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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2008-2009

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T.B.

v.

T.H. and S.H.

**Appeal from Lee Juvenile Court
(JU-07-420.01)**

MOORE, Judge.

T.B. ("the mother") appeals from a judgment purporting to award custody of her child, J.G., to the child's maternal grandmother and maternal stepgrandfather ("the maternal

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grandparents"). We dismiss the appeal as being from a void judgment.

On June 22, 2007, the maternal grandparents filed a petition in the Lee Juvenile Court, which was assigned case number JU-07-420.01, requesting that the juvenile court declare the child dependent and award them temporary emergency custody of the child. That same day, the juvenile court entered an order awarding the maternal grandparents temporary legal and physical custody of the child. After a July 6, 2007, hearing, the juvenile court entered a pendente lite order with the consent of all the parties on August 6, 2007; that order provided that the maternal grandparents and the mother would exercise joint legal and physical custody of the child. Following a subsequent hearing on August 22, 2007, the juvenile court entered an order providing that the maternal grandparents would have temporary custody of the child and that the mother would have visitation; the juvenile court also set the matter for a final hearing.

After the final hearing, the juvenile-court judge stated to the parties that, although the maternal grandparents had alleged the dependency of the child, the judge considered the

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matter to be only a custody case. The juvenile-court judge is a circuit-court judge who also sits as a juvenile-court judge, and he declared to the parties that, in deciding the custody dispute, he considered himself to be sitting as a circuit-court judge. Finally, the judge indicated that, because the matter was a custody dispute, the mother could appeal within 42 days of the entry of the judgment, instead of 14 days as would be the case for a judgment in a juvenile-court case. The judge subsequently rendered a judgment, which was entered under case number JU-07-420.01, on June 23, 2008, finding that the child was not dependent but awarding custody of the child to the maternal grandparents, subject to certain visitation privileges of the mother. In that judgment, the judge found that the mother had voluntarily relinquished custody of the child to the maternal grandparents, that the mother was unfit and improper to be entrusted with the care of the child, and that the maternal grandparents had shown that the change of custody would materially promote the child's best interest and that to not award the maternal grandparents custody would have a disruptive effect on the child. The judge purported to sign the order in his capacity as a circuit-court judge, not a

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juvenile-court judge. On July 7, 2008, the mother filed a motion to alter, amend, or vacate the judgment. That motion was denied by operation of law on July 21, 2008. See Rule 1(B), Ala. R. Juv. P. The mother filed her notice of appeal on August 4, 2008.

"Although neither party has raised an issue regarding this court's jurisdiction, 'jurisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu.'" C.D.S. v. K.S.S., 963 So. 2d 125, 129 n.3 (Ala. Civ. App. 2007) (quoting Wallace v. Tee Jays Mfg. Co., 689 So. 2d 210, 211 (Ala. Civ. App. 1997), quoting in turn Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987)).

Juvenile courts are purely creatures of statute and have extremely limited jurisdiction. See Ex parte K.L.P., 868 So. 2d 454, 456 (Ala. Civ. App. 2003). That limited jurisdiction allows a juvenile court to make a disposition of a child in a dependency proceeding only after finding the child dependent. V.W. v. G.W., 990 So. 2d 414, 417 (Ala. Civ. App. 2008) (quoting K.B. v. Cleburne County Dep't of Human Res., 897 So. 2d 379, 389 (Ala. Civ. App. 2004) (Murdock, J., concurring in the result)) ("[I]n order to make a disposition of a child in

the context of a dependency proceeding, the child must in fact be dependent at the time of that disposition.'"). If, in a dependency proceeding, the juvenile court concludes that a child is not dependent, it may not thereafter adjudicate the custody of the child. E.H. v. N.L., 992 So. 2d 740, 742 (Ala. Civ. App. 2008). Rather, its finding that the child is not dependent implicitly terminates its jurisdiction. See V.W., supra; see also J.W.J. v. P.K.R., 906 So. 2d 182 (Ala. Civ. App. 2005).

In the case at bar, the maternal grandparents' allegation that the child was dependent was the only basis for the juvenile court's jurisdiction to make a final determination as to the custody issue.¹ Although the maternal grandparents alleged that the child was dependent, the juvenile court determined that, in fact, the child was not dependent.

¹In their petition, the maternal grandparents had also attempted to invoke the juvenile court's temporary emergency jurisdiction, pursuant to Ala. Code 1975, § 12-15-153; however, the juvenile court's orders do not indicate that it concluded that the case presented an emergency. In fact, in the juvenile court's August 6, 2007, pendente lite order, it awarded the mother and the maternal grandparents joint custody. Even so, the judgment from which the mother appeals purports to be a final custody determination, not a temporary order entered pursuant to § 12-15-153.

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Instead, the juvenile court determined that the case involved a simple custody dispute. Specifically, the June 23, 2008, judgment stated: "[T]he Court is of the opinion that even though dependency is alleged, that this is, in fact, a custody case." Once the juvenile court declined to find the child dependent, the juvenile court had no jurisdictional basis for determining custody of the child. See, e.g., C.D.S., 963 So. 2d at 130.

Perhaps recognizing that the case was not within the jurisdiction of the juvenile court, the judge attempted to adjudicate the matter as a custody dispute under his jurisdiction as a circuit-court judge. However, neither party had invoked the jurisdiction of the circuit court by filing a complaint regarding the custody of the child. The only action pending between the parties was the dependency action filed by the maternal grandparents in the juvenile court, which the juvenile court could not transfer to a circuit court because only a juvenile court can decide a dependency action. See Ala. Code 1975, § 12-15-30(a) (granting juvenile courts exclusive jurisdiction in proceedings in which a child is alleged to be dependent). Moreover, the judgment rendered by

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the judge was entered under the juvenile-court case number, thus indicating that no new circuit-court action had ever been commenced.

In C.D.S. v. K.S.S., supra, a circuit-court judge in Houston County also served as a juvenile-court judge. 963 So. 2d at 127 n.2. In his capacity as a circuit-court judge, the judge in C.D.S. appointed a guardian ad litem for two children who were the subject of a postdivorce custody dispute. 963 So. 2d at 126-27. Based on the misconduct of the parents as revealed in the circuit-court proceeding, the guardian ad litem filed a dependency petition in the juvenile court. 963 So. 2d at 127. After purporting to enter a judgment finding the children dependent in the circuit-court proceeding, the judge transferred the circuit-court case to the juvenile court. Id. Acting in his capacity as a juvenile-court judge, the judge, on a motion filed by the children's father, denied the dependency petition filed by the guardian ad litem as moot. 963 So. 2d at 128. Subsequently, the judge rendered a judgment later entered under the juvenile-court case number purporting to grant the mother's motion to modify custody, which had been filed in the circuit court. Id.

On appeal, the father argued that the juvenile court erred in modifying custody of the child. 963 So. 2d at 129. This court, acting ex mero motu, 963 So. 2d at 129 n.3, first determined whether the juvenile court had had jurisdiction to enter the custody-modification judgment. This court held that, once the juvenile court denied the dependency petition, it lost jurisdiction to enter any judgments affecting the custody of the children, whose custody could be decided only by the circuit court. 963 So. 2d at 130. In a footnote, this court observed that, although the judge served as both a juvenile-court judge and a circuit-court judge, that fact did not enable the judge to enlarge the jurisdiction of the juvenile court. 963 So. 2d at 130 n.5. Hence, this court held that the judgment rendered by the judge and entered under the juvenile-court case number was a void judgment that would not support an appeal. 963 So. 2d at 130.

In this case, like in C.D.S., the judge attempted to exercise his powers as a circuit-court judge in a juvenile-court proceeding. However, also like in C.D.S., the judge had no jurisdiction to adjudicate custody of the child in the juvenile court once he rejected the dependency petition.

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Although cloaked with the authority to act as a circuit-court judge, that authority did not enable the judge to enlarge the jurisdiction of the juvenile court and rule on matters outside that court's jurisdiction. Therefore, the judgment entered in case no. JU-07-420.01, as well as all the proceedings after the court determined that the child was not dependent, are void.

"[A] judgment entered without subject-matter jurisdiction is void, ... and ... a void judgment will not support an appeal." K.R. v. D.H., 988 So. 2d 1050, 1052 (Ala. Civ. App. 2008). Therefore, we dismiss the appeal as being from a void judgment, albeit with instructions to the juvenile court that it set aside its void judgment.²

APPEAL DISMISSED WITH INSTRUCTIONS.

Thompson, P.J., and Pittman, Bryan, and Thomas, JJ.,
concur.

²We note that the record indicates that the child's mother and father were divorced in the state of Hawaii and that the Hawaii court awarded custody of the child to the mother. It is unclear whether the juvenile court made a determination that it had jurisdiction to modify the Hawaii custody judgment, pursuant to Ala. Code 1975, § 30-3B-203. Because we are dismissing this case because the juvenile court had no subject-matter jurisdiction, it is not necessary for us to comment further on this issue.