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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

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2200205

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**Ex parte M.D.**

**PETITION FOR WRIT OF MANDAMUS**

**(In re: The matter of C.D., a minor child)**

**(Montgomery Juvenile Court)**

FRIDY, Judge.

M.D. ("the mother") petitions this court for a writ of mandamus directing the Montgomery Juvenile Court to instruct that court's juvenile-

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intake officer to accept for filing the mother's petition to modify custody of C.D. ("the child"). We dismiss the mother's mandamus petition as untimely.

The materials before this court indicate the following. On June 9, 2014, the Russell Juvenile Court entered a judgment adjudicating the child to be dependent and awarding custody to the Russell County Department of Human Resources ("DHR"). In that judgment, the Russell Juvenile Court noted that the paternity of the child, who was 19 months old at that time, had not yet been determined. Before the adjudication of dependency, the child had suffered a traumatic brain injury and had been placed in the Father Purcell Memorial Exceptional Children's Center ("the Father Purcell Center") in Montgomery. The Father Purcell Center provides residential care to developmentally disabled children. On March 1, 2019, the Russell Juvenile Court entered a "permanency" judgment in which it stated that DHR's plan for the child was to place the child in the legal custody of R.T. ("the father") and that the mother, through her attorney, agreed with that plan. Accordingly, the Russell Juvenile Court awarded the father legal custody of the child and removed the child from

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the legal custody of DHR. The Russell Juvenile Court also directed that the father was not to remove the child from the Father Purcell Center without the court's permission. The Russell Juvenile Court explicitly retained jurisdiction "to allow it to enforce this Order."

On October 28, 2020, the mother attempted to file in the Montgomery Juvenile Court a petition to modify legal custody of the child. In attempting to file the petition in the Montgomery Juvenile Court, the mother asserted that she lived in North Carolina and had done so for more than the six months preceding the attempted filing; she also asserted that the father had lived in Georgia for more than six months before the attempted filing. The child has lived at the Father Purcell Center in Montgomery since 2014. Accordingly, the mother said, venue was proper in Montgomery County pursuant to § 12-15-302, Ala. Code 1975, which governs venue in dependency actions.<sup>1</sup>

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<sup>1</sup>Section 12-15-302 reads, in pertinent part:

"(b) Regardless of the county where the child currently resides, when a petition is filed seeking to modify an award of custody or visitation pursuant to an adjudication of dependency, and one of the individuals who was a party to the

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On the same day that the mother's petition was presented to the Montgomery Juvenile Court clerk's office for filing, i.e., October 28, 2020, the mother's attorney received a letter via e-mail from Natalie P. Mason, a staff member in that office, rejecting the petition. In the letter, Mason said that she had spoken to her supervisor, Preston Frazier, concerning the petition, adding: "My supervisor and the Juvenile Court Clerk, Angela Starr, reviewed the facts of the case and the Rules of the Court, and

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original proceeding still resides in the county of the juvenile court of original jurisdiction, the petition shall be filed in the juvenile court of the original jurisdiction.

"(c) When a petition is filed seeking to modify an award of custody or visitation pursuant to an adjudication of dependency in which all parties to the original action, including the child, no longer reside in the county of original jurisdiction, the petition shall be filed in the county where the child resides at the time the petition is filed. The petition shall be accompanied by a certified copy of the most recent order to be modified.

"(d) For purposes of this section, county where the child resides means the county in which the child and legal custodian have established legal residence or have resided for six or more months of a calendar year. This term shall not include placements by a state department or agency."

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determined that we do not have jurisdiction. ... We will not be accepting jurisdiction of this case. ..." On December 14, 2020, the mother filed her mandamus petition.

Before this court can address the merits of the mother's petition, we must first determine whether the petition was timely filed. "The issue of timeliness is jurisdictional, and this court may take notice of the issue ex mero motu." Ex parte Murray, 267 So. 3d 328, 331 (Ala. Civ. App. 2018). Generally, a mandamus petition must "be filed within a reasonable time." Rule 21(a)(3), Ala. R. App. P. The reasonable time for filing a petition for the writ of mandamus is presumed to be "the same as the time for taking an appeal, which, in a juvenile action, is within 14 days of the entry of the challenged order." Ex parte Madison Cnty. Dep't of Hum. Res., 261 So. 3d 381, 384 (Ala. Civ. App. 2017).

Rule 12, Ala. R. Juv. P., provides, in pertinent part:

"(A) Any person having knowledge of the facts or being informed of them and believing them to be true may make a complaint, under oath, to a juvenile court intake officer; the complaint, which must be handwritten or typed and contain original signatures, shall allege facts sufficient to establish the subject-matter jurisdiction and venue of the juvenile court and the child's delinquency, dependency, need of supervision, or

violation of an order of probation or aftercare. An individual shall not serve as a complainant and a juvenile court intake officer in the same case. A complaint is made when it is received by the juvenile court intake officer, who shall immediately note thereon the date and time of receipt. The juvenile court intake officer may receive and consider supplements to the complaint in the form of sworn written statements, which must be handwritten or typed and contain original signatures.

"(B) In determining whether to receive a complaint, the juvenile court intake officer shall conduct a preliminary inquiry to determine whether the acts or conditions alleged are within the subject-matter jurisdiction of the juvenile court, whether venue is proper, and whether probable cause exists to believe that the child is delinquent, dependent, in need of supervision, or in violation of an order of probation or aftercare.

"(C) If it appears from the preliminary inquiry that subsection (B) has been satisfied, the juvenile court intake officer shall receive the complaint as provided in subsection (A) and shall either:

"(1) Utilize the informal-adjustment process provided by Rule 15[, Ala. R. Juv. P.,] in delinquency or child-in-need-of-supervision cases;  
or

"(2) Deliver a petition, which must be handwritten or typed and contain original signatures, to the clerk for filing if the juvenile court intake officer finds that the best interests of the child or of the public requires judicial action.

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The filing of the petition with the clerk officially commences a case or action in the juvenile court.

"(D) If it appears from the preliminary inquiry that subsection (B) has not been satisfied or if the petition has not been delivered to the clerk pursuant to subsection (C)(2), the juvenile court intake officer shall take no further action.

"(E) Except as provided in Rule 15, the delivery of a petition by a juvenile court intake officer to the clerk and the filing of that petition shall occur within 21 days of receipt of the complaint or before the 72-hour hearing provided in Ala. Code 1975, § 12-15-207 or § 12-15-308, if such a hearing is required."

See also Ex parte Madison Cnty. Dep't of Hum. Res., 261 So. 3d at 384–85.

In this case, the Montgomery Juvenile Court clerk's office timely notified the mother that the Montgomery Juvenile Court did not have "jurisdiction" over the action.<sup>2</sup> However, the mother waited 47 days from

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<sup>2</sup>We note that § 12-15-117(a), Ala. Code 1975, provides that when a juvenile court has previously adjudicated a child to be dependent, the juvenile court retains continuing jurisdiction over the child until the child attains the age of 21 or until the juvenile court terminates its jurisdiction over the case involving the child before the child's attainment of the age of 21. See V.L. v. T.T.L., 141 So. 3d 88, 92 (Ala. Civ. App. 2013). Accordingly, a juvenile court remains the proper forum in which to seek a custody modification in the case of a child who has been adjudicated to be dependent.

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the date she was notified that the Montgomery Juvenile Court would not permit the filing of the modification petition to file the petition for a writ of mandamus in this court. Thus, she failed to file the petition within a "presumptively reasonable time" from the date of the action that she seeks to challenge, i.e., the date the Montgomery Juvenile Court determined it would not accept the modification petition for filing. In addition, the mother failed to include in her mandamus petition "a statement of circumstances constituting good cause for the appellate court to consider the petition, notwithstanding that it was filed beyond the presumptively reasonable time," as required by Rule 21(a)(3), Ala. R. App. P. As a result, we conclude that the mother's petition for a writ of mandamus is not properly before us, and the petition is dismissed as untimely.

PETITION DISMISSED.

Thompson, P.J., and Moore, Edwards, and Hanson, JJ., concur.

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"Venue, on the other hand, does not impact a [juvenile] court's subject-matter jurisdiction; it limits the territory in which the case can be tried." Ex parte Bell, 978 So. 2d 33, 34 (Ala. 2007).