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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2200427

D.M.G. and T.F.F.

v.

C.W.S. and R.G.S.

2200441

C.W.S. and R.G.S.

v.

D.M.G. and T.F.F.

**Appeals from Coosa Juvenile Court
(JU-17-35.03)**

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HANSON, Judge.

Section 26-10A-24(e), Ala. Code 1975, a portion of the Alabama Adoption Code ("the AAC"), Ala. Code 1975, § 26-10A-1 et seq., provides that, "[o]n motion of [any] party or of [a probate] court, a contested adoption hearing may be transferred to the court having jurisdiction over juvenile matters." (Emphasis added.) This appeal and cross-appeal, which have been consolidated for decision, challenge various aspects of an order entered by the Coosa Juvenile Court ("the juvenile court") in response to an order of the Coosa Probate Court ("the probate court") directing such a transfer. However, because no final judgment that will support an appeal has been entered, we dismiss the appeal and the cross-appeal for lack of appellate jurisdiction.

We note the following pertinent procedural history appearing in the record. In November 2016, a child, G.R.G. ("the child"), was born during the marriage of E.A.S. ("the mother") and D.M.G. ("the father"). In 2017, the child was the subject of a dependency proceeding in the juvenile court brought by the child's great-uncle and great-aunt, C.W.S. ("the great-uncle") and R.G.S. ("the great-aunt"), and was the subject of a custody

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claim by the father's mother, T.F.F. ("the paternal grandmother"). Pursuant to an October 2017 judgment of the juvenile court to which the mother, the father, the great-uncle, the great-aunt, the paternal grandmother, and the child's guardian ad litem consented on the record, the child was found dependent and was placed in the physical custody of the great-uncle and the great-aunt, subject to the visitation rights of the paternal grandmother; the great-uncle, the great-aunt, and the paternal grandmother were named the child's joint legal custodians.

In December 2019, the great-uncle and the great-aunt filed a petition in the probate court pursuant to the AAC. That petition disclosed the names and addresses of the mother and the father and acknowledged the custodial and visitation rights held by the paternal grandmother. In January 2020, the paternal grandmother filed a motion in the Coosa Probate Court seeking a contested hearing, averring that the proposed adoption was not in the child's best interests and that a necessary consent to the proposed adoption "cannot be obtained or is invalid." Thereafter, in July 2020, the great-uncle and the great-aunt filed a motion requesting that the probate court enter a transfer order "pursuant to Section 26-10A-

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24(e)," and the probate court entered a transfer order that likewise specifically referenced § 26-10A-24(e), specifying that the juvenile court was "to decide whether there is actual or implied consent under [Ala. Code 1975, § 26-10A-9,]" and "whether the best interests of the [child] will be served by the adoption."

In February 2021, the juvenile court held a contested hearing at which ore tenus evidence was received, including testimony from the paternal grandmother, the father, the great-uncle, and the great-aunt. After that hearing, but before the juvenile court had entered an order addressing the merits of the issues referred to it under § 26-10A-24(e), counsel for the paternal grandmother and the father filed various motions, such as a motion to dismiss and a motion seeking supplementation of the record to include documents tendered to the probate court for filing, including a particular document purporting to be a letter prepared by the father objecting to the adoption petition. On March 5, 2021, the juvenile court entered several orders, including an order denying the motion to dismiss, an order allowing supplementation of the record only as to the father's purported letter, and an order adjudicating the matters at issue

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in the February 2021 contested hearing held in response to the transfer order entered by the probate court ("the adjudicatory order"). In the adjudicatory order, the juvenile court determined, in pertinent part, that the mother, who had apparently not consented initially to the proposed adoption, had expressly withdrawn her objections; that the father had given implied consent under Ala. Code 1975, § 26-10A-9, to the proposed adoption "by failing to maintain a significant parental relationship with the [child] for a period of six months without paying support"; that the proposed adoption was in the best interests of the child; and that the matter would be remanded to the probate court for the holding of a dispositional hearing pursuant to the AAC. However, the juvenile court's adjudicatory order further stated that the child "ha[d] an attachment to [the] paternal grandmother ... and [the] father," and the juvenile court purported to direct that the child "shall have at least one weekend a month to visit" with those persons on the second weekend of each month and as otherwise agreed. On March 10, 2021, the father and the paternal grandmother filed a notice of appeal directed to the adjudicatory order,

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and the great-uncle and the great-aunt filed a notice of cross-appeal on March 18, 2021.

Under the AAC, "[a]ppeals from any final decree of adoption shall be taken to the Alabama Court of Civil Appeals and filed within 14 days from the final decree." Ala. Code 1975, § 26-10A-26(a) (emphasis added). In contrast, an adjudicatory order like the one in this case, entered by a juvenile court in response to a contested hearing in an adoption action, is interlocutory in nature. See Fowler v. Merkle, 564 So. 2d 960, 961 (Ala. Civ. App. 1989) (holding that adjudicatory order entered by transferee court denying parent's petition to set aside a consent to adoption is not a final judgment); see also Ex parte W.L.K., 175 So. 3d 652, 656 (Ala. Civ. App. 2015) (plurality opinion citing Fowler and indicating that order of probate court determining that parent had not abandoned child or impliedly consented to adoption "did not resolve the entire adoption proceeding").

Our conclusion draws further support from our supreme court's discussion in Ex parte A.M.P., 997 So. 2d 1008 (Ala. 2008), of the various transfer mechanisms available to probate courts in adoption actions,

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including § 26-10A-24(e), which mechanism was expressly invoked by the petitioning parties and the probate court in this case. Speaking through Justice Bolin, himself a former probate-court judge, our supreme court noted that § 26-10A-24(e), unlike Ala. Code 1975, §§ 12-12-35 and 26-10A-21 (statutes providing for transfers of "entire adoption proceedings" from probate courts to circuit courts), provides for a limited transfer:

"[A] transfer under this provision, which may be upon the request of a party or upon motion of the court, is a discretionary transfer by the probate court; however, unlike the other two provisions, this section provides that only the 'contested adoption hearing' may be transferred, rather than the entire adoption proceeding. Therefore, after a juvenile court has conducted a 'contested adoption hearing' transferred to it pursuant to § 26-10A-24(e) and decided the issues presented in the hearing, the adoption proceeding would be remanded to the probate court for further action."

Ex parte A.M.P., 997 So. 2d at 1017 (emphasis added). Thus, the probate court's transfer order pursuant to § 26-10A-24(e) empowered the juvenile court to decide the matters properly at issue in a "contested adoption hearing," which § 26-10A-24(a), Ala. Code 1975, specifies as including only:

"(1) Whether the best interests of the adoptee will be served by the adoption.

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"(2) Whether the adoptee is a person capable of being adopted by the petitioner in accordance with the requirements of [the AAC].

"(3) Whether an actual or implied consent or relinquishment to the adoption is valid.

"(4) Whether a consent or relinquishment may be withdrawn."

In this case, the probate court's July 2020 transfer order expressly invoked the limited-transfer mechanism of § 26-10A-24(e) and specified that the issues of consent and best interests would be for the juvenile court to resolve. At this point, we have for review only an order of a juvenile court adjudicating those issues and purporting to address certain wholly ancillary matters, such as residual visitation rights of the father and the paternal grandmother, that were not referred to the juvenile court. Because the probate court has not yet undertaken the requisite "further action[s]" envisioned by Ex parte A.M.P. and the AAC, there is not a final judgment of adoption that will support an appeal under § 26-10A-26(a).¹

¹Pursuant to the Alabama Rules of Civil Procedure, the term "decree," when used in a statute such as the AAC, is "taken and

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Based upon the foregoing facts and authorities, the appeal and the cross-appeal are dismissed without prejudice to any subsequent appeal that might be taken from a final judgment of the probate court entered in response to the adoption petition filed by the great-uncle and the great-aunt. In doing so, we express no opinion regarding the propriety under the AAC of postadoption visitation (a matter upon which the probate court has yet to rule).

2200427 -- APPEAL DISMISSED.

2200441 -- CROSS-APPEAL DISMISSED.

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

understood" to mean "judgment." See Rule 81(e), Ala. R. Civ. P.