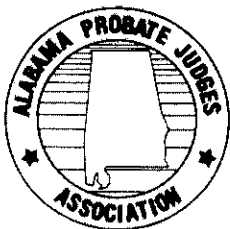


Appeal Court Cases: Adoption [Part II]

Justice Mike Bolin
Alabama Supreme Court

Penny A. Davis, Esq.
Tuscaloosa



Probate Training Conference
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Adoption

Case Law Summaries
2018

Adult Adoption



Evelyn Hays v. Mavis Hays,
946 So. 2d 867 (Ala. Civ. App. 2006).

- A stepparent cannot adopt a consenting adult stepchild under Ala. Code § 26-10A-6(2)(c) after the death of the spouse who was the stepchild's parent.
- The death of the spouse extinguishes the stepparent-stepchild relationship for the purposes of this statute.

ALABAMA DEPARTMENT OF HUMAN RESOURCES v. B.V. and D.V.,
59 So.3d 700 (Ala. Civ. App. 1010)

Synopsis

Background: Foster parents filed a petition to adopt disabled adult. The Probate Court granted the petition. Department of Human Resources (DHR) appealed.

Holdings: The Court of Civil Appeals held that:

- probate court **was not required to obtain the consent of DHR and disabled adult's mother prior to granting the petition;**
- pre- and post-placement investigations were not required;
- substantial evidence supported probate court's determination that foster parents were suitable adopting parents; and
- substantial evidence supported probate court's determination that the adoption was in disabled adult's best interests.

Affirmed.

Consent

- Although the general statutory provision relative to adoption proceedings would require in the present case that DHR and J.C.'s mother consent to J.C.'s adoption by B.V. and D.V.,
- The **more specific statutory** provision found in § 26-10A-11(b) that **applies only to adult adoptions** controls this case and provides that **only the consent of J.C.'s guardian ad litem was required for the adoption.**
- The **guardian ad litem appointed by the Probate Court provided that consent.**

Pre- And Post-placement Investigations

- DHR argues, the necessary pre- and post-placement investigations are required and that a final order granting an adoption petition cannot be entered until such investigations are completed.
- However, in the case of an **adult adoption** such as in the present case, **pre- and post-placement investigations are not required.** See § 26-10A-11(b) (“When the person sought to be adopted is an adult, ... no order of reference or any home studies need be issued.”).

Dispositional Hearing

§ 26-10A-25(b):

- "At the dispositional hearing, the court shall grant a final decree of adoption if it finds on clear and convincing evidence that:
- "(1) The adoptee has been in the actual physical custody of the petitioners for a period of 60 days, unless for good cause shown, this requirement is waived by the court;
- "(2) All necessary consents, relinquishments, terminations, or waivers have been obtained and, if appropriate, have been filed with the court;
- "(3) Service of the notice of pendency of the adoption proceeding has been made or dispensed with as to all persons entitled to receive notice under Section 26-10A-17;
- "(4) All contests brought under Section 26-10A-24 have been resolved in favor of the petitioner;
- "(5) That each petitioner is a **suitable adopting parent and desires to establish a parent and child relationship between himself or herself and the adoptee;**
- "(6) That **the best interests of the adoptee are served by the adoption;** and
- "(7) All other requirements of this chapter have been met."

"(5) That each petitioner is a suitable adopting parent and desires to establish a parent and child relationship between himself or herself and the adoptee;

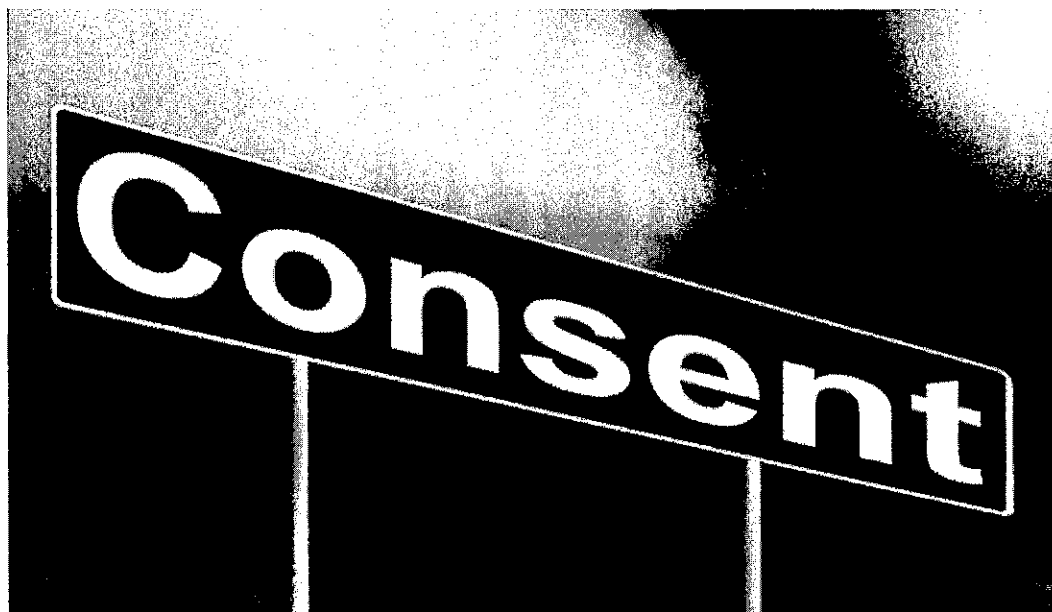
- **"AS TO THE FIFTH REQUIREMENT, we conclude that the record contains substantial evidence supporting the ... Probate Court's determination that B.V. and D.V. were suitable adopting parents and that each already had developed a parent-child relationship with J.C., having had physical custody of J.C. for almost all J.C.'s life and having treated J.C. as their son during that time."**

“(6) That the best interests of the adoptee are served by the adoption

- **FINALLY, AS TO THE SIXTH REQUIREMENT**, we conclude that the record contains substantial evidence supporting the Probate Court's best interests determination.
- J.C. has lived almost his entire life with the petitioners and there was testimony demonstrating that he had an established parent-child relationship with them.
- The record contains evidence indicating that J.C. was making educational progress at the local high school and he was able to participate in activities as a member of their family.
- There was evidence indicating that he had formed strong relationships with individuals at that high school.

“(6) That the best interests of the adoptee are served by the adoption

- There was evidence indicating that the weight he had gained while in the custody and care of the petitioners was related to certain medication he was taking and his genetics rather than an inappropriate diet.
- To be sure, there was evidence, especially related to J.C.'s weight gain and social and educational advancement, that contradicted the testimony offered by the petitioner.
- However, **it is not the job of this court to reweigh the evidence presented to the Probate Court ore tenus, nor is it this court's function to substitute its view of the evidence for that of the Jefferson Probate Court.**



J.L.P. v. L.A.M.,
41 So.3d 770 (Ala. Civ. App. 2008).

HOLDING:

- Adjudicated father of child born out of wedlock, who was child's **"presumed father"** under Adoption Code, **had to consent to child's adoption by mother's husband.**

- Despite his failure to file notice on his own behalf with putative-father registry.

J.L.P. v. L.A.M.,

Reasoning:

- Adoption Code provided that consent of a **“presumed father”** of a child, i.e., any male person as defined in Uniform Parentage Act, was **necessary** in proceeding to adopt that child **if he had received adoptee into his home and openly held out adoptee as his own child.**
- Father had prosecuted paternity action to final judgment that declared him to be child's father.
- He had been awarded and had exercised visitation rights, and had paid child support to mother under paternity judgment.

J.L.P. v. L.A.M.,

- **Adoption Code provided that necessity of consent of a “presumed father,” was not conditioned upon compliance with the Putative Father Registry Act.**
- (Per Curiam, with two Judges concurring and three Judges concurring in the result.) Code 1975, §§ 26-10A-2(11), 26-10A-7(a)(3)(d); Code 1975, § 26-17-1 et seq. (Repealed).

M.M. v. D.P.,
10 So. 3d 605 (Ala. Civ. App. 2008).

- The probate court may not grant an adoption of a child without a waiver of notice or consent from a father listed on the child's birth certificate.
- Ala. Code § 26-10A-7(a)(3)(d) gives a **presumed father** an unqualified right to object to the child's adoption, even absent his filing with the Putative Father Registry.

A.D.S. v. S.J.L.,
70 So.3d 345 (Ala. Civ. App. 2010)

HOLDING:

- Biological father of child born out of wedlock, **who did not comply with Putative Father Registry Act, did not hold the child out as his own,** as required for him to be considered the child's **presumed father**, rather than **putative father**, under Adoption Code provisions applicable at time of his paternity action
- Therefore, **he did not enjoy an unqualified right to object to the adoption of the child;** at time adoption petition was filed in probate court,
- (Per Pittman, J., with four Judges concurring in the result.) Code 1975, §§ 26-10A-7(a)(3)(d), (a)(5), 26-10C-1 et seq.

A.D.S. v. S.J.L.,

PRE-BIRTH:

- Biological father had done nothing to indicate that the child was his.
- Had provided no material support or housing to the mother during the pregnancy.
- Had announced to no one in the community that the mother's fetus would be his child.
- Had taken no steps to initiate a paternity action before the child's birth.

A.D.S. v. S.J.L.

POST BIRTH:

- Even if he was prevented from bringing child into his home by child's mother;
- The child had not ever visited biological father's home even once, before or after the filing of the adoption petition.

Ex parte F.P. and R.P.,
857 So. 2d 125 (Ala. 2003).

PROCEDURAL HISTORY

- Father petitioned for a judicial determination that he was the biological father to child, father and paternal grandmother petitioned for custody of child, and adoptive parents petitioned for adoption of child and to terminate father's parental rights.
- The Juvenile Court entered judgment terminating father's parental rights, denied the joint petition for custody of the child, and approved adoption of child by adoptive parents.
- Father and paternal grandmother appealed. The Court of Civil Appeals, 857 So.2d 110, affirmed.
- Father and paternal grandmother petitioned for a writ of certiorari.

Ex parte F.P. and R.P.,

HOLDING

On ***OVERRULING OF REHEARING***, the Supreme Court held that:

- (1) **evidence was insufficient to support finding that biological father gave implied consent to adoption of child or that father's actions amounted to an abandonment of child.**
- (2) statute establishing prebirth abandonment of child as a ground for termination of parental rights could not be applied retroactively to father.

Ex parte F.P. and R.P.,
[CONTINUED]

➤ **FACTS**

- The father has never seen the child.
- He and the grandmother tried to see the baby shortly after it was born, but were told they could not see the child without the mother's permission.
- He testified that he did not provide support for the mother during her pregnancy because, he says, she did not ask for it.
- He also testified that he has not provided any support to the adoptive parents because they have not requested it.
- He made one attempt to contact the adoptive parents by telephone before the hearing in this case, but he reached a relative of the adoptive parents who was babysitting, the relative told him he could not see the child.
- The adoptive parents say they are not sure they want to have any contact with the father because he is contesting the adoption and they say they would consider requests from him to see the child to be "harassing calls."

Ex parte F.P. and R.P., [CONTINUED]

➤ **FACTS**

➤ **What Father Did**

- On **July 1, 1999**, the father petitioned the juvenile court for a determination of 'father and child relationship,' alleging that on or about June 29, 1999, 'the mother' had given birth to a child he believed might be his biological child [the record indicates that the child was born on July 6, 1999].
- He had registered with the putative-father registry, § 26-10C-1, Ala.Code 1975.
- He stated that he believed an adoption proceeding was pending in Probate Court.
- He requested a blood test to determine paternity.
- He requested a stay of any pending adoption proceedings involving the minor child.

Ex parte F.P. and R.P., [CONTINUED]

➤ **FACTS**

➤ **What Mother Did**

- On **July 12, 1999**, the adoptive parents petitioned the probate court for adoption, alleging that the child, born on July 6, 1999, was in the mother's custody and that 'no other persons or agencies have any interest' in the child; that 'all persons known to the [adoptive parents] at the time of filing this petition from whom consents or relinquishments to this adoption are required by law ... are as follows: [the mother]'; and that they were fit and proper persons to adopt the child.

- On July 13, 1999, the probate court entered an interlocutory judgment, awarding the adoptive parents custody of the child, ordering a postplacement investigation, and setting the case for a dispositional hearing in December 1999.

Ex parte F.P. and R.P., [CONTINUED]

➤ **HOLDING**

- Finally, we address the contention that the father abandoned the child after its birth.

- Postbirth, the father had a justifiable excuse for failing to establish a relationship with the child—the adoptive parents did not wish to allow him to do so.

Ex parte J.W.B. and K.E.M.B.
933 So.2d 1081 (Ala. Sup. Ct. 2005)

HOLDING:

- Evidence was sufficient to support finding **that father failed to maintain a significant relationship with his child.**

- Thereby, **impliedly consented to the child's adoption.**

Ex parte J.W.B. and K.E.M.B.

REASONING:

- Father was not excluded when birth mother was admitted to hospital.

- Maternal grandmother's request that father stay in waiting room was reasonable given mother's medical condition and father's apparent insensitivity by creating a party-like atmosphere in hospital room.

- **Father did not initiate legal proceedings until he was served with notice of adoption.**

- Father never went to birth mother's house in the three weeks following birth.

- **Mother's evasiveness** after father finally contacted her was due in part to father's alleged statement that he would get child legally or illegally and paternal grandmother's former conviction for interference with custody in an unrelated matter.

J.D.S. v. J.W.L.
204 So.3d 386 (Ala. Civ. App. 2016)

Synopsis

Background: Stepfather petitioned to adopt child. Probate Court, granted the petition. Father appealed.

Holding: The Court of Civil Appeals held that evidence was insufficient to support finding that father had abandoned child, thereby impliedly consenting to child's adoption.

Reversed and remanded.

J.D.S. v. J.W.L.

- ✓ The power of the court in adoption proceedings to deprive a parent of his child being in derogation of his natural right to it, and
- ✓ Being a special power conferred by the statute, such statute must be strictly construed, and
- ✓ In order to warrant the exercise of the special power, in opposition to the wishes and against the consent of the natural parent, on the ground that conditions prescribed by statute exist which make that consent unnecessary, **the existence of such conditions must be clearly proven;**
- ✓ If the statute is open to construction and interpretation, it should be construed in support of the right of the natural parent.

J.D.S. v. J.W.L.

Mother testified:

- ✓ Father initially exercised his visitation rights consistently, BUT began to taper off and **had ceased altogether in March 2012.**
- ✓ Since that time, **the father had not sent birthday or Christmas cards or gifts to the child or had any other contact with the child.**
- ✓ In December 2012, the child was hospitalized and the father did not visit the child or otherwise check on him.
- ✓ The mother alleged that the father had not performed any parental duties, other than paying child support, in the three years preceding the hearing.

J.D.S. v. J.W.L.

Father testified:

- ✓ **The last time he saw the child was on Thanksgiving in 2012.**
- ✓ He was not aware that the child had been hospitalized in December 2012.
- ✓ He **admitted that he stopped making efforts to contact the child in January 2013.**
- ✓ The father testified that he had financial problems that prevented him from being able to exercise his visitation with the child.

J.D.S. v. J.W.L.

Father testified:

- ✓The father also testified that he and the mother would argue when he exercised his visitation rights and that he did not want to "rock the boat."
[The mother testified that, at some point, she altered the visitation arrangements to require the father to pick up the child from her parents' house instead of from her house to avoid arguments with the father.]
- ✓The father testified that it was difficult to exercise his visitation with the child because he would not get off work until 5:30 or 6:30 p.m. on Friday evenings and that it was a two-hour drive round trip to retrieve the child.
- ✓The father testified that, even after he stopped visiting with the child, he unsuccessfully attempted to contact the child by telephone. The father testified that he then stopped calling because he did not want to pressure the child.

J.D.S. v. J.W.L.

COURT FINDING:

Evidence **was insufficient to support finding at adoption proceeding that father had abandoned child**, thereby impliedly consenting to adoption of child by stepfather:

- ✓Even though father had failed to make contact with child for approximately two years prior to filing of adoption petition;
- ✓ Father had maintained a relationship with child for eight years before his absence;
- ✓ **Father Consistently paid child support**, even throughout adoption proceedings, and
- ✓Father indicated that his failure to visit child was because of financial problems and a difficult work schedule, not because he intended to abandon child.

S.P. v. J.R. and R.R.,
206 So.3d 637 (Ala. Civ. App. 2016)

- **Synopsis**
- **Background:** Stepfather filed petition to adopt child. The Probate Court granted the petition. Father appealed.

Holding: The Court of Civil Appeals held that father did not impliedly consent to child's adoption.

- Reversed and remanded.

S.P. v. J.R. and R.R.,

Evidence:

- ✓ The **only six-month period in which the father failed to visit the child was during the father's seven-month incarceration.**
- ✓ However, the evidence is **undisputed that the father continued to pay child support during that period.**
- ✓ Although the mother suggested that the child support was really being paid by the paternal grandparents, she did not present any evidence contradicting the testimony indicating that the support had been sent at the father's instruction.

S.P. v. J.R. and R.R.,

Evidence:

- ✓ After the father was released from prison, he contacted the mother to schedule visitation with the child.

- ✓ Although the mother points to a text message the father sent stating that he would sign over his rights to the child for \$10,000, the father explained that he had sent that text message in anger and that he had not been serious about giving up his rights to the child.

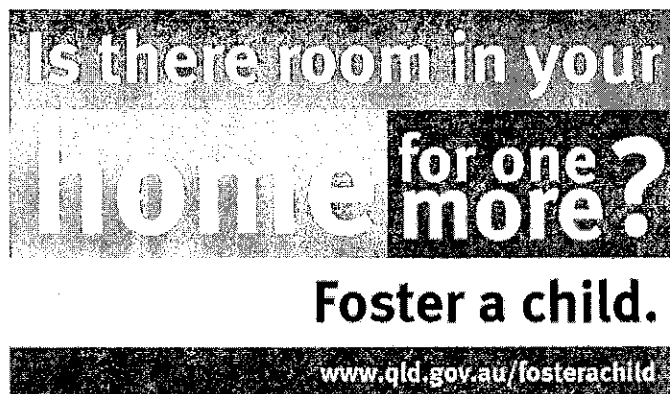
- ✓ We cannot conclude that that isolated text message is clear and convincing evidence of implied consent in light of the other evidence in this case indicating the father's intent to maintain contact with and to support the child.

WALKER COUNTY DEPARTMENT OF PENSIONS AND SECURITY
v. MASON
373 So.2d 863 (Ala. Civ. App. 1979)

- When **permanent custody** of child has not been placed with DHR, consent of child's natural parent is sufficient to support adoption proceeding.

Code of Ala.1975, § 26-10-3.

FORSTER PARENTS



K.P. and C.P. v. G.C. and J.C.,
870 So. 2d 751 (Ala. Civ. App. 2003).

PROCEDURAL FACTS:

- Two sets of foster parents both filed petitions to adopt children.
- Following an *ores tenus* hearing, the Probate Court granted the adoption petition of the foster parents who first had care of the children.
- Department of Human Resources (DHR) and second set of foster parents appealed

K.P. and C.P. v. G.C. and J.C.,

HOLDING:

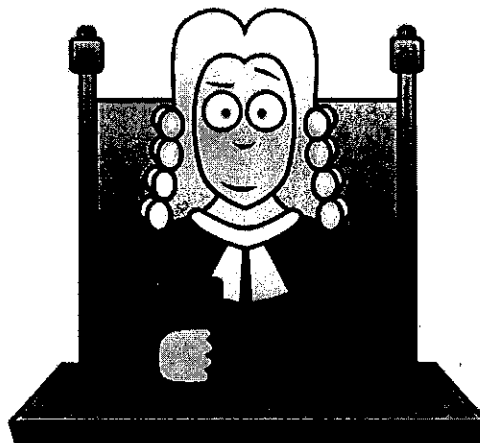
- Evidence was sufficient to establish that home of first set of foster parents was **MORE SUITABLE FOR THE CHILDREN.**

REASONING:

SUFFICIENT EVIDENCE THAT FIRST SET OF FOSTER PARENTS WERE MORE SUITABLE BASED ON:

- **Second set of foster parents** who wished to adopt children had **financial difficulties** and were already providing support to one of their children and three grandchildren.
- **First set of foster parents** only asked that children be removed from their home in frustration over the Department of Human Resources' (DHR) handling of attention deficit hyperactivity disorder (ADHD) of one of the children.

HEARING



In re Adoption of F.I.T.,
43 So. 3d 621 (Ala. Civ. App. 2010).

PROCEDURAL FACTS:

- Petitioners filed adoption petition to adopt child who was the sister of one of the petitioners, and a **foreign national**.
- Child's **parents consented** to the proposed adoption.
- The Probate Court **dismissed the action WITH OUT A HEARING**.

In re Adoption of F.I.T.,

HOLDING

- Petitioners were **entitled to a hearing** on their uncontested adoption petition, despite trial court's concern that it might not have jurisdiction over the case in light of the fact that the child sought to be adopted was a foreign national;
- Petitioners were entitled to opportunity to address the child's legal status.

In re Adoption of F.I.T.

HOLDING

- Petitioners were **entitled to an evidentiary dispositional hearing on their uncontested adoption petition** following court-ordered post-placement investigation into petitioners' suitability as adoptive parents, even though investigation generated a report indicating that one of the petitioners had previously abused a child;
- Statute indicated that investigatory report could not be conclusive.
- Code 1975, §§ 26-10A-19(c), 26-10A-25.

In re Adoption of F.I.T., [CONTINUED]

REASONING

JURISDICTION:

- Unlike Waite v. Waite, supra, there is no party opposing the petitioners in this action; the adoption petition in this case is uncontested.
- Therefore, there is no opposing party on behalf of whom the probate court could assert the affirmative defense of a lack of personal jurisdiction.
- **We are unwilling to hold that, under the facts of this case, the lack of an opposing party precludes the probate court's inquiry into personal jurisdiction.**
- However, in this case, the probate court failed to make such an inquiry; rather, it entered a judgment denying the adoption petition based, in part, on its belief that it might lack jurisdiction.

In re Adoption of F.I.T., [CONTINUED]**REASONING****CHILD ABUSE:**

- Court ordered post placement investigation. Section 26-10A-25, Ala.Code 1975, required the probate court to conduct a dispositional hearing on the adoption petition.
- **At that hearing, which the probate court scheduled but did not conduct**, the probate court would have considered a number of issues, including whether the petitioners are suitable adoptive parents, whether the adoption is in the child's best interests, and whether all requirements of the Adoption Code have been met. § 26-10A-25(b)(5), (6), and (7), Ala.Code 1975.
- The **report generated as a result of the post-placement investigation conducted** pursuant to § 26-10A-19 indicating that R.M.T. had previously abused a child is relevant to those issues.
- Section 26-10A-19(i), Ala.Code 1975, specifies that "[w]hen the [full post-placement] investigation has been conducted, ***the investigatory report shall not be conclusive but may be considered along with other evidence.***" (Emphasis added.)

In re Adoption of F.I.T., [CONTINUED]

- The probate court's failure to make a determination of its jurisdiction and to consider any "other evidence" in a dispositional hearing on the adoption petition was error.
- **BOTTOM LINE: MUST CONDUCT HEARING ON JURISDICTION AND HAVE DISPOSITIONAL HEARING ON UNCONTESTED ADOPTION.**

Jurisdiction



R.L. v. J.E.R.,
69 So. 3d 898 (Ala. Civ. App. 2011).

PROCEDURAL FACTS:

- Prospective adoptive parents filed petition to adopt child.
- Probate court sent case to juvenile court to determine whether to terminate mother's parental rights before adoption proceedings could continue.
- The Juvenile Court, entered judgment, ordering termination of mother's parental rights and ordering adoption.
- Mother appealed termination order.

R.L. v. J.E.R.,

FINDINGS OF FACT.

- Alabama was not child's "home state" under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), for purposes of making initial custody determination.
- Thus, juvenile court was without jurisdiction and judgment terminating mother's parental rights, was void;
- Aside from child's temporary absence from Georgia while he was in perspective adoptive parents' custody, the child had lived with his mother in Georgia for six consecutive months immediately preceding filing of petition, mother continued to live in Georgia during child's temporary absence,
- No evidence that a Georgia court had declined to exercise jurisdiction over issue of child custody.
- Code 1975, § 30-38-201.

R.L. v. J.E.R.,

Ex parte C.L.C., 897 So.2d 234, 238 (Ala.2004), our supreme court held that, **generally, a juvenile court does not have jurisdiction to enter a judgment of adoption.**

The 'primary jurisdiction over adoption proceedings is in the probate court.' B.W.C. v. A.N.M., 590 So.2d 282, 283 (Ala.Civ.App.1991). '[U]nless [a] juvenile court acquire[s] jurisdiction over a petition to adopt by the "transfer" mechanism found in § 12-12-35, [Ala.] Code 1975,[[4] the juvenile court [is] without authority to grant an adoption.' B.W.C., 590 So.2d at 283.

R.L. v. J.E.R.,

“The probate court **kept exclusive jurisdiction over the issue of whether or not to grant or deny the petition to adopt.** *Wesson, supra.*

The probate court, pursuant to the authority of § 26–10A–3, sent the case to the juvenile court for the strictly limited purpose of addressing the issue of termination of parental rights, and the juvenile court acquired only that limited jurisdiction over this particular case.

R.L. v. J.E.R.,

- In this case, no party to the adoption proceeding filed a motion to transfer the case to the juvenile court; therefore, § 12–12–35, Ala.Code 1975, the statute creating the “transfer” mechanism referred to in the quote above, is not applicable here.
- Pursuant to the authority of § 26–10A–3, the probate court sent the case to the juvenile court **strictly for the limited purpose of addressing the issue of termination of parental rights**, and **the probate court retained jurisdiction over the adoption petition.**

R.L. v. J.E.R.,

- Therefore, on the authority of C.L.C., we conclude that **the juvenile court did not have jurisdiction to enter the judgment of adoption.**
- Accordingly, **that judgment is also void**, and the cause is remanded for the juvenile court to vacate the adoption judgment as well.

R.L. v. J.E.R.,

Note: The **UCCJEA does not ordinarily apply in adoption proceedings**, but applied here because the adoption was connected with the separate custody matter of terminating the biological mother's parental rights.

Ex parte W.L.K.,
175 So.3d 652 (Ala. Civil App. 2015).

PROCEDURE:

- Prospective adoptive parents petitioned for adoption, and father filed contest.
- The Probate Court held hearing on father's contest, ruled that father had not impliedly consented to child's adoption,
- Denied father's subsequent motion to dismiss petition,
- Awarded temporary custody to prospective adoptive parents,
- THEN, Transferred case to juvenile court.
- Putative father petitioned for writ of mandamus.

Ex parte W.L.K.

Holdings:

1 Order that father had not abandoned child in six months prior to her birth and thus had not impliedly consented to child's adoption was interlocutory, for purposes of obtaining mandamus review;

2 Father's motion to dismiss did not toll presumptively reasonable time for father to seek mandamus review, but petition was timely as to order denying motion;

Ex parte W.L.K.

Holdings:

3 As matter of first impression, probate court was required to dismiss petition for adoption, and it lacked jurisdiction to transfer case to juvenile court for limited purpose of determining whether to terminate father's parental rights, when it HAD ALREADY ruled that father had not consented to adoption; and

4 Probate court had jurisdiction to award temporary custody to prospective adoptive parents.

Petition granted in part and denied in part; writ issued.

Moore, J., concurred in result and filed opinion.

Thompson, P.J., concurred in result in part, dissented in part, and filed opinion, in which Donaldson, J., joined.

Ex parte W.L.K.

- We are aware that this court and our supreme court have indicated that the transfer language contained in **§ 26-10A-3** mandates transfer to the juvenile court of adoption proceedings lacking implied or express consent from a parent.
- Ex parte A.M.P., 997 So.2d at 1018 (“it is only when there is no express or implied consent or relinquishment from a parent of the adoptee that the mandatory transfer portion of § 26-10A-3 applies.... When applicable, this transfer provision is mandatory...”); R.L. v. J.E.R., 69 So.3d 898, 901 (Ala.Civ.App.2011) (“The mother refused to consent to the adoption; therefore, pursuant to **§ 26-10A-3**, the probate court was required to transfer the matter to the court having jurisdiction to determine whether the mother's parental rights were due to be terminated.”).

Ex parte W.L.K.

- In *Ex parte A.M.P.*, our supreme court further opined that, “[w]hen § 26–10A–3 is read *in para materia* with § 26–10A–9, it is clear that if the probate court finds that the evidence does not prove implied consent ..., then the probate court must transfer the case to juvenile court for a determination of whether to terminate parental rights.” *Ex parte A.M.P.*, 997 So.2d at 1019.

Ex parte W.L.K.

- However, our supreme court did not consider the language of § 26–10A–24(d) in its analysis in *Ex parte A.M.P.*, and neither *Ex parte A.M.P.* nor *R.L.* involved the resolution of an adoption contest in favor of the objecting parent under § 26–10A–24(d).
- Thus, we are presented with a question that cannot be answered by reliance on those cases.

Ex parte W.L.K.

Holdings:

As matter of first impression:

- Probate court was **required to dismiss petition for adoption**
- Probate court **lacked jurisdiction to transfer case to juvenile court for limited purpose of determining whether to terminate father's parental rights, when it Had Already ruled that father had not consented to adoption.**

Petition granted in part and denied in part; writ issued.

Moore, J., concurred in result and filed opinion.

Thompson, P.J., concurred in result in part, dissented in part, and filed opinion, in which Donaldson, J., joined.

T.C.M. and C.N.M. v. W.L.K.
208 So.3d 39 (Ala. Ct. App. 2016)

- This is the **fifth time** that T.C.M. and C.N.M. (hereinafter referred to collectively as the “prospective adoptive parents”) and W.L.K. (“the father”) have appeared before this court seeking review of a court's orders in an action respecting the custody of M.M. (“the child”).
- **Synopsis**
- **Background:** Father filed petition seeking to establish his paternity of child and requesting award of sole custody of child.
- After entering pickup order directing law enforcement to take into custody the child, who was residing with prospective adoptive parents, the Juvenile Court denied prospective adoptive parents' motion for stay of pickup order.
- Prospective adoptive parents filed petition for writ of prohibition or mandamus, which was treated as an appeal.

T.C.M. and C.N.M. v. W.L.K.

Held:

- Pickup order was sufficiently injunctive in nature to provide prospective adoptive parents right to seek review of that order; and
- Juvenile court lacked authority to enter pickup order that directly contradicted probate court's interlocutory order granting custody to prospective adoptive parents.
- Reversed and remanded.

T.C.M. and C.N.M. v. W.L.K.

REASONING:

- ✓ If a probate court is, with certain exceptions not pertinent here, the only court permitted to entertain an adoption action, to enter an adoption judgment, or to set aside an adoption judgment, we must also conclude that another court may not enjoin the operation of an interlocutory custody order entered by the probate court in an adoption action.
- ✓ The juvenile court's pickup order, therefore, cannot be given effect.

T.C.M. and C.N.M. v. W.L.K.

REASONING:

- ✓ Because the juvenile court lacks authority to interfere with the probate court's interlocutory custody order in the adoption action through a pickup order, we **reverse the juvenile court's pickup order** and remand the cause to the juvenile court.
- ✓ Until such time as the supreme court renders its decision on certiorari in *W.L.K. II* and the probate court acts in accordance with the directive of an appellate court, the juvenile court may not enter an order requiring that the child be placed in the custody of the father.

D.B. and T.B. v. M.A.,
975 So. 2d 927 (Ala. Civ. App. 2006).

PROCEDURE:

- These appeals arise from consolidated proceedings involving an **adoption action** and an action to register and enforce a child-custody judgment entered by a Nebraska trial court.
- These appeals are before this court after numerous proceedings in **three different courts in Alabama—a probate court, a juvenile court, and a family court—with accompanying orders from no less than five Alabama judges,**
- In addition to proceedings in a Nebraska trial court, M.A. (“the father”) is a Nebraska resident and the father of B.B., the child at issue in this action (“the child”).

D.B. and T.B. v. M.A.,**FACTS:**

- Child was born in Nebraska.
- Child was moved to Alabama when he was only 11 days old.
- He clearly did not live with the adoptive couple from birth.
- Therefore, **Alabama cannot claim home-state jurisdiction under the PKPA.**

- Furthermore, under the facts of this case, **an Alabama court cannot invoke jurisdiction under any of the other provisions of 28 U.S.C. § 1738A.**

- Indeed, **under the PKPA, an Alabama court is bound to recognize the jurisdiction of the Nebraska trial court** in this case because the Nebraska trial court has made a custody determination regarding the child.

D.B. and T.B. v. M.A.,
975 So. 2d 927 (Ala. Civ. App. 2006).

HOLDING

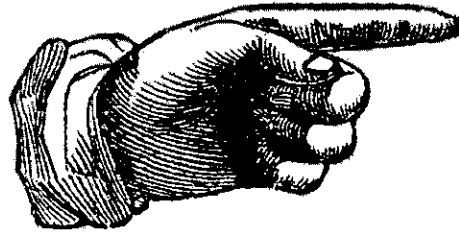
- Under the Parental Kidnapping Prevention Act (20 U.S.C. § 1738A), **Alabama lacks jurisdiction in custody proceedings pertaining to a child whose “home state” is currently exercising jurisdiction in existing custody or visitation proceedings.**

- The **“home state” is one where a child has, immediately preceding the time in question, lived with an acting parent for 6 months or from birth if younger than 6 months, notwithstanding any temporary absences.**

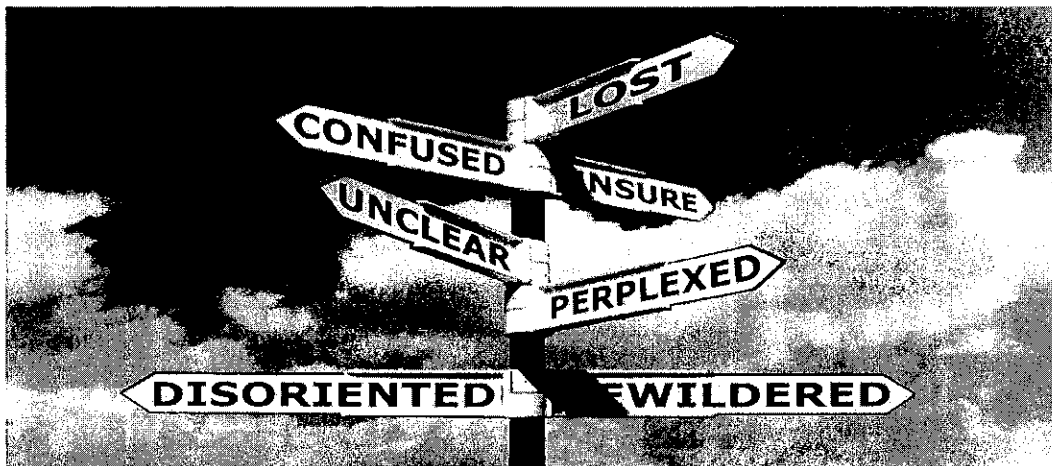
- However, a state may exercise such “home state” jurisdiction within 6 months of the child’s removal from the state if the removal was made by a custody contestant and another contestant continues to reside within the state.

NOTICE

Please Notice This



Post-Judgment Motions



C.B.W.N. v. K.P.R.,
2018 WL 1443391(Ala. Civ. App. 2018).

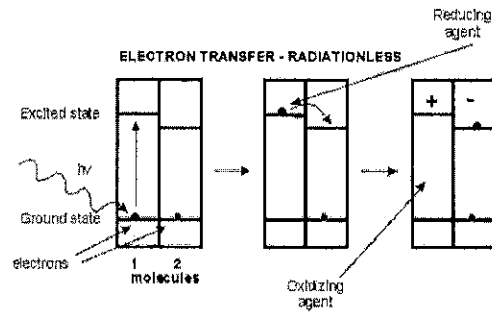
PROCEDURAL FACTS:

- C.B.W.N. (“the stepfather”) appeals from an order of the probate court that, among other things, **granted the contest of K.P.R. (“the father”) to the proposed adoption of C.A.R. (“the child”) by the stepfather.**
- Denied the stepfather's petition to adopt the child.
- Dismissed the adoption proceeding.

C.B.W.N. v. K.P.R.,

HOLDING:

- Based on the current interpretation of § 26–10A–26, Ala. Code 1975, the **appeal was required to be filed within 14 days of the entry of the order.**
- Because the appeal was filed more than 14 days after the entry of the order, this court is without jurisdiction and we dismiss the appeal. Rule 2(a)(1), Ala. R. App. P.



TRANSFER

Ex parte A.M.P.,
997 So. 2d 1008 (Ala. 2008).

Four different provisions address the transfer of adoption cases from probate court:

(1) Ala. Code § 12-12-35

- Upon motion by one of the parties.
- Adoption proceedings may be transferred to district court.
- At the probate **court's discretion**.
- Once transferred, **the entire" adoption proceeding** is transferred to district court.

Ex parte A.M.P.,

Four different provisions address the transfer of adoption cases from probate court:

(1) Ala. Code § 12-12-35

- [(b) When adoption proceedings are transferred to the district court, **a copy of the record of such proceedings shall be filed in the probate court**, and the probate court offices shall maintain records of all adoption proceedings within their respective counties.]

Ex parte A.M.P.,

(2) Ala. Code § 26-10A-21

- If, it is determined that any other custody action concerning the adoptee is pending in another court
- Any party to the adoption proceeding, or the court on its own motion, may move to **stay such adoption proceeding until a determination** has been made by an appropriate court with jurisdiction pursuant to the provisions of the Uniform Child Custody Act (UCCJA) or the Parental Kidnapping Prevention Act (PKPA).
- “The adoption” may be transferred and consolidated with a custody proceeding pending in any court in this state.”
- **HOLDING:**
- The current version of § 26-10A-21, making transfer of the adoption proceeding and consolidation with any custody proceeding **discretionary**

Ex parte A.M.P.,

(3) Ala. Code § 26-10A-24.

- On motion of either party or of the court.
- A contested adoption hearing may be transferred to the “court having jurisdiction over juvenile matters.”[Discretionary with court]
- Note: “Entire adoption proceeding” is NOT transferred. **ONLY the “CONTESTED HEARING” is transferred.**
- After juvenile court has hearing on the contest, the adoption proceeding is **remanded back to probate court for further action.**

Ex parte A.M.P.,

(4) Ala. Code § 26-10A-3

- When a party’s whose **consent is required fails to consent or is unable to consent.**
- The case **must be transferred to juvenile court for the limited purpose** of adjudicating the termination of the party’s parental rights. [NO DISCRETION]
- Following that limited determination, the case would be *remanded to the probate court.*

Ex parte A.M.P.

- When the probate court has exercised its discretion to transfer the entire adoption proceeding (by virtue of § 12-12-35 or § 26-10A-21) to either a district or another court, the transferee court acquires jurisdiction.
- The probate court thereafter **maintains only recordkeeping responsibilities.** See § 12-12-35(b)

Ex parte A.M.P.

- When the probate court has exercised its discretion to transfer only that limited portion of the proceeding concerning a contested hearing (by virtue of § 26-10A-24(e)).
- it is then the province of the transferee juvenile court, attendant to the transferred contested hearing, to decide a contested issue of implied consent.
- Put another way, it is the court that hears and decides the contest that determines “[w]hether an actual or implied consent or relinquishment to the adoption is valid.” § 26-10A-24(a)(3).

I.B. v. T.N. and C.N.,
194 So.3d 221 (Ala. Sup.Ct. 2015)

- Complicated series of court proceeding in Juvenile Court and Probate Court.
- **Holding:** The probate court in this case was not obligated to transfer the adoption proceedings to the juvenile court simply because the juvenile court was simultaneously exercising jurisdiction over other matters related to the mother and the child.
- The probate court properly utilized its discretion in declining to transfer the proceedings to the juvenile court.

VISITATION



B.C.M. v. H.E.C.,
907 So. 2d 445 (Ala. Civ. App. 2005).

When terminating parental rights:
➤ a court cannot reserve visitation
rights to the terminated parent.

THE END

