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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2026

CL-2026-0152

Ex parte M.G.H.

PETITION FOR WRIT OF MANDAMUS

(In re: In the Matter of Adoption of P.L.F.)

(Madison Probate Court: 8122-A)

BOWDEN, Judge.

A probate court has general and original jurisdiction over adoption cases. Ala. Const. 2022, Art. VI, § 144 (describing a probate court's general jurisdiction over adoption cases); § 26-10E-3(a), Ala. Code 1975 (describing a probate court's original jurisdiction over adoption cases). But a probate court's jurisdiction over adoption cases is not exclusive.

Instead, § 26-10E-3, a part of the Alabama Minor Adoption Code ("the adoption code"), § 26-10E-1 et seq., Ala. Code 1975, contains three distinct transfer provisions that allow or, in some circumstances, require a probate court to transfer an adoption case to a juvenile court upon a motion of a party.¹

In this case, H.D.G. ("the grandmother") filed a petition in the Madison Probate Court ("the probate court") to adopt P.L.F. ("the child"). Because the grandmother could not obtain actual consent from M.G.H. ("the mother"), the grandmother asked the probate court to find that the mother had impliedly consented to the adoption by abandoning the child. See § 26-10E-9(a), Ala. Code 1975. The mother objected to the adoption and disagreed that she had impliedly consented to the adoption. However, before the probate court ruled on the implied-consent issue, the mother filed a motion to transfer the case to the Madison Juvenile Court ("the juvenile court"), citing generally § 26-10E-3, Ala. Code 1975. The probate court denied the requested transfer of the case and, instead, set

¹The adoption code replaced the former Alabama Adoption Code, former § 26-10A-1 et seq., Ala. Code 1975, effective January 1, 2024. See Ala. Acts 2023, Act No. 2023-92, § 1.

the case for an evidentiary hearing to determine the issue of implied consent.

The mother filed a petition for the writ of mandamus, asserting that the transfer was mandatory and asking this court to order the probate court to immediately transfer the case to the juvenile court. Because we find that the mother properly invoked the mandatory transfer provision contained in § 26-10E-3(d), we grant her petition and issue a writ of mandamus ordering the probate court to transfer the case to the juvenile court for the limited purpose of adjudicating her contest of the adoption.

Background

This adoption case began on August 25, 2025, when the grandmother filed a petition in the probate court to adopt the child. Among other things, the grandmother alleged in the petition that she was the maternal grandmother of the child and identified the mother as the child's mother. The petition also listed C.F. as the child's father but alleged that his whereabouts were unknown. She further alleged that the child, who was born on May 6, 2013, had been in her physical custody since birth. Finally, the grandmother made the following allegations:

"Neither the mother nor the alleged father of the child has visited with the child, provided material support for the

child, or maintained a significant parental relationship with the child during the four-month period preceding the filing of this petition. They have withheld their presence, care, love, protection, and maintenance without good cause. The actions of the mother and alleged father give rise to a presumption of implied consent to the adoption pursuant to § 26-10E-9(a), Code of Alabama, 1975, as amended."

On December 5, 2025, the mother filed an "Objection to Adoption Petition by Biological Mother [M.G.H.]." The mother subsequently filed a "Motion for Statutory Transfer to Juvenile Court by Biological Mother [M.G.H.]" on January 9, 2026. The motion cited "Ala. Code (1975) § 26-10E-3" as authority for the transfer of "the contest" and noted that

"[t]he [juvenile court] in Court Case No. JU2019-35 ... has since January 2019 taken jurisdiction over the [child] and all of the parties hereto and entertained [the mother's] various petitions thereafter relative to custody of and visitation with the [child] and entered a Final Order in said case on March 3, 2025[,] addressing visitation and child support issues."

The grandmother responded to the motion to transfer on January 21, 2026, restating her claims of implied consent and arguing that she was "entitled to a hearing before the [p]robate [c]ourt on the matter prior to a transfer of the case to the [j]uvenile [c]ourt." According to the mandamus petition, the probate court held a status conference on February 6, 2026, at which time the probate court indicated its intention to hear the claims of implied consent before considering the motion to

transfer. The mother filed her petition for the writ of mandamus on February 23, 2026.

Standard of Review

It is well settled under Alabama law that

"[a] writ of mandamus is an extraordinary remedy available only when the petitioner can demonstrate: "(1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the court.'""

Ex parte Hood, 401 So. 3d 251, 255-56 (Ala. 2024) (quoting Ex parte Alabama Dep't of Corr., 252 So. 3d 635, 636 (Ala. 2017)). This court has considered petitions for the writ of mandamus seeking review of an interlocutory order from a probate court in an adoption proceeding, see, e.g., Ex parte A.M.P., 997 So. 2d 1008 (Ala. 2008); Ex parte W.L.K., 175 So. 3d 652 (Ala. Civ. App. 2015), including an order denying a motion to transfer an adoption proceeding from a probate court to a juvenile court, see, e.g., Ex parte Hicks, 451 So. 2d 324 (Ala. Civ. App. 1984) (plurality opinion).

Analysis

The mother asserted in her motion to transfer that she was entitled to have the case transferred to the juvenile court based on "Ala. Code

(1975) § 26-10E-3." However, § 26-10E-3 contains three distinct transfer provisions -- each with different requirements and circumstances under which a transfer may or must take place. See § 26-10E-3(b), (c), and (d). The mother argues in her mandamus petition that "regardless of whether [her] request is under subdivision (b) or (d) of Ala. Code [1975], § 26-10E-3, or both, the plain and ordinary language is mandatory and requires transfer of the contest to the [j]uvenile [c]ourt." The mother's petition at 13. Because § 26-10E-3(d) is dispositive of the issue, we address that statutory provision in determining that the mother is entitled to have the case transferred to the juvenile court for consideration of her contest.

We have not located, nor has the mother cited in her petition, any cases interpreting § 26-10E-3(d). Before the adoption code replaced the former Alabama Adoption Code, see note 1, *supra*, former § 26-10A-24(e), Ala. Code 1975, governed the transfer of a contested adoption proceeding from probate court to juvenile court. Former § 26-10A-24(e) provided: "On motion of either party or of the court, a contested adoption hearing may be transferred to the court having jurisdiction over juvenile matters." (Emphasis added.) Unsurprisingly, this provision was interpreted as providing for a "discretionary transfer by the probate court." Ex parte

A.M.P., 997 So. 2d 1008, 1017 (Ala. 2008). However, § 26-10E-3(d), which governs this case, provides for what appears to be a mandatory transfer of a contest of an adoption: "On motion of either party or of the probate court, a contest of an adoption under Section 26-10E-23[, Ala. Code 1975,] that is pending in a probate court shall be transferred to the juvenile court for the limited purpose of adjudicating the contest." (Emphasis added.)

"When interpreting a statute, this Court will first look to the plain meaning of the words as written by the Legislature. DeKalb County LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 275 (Ala. 1998). If the plain meaning of the language in the statute is unambiguous, then there is no room for judicial construction. Id. In reviewing the language of § 35-4-6, [Ala. Code 1975,] we first consider the phrase 'Leases for more than 20 years shall be void for the excess over said period....' (Emphasis added.) The word 'shall' is presumptively mandatory. Hornsby v. Sessions, 703 So. 2d 932, 939 (Ala. 1997). Therefore, according to the plain meaning of § 35-4-6, a lease that is made for more than 20 years and that is not properly recorded, is void for any portion of that lease period that exceeds 20 years. The legislators' intent could not be clearer."

Ex parte Achenbach, 783 So. 2d 4, 7 (Ala. 2000). Thus, the use of the word "shall" in § 26-10E-3(d) is presumed to be mandatory.

The mandatory nature of the transfer provision contained in § 26-10E-3(d) is bolstered by the change from "may" to "shall." That change is

a clear indication that the Legislature intended to remove the discretion that the probate court had to transfer a contested adoption proceeding under former § 26-10A-24(e). "It is well settled that when the legislature makes a "material change in the language of [an] original act," it is "presumed to indicate a change in legal rights." 1A Norman J. Singer, Statutes and Statutory Construction § 22:30 (6th ed. 2002) (footnote omitted).'" W.B.B. v. H.M.S., 141 So. 3d 1062, 1064 (Ala. Civ. App. 2013) (quoting Pinigis v. Regions Bank, 977 So. 2d 446, 452 (Ala. 2007)). Thus, we are compelled to agree with the mother that, on the motion of a party or of the probate court, § 26-10E-3(d) requires the transfer of a contest of an adoption to the juvenile court for the limited purpose of adjudicating the contest.

It remains, then, to determine if the mother properly asserted her right to a transfer of her contest of the adoption in the probate court. As a general rule, an appellate court will not issue a writ of mandamus on an issue that has not been presented to the trial court in the first instance. See Ex parte Green, 108 So. 3d 101 (Ala. 2012) (refusing to consider an argument on mandamus review that had not been raised before the trial court). Based on the materials provided to us, it is

undisputed that the mother properly initiated a contest of the adoption when she filed her "Objection to Adoption Petition by Biological Mother" on December 5, 2025. See § 26-10E-23(a), Ala. Code 1975 ("Upon the filing of a pleading or a motion by a party contesting the adoption, or upon transfer of a contested case pursuant to Section 26-10E-3, the court shall forthwith set the matter for a contested hearing. ...").² Thus, the probate court was on notice that the mother was contesting the adoption.

Additionally, the mother cited § 26-10E-3 in her motion to transfer, requesting that the matter be transferred to the juvenile court "for consideration of the contest of adoption." In a subsequent pleading, the mother reaffirmed that she was requesting a transfer "of the contest of adoption" and informed the probate court of the parallel juvenile proceedings concerning the child. From that evidence, we can conclude that, at a minimum, the probate court was aware that: (1) the mother was contesting the adoption; (2) she wanted her contest to be transferred to the juvenile court; and (3) her transfer request was based on § 26-10E-3. Thus, we conclude that the mother properly asserted her right to a

²Section 26-10E-23, Ala. Code 1975, was amended effective January 1, 2026. See Ala. Acts 2025, Act. No. 2025-407, § 1. However, this case was commenced before the effective date of that amendment.

transfer of her contest of the adoption in the probate court pursuant to § 26-10E-3(d).

Conclusion

It is clear from the plain meaning of the terms used in § 26-10E-3(d) that, upon a proper motion, a probate court must transfer a contested adoption case to the juvenile court for the limited purpose of adjudicating the contest. The mother contested the adoption and requested a transfer of the case, citing § 26-10E-3. Thus, the mother has demonstrated a clear legal right to the transfer. Therefore, we grant the petition and issue the writ of mandamus ordering the probate court to transfer this case to the juvenile court for the limited purpose of adjudicating the contest without the probate court first determining the issue of implied consent.³ We also order the probate court to temporarily stay its order for payment of guardian ad litem fees into the probate court until the case is returned to the probate court for final disposition.

PETITION GRANTED; WRIT ISSUED.

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

³Upon transfer of the contested case, the juvenile court must determine, among other things, whether the mother impliedly consented to the adoption. See § 26-10E-23(a)(3), Ala. Code 1975.