S T A T E O F T E N N E S S E E
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Opinion No. 06-012

The Juvenile Court's Authority to Order a Safety Plan

QUESTION

Does the Juvenile Court have the authority to order a safety plan before any other proceeding is instituted?

OPINION

No. The Juvenile Court does not have the authority to order a safety plan before any other proceeding is instituted because it lacks subject matter jurisdiction.

ANALYSIS

It is well-established that the Juvenile Court is a court of limited jurisdiction. *See Stambaugh v. Price*, 532 S.W.2d 929, 932 (Tenn. 1976); Op. Tenn. Att'y Gen. No. 04-106 (July 9, 2004). As a statutory creation, the Juvenile Court can "'exercise only such jurisdiction and powers as have been conferred upon [it] by the statute creating [it].'" *Hyatt v. Bomar*, 358 S.W.2d 295, 296 (Tenn. 1962) (quoting 42 C.J.S. *Infants* § 6). This includes those jurisdictional powers that are necessary by implication from the statute. *Osborn v. Marr*, 127 S.W.3d 737, 739 (Tenn. 2004).

Sections 37-1-103 and 37-1-104 dictate the subject matter jurisdiction of the Juvenile Court. Tenn. Code Ann. § 37-1-103 grants exclusive original jurisdiction to the Juvenile Court in the following proceedings:

> (1) Proceedings in which a child is alleged to be delinquent, unruly or dependent and neglected, or to have committed a juvenile traffic offense as defined in § 37-1-146;
> (2) Proceedings arising under §§ 37-1-141--37-1-144;
> (3) Proceedings arising under § 37-1-137 for the purposes of termination of a home placement;
> (4) Prosecutions under § 37-1-412 or § 39-15-401 unless the case is bound over to the grand jury by the juvenile court or the defendant is

> originally charged with a greater offense of which violation of § 37-1-412 or § 39-15-401 is a lesser included offense;
> (5) Proceedings arising under § 49-5-5209(e); and
> (6) Proceedings in which a parent or legal guardian is alleged to have violated parental responsibilities pursuant to § 37-1-174.
>
> (b) The juvenile court also has exclusive original jurisdiction of the following proceedings, which are governed by the laws relating thereto without regard to the other provisions of this part:
> (1) Proceedings to obtain judicial consent to employment, or enlistment in the armed services of a child, if consent is required by law;
> (2) Proceedings under the Interstate Juvenile Compact, compiled as chapter 4, part 1 of this title; and
> (3) Proceedings under the Interstate Compact on the Placement of Children, compiled as chapter 4, part 2 of this title.

Tenn. Code Ann. § 37-1-103(a), (b).

Once the Juvenile Court acquires subject matter jurisdiction pursuant to section 37-1-103, such jurisdiction continues until the case is dismissed or transferred, an adoption petition is filed, or the child reaches eighteen (18) years of age. Tenn. Code Ann. § 37-1-103(c).

Section 37-1-104 grants the Juvenile Court concurrent jurisdiction over the following proceedings:

> (1) Treat or commit a developmentally disabled or mentally ill child;
> (2) Determine the custody or appoint a guardian of the person of a child; and
> (3) Give judicial consent to the marriage of a child if consent is required by law.
>
> (b) The juvenile court has concurrent jurisdiction with the general sessions court for the offense of contributing to the delinquency or unruly conduct of a minor as defined in § 37-1-156.
>
> (c) The juvenile, circuit and chancery courts have concurrent jurisdiction to terminate parental or guardian rights pursuant to the provisions of title 36, chapter 1, part 1.
>
> (d)(1)(A) The juvenile court has concurrent jurisdiction and statewide jurisdiction with other courts having the jurisdiction to order support for minor children and shall have statewide jurisdiction over the parties involved in the case.

* * *

> (2) In any case in which the court has exclusive or concurrent jurisdiction to order the payment of child support, the court may issue a child support order when requested by a party. . . .
>
> (e) The juvenile court has concurrent jurisdiction with the circuit and chancery court of proceedings arising from the 1980 Hague Convention on the Civil Aspects of International Child Abduction.
>
> (f) Notwithstanding any provision of law to the contrary, the juvenile court has concurrent jurisdiction with the circuit and chancery court of proceedings to establish the paternity of children born out of lawful wedlock and to determine any custody, visitation, support, education or other issues regarding the care and control of children born out of wedlock. Nothing in this subsection shall be construed as vesting the circuit and chancery court with jurisdiction over matters that are in the exclusive jurisdiction of the juvenile court under § 37-1-103.

Tenn. Code Ann. § 37-1-104.

Pursuant to Tenn. Code Ann. §§ 37-1-406 and 37-5-106, in the course of conducting a child protective services investigation, the Department of Children's Services ("DCS") is authorized to make a safety plan. A safety plan is a temporary agreement whereby the parent retains legal custody of the child during the investigation, but agrees to a certain course of action to ensure the child's safety. DCS, Administrative Policies & Procedures No. 14.8(B), *available at* http://www.state.tn.us/youth/policies/chapter14.htm. According to DCS policies, a safety plan can, but need not be, court-ordered. *Id.*

The question posed is whether, given the Juvenile Court's limited jurisdiction, it has the authority to order a safety plan before any other proceeding is instituted. We conclude that the Juvenile Court lacks the authority to order a safety plan before any other proceeding is instituted because it lacks subject matter jurisdiction.

If a court lacks subject matter jurisdiction, it cannot enter valid and enforceable orders. *Brown v. Brown*, 281 S.W.2d 492, 497 (Tenn. 1955). A proceeding to order a safety plan is not one of the enumerated instances that give the Juvenile Court subject matter jurisdiction. It is the opinion of this Office that a proceeding to order a safety plan is also not necessary by implication from Tenn. Code Ann. §§ 37-1-103 or 37-1-104. *See Osborn*, 127 S.W.3d at 739. Therefore, unless and until

a party files a proceeding under Tenn. Code Ann. §§ 37-1-103 or 37-1-104, the Juvenile Court lacks the authority to order a safety plan because it lacks subject matter jurisdiction.[1]

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Requested by:

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[1]If a proceeding under Tenn. Code Ann. §§ 37-1-103 or 37-1-104 had been instituted, the Juvenile Court would have the authority to order a safety plan as a form of a consent decree under Tenn. R. Juv. P. 22(a). *See In the Matter of J.L.E.*, M2004-02133-COA-R3-PT, 2005 WL 1541862 (Tenn. Ct. App. June 30, 2005).