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Opinion No. 07-99

Transfer of Parentage Actions From Juvenile Court to Circuit or Chancery Court

QUESTION

May a juvenile court transfer a parentage action properly initiated therein to a circuit or chancery court?

OPINION

In a county that has a population between 825,000 and 830,000 according to the 1990 or subsequent federal census, the juvenile court may not transfer a properly filed parentage action because the juvenile court in such a county exercises sole subject matter jurisdiction over parentage actions. In all other counties, however, the juvenile court shares subject matter jurisdiction over parentage actions with the circuit and chancery courts and, pursuant to Tenn. Code Ann. § 37-1-103(c), may transfer a parentage action to a circuit or chancery court exercising domestic relations jurisdiction in a related matter to avoid confusion and/or inconsistent rulings.

ANALYSIS

The statutes pertaining to parentage actions, Tenn. Code Ann. § 36-2-301 *et seq.*, provide that, except in counties with populations between 825,000 and 830,000 according to the 1990 or subsequent federal census, a parentage action may be brought in the appropriate juvenile, circuit, or chancery court:

> The juvenile court or any trial court with general jurisdiction[1] shall have jurisdiction of an action brought under this chapter; provided, that, in any county having a population not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000), according to the 1990 federal census or any subsequent federal census, only the juvenile court shall have jurisdiction of an action brought under this chapter.

[1]Circuit and chancery courts are courts of general jurisdiction. Tenn. Code Ann. §§ 16-10-101 & 16-11-102; *Stambaugh v. Price*, 532 S.W.2d 929, 932 (Tenn. 1976).

Tenn. Code Ann. § 36-2-307(a)(1).

Similarly, the statutes pertaining to the juvenile court's subject matter jurisdiction provide that juvenile, circuit, and chancery courts have concurrent subject matter jurisdiction over proceedings to establish paternity, determine custody, visitation, support, education, or other issues regarding the care and control of a child born out of wedlock:

> 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. The court further has the power to enforce its orders. Nothing in this subsection (f) 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(f).

When more than one court has subject matter jurisdiction over a matter, the first to acquire jurisdiction has exclusive jurisdiction until the end of the matter. *See American Lava Corp. v. Savena*, 476 S.W.2d 639, 640 (Tenn. 1972). Any orders from a second court, while the first court is still exercising jurisdiction, are void. *See State v. Hazzard*, 743 S.W.2d 938, 941 (Tenn. Crim. App. 1987). Therefore, although juvenile, circuit, and chancery courts all have subject matter jurisdiction over parentage actions (except in counties with populations between 825,000 and 830,000), the first court to acquire jurisdiction retains exclusive jurisdiction over all parentage issues pertaining to the child at issue.

Once a court has established parentage, it must issue an order declaring the father of the child, containing the following:

> (1) Full names and residential and mailing addresses of the mother, father and child, if known;
>
> (2) Dates of birth and social security numbers of the mother, father and the child, if known;
>
> (3) Father's place of birth, if known;
>
> (4) Home telephone number of the mother and the father, if known;
>
> (5) Driver license numbers of mother and father, if known;

> (6) Name, address and telephone number of mother and father's employers, if known;
>
> (7) Availability of health insurance to cover the child, if known;
>
> (8) Determination of the child's name on the child's birth certificate;
>
> (9) Determination of the custody of the child pursuant to chapter 6 of this title;
>
> (10) Determination of visitation or parental access pursuant to chapter 6 of this title;
>
> (11) Determination of child support pursuant to chapter 5 of this title.
>
> (12) Determination of liability for funeral expense to either or both parties, if the child is deceased;
>
> (13) Determination of liability for a mother's reasonable expenses for her pregnancy, confinement and recovery to either or both parties; and
>
> (14) Determination of the liability for counsel fees to either or both parties after consideration of all relevant factors.

Tenn. Code Ann. § 36-2-311(a). Accordingly, parentage actions not only establish the father of a child, but also determine custody, visitation, and child support. *See* Tenn. Code Ann. § 36-2-311(a)(9)-(11). Therefore, because once a court exercises jurisdiction it excludes all other courts from doing so, *see American Lava Corp.*, 476 S.W.2d at 640, any actions to modify paternity, custody, visitation, or child support must be brought in the court that made the initial order pertaining to such issues.

There is conflicting authority as to whether a court may transfer a properly filed action to another court that has subject matter jurisdiction. The general rule is that a court that possesses subject matter and judicial jurisdiction and is a proper place of venue may not transfer a case initiated therein to another court absent statutory authority to do so. *Transfer of Actions*, 1 Tenn. Cir. Ct. Prac. § 1:22 (2007); 21 C.J.S. *Courts* § 263. For example, in reversing a trial court's ruling that it lacked subject matter jurisdiction, the Tennessee Court of Appeals held that because the trial court did have subject matter jurisdiction, it erred in transferring the case. *State ex rel. Jarrett v. Harris*, No. W2001-00484-COA-R3-JV, 2002 WL 1349505, at * 4 (Tenn. Ct. App. Mar. 13, 2002).

Similarly, the Tennessee Supreme Court has held that trial courts do not have an inherent authority to transfer cases. *Norton v. Everhart*, 895 S.W.2d 317 (Tenn. 1995). However, in a memorandum opinion,[2] the Tennessee Court of Appeals held that the ruling in *Norton* was limited to instances in which the court wishing to transfer lacked subject matter jurisdiction to entertain the action. *Ferguson v. Warren*, No. W2001-00217-COA-R3-CV, 2002 WL 1751405, * 2 (Tenn. Ct. App. Mar. 26, 2002). The court in *Ferguson* went on to state that there is no authority to prohibit a court from transferring a properly filed case. *Id.* at * 2. Accordingly, the court in *Ferguson* indicated that because there was no authority to prohibit a court from transferring a case, it could do so.

Considering parentage cases in particular, the Tennessee Court of Appeals has expressed a preference for transferring cases so that all parentage issues as to a child and/or his siblings are determined by one court. *Gilland v. Gilland*, Nos. M2002-02276-COA-R3-CV & M2002-02770-COA-R3-JV, 2004 WL 2583885, at * 3 (Tenn. Ct. App. Nov. 9, 2004) ("[O]ne court, not two, can and should hear matters such as this in the future so that much of the cost, confusion and inconsistent rulings presented here can be avoided.") Most importantly, the court in *Gilland* noted that "Tenn. Code Ann. § 37-1-103(c) permits the juvenile court to transfer a case such as this to a circuit court exercising domestic relations jurisdiction." *Id.* at * 3 n.10.

Tenn. Code Ann. § 37-1-103(c) provides that, when a juvenile court has acquired jurisdiction, such jurisdiction continues until the case is (1) dismissed, (2) transferred to another juvenile, circuit, chancery, or general sessions court exercising domestic relations jurisdiction to determine custody, or (3) a petition for adoption is filed. Although section 103(c) may be read to limit transfers only for a custody determination, the court in *Gilland* appears to have interpreted section 103(c) to permit transfers for determination of all parentage issues, not just custody. *See Gilland*, 2004 WL 2583885, at * 3 n.10.

We conclude from *Gilland* that a Tennessee court would likely interpret Tenn. Code Ann. § 37-1-103(c) to give juvenile courts (except in counties with populations between 825,000 and 830,000) the authority to transfer a properly filed parentage action to a circuit or chancery court

[2]When a case is decided by memorandum opinion, it shall not be published, cited, or relied on for any reason in any unrelated case. Tenn. R. App. P. 10.

exercising domestic relations jurisdiction in a related matter to avoid confusion and/or inconsistent rulings.

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