S T A T E O F T E N N E S S E E
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Opinion No. 08-189

Juvenile Court Jurisdiction to Hear Petitions to Set Child Support Involving Married Persons

QUESTIONS

1. Which courts have subject matter jurisdiction to hear petitions to set child support for children of married persons who are living apart when the parties have not filed a petition for divorce or legal separation?

2. Considering Op. Tenn. Att'y Gen. No. 04-106 (July 9, 2004), if the juvenile court has subject matter jurisdiction under Question No. 1, what actions may the juvenile court take when, during the pendency of such a case, a party requests legal custody or parenting time?

OPINIONS

1. The juvenile, circuit and chancery courts have concurrent jurisdiction to hear petitions to set child support for children of married persons who are living apart when the parties have not filed a petition for divorce or legal separation.

2. While the juvenile court has jurisdiction to hear a petition to set support in the circumstances presented by Question No. 1, the juvenile court may not rule upon a party's request for legal custody or parenting time because it lacks subject matter jurisdiction to do so.

ANALYSIS

1.

In general, subject matter jurisdiction concerns the authority of a particular court to hear a particular controversy. *Meighan v. United States Sprint Comm. Co.*, 924 S.W.2d 632, 639 (Tenn. 1996). A court's subject matter jurisdiction "relates to the nature of the cause of action and the relief sought and is conferred by the sovereign authority which organizes the court." *Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn. 1994) (citing *Cooper v. Reynolds*, 77 U.S. 308 (1870) and *Turpin v. Conner Bros. Excavating Co., Inc.*, 761 S.W.2d 296, 297 (Tenn. 1988)). Accordingly, subject matter jurisdiction does not depend upon the conduct or agreement of the parties. *Shelby County v. City of Memphis*, 365 S.W.2d 291, 292 (Tenn. 1963). Tennessee courts derive subject matter jurisdiction from the state constitution or from legislative acts.

Osborn v. Marr, 127 S.W.3d 737, 740 (Tenn. 2004). "Courts may not exercise jurisdictional powers that have not been conferred on them directly or by necessary implication." *Id.* at 739 (citing *First Am. Trust Co. v. Franklin-Murray Dev. Co.*, 59 S.W.3d 135, 140 (Tenn. Ct. App. 2001)). 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).

It is well-established that juvenile courts are courts of limited jurisdiction. *Stambaugh v. Price*, 532 S.W.2d 929, 932 (Tenn. 1976). Thus, as such, the juvenile court's subject matter jurisdiction is defined by statute. *Id.* As a tribunal created by statute, a juvenile court has "jurisdiction over matters relating to the care, control and custody of infants, but can exercise such jurisdiction and powers only as have been conferred on [it] by the statute creating [it]." *Hyatt v. Bomar*, 358 S.W.2d 295, 296 (Tenn. 1962) (quotation marks omitted). By contrast, circuit and chancery courts are courts of general jurisdiction. *Stambaugh v. Price*, 532 S.W.2d at 932; *P.E.K. v. J.M.*, 52 S.W.3d 653, 659 (Tenn. Ct. App. 2001). *See also* Tenn. Code Ann. §§ 16-10-101 and 16-11-102(a) (providing, respectively, that the circuit court is a court of general jurisdiction and that, with certain exceptions, the chancery court has concurrent jurisdiction of all civil cases triable in the circuit court).

Sections 37-1-103 and 37-1-104 of the Tennessee Code govern the subject matter jurisdiction of the juvenile court. As relevant here, 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." Tenn. Code Ann. § 37-1-104(d)(1)(A). As the Court of Appeals has noted, "Tennessee law does not confer exclusive jurisdiction for child support actions to any court." *State ex rel. Taylor v. Taylor*, No. W2004-02589-COA-R3-JV, 2004 WL 618291, *2 (Tenn. Ct. App. 2006). Because the chancery and circuit courts are courts of general jurisdiction, the *Taylor* court concluded that actions for child support "may be brought in circuit court, chancery court, or juvenile court." *Id.*

In light of these authorities, this Office concludes that juvenile, circuit and chancery courts have concurrent jurisdiction to hear petitions to set child support for children of married persons who are living apart when the parties have not filed a petition for divorce or legal separation. Tenn. Code Ann. § 37-1-104(d)(1)(A); *Taylor*, 2004 WL 618291, at *2.

2.

For purposes of this question, we assume that a married person has filed a petition to set support in a juvenile court against his or her spouse and that, during the pendency of the litigation, the parties remain married. We also assume that, at some point in the litigation, one party requests "legal custody or parenting time."

In Op. Tenn. Att'y Gen. No. 04-106 (July 9, 2004), this Office opined as follows: "Except in cases involving the determination of custody of children born out of wedlock, the Juvenile Court lacks subject matter jurisdiction to award joint custody to petitioning parties when the action is based solely on a petition for joint custody arising from an agreement of the parties in which the petitioners make no allegations of dependency, neglect, delinquency, unruliness, and when there is no previous history with a Juvenile Court." In reaching this opinion, the

Office applied the well-established test that, to determine whether the juvenile court possesses subject matter jurisdiction, there must be a constitutional or statutory basis that is conferred directly or by necessary implication.[1] *Id.*; *see also Osborn*, 127 S.W.3d at 740. The Office concluded that neither Tenn. Code Ann. §§ 37-1-103 nor 37-1-104 "explicitly or by necessary implication give the Juvenile Court the authority to award joint custody arising from" such an agreement. Op. Tenn. Att'y Gen. No. 04-106 (July 9, 2004).

Applying this test, this Office concludes that while the juvenile court has jurisdiction to hear a petition to set support in the circumstances presented by Question No. 1, the juvenile court may not rule upon a party's request for legal custody or parenting time because it lacks subject matter jurisdiction to do so. Essentially, no statute directly or by necessary implication bestows authority upon the juvenile court to rule on a petition for custody or for parenting time, *Osborn*, 127 S.W.3d at 740, unless such petition is premised upon allegations of dependency and neglect, a type of case over which the juvenile court has exclusive original jurisdiction. Tenn. Code Ann. § 37-1-103(a)(1).

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[1]This Office has conducted similar analyses with regard to issues relating to the subject matter jurisdiction of the juvenile court. *See, e.g.*, Op. Tenn. Att'y Gen. No. 08-27 (Feb. 15, 2008) (the juvenile court lacked subject matter jurisdiction to enter an order regulating conduct); Op. Tenn. Att'y Gen. No. 06-12 (Jan. 17, 2006) (same with respect to entering a safety plan before any other proceeding is instituted).