

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 13, 2016 Session

IN RE BRODY S., ET AL.

**Appeal from the Chancery Court for Williamson County
No. 44400 Michael Binkley, Judge**

No. M2015-01586-COA-R3-JV – Filed May 24, 2016

This appeal concerns the propriety of a writ of certiorari granted by the Williamson County Chancery Court to review a protective custody order entered by the Williamson County Juvenile Court. The chancery court held that the protective custody order from the juvenile court was void and enjoined the Department of Children’s Services (“DCS”) from interfering with the paternal grandmother’s physical and legal custody of the minor children at issue. Because we are of the opinion that the chancery court did not have subject matter jurisdiction to review the juvenile court’s order, we vacate the judgment of the Chancery Court and remand.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Vacated
and Remanded**

ARNOLD B. GOLDIN, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and W. NEAL MCBRAYER, J., joined.

Herbert H. Slatery, III, Attorney General and Reporter; Andrée S. Blumstein, Solicitor General; Alexander S. Rieger and Paul Jordan Scott, Assistant Attorneys General, Nashville, Tennessee, for the appellant, State of Tennessee, Department of Children’s Services.

William P. Holloway and Michael T. Fort, Franklin, Tennessee, for the appellee, B. S.

Neil Campbell, Franklin, Tennessee, for the appellee, R. S.

OPINION

Background and Procedural History

Brand S. and Randi S.¹ (“Parents”) are the parents of two minor children. On August 4, 2015, one of the children was treated at Vanderbilt Children’s Hospital for a skull fracture and subdural hematoma. DCS subsequently began investigating allegations of severe abuse against the child, and a safety placement was soon sought for both children pending the completion of DCS’s investigation.

On August 7, 2015, DCS obtained an ex parte protective custody order from the Williamson County Juvenile Court. Finding that there was probable cause to believe that the children were dependent and neglected, the juvenile court directed that temporary legal custody of the children be placed in DCS. DCS was ordered to “provide appropriate placement and services for the children” and was granted the authority to consent to “any ordinary or necessary medical, surgical, hospital, educational, institutional, psychiatric, or psychological care.” A preliminary hearing was set for the following Monday, August 10, 2015. Of note, the protective custody order was not signed by a juvenile court judge. Instead, it was signed by a magistrate who was not a licensed attorney. A juvenile court judge would later sign the protective custody order and enter it *nunc pro tunc* to August 7, 2015.

On August 7, 2015, following the entry of the protective custody order by the magistrate in juvenile court, Parents filed an “Emergency Petition for Writ of Certiorari and Injunctive Relief” in the Williamson County Chancery Court. Parents contended that the juvenile court’s protective custody order was illegal inasmuch as it had been entered without any petition or other initiating pleading.² In addition to requesting that a writ of certiorari issue, Parents prayed for an emergency order enjoining DCS and the juvenile court from placing the children in the custody of any person “other than persons related to the Children by blood.” According to Parents, the children’s paternal grandmother was able and willing to take custody of the children during the pendency of the litigation.

¹ In cases involving minor children, it is this Court’s policy to redact names sufficient to protect the children’s identities.

² Parents later filed an amended petition for certiorari wherein they contended that the juvenile court’s order was void due to its execution by a magistrate who was not licensed to practice law.

In response to the petition filed by Parents, the chancery court subsequently issued a writ of certiorari, as well as a temporary restraining order.³ The restraining order entered by the chancery court purported to supersede the protective custody order entered in juvenile court. In pertinent part, it restrained DCS and the juvenile court from “retaining physical custody of the children” and “from releasing the children to the custody of any person or entity other than the children’s paternal grandmother.” On August 10, 2015, DCS filed an emergency motion to dissolve the restraining order. In addition to arguing that the chancery court lacked subject matter jurisdiction to enter the order, DCS contended that the restraining order interfered with the juvenile court’s exercise of its original and exclusive jurisdiction over dependency and neglect proceedings.

On the same day that DCS filed its emergency motion to dissolve, the chancery court held a hearing regarding the propriety of its involvement in reviewing the juvenile court’s actions. On August 14, 2015, it entered an order containing extensive findings of fact and conclusions of law. Upon concluding that it had subject matter jurisdiction to grant a writ of certiorari, the chancery court declared the juvenile court’s protective custody orders *void ab initio*. Although the chancery court stated that it was remanding the matter to the juvenile court for further disposition, it denied DCS’s motion to dissolve the temporary restraining order and decreed that it was extending the restraining order into an injunction. In doing so, the chancery court also specifically enjoined DCS from interfering with the paternal grandmother’s physical and legal custody of the children. Following the entry of the August 14 order, DCS filed a timely notice of appeal. Upon filing an appeal, DCS also filed a motion in this Court asking that we stay the chancery court’s August 14 order pending our review. Upon finding that good cause justified a stay, we granted DCS’s motion.

Issues Presented

In its brief on appeal, DCS raises two issues for our review, restated verbatim as follows:

1. After the juvenile court exercised its exclusive jurisdiction to enter a protective-custody order in a dependency-and-neglect proceeding, did the chancery court lack authority to grant a writ of certiorari, declare the protective order void, and enjoin both the juvenile court and the Department of Children’s Services with respect to the physical and legal custody of the subject children?

³ The chancery court’s fiat and restraining order were not initially signed by a judge. Rather, a deputy clerk purported to sign the judge’s name with permission.

2. Even if the chancery court had authority to grant a writ of certiorari, did the chancery court err in issuing a permanent injunction regarding the custody of the subject children without conducting an evidentiary hearing and without properly making findings of fact and conclusions of law?

Discussion

As we perceive it, the pivotal question in this case is whether the chancery court had the authority to review the juvenile court's decisions by granting a writ of certiorari. Whereas Parents maintain that such authority existed, DCS argues that the chancery court was without subject matter jurisdiction in this case. Having considered the relevant law, we agree with the position advanced by DCS. As will be explained below, chancery court is not a superior court to juvenile court with regard to dependency and neglect proceedings.

The concept of subject matter jurisdiction concerns the authority of a court to hear a particular controversy. *Meighan v. U.S. Sprint Commc'ns Co.*, 924 S.W.2d 632, 639 (Tenn. 1996) (citing *Landers v. Jones*, 872 S.W.2d 674 (Tenn. 1994)). "It relates to the nature of the cause of action and the relief sought." *Id.* (citation omitted). Unlike personal jurisdiction, a court's lack of subject matter jurisdiction cannot be waived. *Landers*, 872 S.W.2d at 675. If an order is entered without subject matter jurisdiction, the order is void. *Dishmon v. Shelby State Cmty. Coll.*, 15 S.W.3d 477, 480 (Tenn. Ct. App. 1999) (citations omitted). "The lack of subject matter jurisdiction is so fundamental that it requires dismissal whenever it is raised and demonstrated." *Id.* (citation omitted). As such, whenever we determine that a trial court lacked subject matter jurisdiction, we are obligated to "vacate the judgment and dismiss the case without reaching the merits of the appeal." *Id.* (citation omitted).

The litigation in this case relates back to the juvenile court's August 7, 2015 protective custody order wherein the juvenile court found probable cause "to believe that the [minor children at issue] are dependent and neglected pursuant to T.C.A. § 37-1-102(b)." Although a preliminary hearing regarding the dependency and neglect issues was set in juvenile court for the following Monday, August 10, 2015, Parents, believing the juvenile court's order to be illegal, promptly filed their emergency petition for writ of certiorari in chancery court. Therein, Parents asserted that a review of the juvenile court's actions was available in the chancery court pursuant to the authority in Tennessee Code Annotated section 27-8-101. In their brief on appeal, they generally reference this statute to support the proposition that a superior court has the power to remedy illegal rulings of an inferior tribunal.

As a general matter, Parents are correct as to the function that the writ of certiorari procedure serves. As stated in Section 27-8-101:

The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy.

Tenn. Code Ann. § 27-8-101 (2000). Nevertheless, although the power to issue writs of certiorari is available to “[t]he judges of the inferior courts of law,” including those holding office in chancery court, such power may only be exercised to remove causes from an “inferior jurisdiction.” Tenn. Code Ann. § 27-8-104 (2000). Thus, a court cannot exercise certiorari jurisdiction over a tribunal that is not inferior to it.

With respect to matters of dependent and neglected children, which were clearly at issue in the juvenile court’s protective custody order, the juvenile court is not an inferior tribunal relative to the chancery court. Pursuant to Tennessee Code Annotated section 37-1-103, the juvenile court has exclusive original jurisdiction over proceedings in which a child is alleged to be dependent and neglected. *See* Tenn. Code Ann. § 37-1-103 (2014); *see also State ex rel. Baker v. Turner*, 562 S.W.2d 435, 437 (Tenn. Ct. App. 1977) (noting that the State, acting as *parens patriae*, has conferred upon juvenile courts the “special, exclusive jurisdiction” to determine custody of a dependent minor). Significantly, appeals in dependency and neglect cases must be pursued exclusively in circuit court, not chancery court. *See* Tenn. Code Ann. § 37-1-159 (2014) (“The juvenile court shall be a court of record . . . and any appeal from any final order or judgment in an unruly child proceeding or dependent and neglect proceeding . . . may be made to the circuit court.”); *In re M.J.B.*, 140 S.W.3d 643, 651 (Tenn. Ct. App. 2004) (“In dependent-neglect cases, the parties dissatisfied with a juvenile court’s final decision must appeal to the circuit court.”). Although it is thus clear that the circuit court constitutes a superior tribunal to the juvenile court in the context of dependency and neglect litigation,⁴ we fail to see how the chancery court constitutes one. As such, a fundamental premise for exercising certiorari jurisdiction in this case is lacking. *See*

⁴ We note that case law is replete with decisions recognizing the superiority of the circuit court to the juvenile court and the circuit court’s ability to conduct certiorari review of the juvenile court’s decisions. *See Doster v. State*, 260 S.W.2d 279 (Tenn. 1953) (noting that the juvenile court is a court that is inferior under the law to the circuit court) (citation omitted); *State v. Bockman*, 201 S.W. 741, 742 (Tenn. 1918) (“[W]e are forced to the conclusion that in the sense of our statutes [the juvenile court] is a court or tribunal inferior to the circuit court.”); *State ex rel. Johnson v. Wolf*, No. 06-52-82, 1988 WL 15710, at *4 (Tenn. Ct. App. Feb. 26, 1988) (noting that juvenile courts have “special and limited jurisdiction” and that “[i]n certain instances they are considered to be inferior to circuit courts for the purposes of appellate review”); *State v. Tipton*, No. 01-A-01-9510-CV00445, 1996 WL 17225, at *4 (Tenn. Ct. App. Jan. 19, 1996) (“Circuit courts may review a juvenile court’s interlocutory decision using the common-law writ of certiorari.”); *Matter of McCloud*, No. 01-A-01-9212-CV00504, 1993 WL 194041, at *7 (Tenn. Ct. App. June 9, 1993) (noting that circuit courts may review a juvenile court’s interlocutory decisions using the common-law writ of certiorari).

Tenn. Code Ann. § 27-8-104 (2000) (providing that writs of certiorari may issue to remove matters from “any inferior jurisdiction”).

In an attempt to buttress their argument that the chancery court possessed subject matter jurisdiction in this case, Parents cite to Tennessee Code Annotated section 16-11-102. In full, that statute provides as follows:

- (a) The chancery court has concurrent jurisdiction, with the circuit court, of all civil causes of action, triable in the circuit court, except for unliquidated damages for injuries to person or character, and except for unliquidated damages for injuries to property not resulting from a breach of oral or written contract; and no demurrer for want of jurisdiction of the cause of action shall be sustained in the chancery court, except in the cases excepted.
- (b) Any suit in the nature of the cases excepted in subsection (a) brought in the chancery court, where objection has not been taken by a plea to the jurisdiction, may be transferred to the circuit court of the county, or heard and determined by the chancery court upon the principles of a court of law.

Tenn. Code Ann. § 16-11-102 (2009). Although their specific position is not abundantly clear, Parents appear to reference this statute in order to suggest that because a writ of certiorari would potentially be available in circuit court in order to review a juvenile court’s dependency and neglect proceedings, the writ is concurrently available in chancery court. Giving the words in the statute their natural and ordinary meaning as we must when interpreting any legislation, *Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405, 420 (Tenn. 2013) (citation omitted), we reject Parents’ apparent reasoning on this issue. Save for cases involving “unliquidated damages for injuries to person or character” or cases involving “unliquidated damages for injuries to property not resulting from a breach of oral or written contract,” the chancery court is given concurrent jurisdiction with the circuit court “of all civil causes of action, *triable* in the circuit court.” Tenn. Code Ann. § 16-11-102(a) (2009) (emphasis added). The statute’s use of the word “triable” clearly contemplates that concurrent jurisdiction is provided as to causes of action that are initially subject to a *trial* in the circuit court. *See* BLACK’S LAW DICTIONARY 1735 (10th ed. 2014) (defining triable as “[s]ubject or liable to judicial examination and trial”). Accordingly, the statute should not be construed to afford chancery court concurrent jurisdiction over essentially appellate proceedings such as the writ of certiorari action. *See Watson v. City of LaVergne*, No. M2006-00351-COA-R3-CV, 2007 WL 1341767, at *4 (Tenn. Ct. App. May 7, 2007) (classifying a petition for writ of certiorari as an “appellate cause of action”).

We further reject Parents' alternative argument that Section 16-11-102 provides a basis pursuant to which the chancery court could have granted a writ of certiorari even if the circuit court was otherwise the proper forum. To advance such a position, Parents specifically rely on Tennessee Code Annotated section 16-11-102(b). That provision provides as follows:

Any suit in the nature of the cases excepted in subsection (a) brought in the chancery court, where objection has not been taken by a plea to the jurisdiction, may be transferred to the circuit court of the county, or heard and determined by the chancery court upon the principles of a court of law.

Tenn. Code Ann. § 16-11-102(b) (2009). Even assuming that DCS had failed to sufficiently object to the chancery court's jurisdiction in this case,⁵ there is no merit to Parents' argument that jurisdiction was therefore proper in chancery. The only cases governed by Section 16-11-102(b) are those lawsuits "in the nature of the cases excepted in subsection (a)." *Id.* Under Section 16-11-102(a), the only cases "excepted" are those "for unliquidated damages for injuries to person or character" and those "for unliquidated damages for injuries to property not resulting from a breach of oral or written contract." Tenn. Code Ann. § 16-11-102(a) (2009). Because a writ of certiorari proceeding does not satisfy either of these types of cases, Section 16-11-102(b) does not represent a proper basis for the chancery court's exercise of jurisdiction in this case.

Having reached the conclusion that the chancery court lacked the requisite authority to conduct writ of certiorari review over the juvenile court's dependency and neglect proceedings, we are foreclosed from inquiring into the validity of the juvenile court's actions or whether the circuit court could have properly granted a writ of certiorari under the facts of this case. "The chancery court having no jurisdiction to entertain and determine the case upon the merits, this court cannot do so; and we do not decide anything in regard to the merits or other questions than the one just disposed of. The only decree we can and will pronounce is one of dismissal and adjudging costs." *J.W. Kelly & Co. v. Conner*, 123 S.W.

⁵ In their brief, Parents assert that DCS's objection to the chancery court's jurisdiction did not properly assert that the circuit court was the proper forum for a writ of certiorari in this case. They note:

DCS did object generally at trial to a Circuit and/or Chancery Court having subject matter jurisdiction based upon the claim [that] a Juvenile Court has exclusive and original jurisdiction of a Dependent and Neglect Action. However, DCS did not object to the Chancery Court, as opposed to the Circuit Court, hearing the matter.

Regardless of how DCS framed the issue in the trial court, we have an independent obligation to determine whether a basis for jurisdiction existed.

622, 637 (Tenn. 1909). We recognize that this leaves many important questions unsettled with regard to the role that the circuit court could have potentially played in this matter. For instance, although DCS acknowledges that circuit court, as a superior tribunal, can potentially exercise certiorari review over dependency and neglect proceedings from juvenile court, it has strongly argued that a writ of certiorari would not have been available in circuit court under the facts of this case. Noting that any objections to the juvenile court's protective custody order could have been raised in the originally scheduled August 10, 2015 preliminary hearing, DCS contends that an adequate, plain, and speedy remedy existed that negated the necessity for certiorari review. *See* Tenn. Code Ann. § 27-8-101 (2000) (providing for certiorari review when "there is no other plain, speedy, or adequate remedy"). Whether the circuit court could have exercised certiorari jurisdiction under facts similar to those in this case, however, is beyond the purview of this appeal. Resolution of such a question must wait for another day. Having determined that the chancery court had no subject matter jurisdiction to grant the writ of certiorari, we simply vacate its judgment and remand the case for the entry of an order of dismissal. The consideration of other arguments and issues in this appeal are therefore pretermitted as unnecessary.

Conclusion

For the foregoing reasons, we vacate the judgment of the chancery court. Costs on appeal are assessed against the Appellees, Brand S. and Randi S., for which execution may issue if necessary. We hereby remand this case for the entry of an order of dismissal, the collection of costs, enforcement of the judgment, and for such further proceedings as may be necessary and are consistent with this Opinion.

ARNOLD B. GOLDIN, JUDGE