

Alabama Family Law – Jurisdiction and Service of Process

By Morgan, Lewis & Bockius LLP– March 31, 2021

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Custody Determination -Jurisdiction

Initial Custody Determination

AL. St. 30-3B-201

Subject Matter Jurisdiction exists where:

1. State is child's home state (at commencement of proceeding or six months prior and child is absent but at least one parent resides); or
2. Court of another state does not have jurisdiction under paragraph (1) or court of home state of child declines jurisdiction and (a) child and at least one parent has significant connection to State; (b) substantial evidence is available re: child's care, protection, training and personal relationships; or
3. all courts having jurisdiction under (1) and (2) declined to exercise jurisdiction based on this forum being most convenient;
4. no court of any other state would have jurisdiction under (1), (2), or (3).

[Note: this can include termination of parental rights determination].

Temporary Emergency Jurisdiction

AL. St. 30-3B-204(a) — a court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

Practice/case law

In general, the emergency necessary to invoke temporary jurisdiction must be severe and imminent. *See generally, The Proper Use of the Temporary Emergency Jurisdiction of the U.C.C.J.E.A. and Article 13(b) of the Hague Convention of the Civil Aspects of International Child Abduction* 20 J. Amer. Acad. of Matrimonial Lawyers 299 (2007).

In *S.C. v. _____* the court found that an emergency existed where a biological mother allowed her older daughter to be the primary caretaker for the mother's young child and did not supervise that young child even though the mother knew that the older daughter was mistreating and beating the child. 47 So. 3d 1253, 1254-55 (Ala. Civ. App. 2010).

In *Hensley v. Kanizai*, the court concluded that an emergency sufficient to trigger Section 204(4) existed when a mother allowed her children to be around a dangerous animal and one of the children had already been injured. 143 So. 3d 186, 194 (Ala. Civ. App. 2013)

Custody Determination — Service/Notification Requirements

Ala. Code § 30-3B-205

a) Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of Section 30-3B-108 must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this state as in child custody proceedings between residents of this state.

28 U.S.C.A. § 1738A (West)

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

See *D.B., n.M.A.*, 975 So. 2d 927, 939 (Ala. Civ. App. 2006), *aff'd sub nom. Ex parte D.B.*, 975 So. 2d 940 (Ala. 2007) (Finding service of process on adoptive couple necessary.)

Paternity and Child Support Proceeding —Jurisdiction

Proceeding to Establish, Enforce, Modify Support Order or Determine Parentage — AL. St. 30-3D-201

Jurisdiction permitted over non-resident individual if:

1. personal service in the State
2. consent (by entering general appearance or filing responsive document)
3. individual resided with child in the State
4. individual resided in the State and previously paid prenatal expenses or support for child
5. child resides in State as a result of the individual's acts or directives;
6. individual engaged in sexual intercourse in State and child may have been conceived thereof;
7. individual acknowledged parentage in form submitted to Department of Human Resources;
8. any other basis for jurisdiction consistent with AL and US constitutions.

Paternity and Child Support Proceeding —Service/Notification Requirements

Ala. Code § 30-3D-401

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to Section 30-3D-305.

Ala. Code § 30-3D-605

(a) When a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of this state shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

Ala. Code § 30-3D-506

(b) The obligor shall give notice of the contest to:

- (1) a support enforcement agency providing services to the obligee;
- (2) each employer that has directly received an income-withholding order relating to the obligor; and
- (3) the person designated to receive payments in the income-withholding order or, if no person is designated, to the obligee.

Child Abuse/Neglect Proceeding —Jurisdiction

Original jurisdiction —Juvenile

AL. St. 12-15-114

(a) A juvenile court shall exercise exclusive original jurisdiction of juvenile court proceedings in which a child is alleged to have committed a delinquent act, to be dependent, or to be in need of supervision. A dependency action shall not include a custody dispute between parents. Juvenile cases before the juvenile court shall be initiated through the juvenile court intake office pursuant to this chapter.

(b) A juvenile court shall not have jurisdiction over any delinquent act committed by an individual before his or her 18th birthday for which a petition has not been filed before the individual reaches 21 years of age, except when the delinquent act is an offense having no statute of limitation as provided in Section 15-3-5.

(c) A juvenile court shall also exercise exclusive original jurisdiction over each of the following:

- (1) Proceedings pursuant to the Interstate Compact on Juveniles and the Interstate Compact on Placement of Children pursuant to Chapter 2 of Title 44.
- (2) Proceedings for termination of parental rights.

Child Abuse/Neglect Proceeding — Service/Notification Requirements

Ala. Code § 12-15-122

(a) After a petition alleging delinquency, in need of supervision, or dependency has been filed, the juvenile court shall direct the issuance of summonses to be directed to the child if he or she is 12 or more years of age, to the parents, legal guardian, or other legal custodian, and to other persons who appear to the juvenile court to be proper or necessary parties to the proceedings, requiring them to appear personally before the juvenile court at the time fixed to answer or testify as to the allegations of the petition. Where the legal custodian is summoned, the parent or legal guardian, or both, shall also be served with a summons.

(b) A copy of the petition shall be attached to each summons.

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(c) The summons shall direct the parents, legal guardian, or other legal custodian having the custody or control of the child to bring him or her to the hearing.

(d) An adult who is a party may waive service of the summons by written stipulation or by voluntary appearance at the hearing.

Ala. Code § 12-15-307

Relative caregivers, preadoptive parents, and foster parents of a child in foster care under the responsibility of

the state shall be given notice, verbally or in writing, of the date, time, and place of any juvenile court proceeding being held with respect to a child in their care.

Foster parents, preadoptive parents, and relative caregivers of a child in foster care under the responsibility of the state have a right to be heard in any juvenile court proceeding being held with respect to a child in their care. No foster parent, preadoptive parent, and relative caregiver of a child in foster care under the responsibility of the state shall be made a party to a juvenile court proceeding solely on the basis of this notice and right to be heard pursuant to this section.

Divorce and Legal Separation — Jurisdiction

Minimum Contacts Related to Divorce, Legal Separation, and the Martial Relationship

Ala. R. Civ. P. 4.2(2)(H)

Sufficient contacts with state exist to confer jurisdiction over non-resident defendant where person is "living in the martial relationship within this state notwithstanding subsequent departure from this state, as to all obligations arising from alimony, custody, child support, or property settlement, if the other party to the martial relationship continues to reside in this state."

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Divorce and Legal Separation — Service/Notification Requirements

Ala. Code § 30-2-8

The proceeding must, in all respects, be conducted as other civil actions, except as herein otherwise directed. The cause for which the divorce is sought must be alleged in the complaint, to which the other party must be made a defendant. If service by publication shall be made, when necessary, in the manner provided in the Alabama Rules of Civil Procedure.

Aaron v. Aaron, 571 So. 2d 1150, 1151 (Ala. Civ. App. 1990) (failure to properly serve spouse rendered default judgement void).

Ala. Code § 30-2-40

(a) The court shall enter a decree of legal separation if all of the following requirements are satisfied:

(1) The court determines that the jurisdictional requirements for the dissolution of a marriage have been met.

Adoption Proceeding — Jurisdiction

AL St. 26-10A-3.

The probate court shall have original jurisdiction over proceedings brought under the chapter. If any party whose consent is required fails to consent or is unable to consent, the proceeding will be transferred to the court having jurisdiction over juvenile matters for the limited purpose of termination of parental rights. The provisions of this chapter shall be applicable to proceedings in the court having jurisdiction over juvenile matters.

Pending Proceedings in other jurisdictions: If, at any time during the pendency of the adoption proceeding, it is determined that any other custody action concerning the adoptee is pending in the courts of this state or any other state or country, any party to the adoption proceeding, or the court on its own motion, may move to stay such adoption proceeding until a determination has been made by an appropriate court with jurisdiction pursuant to the provisions of the Uniform Child Custody Jurisdiction Act (UCCJA) [now the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)] or the Parental Kidnapping Prevention Act (PKPA). The adoption may be transferred and consolidated with a custody proceeding pending in any court in this state. *See* AL St. 26-10A21.

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Adoption Proceeding — Service/Notification Requirements

Ala. Code § 26-10A-17

(a) Unless service has been previously waived, notice of pendency of the adoption proceeding shall be served by the petitioner on:

- (1) Any person, agency, or institution whose consent or relinquishment is required by Section 26-10A-7, unless service has been previously waived or consent has been implied.
- (2) The legally appointed custodian or guardian of the adoptee.
- (3) The spouse of any petitioner who has not joined in the petition.
- (4) The spouse of the adoptee.
- (5) The surviving parent or parents of a deceased parent of the adoptee.
- (6) Any person known to the petitioners as having physical custody, excluding licensed foster care or other private licensed agencies or having visitation rights with the adoptee under an existing court order.
- (7) The agency or individual authorized to investigate the adoption under Section 26-10A-19.
- (8) Any other person designated by the court.
- (9) The Department of Human Resources.
- (10) The father and putative father of the adoptee if made known by the mother or otherwise known by the court unless the court finds that the father or putative father has given implied consent to the adoption, as defined in Section 26-10A-9.

(b) The notice shall specifically state that the person served must respond to the petitioner within 30 days if he or she intends to contest the adoption. A copy of the petition for adoption shall be delivered to those individuals or agencies in subdivisions (a) (2) through (a)(10). Any notice required by this chapter may be served on a natural parent prior to birth.

(c) Service of the notice shall be made in the following manner:

(1) Service of process shall be made in accordance with the Alabama Rules of Civil Procedure except as otherwise provided by the Alabama Rules of Juvenile Procedure. If the identity or whereabouts of the parent is unknown, or if one parent fails or refuses to disclose the identity or whereabouts of the other parent, the court shall then issue an order providing for service by publication, by posting, or by any other substituted service.

(2) As to the agency or individual referred to in subdivisions (a)(7) and (a)(9) above, notice shall be by certified mail.

(3) As to any other person for whom notice is required under subsection (a) of this section, service by certified mail, return receipt requested, shall be sufficient. If such service cannot be completed after two attempts, the court shall issue an order providing for service by publication, by posting, or by any other substituted service.

(d) The notice required by this section may be waived in writing by the person entitled to receive notice.

(e) Proof of service of the notice on all persons for whom notice is required by this section must be filed with the court before the adjudicational hearing, provided in Section 26-10A-24.

Domestic Violence —Jurisdiction

Jurisdiction — Manner of seeking and filing protective orders.

AL.St. 30-5-3

1. The courts, as provided in this chapter, shall have jurisdiction to issue protection orders.
2. A protection order may be requested in any pending civil or domestic relations action, as an independent civil action, or in conjunction with the preliminary, final, or post-judgment relief in a civil action.
3. A petition for a protection order may be filed in any of the following locations:
Where the plaintiff or defendant resides.
 4. Where the plaintiff is temporarily located if he or she has left his or her residence to avoid further abuse.
5. Where the abuse occurred.
6. Where a civil matter is pending before the court in which the plaintiff and the defendant are opposing parties.

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- When custody, visitation, or support, or a combination of them, of a child or children has been established in a previous court order in this state, or an action containing any of the issues above is pending in a court in this state in which the plaintiff and the defendant are opposing parties, a copy of any temporary ex parte protection order issued pursuant to this chapter and the case giving rise thereto should be transferred to the court of original venue for further disposition as soon as practical taking into account the safety of the plaintiff and any children.

- A minimum period of residency of a plaintiff is not required to petition the court for an order of protection.

Domestic Violence—Service/Notification Requirements

Ala. Code § 30-5-8

(a)(1) A copy of any notice of hearing or any protection order under this chapter shall be sent to the plaintiff within 24 hours of issuance, provided the plaintiff provides the court with current and accurate contact information, and to the law enforcement officials

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with jurisdiction over the residence of the plaintiff. The clerk of the court may furnish a certified copy of the notice of final hearing or protection order, if any, electronically. (2) A copy of the petition and ex parte protection order, if issued, under this chapter shall be served upon the defendant as soon as possible pursuant to Rule 4 of the Alabama Rules of Civil Procedure. A copy of the notice of final hearing and any other order under this chapter shall be issued to the defendant as soon as possible.

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