

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2018-CA-01745-SCT

***IN THE MATTER OF THE ADOPTION OF THE
MINOR IDENTIFIED IN THE PETITION: C.C.B.
AND S.R.B.***

v.

G.A.K. AND G.R.K.

DATE OF JUDGMENT:	11/29/2018
TRIAL JUDGE:	HON. DEBORAH J. GAMBRELL
TRIAL COURT ATTORNEYS:	JAMES L. GRAY SHAWN M. LOWREY STEVEN PATRICK WANSLEY KRISTIN MICHELLE McGEE
COURT FROM WHICH APPEALED:	PEARL RIVER COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANTS:	MATTHEW THOMPSON CHAD KING JAMES L. GRAY
ATTORNEY FOR APPELLEES:	KIMBERLY-JOY LOCKLEY MIRI
NATURE OF THE CASE:	CIVIL - ADOPTION
DISPOSITION:	AFFIRMED - 10/08/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE KITCHENS, P.J., BEAM AND ISHEE, JJ.

KITCHENS, PRESIDING JUSTICE, FOR THE COURT:

¶1. The chancery court tried this adoption case twice. After the first trial, the chancellor granted the adoption petition of the maternal grandparents, C.C.B. and S.R.B.; and after the second trial, the chancellor granted the competing adoption petition of G.E.K. and G.R.K., the foster parents. The grandparents appeal and argue for the first time that the chancery

court lacked subject matter jurisdiction under the Mississippi Termination of Parental Rights Law (MTPRL) to terminate parental rights and adjudicate the adoption of S.A.B. Also, for the first time on appeal, they argue that the chancery court lacked jurisdiction because it failed to order a home study as required by statute.

¶2. We hold that the chancery court had jurisdiction under the MTPRL to accept the voluntary releases of parental rights filed by S.A.B.'s natural parents and to order S.A.B.'s adoption. We hold also that, because the failure to order a home study does not implicate the chancery court's subject matter jurisdiction, the issue cannot be raised for the first time on appeal. Therefore, we affirm.

FACTS

¶3. S.A.B. was born to S.E.B. on December 14, 2014. In August 2015, the Mississippi Department of Human Services (MDHS) received an anonymous tip implicating S.A.B.'s welfare. An investigator determined that S.A.B. was unsafe, and the MDHS set the matter with the Pearl River County Youth Court. On September 15, 2015, the youth court entered an Order of Adjudication of Neglect. Under this order, S.A.B. remained under the protection of the MDHS and was placed with the foster parents with visitation exercised by the grandparents.

¶4. On March 16, 2016, the youth court changed the permanency plan from parental reunification to termination of parental rights and adoption. On May 2, 2016, the grandparents filed a petition for adoption and termination of parental rights in the Chancery

Court of Pearl River County. The foster parents filed a competing petition for adoption and termination of parental rights. The chancery court consolidated the cases.

¶5. On May 23, 2016, the youth court held another permanency hearing, leaving physical and legal custody with the MDHS and ordering the permanency plan of adoption and a concurrent plan of durable legal custody or legal guardianship. One year later, the youth court held another permanency hearing but made no changes to the previous year's plan.

¶6. S.A.B.'s natural parents executed voluntary releases of parental rights that were filed in the chancery court. The chancellor accepted the voluntary releases and entered judgments terminating each parent's parental rights. On July 10 and 11, 2017, the chancery court held a trial on the adoption petitions and granted the grandparents' adoption petition. The foster parents filed a motion for a new trial, arguing that the natural parents' voluntary releases of parental rights were void. The chancellor agreed, finding the natural parents' voluntary releases void because they did not comply with the governing statute. Accordingly, the chancellor set aside the terminations of parental rights and voided the grandparents' adoption.

¶7. Then, the foster parents filed a petition for termination of parental rights and adoption, and the grandparents filed a competing petition for termination of parental rights and adoption. The natural parents again executed voluntary releases of parental rights, the validity of which is not in question. Finding the voluntary releases valid, the chancellor terminated the parental rights of the natural parents and held a second trial on adoption on August 29

and 30, 2018. After that trial, the chancellor granted the foster parents' adoption petition. The grandparents appeal, challenging the chancery court's jurisdiction.

STANDARD OF REVIEW

¶8. “Whether the chancery court had jurisdiction to hear a particular matter is a question of law, to which this Court must apply a de novo standard of review.” *C.T. v. R.D.H. (In re Adoption of D.N.T.)*, 843 So. 2d 690, 697 (Miss. 2003) (citing *Burch v. Land Partners, L.P.*, 784 So. 2d 925, 927 (Miss. 2001)).

DISCUSSION

I. Whether the chancery court had subject matter jurisdiction to terminate parental rights and order the adoption of S.A.B.

¶9. The grandparents argue that the chancery court lacked subject matter jurisdiction to terminate the natural parents' parental rights and adjudicate the adoption of S.A.B. They argue that, because the youth court had jurisdiction over S.A.B. in an abuse or neglect proceeding, the youth court had exclusive jurisdiction to terminate parental rights. Because the chancery court lacked jurisdiction to terminate parental rights, they contend, S.A.B. was not eligible for adoption, and the adoption must be reversed. Although the grandparents raise this issue for the first time on appeal, “a question of subject matter jurisdiction may be presented at any time.”¹ *Burnette v. Hartford Underwriters Ins. Co.*, 770 So. 2d 948, 951

¹ The foster parents filed a motion for damages, costs, and attorney fees as a sanction for a frivolous appeal under Mississippi Rule of Appellate Procedure 38. Because the grandparents' appeal is not frivolous, the motion is denied. The foster parents' motion to strike the reply brief as untimely is denied. The reply brief was not untimely because the

(Miss. 2000) (quoting *Gale v. Thomas*, 759 So. 2d 1150, 1159 (Miss. 1999)).

¶10. The grandparents rely on *M.A.S. v. Mississippi Department of Human Services (In re Petition of M.A.S.)*, 245 So. 3d 410, 414 (Miss. 2018), in which this Court held that, under Mississippi Code Section 93-15-105(1) (Rev. 2018), “the chancery court may not grant a contested adoption if a youth court with jurisdiction over the child in an abuse proceeding has not yet terminated the parents’ rights.” *M.A.S.* 245 So. 3d at 416. The foster parents argue that, because S.A.B.’s natural parents did not contest the adoption but instead filed voluntary releases of parental rights, the chancery court had jurisdiction to accept the voluntary releases and adjudicate S.A.B.’s adoption. We agree with the foster parents and hold that Section 93-15-105(1) vests jurisdiction in the chancery court to accept a voluntary release of parental rights concerning a child under the jurisdiction of the youth court in an abuse or neglect proceeding.

¶11. Because chancery courts have exclusive jurisdiction over adoptions, “a youth court may not exercise jurisdiction over . . . an adoption.” *M.A.S.*, 245 So. 3d at 414. But when a natural parent contests an adoption, the adoption cannot proceed absent a termination of parental rights under the MTPRL:

No infant shall be adopted to any person if a parent whose parental rights have not been terminated under the Mississippi Termination of Parental Rights Law, after having been summoned, shall appear and object thereto before the making of a decree for adoption. A parent shall not be summoned

grandparents secured an enlargement of time in which to file it under Mississippi Rule of Appellate Procedure 27(b)(1).

in the adoption proceedings nor have the right to object thereto if the parental rights of the parent have been terminated by the procedure set forth in the Mississippi Termination of Parental Rights Law (Section 93-15-101 et seq.), and the termination shall be res judicata on the question of parental abandonment or unfitness in the adoption proceedings.

Miss. Code Ann. § 93-17-7(1) (Rev. 2018). This case concerns the authority of the chancery court to proceed with an adoption when the natural parents have not appeared and objected to the adoption but rather have submitted to the court voluntary releases of parental rights.

¶12. The grandparents invoke Mississippi Code Section 93-15-105(1), which at the time of these proceedings provided:

The chancery court has original exclusive jurisdiction over all termination of parental rights proceedings except that a county court, when sitting as a youth court with jurisdiction of a child in an abuse or neglect proceeding, has original exclusive jurisdiction to hear a petition for termination of parental rights against a parent of that child.

Miss. Code Ann. § 93-15-105(1) (Rev. 2018).² This statute, enacted in the 2016 legislative session as part of the MTPRL, provides that the “original exclusive jurisdiction” for “all termination of parental rights proceedings” is chancery court. *Id.* A specific situation is

² Effective July 1, 2020, the legislature amended Section 93-15-105(1). The amended statute provides that

The chancery court has original exclusive jurisdiction over all termination of parental rights proceedings except when a county court sitting as a youth court has acquired jurisdiction of a child in an abuse or neglect proceeding, then the county court shall have original exclusive jurisdiction to hear a petition for termination of parental rights against a parent of that child pursuant to the procedures of this chapter.

H.B. 1129, Reg. Sess., 2020 Miss. Laws ch. ____, § 1.

excepted. If a “county court, when sitting as a youth court [has] jurisdiction of a child in an abuse or neglect proceeding,” then that court has “original exclusive jurisdiction to hear a petition for termination of parental rights against a parent of that child.” *Id.* The grandparents argue that, because this exception applies in this case, the chancery court lacked jurisdiction to terminate parental rights and adjudicate the adoption.

¶13. When a statute is not ambiguous, this Court applies the statute’s plain language. *City of Natchez v. Sullivan*, 612 So. 2d 1087, 1089 (Miss. 1992) (citing *Pinkton v. State*, 481 So. 2d 306, 309 (Miss. 1985)). For children under the jurisdiction of the county court in an abuse or neglect proceeding, Section 93-15-105(1) places jurisdiction in the county court to adjudicate one matter: “a petition for termination of parental rights against a parent of that child.” Section 93-15-107 provides for such a petition. It allows an interested person to file a petition against a natural parent requesting the involuntary termination of the natural parent’s parental rights. Miss. Code Ann. § 93-15-107(1)(a) (Rev. 2018) (“Involuntary termination of parental rights proceedings are commenced upon the filing of a petition under this chapter.”). A court hearing a petition filed under Section 93-15-107 must adjudicate it in accordance with the provisions of the MTPRL governing involuntary termination of parental rights. *M.A.S.*, 245 So. 3d at 415.

¶14. But the MTPRL provides another mechanism for termination of parental rights that is not a petition for termination of parental rights filed against the child’s parent. According to Section 93-15-107(2), “[v]oluntary termination of parental rights by written voluntary

release is governed by Section 93-15-111.” Miss. Code Ann. § 93-15-107(2) (Rev. 2018). Under Section 93-15-111, voluntary termination of parental rights proceeds not by a petition to terminate parental rights filed against a parent but by a voluntary release filed by the natural parent that operates as a consent to adoption. Miss. Code Ann. § 93-15-111 (Rev. 2018). Section 93-15-111 provides that “[t]he court may accept the parent’s written voluntary release” if the release meets certain listed requirements for a knowing, voluntary, and intelligent relinquishment of parental rights. Miss. Code Ann. § 93-15-111(1) (Rev. 2018).

The statute provides further that

The court’s order accepting the parent’s written voluntary release terminates all of the parent’s parental rights to the child, including, but not limited to, the parental right to control or withhold consent to an adoption. If the court does not accept the parent’s written voluntary release, then any interested person, or any agency, institution or person holding custody of the child, may commence involuntary termination of parental rights proceedings under Section 93-15-107.

Miss. Code. Ann. § 93-15-111(2) (Rev. 2018).

¶15. This Court has recognized that the county court’s exclusive jurisdiction under Section 93-15-105(1) comes into play when the adoption of an abused or neglected child is contested and an objecting parent’s parental rights must be terminated involuntarily before the child is eligible for adoption. *M.A.S.*, 245 So. 3d at 415. The Mississippi Department of Human Services in that case removed a child from his home, and the Harrison County Youth Court adjudicated him abused or neglected. *Id.* at 412. M.A.S. was the child’s foster parent. *Id.* Later, the youth court recommended the child’s reunification with his natural parents. *Id.*

M.A.S. filed a petition for adoption and termination of parental rights in the chancery court. *Id.* at 412-13. The chancellor granted the parents’ motion to dismiss on the ground that the child was ineligible to be adopted over the parents’ objection because the youth court had exclusive jurisdiction over M.A.S.’s petition to terminate parental rights. *Id.* at 413.

¶16. After reviewing case law and the recently enacted MTPRL, this Court affirmed. *Id.* at 418. The Court found that the provision for youth court jurisdiction in Section 93-15-105(1) had resolved a problem identified in dissent by Chief Justice Waller in *Mississippi Department of Human Services v. Watts*, 116 So. 3d 1056, 1059 (Miss. 2012), *superseded by statute*, H.B. 1240, Reg. Sess., 2016 Miss. Laws ch. 431, § 4, that had existed before the enactment of the MTPRL. *Id.* at 415 (citing *Watts*, 116 So. 3d at 1063 (Waller, C.J., dissenting)). Chief Justice Waller’s concern was “that a foster parent could potentially thwart a youth court’s reunification decision by seeking termination as part of a contested adoption in chancery court.” *Id.*(citing *Watts*, 116 So. 3d at 1063 (Waller, C.J., dissenting)). *M.A.S.* held that, under newly enacted Section 93-15-105(1), “the chancery court may not grant a contested adoption if a youth court with jurisdiction over the child in an abuse proceeding has not yet terminated the parents’ rights.” *Id.* at 416. We said that “when a petition for adoption is filed in chancery court—as it must be—and the parents of that child contest the adoption, amended Section 93-17-7(1) now requires that the parents’ rights be terminated *under the MTPRL* before the contested adoption can be granted.” *Id.* at 415 (footnote omitted).

¶17. As the Court held in *M.A.S.*, the provision for youth court jurisdiction over terminations of parental rights in Section 93-15-105(1) applies to contested adoptions in which the adoption cannot occur without a court’s grant of a petition to terminate parental rights. The MTPRL makes clear that a voluntary release of parental rights, filed by a natural parent as a mechanism for consent to adoption, is a different procedural vehicle from a “petition for termination of parental rights filed against a parent.” Miss. Code Ann. § 99-15-107; § 99-15-111. A petition to terminate parental rights, filed against a parent, proceeds under Section 93-15-107 and the other statutes governing involuntary termination of parental rights. But a voluntary release of parental rights proceeds under Section 93-15-111 and does not require a judicial finding “against a parent.” The voluntary release is a document filed by the parent that, if valid and accepted by the court, operates as the parent’s consent to the child’s adoption. Miss. Code Ann. § 93-15-111(2). Indeed, the adoption statutes, which were amended at the time of the MTPRL’s enactment, provide for the filing of a parental consent to adoption in chancery court. Miss. Code Ann. § 93-17-5 (Rev. 2018).

¶18. Nothing in the MTPRL vests a county court sitting as a youth court in an abuse or neglect case with exclusive jurisdiction to accept a voluntary release executed by the child’s natural parent as a consent to adoption. The plain language of Section 93-15-105(1) does not support such a reading because it limits the jurisdiction of a county court in an abuse or neglect proceeding to “petition[s] for termination of parental rights against a parent of that child” Miss. Code Ann. § 93-15-105(1). Other than in that specific scenario, the statute

gives “the chancery court . . . original exclusive jurisdiction over all termination of parental rights proceedings.” *Id.* Because under the MTPRL a voluntary release of parental rights is a distinct and different mechanism for termination of parental rights than a petition filed against the parents, the MTPRL vests the chancery court with jurisdiction to accept a parent’s voluntary release and to proceed with an adoption. We note that, because parental reunification is not possible after the parents voluntarily release their parental rights, Chief Justice Waller’s concern from *Watts* is not implicated.

¶19. Interpreting the MTPRL consistent with its plain language yields the conclusion that the chancery court had jurisdiction to accept the natural parents’ voluntary releases of parental rights and to adjudicate the competing adoption petitions filed by S.A.B.’s grandparents and foster parents. After the youth court entered a permanency plan of termination of parental rights and adoption, S.A.B.’s grandparents and foster parents filed competing petitions for adoption and termination of parental rights against S.A.B.’s natural parents. But those petitions to terminate parental rights never came on for hearing. Instead, they were mooted by the parents’ filing of voluntary releases of parental rights. The chancery court had jurisdiction to accept the voluntary releases of parental rights and to adjudicate the adoption of S.A.B.

II. Whether the chancery court lacked jurisdiction because it did not order a home study.

¶20. The grandparents argue that the chancery court lacked jurisdiction to order S.A.B.’s adoption because that court did not order a home study of the foster parents by a licensed

adoption agency, a qualified social worker, or the MDHS. Mississippi Code Section 93-17-11 provides that the chancery court

shall require in adoptions, other than those in which the petitioner or petitioners are a relative or stepparent of the child, that a home study be performed of the petitioner or petitioners by a licensed adoption agency or by the Department of Human Services, at the petitioner's or petitioners' sole expense and at no cost to the state or county. The investigation and report shall give the material facts upon which the court may determine whether the child is a proper subject for adoption, whether the petitioner or petitioners are suitable parents for the child, whether the adoption is to its best interest, and any other facts or circumstances that may be material to the proposed adoption. The home study shall be considered by the court in determining whether the petitioner or petitioners are suitable parents for the child.

Miss. Code Ann. § 93-17-11 (Rev. 2018). The grandparents cite Section 93-17-3(6), which at the relevant time provided that

No person may be placed in the home of or adopted by the prospective adopting parties before a court-ordered or voluntary home study is satisfactorily completed by a licensed adoption agency, a licensed, experienced social worker approved by the chancery court or by the Department of Human Services on the prospective adoptive parties if required by Section 93-17-11.

Miss. Code Ann. § 93-17-3(6) (Rev. 2018).

¶21. Because the grandparents raise this issue for the first time on appeal, they frame the issue as one of subject matter jurisdiction that may be brought up at any time. They liken the failure to order the statutorily required home study to a petitioner's failure to attach the statutorily required doctor's certificate to an adoption petition, which this Court has said is a jurisdictional prerequisite to adoption. *Boone v. George Cnty. Dep't of Pub. Welfare (In re Adoption of F.N.M.)*, 459 So. 2d 254, 257 (Miss. 1984) (citing Miss. Code Ann. § 93-17-

3 (Supp. 1983)). But four years after *F.N.M.*, this Court retreated from that pronouncement. *In re Adoption of R.M.P.C.*, 512 So. 2d 702, 706 (Miss. 1987). We held that the failure to submit a doctor’s certificate is not a matter of subject matter jurisdiction that may be raised at any time. *Id.* “Subject matter jurisdiction has reference to the power and authority of a court to entertain a case at all.” *Id.* (citing *Am. Fid. Fire Ins. Co. v. Athens Stove Works, Inc.*, 481 So. 2d 292, 296 (Miss. 1985)). We found that subject matter jurisdiction was not implicated by the failure to attach a doctor’s certificate because “adoption cases are well within the jurisdiction of the Chancery Court.” *Id.* (citing *Welch v. Welch*, 208 Miss. 726, 732, 45 So. 2d 353, 354 (1950)).

¶22. Like the failure to attach a doctor’s certificate, the failure to order a home study is not a matter of subject matter jurisdiction that may be raised for the first time on appeal. We note that the guardian *ad litem* did perform a home study in this case and that Section 93-17-3(6) was amended after the trial to allow the chancellor to direct that the home study may be completed “by a court-appointed guardian ad litem that has knowledge or training in conducting home studies.” H.B. 1134, Reg. Sess., 2020 Miss. Laws ch. ____, § 1 (effective July 1, 2020). The chancellor considered the guardian *ad litem*’s report in determining that adoption by the foster parents was in S.A.B.’s best interest.

CONCLUSION

¶23. We affirm. The chancery court had jurisdiction under the MTPRL to accept the natural parents’ voluntary releases of parental rights and to adjudicate S.A.B.’s adoption. We

find that the failure to order a home study did not implicate the chancery court's subject matter jurisdiction and cannot be challenged for the first time on appeal.

¶24. **AFFIRMED.**

**RANDOLPH, C.J., KING, P.J., COLEMAN, MAXWELL, BEAM,
CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR.**