

**IN THE SUPREME COURT OF MISSISSIPPI**  
**NO. 1999-IA-01332-SCT**

***K. M. K.***

***v.***

***S. L. M., BY AND THROUGH***

***HER NEXT FRIENDS, J. H. AND D. H.***

DATE OF JUDGMENT:	07/28/1999
TRIAL JUDGE:	HON. STUART ROBINSON
COURT FROM WHICH APPEALED:	HINDS COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANT:	FORD ANDREW HOWELL WAYNE MILNER
ATTORNEYS FOR APPELLEES:	LEE B. AGNEW, JR. KATE S. EIDT
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
DISPOSITION:	REVERSED AND RENDERED - 12/29/2000
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	1/19/2001

**EN BANC.**

**WALLER, JUSTICE, FOR THE COURT:**

¶1. This termination of parental rights case is before us on interlocutory appeal. S.L.M., by and through her foster parents, J.H. and D.H., filed this action in the Chancery Court of the First Judicial District of Hinds County for termination of the parental rights of her natural mother, K.M.K. K.M.K. subsequently filed a motion to dismiss the action, alleging that jurisdiction was improper in the Chancery Court as the County Court of Hinds County, sitting as the Youth Court, had already taken jurisdiction over the child. This appeal arises from the denial of that motion.

**STATEMENT OF THE FACTS**

¶2. S.L.M., who was born on January 4, 1995, is the natural minor child of K.M.K. On October 31, 1997, S.L.M., along with her three siblings, was removed from the home of K.M.K. following findings of abuse and neglect of the four minor children. None of the children have been returned to the care of K.M.K. The County Court of Hinds County, sitting as the Youth Court, ordered that S.L.M. be placed into the home of her current foster parents, J.H. and D.H., in December of 1997, and further provided for visitation of S.L.M. by K.M.K.

¶3. In July of 1998, J.H. and D.H., acting as next friends of S.L.M., filed in the Chancery Court of the First Judicial District of Hinds County a petition for termination of parental rights of K.M.K. and the putative father of S.L.M. The petition alleged that K.M.K. had been indicted for child abuse of S.L.M. and S.L.M.'s natural brother under Miss. Code Ann. § 97-5-39(2) (1994). The petition further averred that there had been a substantial erosion of the relationship between K.M.K. and S.L.M., and that K.M.K. was unable to give care and custody to S.L.M. due to drug addiction and mental illness and/or deficiencies. J.H. and D.H., acting on behalf of S.L.M., then filed an emergency motion in the chancery court seeking immediate termination of visitation by K.M.K.

¶4. On September 29, 1998, K.M.K. filed a motion to dismiss the petition and the emergency motion, alleging that the chancery court lacked jurisdiction over her and the subject matter of the suit. Specifically, K.M.K. alleged that the youth court had taken jurisdiction of the matter and had already entered an order granting specific visitation rights to K.M.K. Further, the motion alleged that it was only after the youth court refused to terminate visitation that K.M.K. was indicted on charges of child abuse. After yet another denial to terminate visitation by the youth court, J.H. and D.H., on behalf of S.L.M., filed the instant chancery court action. K.M.K. argued that the chancery court would violate principles of collateral estoppel and res judicata should it choose to exercise jurisdiction over the suit.

¶5. By order dated July 28, 1999, the chancellor denied the motion to dismiss, but granted certification for interlocutory appeal, finding that the question of jurisdiction in this case, including the issues of res judicata and collateral estoppel, should be addressed by this Court under [M.R.A.P. 5\(a\)](#), which allows for interlocutory appeal to resolve matters that would materially advance termination of litigation and avoid exceptional expense to the parties, to protect a party from substantial and irreparable injury, and to resolve an issue of general importance to the administration of justice. This Court granted permission to file the interlocutory appeal.

### **STANDARD OF REVIEW**

¶6. Jurisdiction is a question of law. [Entergy Miss., Inc. v. Burdette Gin Co.](#), 726 So. 2d 1202, 1204-05 (Miss. 1998). This Court reviews questions of law de novo. See [Saliba v. Saliba](#), 753 So. 2d 1095, 1098 (Miss. 2000); [Peters v. Peters](#), 744 So. 2d 803, 804 (Miss. Ct. App. 1999).

### **DISCUSSION**

¶7. K.M.K. alleges that the chancery court does not have jurisdiction over this matter because the youth court has exclusive original jurisdiction. Miss. Code Ann. § 43-21-151(1) (Supp. 1999) provides that:

The youth court shall have exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, and abused child or a dependent child **except** in the following circumstances . . . (c) When a charge of abuse of a child first arises in the course of a custody action between the parents of the child already pending in the chancery court . . . .

(emphasis added). K.M.K. argues that a petition for termination of parental rights is essentially the same relief that was denied when the youth court refused to terminate visitation rights. Therefore, K.M.K. argues that if the chancery court is allowed to exercise jurisdiction over the termination of parental rights, one court would be able to order relief in conflict with another court's order on the same issue, violating principles of res judicata and collateral estoppel.

¶8. S.L.M. argues that custody and visitation as decided by the youth court is a separate and distinct issue from termination of parental rights, and the chancery court is authorized to exercise jurisdiction over termination of parental rights cases. *See* Miss. Code Ann. § 93-15-105 (Supp. 1999). S.L.M. relies on this Court's decisions in *Petition of Beggiani*, 519 So. 2d 1208 (Miss. 1988) and *In re T.A.P.*, 742 So. 2d 1095 (Miss. 1999).

¶9. K.M.K. correctly points out that Miss. Code Ann. § 93-15-105 was amended in 1996, allowing a county court sitting as a youth court to have concurrent jurisdiction with a chancery court over petitions for termination of parental rights. The only question, therefore, for this Court to decide is whether that amendment gives a county court acting as a youth court priority of jurisdiction over a chancery court when the parties were first subject to the jurisdiction of the youth court for proceedings involving abuse and neglect.

¶10. We hold that a chancery court may not exercise jurisdiction over any abused or neglected child or any proceeding pertaining thereto over which the youth court may exercise jurisdiction *if* there has been a prior proceeding in the youth court concerning that same child.<sup>(1)</sup> We note especially, however, that this holding is limited to questions of priority jurisdiction in counties that have a county court sitting as a youth court in addition to a chancery court.<sup>(2)</sup>

¶11. No doubt prior to the amendment of § 93-15-105 allowing a county court/youth court to hear a termination of parental rights petition, it was necessary for the chancery court to consider the matter as a separate issue from a youth court's prior determination of custody and visitation, thereby allowing a chancery court to vacate and make moot youth court orders in conflict with its later determination as to the termination of parental rights. Now, however, the Legislature has given both chancery and county courts acting as youth courts the power to determine whether parental rights should be terminated. The Legislature has also stated that the youth court will have exclusive original jurisdiction over "all proceedings" involving abused and neglected children except when the allegation first arose in a pending chancery court action. Miss. Code Ann. § 43-21-151(1).

¶12. In addition to being faithful to the legislative intent and plain meaning of the statute, our holding promotes other values important to judicial administration. First, it will prevent forum shopping. The foster parents in this case brought the termination of parental rights suit in the chancery court only after the youth court had twice refused to terminate the visitation rights of K.M.K. Second, our holding will prevent potentially conflicting orders between trial courts dealing with the same issues. Lastly, this holding will prevent multiple suits in different courts and promote judicial economy by allowing a court already familiar with the parties and situations to hear all petitions dealing with those same parties and situations.

### CONCLUSION

¶13. We hold that the County Court of Hinds County, sitting as the Hinds County Youth Court, may properly exercise jurisdiction over the termination of parental rights proceedings, and has priority of jurisdiction since that court has already considered the issues of neglect and abuse concerning the children of K.M.K. Therefore, the chancery court erred in denying K.M.K.'s motion to dismiss. The Hinds County Chancery Court's order denying the motion to dismiss is reversed, and judgment is rendered here dismissing the chancery court action for lack of jurisdiction.

¶14. **REVERSED AND RENDERED.**

**SMITH, MILLS, COBB AND DIAZ, JJ., CONCUR. McRAE, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY PRATHER, C.J., PITTMAN AND BANKS, P.JJ.**

**McRAE, JUSTICE, DISSENTING:**

¶15. The Constitution of 1890 trumps any statute that is in conflict with it. Accordingly, I dissent. The chancery court is a court established by the Mississippi Constitution. The Constitution requires that all matters involving minors will have jurisdiction in the chancery court. *See* Miss. Const. of 1890, § 159. The youth court's jurisdiction is derived from statutes. Miss. Code Ann. § 43-21-151(1996); Miss. Code Ann. § 93-15-105 (1996). The statute establishing the youth court's jurisdiction sets out certain matters involving abuse and neglect that may be handled by the youth court exclusively. Miss. Code Ann. § 93-15-105 adds that petitions to terminate parental rights may be heard in both youth court and chancery court, therefore granting the youth court concurrent jurisdiction over the issue. The legislature may give concurrent jurisdiction previously held exclusive to one court to another, but such an expansion of powers of the latter does not diminish the jurisdictional powers of the former. Neither the statutes bestowing the concurrent jurisdictional powers on the youth court nor the constitutional provisions establishing the chancery court diminish the chancery court's jurisdictional authority to hear petitions to terminate parental rights. The chancery court's jurisdictional powers are derived from the constitution, and any statute that conflicts with such is void. If a statute is interpreted to strip the jurisdictional powers of the chancery court, said statute would be unequivocally violative of the constitution.

¶16. Furthermore, the issues ruled on by the youth court are not the same as those before the chancery court. **There was never a petition to terminate parental rights filed in the youth court.** The majority notes, but apparently ignores the fact that this Court has already dealt with this matter on two prior occasions, acknowledging each time that we are faced with two different issues: termination of parental rights and custody and visitation.

¶17. By allowing the youth court to have exclusive jurisdiction over such matters, the majority in effect is overruling *Petition of Beggiani*, 519 So. 2d 1208 (Miss. 1988) and *In re T.A.P.*, 742 So. 2d 1095 (Miss. 1999). The majority notes that *Petition of Beggiani* held that the youth court should retain jurisdiction over the abuse and neglect subject matter, but that the chancery court was not precluded from properly determining the adoption matter, since that is a different subject.

¶18. In the case of *In re T.A.P.*, the majority points out that these the termination of parental rights issue before the chancery court and the termination of visitation and custody rights issue before the youth court were two different types of matters. 742 So. 2d at 1103-04. In the *T.A.P.* case, the chancery court did not terminate the parental rights and this Court therefore sent it back to the youth court to reconsider its denial of visitation to the natural parent. *Id.* **What is significant to note and that the majority overlooks, is that *T.A.P.* deals with the same jurisdictional conflict we face here today.**

¶19. Miss. Code Ann. § 43-21-151 states that the youth court has exclusive jurisdiction over certain issues involving abused and neglected children. Simply because the matter involves abused and neglected children does not, however, prohibit the chancery court from having jurisdiction over other issues. The majority even comments in its footnote that "[T]here are some matters concerning abused and neglected children over which the youth court has no jurisdiction. *See* Miss. Code Ann. § 93-17-3 (1994) (adoption petitions must

be filed in the chancery court)."

¶20. Normally, termination of parental rights and adoption are one in the same. If you are adopting, you are terminating somebody else's parental rights and it must go back to the chancery court. If the majority recognizes that the chancery court retains absolute jurisdiction over adoption petitions that terminate parental rights, including those cases which involve abused and neglected children, how can the majority **interpret** that it "is the clear and unmistakable intent of the Legislature in using the phrase 'all proceedings'" in Miss. Code Ann. § 43-21-151 to allow the youth court exclusive jurisdiction over the termination of parental rights, simply because it initially handled some other matter?

¶21. Even if it were the legislature's intent to give the youth court jurisdiction over these type of matters though its amendments to § 93-15-105, it could not have precluded the chancery court's concurrent jurisdiction, nor could it grant the youth court priority jurisdiction. **The statute is clear and explains that jurisdiction is concurrent with and not in substitution of the chancery court's jurisdiction.** If the legislature wanted to reduce the jurisdictional powers of a constitutionally created court, it could pass an amendment to the constitution limiting that court's jurisdiction, but such did not occur here. If we interpret the statutes to reduce the chancery court's jurisdiction, then the statutes would be void due to their conflict with the constitution.

¶22. This Court has already held that termination of parental rights is a different category than matters involving the abused and neglected child, and to preclude the chancery court from exercising jurisdiction here is wrong and violative of the constitution. Accordingly, I dissent.

**PRATHER, C.J., PITTMAN AND BANKS, P.JJ., JOIN THIS OPINION.**

1. We note that there are some matters concerning abused and neglected children over which the youth court has no jurisdiction. *See* Miss. Code Ann. § 93-17-3 (1994) (adoption petitions must be filed in the chancery court). Our holding in this case is, of course, limited by statutory authority determining proper jurisdiction.

2. The youth court has different divisions. Miss. Code Ann. § 43-21-107 (1993). One division of the youth court is the County Court, presided over by the county court judge or a judge chosen by the county court judge, in those counties that have a county court. *Id.* Another division is a division of the Chancery Court, presided over by a chancellor or a youth court referee. *Id.*; Miss. Code Ann. § 43-21-111 (Supp. 1999). In jurisdictions where there is no county court, the chancery court would rightfully retain jurisdiction over cases involving termination of parental rights. Miss. Code Ann. § 93-15-105.