

## *Snyder v. Carter*

Court of Appeals of Georgia

November 17, 2005, Decided

A05A2265, A05A2266.

### Reporter

276 Ga. App. 426 \*; 623 S.E.2d 241 \*\*; 2005 Ga. App. LEXIS 1271 \*\*\*; 2005 Fulton County D. Rep. 3559

SNYDER v. CARTER et al. (two cases).

**Prior History:** [\*\*\*1] Adoption. Forsyth Superior Court. Before Judge Bagley.

**Disposition:** Judgment affirmed.

### Core Terms

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superior court, juvenile court, deprivation, adoption petition, termination, parental rights, proceedings, matters, subject matter jurisdiction, exclusive original jurisdiction, retain jurisdiction, custody, termination of parental rights, exclusive jurisdiction, court's jurisdiction, file a petition, deny a motion, undisputed, conferred, appeals, vested

### Case Summary

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#### Procedural Posture

The Forsyth County Superior Court (Georgia) concluded that it had jurisdiction over termination proceedings and the adoption petition filed by appellee adoptive parents to adopt the biological parents' minor son. It then terminated the biological parents' rights in their minor son and granted the adoptive parents' adoption petition. The biological parents appealed.

The county juvenile court entered an order that found the biological parents' minor child to be deprived. It authorized placement of the minor child with maternal cousins, the adoptive parents. Eventually, the adoptive parents filed a petition in the trial court to adopt the minor child. The trial court later terminated the biological parents' rights in their minor child and granted the adoptive parents' adoption petition that allowed them to adopt the minor son. The biological parents appealed and claimed that the trial court did not have subject matter jurisdiction over the adoption petition given the proceedings that were going on in the county juvenile court. The appellate court disagreed with the biological parents. It found that [O.C.G.A. § 19-8-2\(a\)](#) gave the trial courts subject matter jurisdiction over all matters of adoption, except such matters as were granted to the juvenile courts. It then found that the juvenile courts had not been shown to have been granted jurisdiction over adoption matters, which meant the trial court had jurisdiction over both the adoption and termination matters involved in the case.

#### Outcome

The trial court's judgment was affirmed.

### LexisNexis® Headnotes

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#### Overview

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions

### [HN1](#) Standards of Review, De Novo Review

Where a trial court's decision on whether it retains subject matter jurisdiction in a case is based on an application of law to undisputed facts, a reviewing court applies a de novo standard of review.

Family Law > Family Protection & Welfare > Children > Abuse, Endangerment & Neglect

### [HN2](#) Children, Abuse, Endangerment & Neglect

See [O.C.G.A. § 15-11-2\(8\)](#).

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

### [HN3](#) Subject Matter Jurisdiction, Jurisdiction Over Actions

Subject-matter jurisdiction is established by laws, and there is nothing parties to a suit can do to give a court jurisdiction over a matter that has not been conferred by law. Furthermore, matters concerning subject matter jurisdiction cannot be waived by failure to raise them in proceedings below.

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > Concurrent Jurisdiction

Family Law > ... > Termination of Rights > Involuntary Termination > General Overview

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > Exclusive Jurisdiction

Family Law > Adoption > Adoption Procedures > General Overview

### [HN4](#) Jurisdiction Over Actions, Concurrent Jurisdiction

Exclusive jurisdiction of adoption proceedings is vested in the trial courts. In addition, the trial courts have concurrent jurisdiction over termination of parental rights petitions filed in connection with an adoption petition.

## Headnotes/Summary

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### Headnotes

Georgia Advance Headnotes

[GA\(1\)](#)  (1)

Family Law. > Adoption. > Procedures.

Superior court did not err in holding that it retained subject matter jurisdiction over parties' adoption petition and termination of the parents' parental rights.

**Counsel:** *Christopher S. Thurman*, for appellant (case no. A05A2265).

*Mindy R. Smith*, for appellant (case no. A05A2266).

*Patterson & Hansford, Jennifer D. Patterson*, for appellees.

**Judges:** BLACKBURN, Presiding Judge. Miller and Bernes, JJ., concur.

**Opinion by:** BLACKBURN

## Opinion

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[\*426] [\*\*242] BLACKBURN, Presiding Judge.

James and Carol Snyder separately appeal a final order terminating their parental rights and granting Lori and Ray Carter's petition to adopt the Snyders' minor son, W. L. S. Both appeals assert the sole enumeration of error that the Superior Court of Forsyth County did not have subject matter jurisdiction over the Carters' petition. For the reasons set forth below, we affirm.

[HN1](#) [↑] As the superior court's decision on whether it retained subject matter jurisdiction in this case was based on an application of law to undisputed facts, we apply a de novo standard of review. *McDonald v. MARTA*.<sup>1</sup> The undisputed evidence shows that based on a hearing held on October 29, 2003, the Juvenile Court of Forsyth County entered an order finding the Snyders' minor child, W. L. S., deprived pursuant to [OCGA § 15-11-2](#).<sup>2</sup> Consequently, the juvenile court

granted temporary legal and physical custody of W. L. S. to the Department of Family [\*\*\*2] and Children Services (DFACS) but authorized placement of W. L. S. with maternal cousins, Lori and Ray Carter. On September 23, 2004, the juvenile court entered an order extending DFACS's legal custody of W. L. S. for another year. W. L. S. remained in the care of the Carters following this order.

On October 22, 2004, the Carters filed a petition for the adoption of W. L. S. and termination of the Snyders' parental rights in the Superior Court of [\*\*\*3] Forsyth County. Shortly thereafter, in December 2004, DFACS filed a petition for the termination of the Snyders' parental rights in the juvenile court. On January 3, 2005, DFACS moved the superior court to dismiss the Carters' petition for adoption, arguing that the juvenile court had jurisdiction and was the proper venue for such proceedings based on both the deprivation matter as well as the petition for termination pending in the juvenile court. The superior court denied the motion and retained jurisdiction over the Carters' adoption petition. At the commencement of the hearing on the Carters' adoption petition, the [\*\*243] Snyders similarly argued that the superior court did not properly have jurisdiction over the matter. The superior court disagreed and again denied the motion. Following the [\*427] hearing, the superior court terminated the Snyders' parental rights and granted the Carters' petition to adopt W. L. S. These appeals followed.

The Snyders contend that the superior court erred in finding that it retained jurisdiction over the Carters'

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<sup>1</sup> [McDonald v. MARTA, 251 Ga. App. 230 \(554 SE2d 226\) \(2001\)](#).

<sup>2</sup> [OCGA § 15-11-2 \(8\)](#) provides:

[HN2](#) [↑] "Deprived child" means a child who: (A) Is without proper parental care or control, subsistence,

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education as required by law, or other care or control necessary for the child's physical, mental, or emotional health or morals; (B) Has been placed for care or adoption in violation of law; (C) Has been abandoned by his or her parents or other legal custodian; or (D) Is without a parent, guardian, or custodian.

adoption petition. They argue that the juvenile court had exclusive original jurisdiction based on the pending deprivation matter before the juvenile [\*\*\*4] court. We disagree.

Initially, we emphasize that [HN3](#) [↑] “[s]ubject-matter jurisdiction is established by our laws, and there is nothing parties to a suit can do to give a court jurisdiction over a matter that has not been conferred by law.” (Punctuation omitted.) *Dempsey v. Bd. of Regents &c. of Ga.* <sup>3</sup> Furthermore, matters concerning subject matter jurisdiction cannot be waived by failure to raise them in proceedings below. *Dept. of Human Resources v. Nation.* <sup>4</sup>

In addressing the issue of whether the superior court has jurisdiction over this adoption and termination of parental rights petition, we note that the facts of this case are remarkably similar to those of *Edgar v. Shave.* <sup>5</sup> [\*\*\*6] In *Edgar*, appellant contended that the superior court lacked jurisdiction [\*\*\*5] over an adoption petition because of the pendency of deprivation proceedings in the juvenile court. *Id. at 338 (1)*. We disagreed and held that “[OCGA § 19-8-2 \(a\)](#) confers on the superior courts exclusive jurisdiction in all matters of adoption, except such jurisdiction as may be granted to the juvenile courts.” (Punctuation omitted.) *Id.* We further held that while the juvenile court had exclusive original jurisdiction over deprivation proceedings, nothing in the text of former [OCGA § 15-11-5 \(a\) \(1\) \(C\)](#) (now [OCGA § 15-](#)

[11-28 \(a\) \(1\) \(C\)](#)) <sup>6</sup> granted the juvenile court jurisdiction over adoption matters. *Id.* To the contrary, [HN4](#) [↑] “[e]xclusive jurisdiction of adoption proceedings is vested in the superior courts.” (Punctuation omitted.) *Id.* See also *Spires v. Bittick.* <sup>7</sup> In addition, the superior courts have concurrent jurisdiction over termination of parental rights petitions filed in connection with an adoption petition. See *In the Interest of D. L. N.* <sup>8</sup>

[\*428] Citing *West v. Cobb County Dept. of Family &c. Svcs.*, <sup>9</sup> the Snyders nevertheless argue that [OCGA § 15-11-28 \(a\) \(1\) \(C\)](#) vests exclusive original jurisdiction in the juvenile court over matters concerning children whom the juvenile court has found to be deprived. In *West*, however, the Supreme Court of Georgia held only that a writ of habeas corpus filed in the superior court was not a proper remedy for seeking custody of a child found to be deprived and that therefore the [\*\*\*7] juvenile court retained jurisdiction over the matter. *Id. at 426*. *West* did not in any way address the issue of the superior court's exclusive jurisdiction over adoption matters.

[GA\(1\)](#) [↑] (1) Based on the holding in *Edgar*, the

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<sup>6</sup> [OCGA § 15-11-5 \(a\) \(1\) \(C\)](#) was the predecessor to [OCGA § 15-11-28 \(a\) \(1\) \(C\)](#), which provides: “Except as provided in subsection (b) of this Code section, the [juvenile] court shall have exclusive original jurisdiction over juvenile matters and shall be the sole court for initiating action ... [c]oncerning any child ... [w]ho is alleged to be deprived.”

<sup>7</sup> *Spires v. Bittick*, 171 Ga. App. 914 (1) (321 SE2d 407) (1984).

<sup>8</sup> *In the Interest of D. L. N.*, 234 Ga. App. 123, 124 (1) (506 SE2d 403) (1998).

<sup>9</sup> *West v. Cobb County Dept. of Family &c. Svcs.*, 243 Ga. 425 (254 SE2d 373) (1979).

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<sup>3</sup> *Dempsey v. Bd. of Regents &c. of Ga.*, 256 Ga. App. 291, 292 (568 SE2d 154) (2002).

<sup>4</sup> *Dept. of Human Resources v. Nation*, 265 Ga. App. 434, 439 (1) (594 SE2d 383) (2004).

<sup>5</sup> *Edgar v. Shave*, 205 Ga. App. 337 (422 SE2d 234) (1992).

superior court did not err in holding that it retained subject matter jurisdiction over the Carters' adoption petition and termination of the Snyders' parental rights. Accordingly, we affirm.

*Judgment affirmed. Miller and Bernes, JJ., concur.*

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