

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE**BENJAMIN MCCURRY v. AGNESS MCCURRY****Appeal from the Circuit Court for Washington County
No. 38147 D. Kelly Thomas, Jr., Senior Judge**

No. E2025-00401-COA-R3-CV

The appellant has filed a notice of appeal as of right from interlocutory orders entered by the trial court. Due to the lack of a final judgment, this Court does not maintain subject matter jurisdiction to adjudicate the appeal. Accordingly, the appeal is dismissed, and the portion of this Court's prior order directing that the matter be scheduled for the next oral argument docket is vacated.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which JOHN W. MCCLARTY and KRISTI M. DAVIS, JJ., joined.

Agness McCurry, Austin, Texas, Pro Se.

Benjamin McCurry, Johnson City, Tennessee, Pro Se.

MEMORANDUM OPINION¹

The appellant, Agness McCurry, proceeding self-represented, filed a motion in the Washington County Circuit Court ("trial court") on August 18, 2023, seeking the recusal of Senior Judge D. Kelly Thomas in this matter as well as in other actions pending in the trial court and a different court. On October 27, 2023, the trial court entered an order

¹ Tennessee Court of Appeals Rule 10 provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

denying the motion to recuse. Ms. McCurry subsequently filed three more motions seeking the trial court judge's recusal, all of which were timely denied by the trial court.

On February 18, 2025, Ms. McCurry filed a motion seeking (1) modification of the parties' child custody and visitation orders, (2) reunification therapy with the parties' minor child, and (3) a psychological evaluation of Mr. McCurry. In addition, Ms. McCurry filed another motion seeking recusal of the trial court judge on that same date. Ms. McCurry concomitantly filed various subpoenas that she sought to have issued by the court clerk and served.

On March 12, 2025, the trial court entered an order denying Ms. McCurry's motion to recuse. The court entered a separate order on the same date regarding issuance of Ms. McCurry's subpoenas, explaining:

Defendant Agness McCurry has mailed several subpoenas to the court clerk's office in an apparent attempt to have them issued. As this court has observed in several prior orders, Ms. McCurry filed an appeal in this action, appeal number E2024-00042-COA-R3-CV, on November 23, 2023. Consequently, jurisdiction over this case remains with the Court of Appeals, not this court, until her appeal is resolved.

Moreover, Ms. McCurry, in her own filings with this court, has indicated that there is ongoing litigation in Washington County Chancery Court involving a petition to terminate her parental rights and for stepparent adoption, case No. 24-AD-0225. According to Tenn. Code Ann. § 36-1-116(f)(1),

(2) Except for proceedings concerning allegations of delinquency, unruliness, or truancy of the child under title 37, *any proceedings that may be pending seeking the custody or guardianship of the child or visitation with the child who is in the physical custody of the petitioners on the date the petition is filed*, or where the petitioners meet the requirement of § 36-1-111(d)(6), *shall be suspended pending the court's orders in the adoption proceeding, and jurisdiction of all other pending matters concerning the child and proceedings concerning establishment of the paternity of the child shall be transferred to and assumed by the adoption court*; provided, that until the adoption court enters any orders affecting the child's custody or guardianship as permitted by this part, all prior parental or guardian authority, prior court orders regarding custody or guardianship, or statutory authority concerning the child's status shall remain in effect. Actions suspended by this

section, regardless of the stage of adjudication, shall not be heard until final adjudication of the action for termination of parental rights or adoption regarding the same child even if such adjudication of the termination of parental rights or adoption will render the custody, guardianship, or visitation action moot.

(Emphasis added). The adoption court is the Washington County Chancery Court. Even if jurisdiction were not currently with the Court of Appeals, the proper forum for Ms. McCurry to seek issuance of the subpoenas is in the Chancery court. The three subpoenas specifically refer to case no. 24-AD-0025, the Chancery court termination/adoption proceeding. Thus, that court, not this court, is the one to which she should seek the discovery she requests.

Because this court is currently without jurisdiction to grant the relief sought, the clerk need not issue the subpoenas as requested by Ms. McCurry.

Following entry of the March 12, 2025 orders, Ms. McCurry filed a “Motion to Vacate” those orders. On April 9, 2025, the trial court entered an order concerning the “Motion to Vacate,” stating that the court was construing the motion as a motion to alter or amend filed pursuant to Tennessee Rule of Civil Procedure 59.01(4). The court denied the motion, finding that Ms. McCurry had not demonstrated that she was entitled to such relief.

Ms. McCurry filed her first notice of appeal in this Court on March 21, 2025, stating that she was appealing from the trial court’s orders entered on March 12, 2025—both the order on the motion to recuse and the order stating that Ms. McCurry’s subpoenas need not be issued by the court clerk. Subsequently, on April 16, 2025, Ms. McCurry filed a second notice of appeal regarding the April 9, 2025 order denying the motion to vacate.

On July 25, 2025, this Court entered an order directing Ms. McCurry to show cause as to why her appeal should not be dismissed due to this Court’s lack of subject matter jurisdiction. This Court explained that unless a final judgment existed in the underlying litigation, Ms. McCurry maintained no right to appeal pursuant to Tennessee Rule of Appellate Procedure 3. We further noted that Ms. McCurry had not filed a petition seeking an interlocutory appeal of the denial of her recusal motion pursuant to Tennessee Supreme Court Rule 10B. Ms. McCurry was allowed fifteen days within which to file a response to the show cause order and was cautioned that her appeal could be dismissed if she failed to do so.

On July 29, 2025, Ms. McCurry filed a response to the show cause order, arguing that this Court should exercise jurisdiction to adjudicate her appeal. Ms. McCurry also filed her appellate brief on that date, and Mr. McCurry filed his brief shortly thereafter.

Accordingly, the jurisdiction issue was deferred to the panel assigned to this appeal by order dated August 19, 2025.

Although the parties' respective briefs present a number of issues for our review, Tennessee Rule of Appellate Procedure 13(b) requires that we first consider subject matter jurisdiction. *See Morgan Keegan & Co. v. Smythe*, 401 S.W.3d 595, 601 n.15 (Tenn. 2013) ("Courts have the responsibility to address their own subject matter jurisdiction, even when the parties have not raised the issue."); *see also Meighan v. U.S. Sprint Commc'ns Co.*, 924 S.W.2d 632, 639 (Tenn. 1996) (emphasizing that subject matter jurisdiction cannot be waived). Accordingly, we must specifically consider whether any of the appealed orders constitutes a final judgment.

It is well settled in Tennessee that "[u]nless an appeal from an interlocutory order is provided by the rules or by statute, appellate courts have jurisdiction over final judgments only." *In re Estate of Henderson*, 121 S.W.3d 643, 645 (Tenn. 2003); *Bayberry Assocs. v. Jones*, 783 S.W.2d 553, 559 (Tenn. 1990). "A final judgment is one that resolves all the issues in the case, 'leaving nothing else for the trial court to do.'" *Estate of Henderson*, 121 S.W.3d at 645 (quoting *State ex rel. McAllister v. Goode*, 968 S.W.2d 834, 840 (Tenn. Ct. App. 1997)). An order that does not adjudicate all the claims, rights, or liabilities between all the parties is not appealable as of right. *Estate of Henderson*, 121 S.W.3d at 645. Therefore, this Court does not have subject matter jurisdiction to adjudicate an appeal as of right if there is no final judgment. *See Bayberry Assocs.*, 783 S.W.2d at 559.

In the case at bar, our review of the appellate record discloses no final judgment. Regarding the March 2025 order denying Ms. McCurry's motion to recuse, Tennessee Supreme Court Rule 10B provides a method for an interlocutory appeal as of right when a trial court denies a motion to recuse; however, Ms. McCurry has not availed herself of the method of interlocutory appeal provided by Rule 10B.² Moreover, the recusal order is not a final judgment from which an appeal as of right would lie pursuant to Tennessee Rule of Appellate Procedure 3. *See Riverland, LLC v. City of Jackson*, No. W2017-01464-COA-R3-CV, 2018 WL 741679, at *1 (Tenn. Ct. App. Feb. 7, 2018) ("Except where otherwise provided, this Court only has subject matter jurisdiction over final orders.").

The trial court's other order entered in March 2025 merely stated that subpoenas need not be issued by the trial court clerk inasmuch as the proceedings in the underlying matter had been suspended by operation of Tennessee Code Annotated § 36-1-116(f) (West

² We note that Ms. McCurry previously has been made aware of the proper method of interlocutory appeal from a recusal order. *See, e.g., StoneyBrooke Inv'rs, LLC v. McCurry*, No. E2023-01673-COA-R3-CV, 2024 WL 370103, at *2 (Tenn. Ct. App. Jan. 31, 2024) (memorandum opinion explaining that an order of recusal is not a final judgment from which an appeal as of right exists and that the proper method of interlocutory appeal is via a Rule 10B petition).

July 1, 2024, to May 5, 2025). This statute, which is part of the adoption statutory scheme, expressly states in pertinent part:

- (f)(1) Upon the filing of the petition [for adoption], the [adoption] court shall have exclusive jurisdiction of all matters pertaining to the child, including the establishment of paternity of a child pursuant to chapter 2, part 3 of this title, except for allegations of delinquency, unruliness or truancy of the child pursuant to title 37; provided, that, unless a party has filed an intervening petition to an existing adoption petition concerning a child who is in the physical custody of the original petitioners, the court shall have no jurisdiction to issue any orders granting custody or guardianship of the child to the petitioners or to the intervening petitioners or granting an adoption of the child to the petitioners or to the intervening petitioners unless the petition affirmatively states, and the court finds in its order, that the petitioners have physical custody of the child at the time of the filing of the petition, entry of the order of guardianship, or entry of the order of adoption, or unless the petitioners otherwise meet the requirements of § 36-1-111(d)(6).
- (2) Except for proceedings concerning allegations of delinquency, unruliness, or truancy of the child under title 37, any proceedings that may be pending seeking the custody or guardianship of the child or visitation with the child who is in the physical custody of the petitioners on the date the petition is filed, or where the petitioners meet the requirement of § 36-1-111(d)(6), shall be suspended pending the court's orders in the adoption proceeding, and jurisdiction of all other pending matters concerning the child and proceedings concerning establishment of the paternity of the child shall be transferred to and assumed by the adoption court; provided, that until the adoption court enters any orders affecting the child's custody or guardianship as permitted by this part, all prior parental or guardian authority, prior court orders regarding custody or guardianship, or statutory authority concerning the child's status shall remain in effect. Actions suspended by this section, regardless of the stage of adjudication, shall not be heard until final adjudication of the action for termination of parental rights or adoption regarding the same child, even if such adjudication of the termination of parental rights or adoption will render the custody, guardianship, or visitation action moot.

(Emphasis added.) Accordingly, as the trial court found, once a petition seeking adoption of the minor child was filed in a different court, that court maintained exclusive jurisdiction

of all matters pertaining to the minor child, and any other proceedings pending relative to custody or visitation were suspended awaiting adjudication of the adoption petition in the adoption court. Because the custody and visitation action in the trial court was suspended pending the outcome in the adoption court, the trial court's order regarding subpoenas was also not a final order.

Finally, with regard to the trial court's April 2025 order denying Ms. McCurry's motion to vacate, that order was also non-final for the same reasons that the underlying orders Ms. McCurry sought to vacate were non-final. Therefore, due to the lack of a final order in this matter, this Court does not have subject matter jurisdiction to adjudicate this appeal as of right. *See Bayberry Assocs.*, 783 S.W.2d at 559. As such, we must dismiss this appeal.

For the foregoing reasons, this appeal is dismissed for lack of subject matter jurisdiction because the record discloses no final judgment resolving all the issues in the case. Accordingly, the portion of this Court's order dated September 24, 2025, directing that this matter be scheduled for the next oral argument docket, is vacated. All other pending motions are denied. This case is remanded to the trial court for further proceedings consistent with this opinion. The costs of this appeal are taxed to the appellant, Agness McCurry.

s/Thomas R. Frierson, II

THOMAS R. FRIERSON, II, JUDGE