



## NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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March 22, 2022

Briana Carlson, Esq.  
Calderón Seguin PLC  
2751 Prosperity Avenue, Suite 500  
Fairfax, Virginia 22031  
*Counsel for Petitioners*

Re: *In Re: Kelvin Alexander Fajardo Cordon*  
Case No. JA-2021-292

Dear Counsel:

This case came before the Court on January 15, 2022, for a hearing on Petitioners' appeal of the Fairfax Juvenile and Domestic Relations Court's denial of their Petition for Custody of Respondent. Having taken the Motion under advisement and after reviewing the memoranda of law and arguments submitted by counsel, the Court issues the following opinion partially granting Petitioner's Petition for Custody of Respondent.

### BACKGROUND

On July 15, 2021, Roberto Miguel Damian Bacalski and Lisa Helene Donovan Bacalski ("Petitioners") filed their Petition for Custody of Kelvin Alexander Fajardo Cordon ("Respondent") in the Fairfax County Juvenile and Domestic Relations Court. Petitioners are the foster parents for Respondent who has resided with them since March 25, 2020, when the Respondent was sixteen.

The Petition sought custody of Respondent and factual findings which would render him eligible for designation as a special immigrant juvenile as defined by 8 U.S.C. § 1101(a)(27)(J). Respondent's biological parents, who live in Honduras, concurrently filed consents and waivers of service in the proceeding. While awaiting a hearing, Respondent turned eighteen on [REDACTED]

OPINION LETTER

The Fairfax County Juvenile and Domestic Relations Court held a Calendar Control Hearing on August 20, 2021, scheduling the matter for a hearing on December 13, 2021. During the December 13, 2021 hearing, the Fairfax County Juvenile and Domestic Relations Court denied the Petition and dismissed the proceedings based on a lack of jurisdiction, stating since the Respondent was eighteen, the Petition was moot. On December 17, 2021, Petitioners timely appealed.

The questions before the Court are: (1) Does the Court have jurisdiction for custody, and (2) Does the Court have jurisdiction for findings of fact so the Respondent may petition the federal government for special immigrant juvenile status?

## ANALYSIS

### I. Standard of Review

This Court reviews appeals from the Fairfax County Juvenile and Domestic Relations Court *de novo*. Va. Code § 16.1-296(A). Upon appeal from the Juvenile and Domestic Relations Court, this Court's jurisdiction is derivative. *Fairfax Cnty. Dept. of Family Servs. v. D.N.*, 29 Va. App. 400, 405 (Va. Ct. App. 1999) (citing *Addison v. Salyer*, 185 Va. 644, 651 (1946)). Thus, the Circuit Court has all powers and authority granted to the Juvenile and Domestic Relations Court for all cases appealed. *See Peyton v. French*, 207 Va. 73, 79 (1966).

### II. Jurisdiction

The Petitioners assert jurisdiction in child custody matters vests at the time of filing. Initial child custody jurisdiction is governed by the Uniform Child Custody and Enforcement Act. Va. Code §§ 20-146.1-146.38. Specifically, jurisdiction is valid in Virginia only when the "Commonwealth is the home state of the child on the date of the commencement of the proceeding." Va. Code § 146.12(A)(1). The "home state" of the child is defined as "the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding." Va. Code § 20-146.1. Commencement is defined as the filing of the first pleading in a proceeding. *See id.*

#### A. Jurisdiction Over the Custody Portion of the Petition

Mootness may be brought up by a court *sua sponte*. *de Haan v. de Hann*, 54 Va. App. 428, 436 (2009) (citing *Earley v. Landsidle*, 257 Va. 365, 371 (1999)). A case is moot when the controversy giving rise to the action ceases to exist. *See Chaffins v. Atl. Coast Pipeline, LLC*, 293 Va. 564, 572 (2017). In matters of child custody proceedings, once a child reaches the age of majority, custody can no longer be an issue. *See* Va. Code § 20-124.2(A); *see also Miederhoff v. Meiderhoff*, 38 Va. App. 366, 373 (2002) (holding once the child reaches the age of majority, defined as eighteen years old, he is "no longer subject to" parental custody).

Here, Petitioners filed their first pleading on July 15, 2021. It necessarily follows then on the date this action commenced, Respondent was still a minor. Respondent turned eighteen during the pendency of the action; after the date of filing but before the hearing date on the merits. The Fairfax County Juvenile and Domestic Relations Court ultimately held it did not have jurisdiction over the Petition due to Respondent turning the age of majority, thus rendering the Petition moot.

For the sole purpose of custody, the Fairfax County Juvenile and Domestic Relations Court was divested of jurisdiction once Respondent turned eighteen. *See Miederhoff*, 38 Va. App. at 373. The Circuit Court, in turn, was divested of jurisdiction for custody on that date as well.

### **B. Jurisdiction Over the Factfinding Portion of the Petition**

Virginia Code Section 16.2-241(A1) was subject to legislative amendment in the 2020 legislative session, and its current version took effect on July 1, 2021. It now states, in relevant part, the judges of juvenile and domestic relations courts shall have exclusive original jurisdiction in matters and proceedings involving

[m]aking specific findings of fact required by state or federal law to enable a child to apply for or receive a state or federal benefit. *For the purposes of this subsection only, when the court has obtained jurisdiction over the case of any child, the court may continue to exercise its jurisdiction until such person reaches 21 years of age, for the purpose of entering findings of fact or amending past orders, to include findings of fact necessary for the person to petition the federal government for status as a special immigrant juvenile, as defined by 8 U.S.C. § 1101(a)(27)(J).*

Va. Code § 16.1-241(A1) (emphasis added).

At the time of filing the Petition, on July 15, 2021, Respondent was not yet eighteen. The Juvenile and Domestic Relations Court had jurisdiction over this matter on July 15, 2021, because it was the date of commencement, Respondent had been living in the Commonwealth for at least six months before the date of commencement, the Petitioners were acting as his parents, and he had not reached the age of majority. *See* Va. Code §§ 20-146.1, 146.12(A)(1).

If, *arguendo*, the Juvenile and Domestic Relations Court completely divested itself of jurisdiction in this matter because the Respondent was the age of majority at the time of the hearing, the decision would render Section 16.1-241(A1) meaningless. It is a well-settled principle of statutory interpretation that every part of a statute is presumed to have some effect and no part will be considered meaningless unless absolutely necessary. *Hubbard v. Henrico Ltd. Partnership*, 255 Va. 335, 340–41 (1998) (citing *Sims Wholesale Co. v. Brown-Forman Corp.*, 251 Va. 398, 405 (1996); *Raven Red Ash Coal Corp. v. Absher*, 153 Va. 332, 335 (1929)). When a bridge is built, one must be able to cross it.

Excluding emergency jurisdiction, the Commonwealth obtains jurisdiction in child custody matters when the “Commonwealth is the home state of the child on the date of the commencement of the proceeding.” Va. Code § 20-146.12(A)(1) (emphasis added). Commencement is defined as “the filing of the first pleading in a proceeding.” Va. Code § 20-146.1. This matter commenced in the Fairfax County Juvenile and Domestic Relations Court on July 15, 2021. Thus, the date the Fairfax Juvenile and Domestic Relations Court obtained jurisdiction in this matter was the date of filing, not the date of hearing.

The statute Petitioners move under expressly states “when a court has obtained jurisdiction over the case of any child, the court may continue to exercise its jurisdiction until such person reaches 21 years of age,” for factfinding so the person may petition the federal government for protections under special immigrant juvenile status. Va. Code § 16.1-241(A1). The Juvenile and Domestic Relations Court obtained jurisdiction on the date of commencement, July 15, 2021. On appeal, the Circuit Court obtained jurisdiction on the same day. The Court has the ability to continue its jurisdiction, even after Respondent turned eighteen, solely for the purpose of factfinding for the Respondent’s later petition to the federal government for special immigrant juvenile status.

### CONCLUSION

Under the law, Petitioners lose their ability to obtain custody over Respondent once he turned eighteen even though the Petition was filed while Respondent was not yet the age of majority. However, the Petitioners can still move forward to seek factfinding as outlined in Va. Code § 16.1-241(A1). As Respondent has not yet turned twenty-one, the Court retains limited jurisdiction to issue findings of fact necessary for Respondent to petition the federal government for status as a special immigrant juvenile. The Petitioner’s Motion is granted in part and denied in part. The Court will set a hearing in conjunction with counsel’s schedule to hear evidence as to factual findings. Petitioners’ counsel shall prepare an order reflecting the Court’s ruling.

Sincerely,

A large black rectangular redaction box covering the signature of Penney S. Azcarate.

Penney S. Azcarate

PSA/swa

**OPINION LETTER**