2. Infants ⇐16.14

The rule providing for interlocutory appeal in criminal cases cannot be stretched to permit an interlocutory appeal in a delinquency proceeding against a child without doing violence to distinction drawn between a criminal proceeding and a proceeding in delinquency. 1967 Perm.Supp., C.R.S., section 22–1–1 et seq.; C.A.R. 4.1.

Robert R. Gallagher, Jr., Dist. Atty., Littleton, for petitioner-appellant.

Edward G. Donovan, Deputy Public Defender, Littleton, for respondents-appellees.

PRINGLE, Justice.

P. L. V., the Respondent-Appellee here, was charged with being a delinquent child. He filed a pre-trial motion to suppress as evidence certain statements made by him to police officers following his arrest on suspicion of burglary. The motion to suppress was granted, and the district attorney brings this interlocutory appeal from that order.

[1] We find it unnecessary to consider the contention of error raised by the Petitioner-Appellant since, in our opinion, an interlocutory appeal is not available to either the state or the respondent in a delinquency proceeding under the Colorado Children's Code, 1967 Perm.Supp., C.R.S. 1963, 22–1–1 et seq.

This court has on previous occasions stressed the distinction between a criminal proceeding and a proceeding in delinquency. I. R. v. People, Colo., 464 P.2d 296; People ex rel. Rodello v. District Court, 164 Colo. 530, 436 P.2d 672; People v. District Court, 164 Colo. 437, 435 P.2d 763. While similar constitutional and procedural safeguards are frequently provided for the accused in both proceedings this does not erase the grounds for distinguishing between them.

[2] C.A.R. 4.1 is entitled "Interlocutory Appeals in *Criminal Cases*." (Emphasis added.) The rule cannot be stretched to permit an interlocutory appeal in a delinquency proceeding without doing violence to the distinction carefully drawn by this court in former cases. We would point out that our decision today in no way precludes an appeal to this court after trial. What we hold here is that there is no right to an interlocutory appeal in juvenile delinquency cases under the appellate rules as they now read.

The appeal is dismissed.

BOARD OF COUNTY COMMISSIONERS OF the COUNTY OF TELLER, State of Colorado, Petitioner,

v.

The DISTRICT COURT IN AND FOR the COUNTY OF TELLER and State of Colorado, The Honorable Patrick M. Hinton, Judge Presiding, Stafford N. Ordahl, Carol M. Kenney and John Wondergem, Respondents.

No. 24802.

Supreme Court of Colorado,
En Banc.
July 20, 1970.

Original proceeding for writ of prohibition brought by Board of County Commissioners to stop further action on complaint seeking order to compel Board to redistrict the commissioner districts. The Supreme Court, Pringle, J., held that defenses of insufficiency of process and lack of jurisdiction over person which were available to Board of County Commissioners at time their motion to dismiss complaint was filed, but which were omitted, were waived and Supreme Court would not consider such defenses in original proceeding for writ of prohibition.

Rule discharged.

1. Motions ⇐2, 4
Process ⇐155

Rule that defenses of insufficiency of process and lack of jurisdiction may be

made by motion is based on theory that quick presentation of defenses and objections should be encouraged and that successive motions which prolong such presentation should be carefully limited. Rules of Civil Procedure, rule 12(b); Fed.Rules Civ.Proc. rule 12(b), 28 U.S.C.A.

2. Courts ⇐37(1)
Process ⇐166
Prohibition ⇐28

Defenses of insufficiency of process and lack of jurisdiction over person which were available to Board of County Commissioners at time their motion to dismiss complaint seeking to compel them to redistrict commissioner districts for lack of jurisdiction over subject matter was filed, but which were omitted, were waived and Supreme Court would not consider such defenses in original proceeding for writ of prohibition brought by Board to stop further action on complaint. Rules of Civil Procedure, rules 12(b, g), (h) (1); C.R.S. '63, 36–1–6.

3. Pleading ⇐360(18)

Although trial court, in denying Board of County Commissioners' motion to dismiss complaint seeking to compel Board to redistrict commissioner districts on ground of lack of jurisdiction over subject matter, granted board twenty days to answer or otherwise plead, trial court did not grant board permission to file another motion on defenses of insufficiency of process and lack of jurisdiction over person which were available to Board at time first motion was filed in that such a motion was not a pleading. Rules of Civil Procedure, rules 12(b, g), (h) (1).

Geddes, Weir, Sparks & O'Brien, Colorado Springs, for petitioner.

Evans, Peterson & Torbet, Colorado Springs, for respondents Stafford N. Ordahl, Carol M. Kenney and John Wondergem.

PRINGLE, Justice.

This is an original proceeding for a writ of prohibition brought by the Board of County Commissioners, hereinafter referred to as the board. Ordahl, Kenney, and Wondergem filed a complaint in the district court of Teller County naming the board as defendant and seeking an order compelling the board to re-district the commissioner districts. The board appeared specially and filed a motion under C.R.C.P. 12(b) to dismiss the action for lack of jurisdiction over the subject matter. This motion was denied. An amended complaint was served on the board, and they filed another motion to dismiss based partly on the ground that the court lacked jurisdiction over the person of the defendant because of insufficiency of service of process. This motion was also denied, and the board brings this original proceeding to stop any further action on the complaint.

[1] The defenses of insufficiency of process and lack of jurisdiction over the person are defenses which may be made by motion under C.R.C.P. 12(b). Our rule 12(b) is patterned after rule 12(b) of the Federal Rules of Civil Procedure and like its federal counterpart is based on the theory that the quick presentation of defenses and objections should be encouraged and that successive motions which prolong such presentation should be carefully limited. 2A Moore's Federal Practice ¶ 12.12. C.R.C.P. 12(g) and 12(h) (1) make it expressly clear that if a party makes a motion under rule 12(b) and in doing so omits the defense of lack of jurisdiction over the person or insufficiency of process, and such defenses were available to him at the time the motion was made, then the omitted defenses are waived, and the defendant may not raise them by subsequent motion or in his answer.

[2] In this case, the board's claim of insufficient process is based on the failure of the plaintiffs to serve the complaint on the clerk of the board of county commissioners as required by C.R.S. 1963, 36–1–6. This defense was available to the board at the time their motion to dismiss for lack of jurisdiction over the subject matter was filed. Therefore, the board has waived

those defenses by thus omitting them. This court will not subvert the theory underlying rule 12(b) and the clear language of rules 12(g) and 12(h) (1) by considering the questions of jurisdiction over the person of the defendant or the sufficiency of process in this original proceeding when those defenses were clearly waived by the board.

[3] We cannot agree with the board that the trial judge, in denying the first motion under rule 12(b), granted them relief from the waiver imposed by rule 12(h) (1). While the judge did grant the board twenty days *"to answer or otherwise plea* [sic]" (emphasis added), this language cannot be stretched into permission to file another motion under rule 12(b) since such a motion is not a pleading.

The rule is discharged.

Jose DEL CAMPO, also known as Joe Martin, Plaintiff in Error,

v.

The PEOPLE of the State of Colorado In the Interest of Veronica DEL CAMPO and Victor Del Campo, Children, upon the Petition of Orlando Romero, Petitioner, Defendant in Error.

No. 23702.

Supreme Court of Colorado,
In Department.
July 13, 1970.

Paternity action. The Juvenile Court, City and County of Denver, Philip B. Gilliam, J., entered a judgment and the putative father appealed. The Supreme Court, Day, J., held that where children were residents of county in which paternity action was brought when petition was filed, Juvenile Court was not divested of jurisdiction by reason of fact that the children moved and were residents of another county at time of trial.

Affirmed.

Bastards ⇐35

Where children were residents of county in which paternity action was brought when petition was filed, juvenile court was not divested of jurisdiction by reason of fact that the children moved and were residents of another county at time of trial. C.R.S. '63, 22-6-1; 1967 Perm.Supp., C.R.S., section 22-1-5.

Thomas J. Constantine, Joseph P. Constantine, Denver, for plaintiff in error.

Max P. Zall, Atty. for the City and County of Denver, Frank A. Elzi, Asst. City Atty., Robert A. Powell, Asst. City Atty., Denver, for defendant in error.

DAY, Justice.

Involved in this writ of error is one narrow issue: Whether, in a paternity action, the child or children involved must be residents of the county at the time of the trial?

The Welfare Department of the City and County of Denver, pursuant to 1967 Perm.Supp., C.R.S.1963, 22-6-1, initiated the paternity proceedings against the plaintiff Del Campo in the Denver Juvenile Court. It is conceded that at the time of the commencement of the proceedings the children involved were residing in the City and County of Denver, but at the time of the trial had been removed to Larimer County. On the date of the trial Del Campo moved to dismiss the action because the children had moved. His motion was denied.

The court properly disposed of the motion to dismiss. We find that 1967 Perm. Supp., C.R.S.1963, 22-1-5, is controlling in this matter. It reads as follows:

"Venue.—(1) Proceedings in cases brought under the provisions of section 22-1-4, except section 22-1-4(1) (i), shall