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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2014

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T.C.

v.

Y.R.

**Appeals from Houston Juvenile Court
(JU-12-526.01 and JU-12-527.01)**

DONALDSON, Judge.

T.C. ("the mother") appeals the judgments entered by the Houston Juvenile Court ("the trial court") on December 19, 2013, which found El.E. and Ev.E. ("the children") to be

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dependent and placing the children in the custody of Y.R. ("the maternal grandmother").

Facts and Procedural History

The maternal grandmother filed petitions on August 27, 2012, in the trial court alleging that the children were dependent. The petitions set forth numerous grounds in support of that assertion, specifically alleging, among other things, that the mother had been in several relationships involving domestic violence, that the mother abuses prescription drugs, and that the mother was at that time admitted to the behavioral-medicine unit of a hospital for mental illness. The maternal grandmother requested legal custody of the children. On that same date, the trial court granted temporary custody of the children to the maternal grandmother. The trial of the matter was continued numerous times, in part to allow the mother to obtain a mental evaluation and in part because, in December 2012, D.E. ("the father") filed a custody-modification petition in Louisiana state court regarding the children. That action was ultimately resolved when the Louisiana state court declined to

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exercise jurisdiction over the children and the father dismissed his petition.

The trial court held an adjudicatory hearing on December 12, 2013, at which the only evidence submitted was through the testimony of the mother and the maternal grandmother. The father was also a party to the actions but did not appear at the trial, has not appealed the trial court's judgments, and has not taken any part in these appeals.

At trial, the mother testified that she had moved from Alabama and was living in a one-bedroom converted garage apartment in Norco, Louisiana, where she had been since May 2013. She testified:

"I have been looking for a bigger, two- to three-bedroom apartment. I've found some. I'm still holding out hope that I can get it at a cheaper price. Being that my car just broke down, I had to take all the money I was saving towards that to purchase a car."

The mother testified that her current job was as an assistant manager at a pizza store, where she had been working since August 2013. She testified that she was taking the prescription medications Effexor for treatment of "situational depression" and Vicoprofen (a combination of hydrocodone and ibuprofen) twice daily for pain. She testified that she was

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seeing a pastor for counseling but that she was not under the care of any mental-health professionals.

When questioned about how many schools the children had attended while in her care, the mother testified that "a number doesn't pop into my head immediately ... I could probably count. But I would like to say right at seven."

The mother testified that she did not think the maternal grandmother had given adequate care to the children. In explaining her dissatisfaction with the maternal grandmother's parenting skills, the mother said: "Look at me, for one, how I turned out. Do you think I want my children to be raised by the same monster that's done this to me?"

The mother testified that one of the children is deaf in one ear and requires a hearing aid for the other as a result of a birth defect. The maternal grandmother testified that she had sought surgical treatment for this child. The mother testified that she was opposed to the surgical treatment.

The maternal grandmother testified that the mother had experienced mental-illness issues since her childhood. The maternal grandmother testified that the mother had been engaged in several abusive relationships, had moved

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frequently, and had failed to adequately provide for herself and for the children regularly throughout their lives. Evidence was presented regarding the mother's past abusive relationships, her abuse of drugs, and her mental-health treatment which included inpatient care. The evidence also showed that the mother had not contributed any amounts toward the support of the children while they had been in the custody of the maternal grandmother.

On December 19, 2013, the trial court entered separate judgments finding the children to be dependent and placing them into the permanent custody of the maternal grandmother. The judgments did not make any findings of fact or state the specific grounds on which the court found the children to be dependent. Neither party takes issue on appeal with the failure of the trial court to issue written findings of fact or to provide the basis of its finding of dependency.

The mother filed motions to alter, amend, or vacate on January 2, 2014, arguing that the evidence did not support a finding that the children were still dependent at the time of the hearing or in the months leading up to the hearing. The

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trial court denied that motion the same day. The mother filed her notices of appeal on January 2, 2014.

Standard of Review

"Our standard of review of dependency determinations is well settled.

"A finding of dependency must be supported by clear and convincing evidence. § 12-15-65(f) [, Ala. Code 1975]^[3]; M.M.S. v. D.W., 735 So. 2d 1230, 1233 (Ala. Civ. App. 1999). However, matters of dependency are within the sound discretion of the trial court, and a trial court's ruling on a dependency action in which evidence is presented ore tenus will not be reversed absent a showing that the ruling was plainly and palpably wrong. R.G. v. Calhoun County Dep't of Human Res., 716 So. 2d 219 (Ala. Civ. App. 1998); G.C. v. G.D., 712 So. 2d 1091 (Ala. Civ. App. 1997); and J.M. v. State Dep't of Human Res., 686 So. 2d 1253 (Ala. Civ. App. 1996)."

"J.S.M. v. P.J., 902 So. 2d 89, 95 (Ala. Civ. App. 2004). ..."

"

"^[3]The requirement that a finding of dependency must be supported by clear and convincing evidence before the dispositional phase of a dependency proceeding is now codified at § 12-15-311(a), Ala. Code 1975."

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J.L. v. W.E., 64 So. 3d 631, 634 (Ala. Civ. App. 2010) (quoting L.A.C. v. T.S.C., 8 So. 3d 322, 326-27 (Ala. Civ. App. 2008)). See also Ex parte McInish, 47 So. 3d 767 (Ala. 2008) (explaining the standard of review to be used in evaluating whether the clear-and-convincing-evidence burden of proof has been met).

Discussion

The mother raises a single issue on appeal -- whether the trial court's judgments are supported by clear and convincing evidence that the children were dependent at the time of disposition. The mother concedes that, at the time the maternal grandmother filed her petitions seeking a finding of dependency, the children were dependent because "she has had some difficulties and instability in the past." This includes the facts that the mother has moved frequently, has been in a series of physically abusive relationships, and had been admitted to the behavioral-medicine unit of a hospital at the time the petitions were filed. However, the mother argues that the testimony shows that, at that time of trial, "she has 'gotten it together' without any help from [the maternal

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grandmother]" and that "she is more stable than she has been for most of her life." Aside from citation to general propositions of law, the mother's argument rests on a citation to V.W. v. G.W., 990 So. 2d 414, 417 (Ala. Civ. App. 2008) ("[I]n order to make a disposition of a child in the context of a dependency proceeding, the child must in fact be dependent at the time of that disposition." (quoting K.B. v. Cleburne Cnty. Dep't of Human Res., 897 So. 2d 379, 389 (Ala. Civ. App. 2004) (Murdock, J., concurring in the result))).

The trial court did not make specific findings of the fact supporting the adjudications of dependency.

"[W]here a trial court does not make specific findings of fact concerning an issue, this Court will assume that the trial court made those findings necessary to support its judgment, unless such findings would be clearly erroneous.' Lemon v. Golf Terrace Owners Ass'n, 611 So. 2d 263, 265 (Ala. 1992). See W.D. Williams, Inc. v. Ivey, 777 So. 2d 94, 98 (Ala. 2000); Ex parte Patronas, 693 So. 2d 473, 475 (Ala. 1997); Ex parte Bryowsky, 676 So. 2d [1322,] 1324 [(Ala. 1996)]; Jantronic Systems, Inc. v. Brock, 646 So. 2d 1337, 1337 (Ala. 1994); Meeks v. Hill, 557 So. 2d 1238, 1240 (Ala. 1990); May v. Campbell, 470 So. 2d 1188, 1190 (Ala. 1985); Hand v. Stanard, 392 So. 2d 1157, 1159 (Ala. 1980). Moreover, '[b]ecause the trial court has the advantage of observing the witnesses' demeanor and has a superior opportunity to assess their credibility, this Court cannot alter the trial court's judgment unless it is so unsupported by the evidence as to be clearly and palpably wrong.' Ex

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parte D.W.W., 717 So. 2d 793, 795 (Ala. 1998)
(emphasis added)."

Ex parte Fann, 810 So. 2d 631, 636 (Ala. 2001).

The mother argues that the evidence shows that, at the time of the disposition, she had a job and transportation, was receiving pastoral counseling and medication, and was not currently in a romantic relationship. The testimony presented by the mother at trial, if believed by the trial court, would indicate that the mother made progress in gaining stability during the pendency of the litigation. However, the trial court could have found from the mother's own testimony that she had several remaining issues affecting her ability to provide for the care, support, and education of the children and to discharge her responsibilities to and for the children. See § 12-15-102(8), Ala. Code 1975. At the time of disposition, the mother testified that she had moved away from Alabama to Louisiana and had been living in a one-bedroom garage apartment for approximately seven months. She testified that she had exhausted all of her funds to purchase a car. She testified that she had been at her current employment for four months. She was not seeking counseling for her depression. Though the mother testified that she was not in a romantic

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relationship at the time, she admitted that during the trial she was staying in a motel with a male. The mother described her relationship with her three siblings as "nonexistent." The mother admitted that her visits with the children had been rare and that the single trip she had made to Alabama to see the children while they were in the maternal grandmother's custody was court-ordered; however, she blamed the maternal grandmother for not allowing visits to occur. The mother admitted that she had not provided Christmas or birthday presents for the children during the pendency of the cases. Although the mother had not been ordered to pay support to the maternal grandmother for the benefit of the children, the maternal grandmother offered undisputed testimony indicating that the mother had provided no financial support for the children during the 16 months between the filing of the petitions and the date of trial in these matters.

This court has held:

"[T]he juvenile court "may consider the past history of the family as well as the evidence pertaining to current conditions." A.R. v. State Dep't of Human Res., 992 So. 2d 748, 760 (Ala. Civ. App. 2008) (quoting T.B. v. Lauderdale Cnty. Dep't of Human Res., 920 So. 2d 565, 570 (Ala. Civ. App. 2005)). In viewing the evidence before the juvenile court relating to the entire case, including the

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mother's history as well as the mother's current conditions, we cannot conclude that the juvenile court's determination that the mother's condition was unlikely to improve in the foreseeable future was not supported by clear and convincing evidence."

A.M.F. v. Tuscaloosa Cnty. Dep't of Human Res., 75 So. 3d 1206, 1213 (Ala. Civ. App. 2011).

"In ore tenus proceedings, the trial court is the sole judge of the facts and of the credibility of witnesses, and the trial court should accept only that testimony it considers to be worthy of belief. Ostrander v. Ostrander, 517 So. 2d 3 (Ala. Civ. App. 1987). Further, in determining the weight to be accorded to the testimony of any witness, the trial court may consider the demeanor of the witness and the witness's apparent candor or evasiveness. Ostrander, supra. ... It is not the province of this court to override the trial court's observations."

Woods v. Woods, 653 So. 2d 312, 314 (Ala. Civ. App. 1994).

The mother does not dispute that her history of inappropriate behaviors caused the children to be dependent at the time the petitions were filed. Rather, she argues that her conditions as of the time of trial were no longer sufficient to support a finding of dependency. The trial court, having heard the evidence regarding the mother's history of behavior with the children, personally observed the mother, listened to her answers to questions propounded by counsel, and personally questioned the mother.

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The trial court could reasonably have discounted the mother's testimony that she was sufficiently rehabilitated from the conditions that she admitted caused the dependency to originally occur. Given the mother's undisputed history of instability, frequent moves, violent romantic relationships, and significant mental-illness issues, the trial court could have reasonably found that living approximately seven months in a one-bedroom apartment, working four months at one job, and having no current mental-health counseling did not indicate that the mother had changed her circumstances such that she was now able to provide for the care, support, and education of the children and to discharge her responsibilities to and for the children.

Conclusion

We cannot substitute our assessment of the mother's credibility for that of the trial court. Because the mother fails to demonstrate that the trial court's judgments finding that the children remained dependent at the time of disposition was not supported by the evidence after applying the appropriate standard, the judgments are affirmed.

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2130327 -- AFFIRMED.

Thompson, P.J., and Pittman and Thomas, JJ., concur.

Moore, J., dissents, with writing.

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MOORE, Judge, dissenting.

On August 27, 2012, Y.R. ("the maternal grandmother") filed separate dependency petitions in the Houston Juvenile Court ("the juvenile court"), alleging that El.E. and Ev.E. ("the children") were dependent because (1) T.C. ("the mother") had engaged in domestic violence in past relationships, (2) the mother had displayed aggressive behavior in the past, (3) the mother was presently abusing prescription drugs, and (4) the mother had been admitted into the behavioral-medicine unit of a local hospital. The juvenile court awarded the maternal grandmother pendente lite custody of the children. On January 3, 2013, by agreement of the parties, the juvenile court awarded the mother limited weekend visitation with the children to be supervised by the maternal grandmother or the designee of the maternal grandmother. The cases were continued several times for various reasons until the trial was held on December 12, 2013, at which only the mother and the maternal grandmother testified. The juvenile court entered separate judgments adjudicating the children dependent without explanation and awarding their custody to the maternal grandmother. The

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mother filed postjudgment motions, which the juvenile court denied. The mother now appeals.

Our dependency statutes allow a juvenile court to separate a family based only upon clear and convincing evidence that the child is dependent at the time of the dependency adjudication. See generally V.W. v. G.W., 990 So. 2d 414, 417 (Ala. Civ. App. 2008). Without clear and convincing evidence regarding a parent's present inability to properly care for a child, there can be no adjudication of dependency. See generally Hamilton v. State, 410 So. 2d 64, 66 (Ala. 1982). "Clear and convincing evidence" is

"[e]vidence that, when weighed against evidence in opposition, will produce in the mind of the trier of fact a firm conviction as to each essential element of the claim and a high probability as to the correctness of the conclusion."

§ 6-11-20(b)(4), Ala. Code 1975. When a parent appeals a dependency adjudication on the ground of the sufficiency of the evidence, this court must review the record to determine whether the juvenile court reasonably could have been clearly convinced that the child was dependent at the time of the adjudication. See generally Ex parte McInish, 47 So. 3d 767 (Ala. 2008).

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The maternal grandmother based her dependency petitions, in part, on an allegation that the mother had engaged in domestic violence with her partners. The record indicates that, in fact, the mother had, in the past, been involved in repeated incidences of domestic violence with several different men. On at least one occasion, the children had been present during a violent domestic dispute, prompting a Georgia child-welfare agency to investigate the family, but the record does not contain any information indicating that the mother had ever failed to protect the children from abuse or domestic violence or that the children had ever been endangered by the domestic violence. The last occasion of domestic violence occurred in or around August 2012, after which the mother separated from her live-in paramour and moved with the children to Dothan to stay with the maternal grandmother.

By the time of the trial in December 2013, the mother was not involved in any romantic relationship, was not planning on developing any romantic relationship, was living alone in a garage apartment in Norco, Louisiana, and had not been involved in an episode of domestic violence in over a year.

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The mother drove to the trial with her male best friend, who she had known since she was 13 years old, and they stayed at a local motel; the record contains no evidence indicating that the mother and her friend were staying in the same room together, that they were engaged in anything other than a platonic relationship, or that they had ever, or were currently, involved in any volatile behavior toward one another. The record contains no expert or other testimony suggesting that, at the time of the dependency dispositions, the mother was prone to violence toward the children or that she represented any current danger to the children because of her past episodes of domestic violence.

As to the second allegation in her dependency petitions, the maternal grandmother presented virtually no evidence indicating that the mother displayed aggressive behavior and did not produce any evidence indicating that the mother had ever displayed such behavior toward the children. The record is devoid of any evidence indicating that, at the time of the dependency dispositions, the mother had uncontrolled or aggressive behavioral problems that would prevent her from properly caring for the children.

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The maternal grandmother thirdly alleged that the mother was abusing prescription drugs. The record indicates that the mother has used prescription medication for pain from spinal stenosis and for psychological issues. The maternal grandmother testified that, when she went to get the children in August 2012, she found the mother's home "filthy" because the mother could not "get it together," because she was "wiped out" from taking medications. However, the record contains no evidence indicating that the mother had ever misused or abused her prescription medication. The record also indicates, without dispute, that the mother had revised her medication intake based on the advice of her physicians. The maternal grandmother presented no evidence indicating that, at the time of the dependency dispositions, the mother was suffering from any medicinal overuse or abuse that would prevent her from properly caring for the children.

The record indicates that the mother has some form of psychological illness, the exact diagnosis of which was disputed at trial. In August 2012, about 10 days after moving in with the maternal grandmother, the mother was admitted to the behavioral-medicine unit of a local hospital after she had

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"flashed" a neighbor. The mother spent three or four days in the unit before being released by her doctors. As stated above, the mother followed the advice of her physicians to discontinue certain medications. The mother testified at trial that she was receiving pastoral counseling, but the record does not reveal whether that counseling was prescribed or strictly voluntary and the maternal grandmother has not alleged that the counseling is insufficient in any way to moderate any mental-health symptoms the mother might have. The record contains no further evidence regarding the mother's mental or emotional status or any evidence indicating that, at the time of the dependency dispositions, her condition prevented her from properly caring for the children at that time.

Rule 25(A) of the Alabama Rules of Juvenile Procedure provides, in pertinent part:

"At the close of the hearing, the juvenile court shall make one of the following findings in writing:

"(1) That the facts alleged in the juvenile petition are true and the child is dependent, in need of supervision, or delinquent; or

"(2) That the facts alleged in the petition are not proved or that the child is not in need of care

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or rehabilitation or supervision, in which event the juvenile petition shall be dismissed."

The juvenile court did check a box on a form to find the children dependent, which suggests that it had concluded that "the facts alleged in the juvenile petition are true." However, that finding is clearly erroneous as to at least two of the allegations in the petitions and is not conclusive as to two others. The evidence did not sustain the allegations of prescription-drug abuse and aggressive behavior by the mother. The fact that the mother had been involved in domestic violence and the fact that she had been admitted to a behavioral-medicine unit in the past, although proven, did not establish the current dependency of the children. The maternal grandmother did not meet her burden of proving, through clear and convincing evidence, that those past circumstances had rendered the mother unable to properly care for the children and that those factors persisted to such a degree so as to prevent the mother from caring for the children appropriately at the time of the dependency dispositions. See generally M.G. v. Etowah Cnty. Dep't of Human Res., 26 So. 3d 436, 442 (Ala. Civ. App. 2009) ("[T]he test [for whether the Department of Human Resources ('DHR')

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has proven dependency in a termination-of-parental-rights case] is whether DHR has presented clear and convincing evidence demonstrating that the parental conduct or condition currently persists to such a degree as to continue to prevent the parent from properly caring for the child." (footnote omitted) (Per Moore, J., with one judge concurring, one judge concurring in the result, and two judges dissenting)).

A juvenile court may find a child dependent on a ground litigated at trial without objection of the other party if that ground is proven by clear and convincing evidence. T.H. v. Jefferson Cnty. Dep't of Human Res., 70 So. 3d 1236, 1245 (Ala. Civ. App. 2010) (Per Moore, J., with two judges concurring in the result and two judges dissenting). In this case, the main opinion maintains that the judgments should be affirmed because

"the trial court could have found from the mother's own testimony that she had several remaining issues affecting her ability to provide for the care, support, and education of the children and to discharge her responsibilities to and for the children. ... At the time of disposition, the mother testified that she had moved away from Alabama to Louisiana and had been living in a one-bedroom garage apartment for approximately seven months. She testified that she had exhausted all of her funds to purchase a car. She testified that she had been at her current employment for four months. ... The

mother described her relationship with her three siblings as 'nonexistent.' The mother admitted that her visits with the children had been rare and that the single trip she had made to Alabama to see the children while they were in the maternal grandmother's custody was court-ordered; however, she blamed the maternal grandmother for not allowing visits to occur. The mother admitted that she had not provided Christmas or birthday presents for the children during the pendency of the cases. Although the mother had not been ordered to pay support to the maternal grandmother for the benefit of the children, the maternal grandmother offered undisputed testimony that the mother had provided no financial support for the children during the 16 months between the filing of the petitions and the date of trial in these matters."

___ So. 3d at ___.

The evidence in the record shows that, at the time of the trial, the mother was, in fact, residing in a one-bedroom garage apartment in Louisiana. However, the maternal grandmother presented no evidence to suggest the inadequacy of that apartment for the children's shelter needs. The record contains no evidence from which the juvenile court could have inferred that the children would be endangered in any way by residing with the mother in that apartment, assuming the mother maintained that residence, given her testimony that she could relocate if she regained custody of the children. Hence, the juvenile court could not reasonably have found the

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children dependent based on the nature of the residence of the mother.

The fact that the mother had been living in that apartment for only approximately seven months and the fact that she had often moved in the past also do not support a finding of dependency. In stating that children need stability, the law does not refer to residential stability but, instead, refers to stability in the psychological and emotional relationship a child has with his or her custodial parent. See Rudnick v. Rode, 820 N.W.2d 371, 381 (N.D. 2012). In the absence of evidence of a detriment to the child, the fact that a parent frequently changes residences does not, in and of itself, render that parent unfit to parent a child. See generally State ex rel. Juvenile Dep't of Clackamas Cnty. v. Wiese, 10 Or. App. 73, 76, 498 P.2d 813, 815 (1972) ("The law, however, does not allow the courts to sever parental rights where the parents are able to care for their children within what has been described as the societal norm, even though 'transiency and incapacity, poverty and instability' pervade the relationship." (quoting State v. McMaster, 259 Or. 291, 303, 486 P.2d 567, 573 (1971))); and Rowlett v.

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Vanderburgh Cnty. Office of Family & Children, 841 N.E.2d 615, 623 (Ind. Ct. App. 2006) ("[I]n the matter of raising children, stability of environment is an important factor. However, this in and of itself is not a valid basis for terminating the relationship between the natural parent and the children."). See also D.M.J. v. D.N.J., 106 So. 3d 393, 404-05 (Ala. Civ. App. 2012) (Moore, J., dissenting) ("[I]t cannot be inferred that a child's healthy development is automatically threatened by the residential instability of his or her custodial parent; if that was the case, the courts would have to deny petitions for custody filed by parents whose professions require constant relocation, such as military personnel."). The maternal grandmother did not even attempt to prove that the children had actually suffered any harm or had been exposed to a threat of any real harm as a result of their frequent dislocations with the mother. The record also contains no evidence indicating that returning the children to the custody of their mother, and thus rejoining them with their primary caregiver since their births, would adversely affect them in any manner. Hence, even if convinced that the mother had not stabilized her residence, the juvenile

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court could not have relied on that factor to adjudicate the children dependent.

The juvenile court also could not have been clearly convinced of the dependency of the children based on the poverty of the mother. The evidence in the record shows that the mother moved to Louisiana in January 2013, in part, in order to obtain more lucrative employment. She initially secured a job at a bar in New Orleans, which she held from January through February 2013. In mid-February 2013, the mother began working for a pizza restaurant as an assistant manager, a job she held until approximately four months before the trial when she was offered better pay to become an assistant manager at a competing pizza restaurant. Through her consistent employment, the mother was able to accumulate savings, but she had spent those savings on the purchase of an automobile. The mother also purchased gifts for the children, which she presented to them the day before the dependency hearing, although not on Christmas day of 2012 or on their birthdays. Nothing in the record indicates that the mother's current income is inadequate to meet the financial needs of the children, which the maternal grandmother has been meeting

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despite the fact that she and her husband live solely off of Social Security and workers' compensation disability benefits amounting to \$1,667 per month. Admittedly, the mother had not paid child support for the children during their stay with the maternal grandmother, but the juvenile court had not ordered the mother to pay any child support. Cf. Ala. Code 1975, § 12-15-314(e) (requiring juvenile courts to award child support when placing dependent children with third parties). Thus, the juvenile court could not have inferred that, at the time of the dependency dispositions, the mother lacked the financial means to care for the children based on her not having paid child support.

The mother rarely visited with the children in person while living in Louisiana. However, the maternal grandmother testified that the mother had telephoned the children dozens of times, and the maternal grandmother admitted that, on at least one occasion, she had blocked the mother's telephone calls to the children following an argument she had with the mother. On one occasion, the mother had also driven the six hours from her home in Louisiana to Dothan to visit with the children, only to have her visitation plans thwarted by the

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maternal grandmother. When the maternal grandmother took the children to Louisiana, the maternal grandmother, who controlled the mother's visitation time with the children, allowed the mother only limited interaction with the children. From the evidence regarding visitation, which mainly indicates that logistics and lack of cooperation from the maternal grandmother prevented more extensive contact between the mother and the children, the juvenile court could not have inferred that the mother was, at the time of the dependency dispositions, unable or unwilling to discharge her parental responsibilities to the children.

Finally, I reject the reasoning of the main opinion that the juvenile court could have determined that the children were dependent by rejecting the mother's testimony indicating that she had rehabilitated herself. ___ So. 3d at ___. In dependency cases, the burden rests squarely on the party seeking to prevent reunification of the family to prove by clear and convincing evidence that the conditions causing dependency persist. See Ala. Code 1975, § 12-15-310(b). The law does not place any burden on a parent to prove that he or she has rehabilitated himself or herself. See J.B. v.

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Cleburne Cnty. Dep't of Human Res., 992 So. 2d 34, 43-57 (Ala. Civ. App. 2008) (Moore, J., dissenting). The maternal grandmother candidly testified that she knew nothing of the current living situation of the mother. She called the mother as a witness in order to prove that the mother had not overcome the problems causing the initial dependency of the children. However, the mother did not testify as to any facts that would support a determination that she continued to have any problems that would affect her ability to properly care for the children. Thus, the maternal grandmother did not discharge her burden of proving a prima facie case that the children were dependent such that the burden would have shifted to the mother to prove otherwise.

The Alabama Juvenile Justice Act, § 12-15-101 et seq., Ala. Code 1975, provides that a juvenile court should strive "[t]o reunite a child with his or her parent or parents as quickly and as safely as possible when the child has been removed from the custody of his or her parent or parents," "with a preference at all times for the preservation of the family." § 12-15-101(b)(3) & (8), Ala. Code 1975. When the record contains no evidence indicating that parental conduct,

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conditions, or circumstances currently endanger the health, safety, or welfare of a child, a juvenile court should not be permitted to maintain a separation of the family on the premise that the juvenile court simply does not believe, based on its personal observations, that the parent can resume proper care of the children. The constitutional right to family integrity mandates that only clear and convincing evidence may support the continued separation of a family. See generally Santosky v. Kramer, 455 U.S. 745 (1982).

Even if the juvenile court disbelieved the entirety of the mother's testimony, it could not have kept the children separated from the mother without clear and convincing evidence demonstrating that she was incapable of properly caring for them. In this case, the record contains absolutely no evidence to support a determination that the mother, at the time of the dependency dispositions, was unable to properly care for the children. The judgments cannot be affirmed based solely on the evidence regarding the past history of the mother. Therefore, I respectfully dissent.