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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2171063 and 2171064

P.L.G.

v.

Mobile County Department of Human Resources

Appeals from Mobile Juvenile Court
(JU-13-469.04 and JU-13-470.05)

PER CURIAM.

P.L.G ("the mother) separately appeals from two judgments of the Mobile Juvenile Court ("the juvenile court") terminating her parental rights to S.L.G. and C.I.G. ("the

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children"), respectively. We reverse the judgments and remand the causes with instructions to the juvenile court.

Facts and Procedural History

The children are twins and were born to the mother in September 2012. On December 5, 2017, the Mobile County Department of Human Resources ("DHR") filed separate petitions in the juvenile court seeking judgments terminating the parental rights of the mother and C.L.O. ("the father") to the children. In the petitions, DHR alleged, among other things, that the father's location was unknown; that the children were dependent and had been in the custody of DHR since October 2016; that the parents had abandoned and neglected the children; that the mother has "untreated mental health issues that prevent [her] from providing adequate care for the child[ren]"; and that efforts by DHR to rehabilitate the mother had been unsuccessful. Separate counsel were appointed to represent the mother and the father. The father was served by publication.

A trial was held in the juvenile court on March 22, 2018, and April 3, 2018. The father was represented by counsel but did not attend the trial. Testimony was presented from a

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psychologist, a mental-health and substance-abuse therapist, DHR caseworkers, and the mother.

On July 19, 2018, judgments rendered by the juvenile court on July 6, 2018, were entered in each case. The judgments were substantially identical except for specific references to each child, and provided, in part:

"6. The Court finds that the mother has failed to modify her circumstances to meet the needs of the children since the finding of dependency. The Court finds that the mother has recently made improvements in her circumstances, but that by failing to participate in any meaningful manner starting in July of 2017, she has[, as] of this time[,] failed to put herself in a position where she can care for the child[ren]. From the psychological evidence that was presented, the Court finds it unlikely that the mother will be able to follow through, in high stress situations, to deal with the child[ren].

"7. There is no known relative willing or able to take the care, custody, and control of the child[ren].

"8. Termination of parental rights is in the best interest of the child[ren] to promote permanency.

"9. [DHR] made all reasonable efforts to finalize the plan of adoption after the same was accepted by the court.

"10. The Court finds [DHR] made all reasonable efforts to promote reunification but that said efforts failed in large part due to the failure of the mother to consistently follow the recommendations and accept the services offered.

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".....

"12. From the foregoing, the [juvenile] Court concludes that termination of parental rights is in the best interest of the child[ren;] however[,] given the mother's recent efforts[,] the Court finds that[,] if [DHR] is unable to find an adoptive resource, ... the issue of the termination of the mother's parental rights should be revisited.

"Wherefore, it is ORDERED, ADJUDGED, and DECREED by the Court that any and all rights in and to [the children] of [the mother and father] be and hereby are ORDERED terminated and the permanent care, custody, and control of [the children] is hereby awarded to [DHR] which agency is authorized to proceed with a permanent plan of adoption.

".....

"It is further ORDERED, ADJUDGED, and DECREED by the Court that this matter is set for a review hearing on 01/08/2019 at 8:30 AM at which time [DHR] shall present to the Court a report detailing [its] efforts to finalize the permanent plan of adoption. On the date of the review hearing, the Court will accept evidence from [DHR] as to the efforts made to find an adoptive resource, and if there has been no resource found, the Court will at that time require [DHR] to renew efforts to seek reunification, or relative placement options.

".....

"The Court does reserve jurisdiction to enter such further and future orders as may be necessary for the best interest of the child[ren]."

On August 1, 2018, the mother filed a postjudgment motion in each case asking the juvenile court to alter, amend, or

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vacate the judgments. On August 13, 2018, the mother filed a notice of appeal in each case to this court. The notices of appeal were held in abeyance until the mother's postjudgment motions were denied by operation of law on August 15, 2018. See Rule 1(A) and (B), Ala. R. Juv. P.; Rule 4(a)(5), Ala. R. App. P. This court has jurisdiction pursuant to Rule 28(A)(1)(c)(ii), Ala. R. Juv. P. The appeals were consolidated by this court.

Standard of Review

"[W]e will reverse a juvenile court's judgment terminating parental rights only if the record shows that the judgment is not supported by clear and convincing evidence. F.I. v. State Dep't of Human Res., 975 So. 2d [969] at 972 [(Ala. Civ. App. 2007)]." J.C. v. State Dep't of Human Res., 986 So. 2d 1172, 1183 (Ala. Civ. App. 2007). 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. Proof by clear and convincing evidence requires a level of proof greater than a

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preponderance of the evidence or the substantial weight of the evidence, but less than beyond a reasonable doubt."

"'§ 6-11-20[(b)](4), Ala. Code 1975.'

"L.M. v. D.D.F., 840 So. 2d 171, 179 (Ala. Civ. App. 2002)."

J.C., 986 So. 2d at 1184 (emphasis omitted).

Analysis

The mother argues that the judgments terminating her parental rights must be reversed because, she says, clear and convincing evidence was not presented to support the judgments. We conclude that the juvenile court's judgments are contradictory regarding whether the mother's parental rights were terminated because, as will be discussed below, the judgments contain not only language that would be consistent with a termination of the mother's parental rights but also language that would be inconsistent with a termination. We further conclude that, because the juvenile court's judgments are contradictory, the judgments must be reversed. See State Dep't of Human Res. v. A.J.T., 939 So. 2d 46, 47 (Ala. Civ. App. 2006).

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In light of the language of the judgments regarding the mother's recent efforts to rehabilitate herself and the juvenile court's intent to revisit the issue whether the mother's parental rights should be terminated if DHR is unable to find an adoptive resource, we asked the parties to provide supplemental briefs to address whether the judgments of the juvenile court were final, appealable judgments. DHR responded that the judgments should be considered final judgments terminating the mother's parental rights and that the provision in paragraph 12 of each judgment expressing the juvenile court's intent to revisit the termination at a later date is "beyond the authority of the juvenile court." DHR further contends that, "[i]f the existence of an adoptive resource were required, a juvenile court could not grant a petition to terminate parental rights, no matter how egregious the circumstances. R.B. v. State Dep[artment] of Human Res[ources], 669 So. 2d 187 (Ala. Civ. App. 1995)." DHR also contends that the provisions of each judgment providing for a review of DHR's adoption efforts "exceeds the juvenile court's discretion and authority and is, therefore, a nullity as to those remarks, but does not affect the finality of the

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judgments otherwise." We agree with DHR's contention that the existence of an adoptive resource is not a condition precedent to the termination of a parent's parental rights; however, we disagree with DHR's interpretation of the import of the juvenile court's judgments.

When a nonparent seeks termination of a parent's parental rights, a juvenile court's determination regarding whether to terminate those rights is governed by a two-prong test: (1) whether clear and convincing evidence establishes that the child is dependent and (2) whether clear and convincing evidence establishes that no viable alternatives to the termination of parental rights exist. See K.N.F.G. v. Lee Cty. Dep't of Human Res., 983 So. 2d 1108, 1115 (Ala. Civ. App. 2007). "Concerning the first prong of the test[, i.e., dependency], the petitioner must prove by clear and convincing evidence that grounds for termination exist." J.S. v. Etowah Cty. Dep't of Human Res., 72 So. 3d 1212, 1219 (Ala. Civ. App. 2011) (citing § 12-15-319, Ala. Code 1975; and Bowman v. State Dep't of Human Res., 534 So. 2d 304, 305 (Ala. Civ. App. 1988)). Regarding the second prong, we have held that "the court must properly consider and reject all viable

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alternatives to a termination of parental rights." B.M. v. State, 895 So. 2d 319, 331 (Ala. Civ. App. 2004).

Under subsection (a) of § 12-15-319, Ala. Code 1975, grounds for terminating parental rights exist if clear and convincing evidence establishes that the parents "are unable or unwilling to discharge their responsibilities to and for the child, or that the conduct or condition of the parents renders them unable to properly care for the child and that the conduct or condition is unlikely to change in the foreseeable future." (Emphasis added.) Consequently, the language in the juvenile court's judgments purporting to terminate the mother's parental rights necessarily presupposes that the juvenile court found that the conduct or condition that rendered the mother unable or unwilling to discharge her responsibilities to and for the children "is unlikely to change in the foreseeable future." § 12-15-319(a); see K.N.F.G. and J.S., supra. Despite that implied finding, however, the juvenile court explicitly found that, "given the mother's recent efforts," the termination decision should be "revisited" upon the occurrence of a condition subsequent, i.e., DHR's failure to locate an adoptive resource ("the

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condition subsequent"), at which point the mother would purportedly gain a renewed right to potential reunification with the children. Judgments "terminating parental rights but reserving certain parental rights to the parent [are] contradictory." State Dep't of Human Res. v. A.J.T., 939 So. 3d at 47.

Moreover, the language of the judgments purporting to terminate the mother's parental rights necessarily presupposes that the juvenile court found that no viable alternatives to termination existed. See K.N.F.G., supra. The condition subsequent, however, implies that reunification of the children with the mother in the future may be a viable option. Consequently, the language of the judgments is contradictory regarding the issues whether a viable alternative to termination of the mother's parental rights exists and whether grounds for termination of the mother's parental rights exist. Therefore, based on the authority of A.J.T., supra, we must reverse the juvenile court's judgments and remand these cases for the juvenile court to determine anew whether the mother's parental rights should be terminated. Because current conditions, among other things, must be considered in

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determining whether to terminate parental rights, see D.O. v. Calhoun Cty. Dep't of Human Res., 859 So. 2d 439, 444 (Ala. Civ. App. 2003) ("This court has consistently held that the existence of evidence of current conditions or conduct relating to a parent's inability or unwillingness to care for his or her children is implicit in the requirement that termination of parental rights be based on clear and convincing evidence."), and because over eight months have elapsed since the juvenile court entered its judgments, we direct the juvenile court, on remand, to receive evidence regarding the pertinent current conditions and to consider that evidence as well as the evidence introduced at the trial in determining whether to terminate the mother's parental rights.

2171063 -- REVERSED AND REMANDED WITH INSTRUCTIONS.

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Thompson, P.J., and Donaldson and Hanson, JJ., concur.

Moore and Edwards, JJ., dissent.

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MOORE, Judge, dissenting.

P.L.G. ("the mother") appeals from separate, but substantially identical, judgments of the Mobile Juvenile Court ("the juvenile court") terminating her parental rights to S.L.G. and C.I.G. ("the children"), respectively. Because I disagree with the conclusion in the main opinion that the juvenile court's judgments are due to be reversed based on the authority of State Department of Human Resources v. A.J.T., 939 So. 2d 46, 47 (Ala. Civ. App. 2006), I respectfully dissent.

In Ex parte Kimberly-Clark Corp., 779 So. 2d 178, 179 (Ala. 2000), our supreme court considered a judgment in a workers' compensation action in which the circuit court had awarded an employee compensation for a 20% permanent-partial disability, among other things, but had included language in the judgment purporting to retain jurisdiction over the matter and to reserve the right to modify the judgment. Our supreme court granted the employer's petition for a writ of prohibition and directed the circuit court not to hold an evidentiary hearing on the employee's petition seeking a modification of the circuit court's judgment. Id. at 179-80.

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Citing Tombrello Coal Co. v. Fortenberry, 248 Ala. 640, 29 So. 2d 125 (1947), and Ex parte Johnston, 231 Ala. 458, 165 So. 108 (1935), our supreme court concluded that the circuit court's condition for reexamination of the employee's injuries was ineffective and that that condition was subject to be corrected on review by an appellate court but did not affect the conclusive character of the original judgment. 779 So. 2d at 182. In doing so, our supreme court noted that, since Tombrello and Johnston had been decided, the legislature had revisited the matter of finality in workers' compensation awards and had, among other things, enacted a provision allowing the reopening of judgments awarding permanent-total-disability benefits when the employer petitions the trial court to reduce an award of permanent-total-disability benefits. 779 So. 2d at 180-81. Because the legislature had not created a similar remedy for reopening a judgment at the behest of the employee, the supreme court concluded that the employee's modification petition could not be considered.

In the present appeals, the main opinion asserts that the juvenile court included a condition subsequent -- the failure of the Mobile County Department of Human Resources to locate

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an adoptive resource -- in its judgments, the occurrence of which would allow the juvenile court to reconsider the termination of the mother's parental rights to the children. It then concludes, quoting A.J.T., 939 So. 2d at 47, that judgments "'terminating parental rights but reserving certain parental rights to the parent [are] contradictory.'" ___ So. 3d at ___. In the present cases, however, like in Ex parte Kimberly Clark, there is no statutory authority allowing the juvenile court to reconsider the termination of the mother's parental rights at a later date if no adoptive resource is located for the children. In K.R.S. v. DeKalb County Department of Human Resources, 236 So. 3d 910, 914 (Ala. Civ. App. 2017), this court explained:

"A termination of parental rights ... 'necessarily precludes the parent from later attempting to reestablish his or her visitation privileges, right to custody, or other parental rights with the child or children in question.' In re Grayson, 419 So. 2d 234, 237 (Ala. Civ. App. 1982) (Bradley, J., concurring specially). Unlike a judgment divesting a parent of custody, a judgment terminating parental rights is immediate, permanent, and irrevocable. See C.B. v. State Dep't of Human Res., 782 So. 2d 781, 785 (Ala. Civ. App. 1998) ('[T]ermination of parental rights is an extreme action that cannot be undone; it is permanent.'). Alabama law does not provide any other remedy that permanently prevents a parent from attempting to regain custody of his or her child."

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See also Ex parte Limestone Cty. Dep't of Human Res., 255 So. 3d 210, 217 (Ala. Civ. App. 2017) (concluding that § 12-15-321, Ala. Code 1975, does not allow a juvenile court to determine the permanency plan for a child after the termination of parental rights). Thus, in the present cases, like in Ex parte Kimberly Clark, the juvenile court's statement in its judgments purporting to retain jurisdiction to reconsider the termination of the mother's parental rights is ineffective, although it does not disturb the finality of the juvenile court's judgments terminating the mother's parental rights. 779 So. 2d at 182.

The main opinion likens the juvenile court's judgments to the judgment under review in A.J.T. In A.J.T., the Marshall Juvenile Court entered a judgment terminating the parental rights of A.J.T. to his two children, but granted him visitation with the children every other weekend. 939 So. 2d at 47. This court reversed the judgment, noting that "a judgment terminating parental rights but reserving certain parental rights to the parent is contradictory." Id. In the present case, the juvenile court did not purport to terminate the mother's parental rights but reserve to her the right of

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visitation with the children. Rather, the juvenile court ordered that the mother's parental rights be terminated, but it attempted to reserve in itself the right to reconsider that termination. Thus, I conclude that the present cases are more in line with Ex parte Kimberly Clark than with A.J.T.

In my opinion, the juvenile court's judgments are final judgments terminating the parental rights of the mother to the children, and any language purporting to reserve a right in the juvenile court to later reconsider that termination is ineffective; thus, there is no inherent contradiction in the juvenile court's judgments such that this court may reverse on that basis. Because it is my opinion that this court should proceed to consider whether the juvenile court's judgments terminating the mother's parental rights are supported by clear and convincing evidence, I respectfully dissent.

Edwards, J., concurs.