REL: March 29, 2019

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2180013

S.L. and D.L.

v.

J.L.C. and R.C.

Appeal from Coffee Juvenile Court
(JU-15-85.02)

2180014

S.L. and D.L.

v.

J.L.C. and R.C.

Appeal from Coffee Juvenile Court
(JU-15-86.02)

PER CURIAM.

In appeal number 2180013, S.L. ("the paternal grandmother") and D.L. ("the paternal grandfather"), the paternal grandparents of A.W. and X.W. ("the children"), twins born on May 18, 2011, appeal from a judgment entered by the Coffee Juvenile Court ("the juvenile court") in case number JU-15-85.02, awarding the children's maternal grandparents, J.L.C. ("the maternal grandfather") and R.C. ("the maternal grandmother"), visitation with A.W. In appeal number 2180014, the paternal grandparents appeal from a separate, but nearly identical, judgment entered by the juvenile court in case number JU-15-86.02, awarding the maternal grandparents visitation with X.W. In both cases, the juvenile court denied the paternal grandmother's postjudgment motion without having conducted a hearing on the motion. Because we hold that there was probable merit to the motion, we reverse the juvenile court's orders denying the paternal grandmother's postjudgment motion.

Procedural History

It is undisputed that the children had previously been the subject of dependency actions in the juvenile court in

which the paternal grandparents were awarded custody of the children on October 27, 2015.

On February 21, 2018, the maternal grandparents filed in the Coffee Circuit Court ("the circuit court") a petition seeking grandparent visitation with the children. On March 19, 2018, the paternal grandparents filed a pro se answer in the circuit court. Upon the paternal grandparents' motion, the circuit court transferred the case to the juvenile court, which apparently docketed a separate case for each child.

On June 18, 2018, the parties and their attorneys appeared before the juvenile court in case number JU-15-85.02 and case number JU-15-86.02, and the following colloquy occurred:

> "[The Court:] Present today are [the maternal grandfather] and [the maternal grandmother] who are presently represented by Attorney Sonny Reagan. [The paternal grandparents], as I referenced, are present and represented by Benton Persons.
>
> "But it's my understanding that the parties reached an agreement related to the issues.
>
> "Is that correct?
>
> "[Counsel for the maternal grandparents:] That's correct. Your Honor.
>
> "THE COURT: Whoever would like to recite it may do so.

"[Counsel for the maternal grandparents]: Judge, I'd be glad to take first shot at it.

"The parties have agreed to resume a normal visitation schedule. However, the parties have agreed to have a graduated process to get to full visitation for the [maternal grandparents]. And we will submit proposed orders to the Court laying that out.

"There's going to be conditions as well. And one of those conditions is that [J.L., a neighbor of the maternal grandparents who allegedly sexually molested the children,] have no contact whatsoever with the children when they're exercising visitation with the maternal grandparents; and also that there be no consumption of alcohol in the presence of the minor children by either party; and also that any medications that are prescribed for adults will be secured and out of the reach of the children.

"And we would expect hopefully that this graduated visitation schedule will initially move to a few hours, like on a Saturday, then go to a full day, then overnight. And eventually we'll end up with a visitation schedule that looks similar to like in a divorce. And hopefully that graduated process will take place over a period of about six months.

"But we'll propose some orders to you.

"[Counsel for the paternal grandparents]: And the only other condition we are asking is that the mother[, A.C.,] not be allowed to take the children out of the [maternal grandparents'] home and to stay under their supervision.

"[Counsel for the maternal grandparents]: Thank you for that. The children bottom line will always be supervised by the grandparents.

> "THE COURT: What I'll do then is I'll enter an order that says that the parties have entered into a settlement agreement that's been made known to the Court. Will thirty days be enough time to get a proposed order?
>
> "[Counsel for the maternal grandparents]: Yes, sir. I'll have that to you this week.
>
> "THE COURT: That sounds good. I'll get that order out today saying that y'all have thirty days to get something submitted."

That same day, the juvenile court entered separate, but nearly identical, orders in case number JU-15-85.02 and case number JU-15-86.02, stating:

> "The parties having appeared with counsel on today's date and having announced to the Court that a settlement of the issues has been reached:
>
> "It is ORDERED that the parties shall submit to the Court a proposed order citing the terms of the settlement within 30 days of the date of this order."

On July 19, 2018, the juvenile court entered in both actions separate, but nearly identical, judgments, awarding the maternal grandparents visitation with each child. The visitation was ordered to be graduated; after 120 days, the maternal grandparents would begin overnight visitation, and, after 180 days, they would have visitation "every other weekend beginning at 6:00 p.m. on Friday and ending at 6:00

p.m. on Sunday," as well as on alternating holidays and portions of school breaks. The judgments also provided that "[a]t no time shall the child be in the presence of [J.L.]"; that "[n]either party to this action shall consume alcoholic beverages in the presence of the minor child"; and that "[b]oth parties shall ensure that all medications are secured in the home so the minor child does not have access to the medications."

On July 31, 2018, the paternal grandmother filed a postjudgment motion, referencing both case number JU-15-85.02 and case number JU-15-86.02, seeking to set aside the judgments and to set the grandparent-visitation actions for a hearing. The paternal grandmother alleged, in part:

> "Approximately two (2) years ago the [children] were being sexually molested by a friend of the [children's] mother at the ... home [of the maternal grandparents] and after [the paternal grandmother] learned of same she stopped all overnight visitation. Further [one of the children] found medication that had been negligently left on the kitchen table. She thought it was candy and ate it. She was in the emergency room for over eight (8) hours, on a heart monitor, had to have the charcoal treatment and was otherwise put in danger.
>
> "2. [The paternal grandmother] did not enter into the Agreement that was entered by the Court and was never allowed to testify as to the facts that would show why overnight or unsupervised visitation

> was not in the children's best interest. Further [the paternal grandmother] never spoke with the [maternal grandparents] at Court or their attorney to enter an agreement and did not give her attorney ... permission to enter into any agreement. She requested to review any offer that was going to be submitted and to date has not seen same except as in the Court's order.
>
> "....
>
> "4. ... [The paternal grandmother] fears for the safety of the minor children and what they have been exposed to at the home of the [maternal grandparents]. Under no circumstance would she agree to overnight [visitation] in their home.
>
> "5. [The paternal grandmother] request[s] a hearing on this matter for the Court to set aside the order and determine visitation, if any, for the [maternal grandparents]."

On August 1, 2018, the juvenile court, without holding a hearing, entered separate, but nearly identical, orders in case number JU-15-85.02 and case number JU-15-86.02, stating, in part:

> "MOTION TO SET ASIDE AGREEMENT filed by [the paternal grandparents] is hereby DENIED.
>
> "The Court has reviewed the record made of the proceeding where the agreement was announced to the Court. The Paternal Grandparents and [the] Maternal Grandparents were both present and represented by counsel.
>
> "The Order entered in this matter is consistent with the agreement that was read into the record."

(Capitalization in original.)

Within three hours of the entry of that order, the paternal grandmother filed an "amended" postjudgment motion in both cases, asserting that "nothing was read into the record as to any agreement while she was present" and again requesting that the judgments be set aside. The juvenile court denied the amended postjudgment motion by an order entered in both cases on August 6, 2018. On August 9, 2018, the paternal grandmother filed another postjudgment motion and a separate motion for relief from the judgments in both cases,[1] asserting that she had recently discovered evidence that J.L. was a registered sex offender and arguing that the judgments allowing visitation to the maternal grandparents violated Ala. Code 1975, § 15-20A-l1(b).[2] On August 14, 2018,

[1]The maternal grandmother also filed a "motion" to modify the judgments; however, the jurisdiction of a court to modify a judgment may be obtained only by the filing of a separate civil action and the payment of an appropriate filing fee. See Ex parte Bragg, 237 So. 3d 235, 238 (Ala. Civ. App. 2017); see also Ex parte Davidson, 782 So. 2d 237, 240 (Ala. 2000). Thus, we consider that motion to be a nullity.

[2]Section 15-20A-11(b) provides: "No adult sex offender shall establish a residence or maintain a residence after release or conviction within 2,000 feet of the property on which his or her former victim, or an immediate family member of the victim, resides unless otherwise exempted pursuant to Section 15-20A-24 or Section 15-20A-16[, Ala. Code 1975]."

the paternal grandparents filed their notices of appeal to this court.

Discussion

On appeal, the paternal grandparents frame the issues as follows:

> "Whether the [juvenile] court erred by not setting aside [its] Order[s] that [were] based upon a purported agreement between the parties when no such agreement was read into the record and by [its] refusal and denial to grant a hearing concerning said Motions.
>
> "Whether the [juvenile] court erred in denying [the paternal grandparents'] Motion for Relief from Judgment based upon newly discovered evidence."

We must first consider the procedural issues affecting our review of these cases.

A. The Postjudgment Motions

The record shows that the paternal grandmother filed a postjudgment motion in both cases on July 31, 2018, asserting that she had not agreed to the visitation plan incorporated into the final judgments. The paternal grandmother maintained that she had not negotiated any settlement with the maternal grandparents and that she had not authorized her attorney to enter into any agreement. The paternal grandmother alleged that she had agreed only to review and to consider any offer

of settlement. The paternal grandmother asserted that the juvenile court had entered its judgments, adopting a proposed judgment that had been submitted by the maternal grandparents, although she had not received, reviewed, or approved that proposed judgment. Finally, the paternal grandmother stated that she would not have agreed to the maternal grandparents having overnight and unsupervised visitation with the children because she feared for the safety of the children based on past incidences of sexual abuse and other neglect she alleged had occurred in the home of the maternal grandparents. The paternal grandmother requested that the juvenile court set the postjudgment motion for a hearing, set aside its judgments, and set a trial date to receive evidence, including her testimony, to determine the visitation issue based on the best interests of the children.

Without conducting a hearing, the juvenile court denied that postjudgment motion by orders entered on August 1, 2018. The juvenile court concluded, upon its review of the transcript of the colloquy from June 18, 2018, that the paternal grandparents had been present and represented by their attorney when the visitation agreement had been read

into the record. The juvenile court also determined that the final judgments contained a visitation plan that was consistent with that agreement. Within three hours of the entry of the orders denying the postjudgment motion, the paternal grandmother filed an "amended" postjudgment motion in both cases, arguing that she had not been present when the visitation agreement was read into the record. The paternal grandmother reiterated that she had not been notified of a proposed agreement and that she had not approved its contents before it was submitted to the juvenile court and incorporated into the final judgments. In substance, the paternal grandmother was requesting that the juvenile court reconsider its orders denying the first postjudgment motion.

The Alabama Rules of Civil Procedure do not authorize a court to reconsider a postjudgment motion that has already been denied. See Ex parte Dowling, 477 So. 2d 400, 404 (Ala. 1985). Nevertheless, the maternal grandparents responded to the amended postjudgment motion by attaching correspondence between the attorneys for the parties negotiating and agreeing to the terms of the proposed judgment that was eventually incorporated into the final judgments. On August 6, 2018, the

juvenile court entered orders in both cases purporting to deny the amended postjudgment motion. Because the juvenile court lacked jurisdiction to rule on the amended postjudgment motion, that order was a legal nullity. See Progressive Ins. Co. v. Brown, 195 So. 3d 1007, 1010 (Ala. Civ. App. 2015).

On August 9, 2018, the paternal grandmother filed a third postjudgment motion in which she reasserted that she had not agreed to the visitation terms in the final judgments. The paternal grandmother explained that she would not have agreed to allow visitation between the children and the maternal grandparents because J.L., an alleged registered adult sex offender who, according the paternal grandmother, had previously sexually abused the children, resided on the property next door to the maternal grandparents. The paternal grandmother argued that the visitation plan that was incorporated into the judgments by the juvenile court violated Ala. Code 1975, § 15-20A-11(b), by exposing the children to the risk of sexual abuse. This postjudgment motion contained similar allegations to the first postjudgment motion and, as such, was an impermissible repetitive postjudgment motion. Ex parte Dowling, supra. To the extent that the paternal

grandmother raised a new legal argument that the final judgments violated § 15-20A-11(b), the juvenile court lacked jurisdiction to consider that argument because it was not raised in a postjudgment motion filed within 14 days of the entry of the final judgments. See Rule 1(B), Ala. R. Juv. P.

Based on the above, we conclude that the paternal grandmother filed only one valid postjudgment motion -- the first postjudgment motion filed on July 31, 2018. In that postjudgment motion, the paternal grandmother argued that the judgments should be set aside because she had not agreed to the visitation provisions, which she deemed to be antithetical to the best interests of the children, and she requested a hearing on the merits of the postjudgment motion. The juvenile court explicitly denied the motion to set aside the judgments and impliedly denied the request for a hearing on the postjudgment motion. Having raised those issues before the juvenile court and received adverse rulings, the paternal grandmother has properly preserved those issues for review on appeal. See generally Nnaife v. Pitt, 883 So. 2d 682 (Ala. Civ. App. 2003). We cannot, however, consider any separate

arguments improperly raised in the other postjudgment motions filed by the paternal grandmother.

B. The Motion for Relief from Judgments

On August 9, 2018, the paternal grandmother filed a "motion for relief from judgment based upon newly discovered evidence" in each case. In that motion, the paternal grandmother stated that she had, on August 9, 2018, obtained information from a friend that J.L. had been convicted by a Dale County court of sexual abuse in the second degree in 2010 and that he was now a registered adult sex offender. The paternal grandmother contended that the judgments should be set aside based on that newly discovered evidence in order to protect the children from the grave danger of sexual abuse by J.L., who lived in a residence less than 2,000 feet from the maternal grandparents' home. The paternal grandmother again maintained that the final judgments violated § 15-20A-11(b). We construe that motion as a motion for relief from the judgments filed pursuant to Rule 60(b)(2), Ala. R. Civ. P., which allows a court, on motion, to relieve a party from a final judgment based on "newly discovered evidence which by

due diligence could not have been discovered in time to move for a new trial under Rule 59(b)[, Ala. R. Civ. P.]."

A juvenile court has jurisdiction to consider a Rule 60(b)(2) motion for relief from a judgment filed within four months of the entry of the final judgment. See E.S.R. v. Madison Cty. Dep't of Human Res., 11 So. 3d 227, 231 (Ala. Civ. App. 2008). The filing of the notices of appeal by the paternal grandparents on August 14, 2018, did not divest the juvenile court of jurisdiction to rule on the Rule 60(b)(2) motion. See Harville v. Harville, 568 So. 2d 1239, 1240 (Ala. Civ. App. 1990). The record does not disclose any ruling by the juvenile court on the Rule 60(b)(2) motion, so that motion remains pending in the juvenile court in both cases. See Garland v. Garland, 406 So. 2d 415, 415 (Ala. Civ. App. 1981). Unless and until the juvenile court adjudicates the Rule 60(b)(2) motion, this court has nothing to review regarding that motion. See Ex parte R.S.C., 853 So. 2d 228, 234 (Ala. Civ. App. 2002). We, therefore, do not address the issue whether the juvenile court erred by denying the motion for relief from the judgments based on newly discovered evidence.

C. The Paternal Grandfather's Appeals

The paternal grandfather is named as an appellant in the notices of appeal, but he has not identified any adverse ruling made against him. As stated above, the paternal grandparents assert errors committed by the juvenile court in its rulings on the various postjudgment motions, all of which were filed solely in the name of the paternal grandmother. The paternal grandfather did not file any postjudgment motion or join in any of the postjudgment motions filed by the paternal grandmother. "'A party cannot claim error where no adverse ruling is made against him.'" Alcazar Shrine Temple v. Montgomery Cty. Sheriff's Dep't, 868 So. 2d 1093, 1094 (Ala. 2003) (quoting Holloway v. Robertson, 500 So. 2d 1056, 1059 (Ala. 1986)). Accordingly, we conclude that the paternal grandfather has no right to appeal, and we dismiss these appeals insofar as they have been brought on behalf of the paternal grandfather.

D. The Merits

We now turn to the merits of the cases. Section 34-3-21, Ala. Code 1975, provides that "[a]n attorney has authority to bind his or her client, in any action or proceeding, by any agreement in relation to such case, made in writing, or by an

entry to be made on the minutes of the court." Under that Code section, "[w]here a trial court finds that an attorney has the authority to enter into a settlement agreement and an agreement is made in writing or by an entry of the agreement on the trial court record, the client will be bound." Jones v. Stedman, 595 So. 2d 1355, 1356 (Ala. 1992). In Hawk v. Biggio, 372 So. 2d 303 (Ala. 1979), our supreme court held that § 34-3-21 is not dispositive of the issue whether an attorney has the authority to settle a case. "Instead, the court concluded, it is always a question of fact whether an attorney has the authority to make a settlement on behalf of his client." Warner v. Pony Express Courier Corp., 675 So. 2d 1317, 1320 (Ala. Civ. App. 1996).

In these cases, the juvenile court noted in its orders denying the postjudgment motion that the paternal grandmother was present and did not object when her counsel and counsel for the maternal grandparents informed the juvenile court that a settlement had been reached and when the terms of that settlement were read into the record. When a client remains silent while her attorney recites a settlement agreement into the record in open court, the court may infer that the lawyer

had the client's authority to settle the case. See Jones v. Stedman, supra. In her brief on appeal, the paternal grandmother does not dispute that she was present when the settlement agreement was read into the record, as she did in her amended postjudgment motion. See Gary v. Crouch, 923 So. 2d 1130, 1136 (Ala. Civ. App. 2005) ("[A]rguments not raised by the parties [on appeal] are waived."). The record shows that, during the colloquy, the paternal grandmother did not state any objection to the assertion that a settlement agreement had been reached and did not contest the terms of that settlement agreement. Under Jones, the juvenile court was authorized to infer that the paternal grandmother had authorized her attorney to settle the case upon the terms as read into the record.

However, the paternal grandmother argues that "no specific agreement was read into the record." The record shows that the attorneys for the parties outlined the basic terms of the settlement agreement and informed the juvenile court that the parties would submit a proposed order with more specific details. The paternal grandmother asserts that she did not review the proposed order submitted to the juvenile

court and that she did not authorize her attorney to submit that proposed order without her approval. The paternal grandmother argued in her first postjudgment motion that the judgments should be set aside because she had not agreed to the provisions of the judgments allowing overnight and unsupervised visitation because, she asserts, those provisions would expose the children to an unreasonable risk of sexual abuse and other harm. However, on appeal the paternal grandmother does not dispute the finding of the juvenile court that the proposed order, which was incorporated into the final judgments, is consistent with the settlement agreement that was read into the record, so that argument is waived. See Gary v. Crouch, supra. Thus, we conclude that the juvenile court acted within its discretion in determining that the paternal grandmother had authorized her attorney to enter into the settlement agreement and to submit the proposed order, which was consistent with the terms of that settlement agreement, to the juvenile court. See Jones, supra.

Having determined that the paternal grandmother had agreed to the terms of the maternal grandparents' visitation with the children, the juvenile court refused to set aside its

judgments. The paternal grandmother argues that the juvenile court should have conducted a hearing on her postjudgment motion to receive evidence and arguments regarding her concern for the safety of the children. The paternal grandmother notes that a court is not bound by an agreement of the parties concerning the custody of a child. Horton v. Gilmer, 266 Ala. 124, 128, 94 So. 2d 393, 396 (1957). In deciding whether to enforce an agreement involving visitation with minor children, the paramount consideration is the best interests of the child. S.A.N. v. S.E.N., 995 So. 2d 175, 179 (Ala. Civ. App. 2008).

In Ford v. Ford, 371 U.S. 187 (1962), the United States Supreme court reviewed a judgment entered by a Virginia court that provided: "'It being represented to the court by counsel that the parties hereto have agreed concerning the custody of the infant children, it is ordered that this case be dismissed.'" 371 U.S. at 188. The Supreme Court construed that judgment to mean "no more than that the parents had made an agreement between themselves." 371 U.S. at 193. The Court determined that the judgment of dismissal was not a final determination of custody entitled to full faith and credit

under Art. IV, § 1, of the United States Constitution because the law in Virginia, "like that of probably every State in the Union, requires the court to put the child's interest first." Id. (footnote omitted). The Court recognized that the common law generally requires a court to make an inquiry into the best interests of the child even when parents have agreed to a particular custody arrangement. 371 U.S. at 193-94.

Like Virginia, Alabama law holds that the courts of this state have "no more important or sacred duty to perform than to look after the proper care and custody of minors coming within their jurisdiction." Murphree v. Hanson, 197 Ala. 246, 256, 72 So. 437, 441 (1916). In this case, the paternal grandmother alleged that the visitation judgments did not serve the best interests of the children because, she said, it exposed them to a substantial risk of sexual abuse. In S.A.N., supra, this court reversed a judgment in which a trial court had awarded a convicted adult sexual offender visitation with his children. In that case, the parties stipulated to a visitation schedule should the trial court determine that former Ala. Code 1975, § 15-20-26, did not prohibit visitation. 995 So. 2d at 176. Finding former § 15-20-26

inapplicable, the trial court perfunctorily entered a judgment consistent with the stipulation of the parties. This court reversed the judgment, holding that the trial court had erred in failing to make its own inquiry into "the mode, duration, and extent of visitation privileges, if any, that would serve the best interests of the children." 995 So. 2d at 179. We remanded the case for the trial court to conduct a hearing to reconsider the visitation plan by focusing not on the agreement of the parties, but on the best interests of the children. Id.

Rule 59(g), Ala. R. Civ. P., provides that a postjudgment motion "shall not be ruled upon until the parties have had opportunity to be heard thereon." A trial court commits reversible error when it denies a postjudgment motion that has probable merit without holding a requested hearing. See Weiss v. Nave, 148 So. 3d 1086, 1089 (Ala. Civ. App. 2014). In these cases, the paternal grandmother requested a hearing on her postjudgment motion to, among other things, explore whether the judgments should be set aside in order to protect the children. By denying the request for a hearing, the juvenile court did not have an opportunity to consider the

factors supporting the paternal grandmother's position that the only way to secure the children from harm would be to deny visitation altogether. The juvenile court had before it only the agreement of the parties that contained a restriction preventing visitation in the presence of J.L. The juvenile court did not receive any evidence or arguments from which it could have determined that that restriction would adequately safeguard the children from the risk of sexual abuse or other harm. Given the circumstances as alleged by the paternal grandmother, we cannot say that her argument for setting aside the judgments to serve the best interests of the children is without any merit.

Conclusion

We dismiss these appeals insofar as they have been brought on behalf of the paternal grandfather. We agree with the paternal grandmother that the juvenile court erred by denying her postjudgment motion without conducting a hearing. We, therefore, reverse the orders denying the paternal grandmother's postjudgment motion and remand the cases for the juvenile court to hold a hearing on the postjudgment motion

filed by the paternal grandmother on July 31, 2018, in a manner consistent with this opinion.

2180013 -- APPEAL DISMISSED IN PART; REVERSED AND REMANDED WITH INSTRUCTIONS.

2180014 -- APPEAL DISMISSED IN PART; REVERSED AND REMANDED WITH INSTRUCTIONS.

Moore, Donaldson, Edwards, and Hanson, JJ., concur.

Thompson, P.J., concurs in the result, with writing.

THOMPSON, Presiding Judge, concurring in the result.

The paternal grandparents, S.L. ("the paternal grandmother") and D.L. ("the paternal grandfather"), and the maternal grandparents, J.L.C. and R.C., appeared with their attorneys at a hearing before the Coffee Juvenile Court ("the juvenile court") and announced that, after mediation, they had reached an agreement with regard to the sole claim before the juvenile court, i.e., the maternal grandparents' claim seeking visitation with A.W. and X.W. ("the children"), who are in the custody of the paternal grandparents. That agreement was read into the record. As noted in the main opinion, that agreement specified that the children were to have no contact with J.L., that the adults would not consume alcohol in the children's presence, that all medications would be secured so that the children have no access to them, and that the maternal grandparents would receive a schedule of gradually increasing visitation with the children. The juvenile court entered judgments on July 19, 2018, that incorporated the terms of the parties' agreement.

The paternal grandmother filed a timely postjudgment motion pursuant to Rule 59(e), Ala. R. Civ. P., on July 31,

2018, arguing that she had not agreed to the terms of the agreement that had been read into the record, that she had not given her attorney permission to enter into an agreement, that she feared for the children's safety, and that she would never have agreed to allow the children to stay overnight with the maternal grandparents. She requested a hearing on that motion. The juvenile court denied that motion on August 1, 2018, noting that it had reviewed the record and that the paternal grandmother was present when the agreement was read into the record.

Thereafter, also on August 1, 2018, the paternal grandmother filed an invalid successive "postjudgment" motion; that motion was a nullity. Tanner v. Tanner, 146 So. 3d 15, 19 (Ala. Civ. App. 2013) (holding a successive postjudgment motion to be a nullity); O'Hare v. O'Hare, 129 So. 3d 297, 299 (Ala. Civ. App. 2013) (same); R.D.J. v. A.P.J., 142 So. 3d 662, 667 n. 3 (Ala. Civ. App. 2013); and Gold Kist, Inc. v. Griffin, 659 So. 2d 626, 627 (Ala. Civ. App. 1994) ("Successive post-judgment motions by the same party, seeking essentially the same relief, are not allowed."). Thus, the juvenile court lacked jurisdiction to consider or rule on that

August 1, 2018, motion, and, therefore, its August 6, 2018, order purporting to do so was also a nullity. Progressive Ins. Co. v. Brown, 195 So. 3d 1007, 1010 (Ala. Civ. App. 2015).

The paternal grandmother filed a third "postjudgment" motion on August 9, 2018, seeking to set aside the July 19, 2018, judgments. See Evans v. Waddell, 689 So. 2d 23, 26 (Ala. 1997) ("The substance of a motion ... determines what kind of motion it is."). As is the case with the paternal grandmother's second, August 1, 2018, motion, the August 9, 2018, motion was a nullity as a successive postjudgment motion. Progressive Ins. Co. v. Brown, supra. In addition, the paternal grandmother's August 9, 2018, motion was not timely filed within 14 days of the entry of the July 19, 2018, judgments. Rule 1(B), Ala. R. Juv. P. ("All postjudgment motions ... must be filed within 14 days after entry of order or judgment ...."). Therefore, neither the juvenile court nor this court has jurisdiction to consider that motion.

I agree with the main opinion to the extent that it concludes that the only valid postjudgment motion before the

juvenile court, and, therefore, before this court, is the paternal grandmother's July 31, 2018, postjudgment motion.

The paternal grandmother and the paternal grandfather also filed on August 9, 2018, a motion titled "motion for relief from judgment based upon newly discovered evidence." If that motion was one filed pursuant to Rule 59, Ala. R. Civ. P., that motion, like the paternal grandmother's August 9, 2018, postjudgment motion, was untimely and the juvenile court was without jurisdiction to consider it. However, if that motion was filed pursuant to Rule 60(b), Ala. R. Civ. P., an argument the paternal grandmother does not raise in her appellate brief, it remains pending in the juvenile court because there has been no ruling on that motion. Lawrence v. Lawrence, 117 So. 3d 723, 726 (Ala. Civ. App. 2013); Rhodes v. Rhodes, 38 So. 3d 54, 63 (Ala. Civ. App. 2009). As noted above, the nature of a motion is determined by its substance. Evans v. Waddell, supra. Regardless, whether it is an untimely Rule 59(e) motion or a still pending Rule 60(b) motion, that motion should have no impact on this court's resolution of these appeals. Therefore, given the posture of these matters, and in the absence of any indication that the

juvenile court considered that motion or ruled on it, I believe the main opinion has erred in determining the nature of the paternal grandparents' motion, i.e., that it was a motion filed pursuant to Rule 60(b), Ala. R. Civ. P. I would leave the determination of the nature of that motion to the juvenile court if and when the juvenile court determines that that motion remains pending before it.

In the only valid postjudgment motion before the juvenile court, and that may be properly considered by this court, i.e., the July 31, 2018, postjudgment motion, the paternal grandmother alleged, among other things, that she did not enter into the agreement upon which the judgments were based, that she did not give her attorney authority to settle the actions, and that she had asked to be allowed to review any proposed order to be submitted to the juvenile court. On appeal, the paternal grandmother points out that the terms of the agreement read into the record were general, i.e., that they provided for the gradual increase in the maternal grandparents' visitation but set forth no specific time line upon which visitation would be increased. She also contends on appeal, as she did in her July 31, 2018, postjudgment

motion, that she was not shown the proposed order setting forth the details of the agreement before it was submitted to the juvenile court and that there "was no meeting of the minds" with regard to the specific visitation terms of the settlement agreement.

In these cases, the main opinion discusses the allegations in the motions filed after the sole, valid, July 31, 2018, postjudgment motion and has used those allegations to describe the nature of the relief purportedly sought by the paternal grandmother in her first postjudgment motion. But see Progressive Ins. Co. v. Brown, 195 So. 3d at 1011 ("Because Progressive's May 28 and June 3, 2015, motions were impermissible successive postjudgment motions, we decline to consider any assertions or arguments made in those motions that were not first presented in Progressive's May 22, 2015, motion."). Therefore, I concur in the result to reverse the juvenile court's orders denying the paternal grandmother's July 31, 2018, postjudgment motion and remand these matters to the juvenile court for a hearing, but I do not agree with the analysis in the main opinion.

In Jones v. Stedman, 595 So. 2d 1355 (Ala. 1992), the parties' attorneys read the precise terms of a settlement agreement into the record and the trial court entered a judgment incorporating the terms of that agreement. The wife later moved to set aside the agreement, and the trial court received ore tenus evidence concerning the validity of the agreement. The trial court denied the motion to set aside. This court affirmed, noting that the wife had been silent while the terms of the agreement were read into the record and concluding that that silence supported the trial court's implicit determination that the wife had consented to the terms of the settlement agreement. Jones v. Stedman, 595 So. 2d at 1356. In another case, our supreme court noted that "'"'[w]hether an attorney has authority to bind his client by an agreement to settle the case by consent is a question of fact.'"'" J.K. v. UMS-Wright Corp., 7 So. 3d 300, 307 (Ala. 2008) (quoting Alexander v. Burch, 968 So. 2d 992, 996 (Ala. 2006), quoting in turn other cases).

Those parts of the parties' agreement that were read into the record with regard to a gradual and continuing increase in the amount of visitation to be afforded the maternal

grandparents are broader than the fixed time line for that visitation that is set forth in the July 19, 2018, judgments. Given the general terms read into the record, I am unable to conclude whether the paternal grandmother consented to the specific terms of the visitation agreement. Accordingly, I agree that the orders denying the paternal grandmother's postjudgment motion should be reversed and that these matters should be remanded, but I would specifically instruct the juvenile court to conduct an ore tenus hearing to make findings of fact regarding whether the paternal grandmother's attorney had the authority to enter into the particular terms of the settlement agreement or whether, as might be the case, the paternal grandmother had a change of heart after entering into that agreement. See Kent v. Herchenhan, 215 So. 3d 1079, 1082 (Ala. Civ. App. 2016) (noting that, generally, when a party requests a hearing on a postjudgment motion, the movant is entitled to that hearing, and it is error for the trial court to fail to conduct such a hearing).

The best interests of the children at issue are always the primary consideration in actions involving dependency, custody, or visitation. Whittle v. Whittle, 692 So. 2d 130,

133 (Ala. Civ. App. 1997); Hodge v. Hovey, 679 So. 2d 1145, 1147 (Ala. Civ. App. 1996); and Jackson v. Jackson, 520 So. 2d 530, 531 (Ala. Civ. App. 1988). I believe that courts charged with issues concerning children are well aware of that and do their best to keep the consideration of the best interests of the children in the forefront of every ruling.

In a number of cases, this court has held that negotiated settlement agreements on the issues of custody or visitation are as binding as any other contract and that the trial court could deviate from an agreement only if it received evidence to support that deviation from the parties' agreement. See Holder v. Holder, 86 So. 3d 1001, 1004 (Ala. Civ. App. 2011) (reversing and remanding for the trial court to enter a judgment in compliance with the parties' settlement agreement pertaining to issues including a proposed relocation and terms of visitation with the parties' children); Freeman v. Freeman, 84 So. 3d 939, 944 (Ala. Civ. App. 2011) (reversing the trial court's judgment that failed to incorporate certain conditions on the father's visitation with the parties' children); G.B. v. J.H., 915 So. 2d 570, 576 (Ala. Civ. App. 2005) (reversing "the judgment insofar as it omitted a provision for visitation

and remand[ing] the case to the circuit court with instructions to incorporate the parties' visitation agreement into its judgment"); and J.F. v. D.C.W., 896 So. 2d 577, 581 (Ala. Civ. App. 2004) ("Given the lack of evidence before the trial court, it is unclear why the trial court deviated from the settlement agreement reached by the parties in mediation and later in open court.").

I would reverse the orders denying the paternal grandmother's postjudgment motion and remand the matters to the juvenile court to conduct a hearing on the arguments presented in the paternal grandmother's first, and only valid, postjudgment motion and to determine whether the paternal grandmother's attorney had the authority to enter into the particular terms of the settlement agreement. Further, given the posture of these cases, I would also leave the issue of the nature of the August 9, 2018, motions to be determined by the juvenile court. I presume that the juvenile court will keep the best interests of the children in mind and that, if the juvenile court deems it necessary, it will receive evidence on that issue.