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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

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S.F.

v.

R.L. and A.L.

**Appeal from Geneva Juvenile Court
(JU-11-378.02)**

MOORE, Judge.

S.F. ("the mother") appeals from a judgment of the Geneva Juvenile Court ("the juvenile court") declining to transfer custody of her child, S.A.B. ("the child"), to her from R.L.

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and A.L. ("the custodians") and finding the mother in contempt. We dismiss the mother's appeal.

Procedural History

On May 24, 2018, the mother filed a petition to modify custody of the child. She asserted, among other things, that the custodians had been awarded custody of the child on February 17, 2012, and that there had been a material change of circumstances such that the mother should be awarded custody of the child. The mother attached to her petition an order of the juvenile court dated February 18, 2014, indicating that the juvenile court had previously adjudicated the child dependent on February 17, 2012, pursuant to a dependency petition that had been filed by the custodians and that the juvenile court had awarded custody of the child to the custodians at that time. In its February 18, 2014, order, the juvenile court denied a previous petition to modify custody of the child that had been filed by the mother. The mother also attached to her petition a July 21, 2014, order of the juvenile court awarding the mother specified visitation with the child.

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The custodians filed a response to the mother's modification petition on June 7, 2018. On August 22, 2018, the custodians filed an amended response to the mother's modification petition. That amended response also included a counterpetition seeking a finding of contempt against the mother for her failure to pay child support as "previously ordered," enforcement of the mother's child-support obligation, and an order requiring the mother to return the child following her visitation with the child. The custodians filed a second amended response to the mother's petition on August 27, 2018, correcting certain dates referenced in the first amended response.

A trial was conducted on October 30, 2018. On November 15, 2018, the juvenile court entered a judgment finding that the mother had failed to meet the standard for a modification of custody outlined in Ex parte McLendon, 455 So. 2d 863 (Ala. 1984), and denying the mother's petition for a modification of custody. With regard to the custodians' counterpetition, the juvenile court stated:

"With regard to the contempt [p]etition, the counterclaim by the [custodians], the Court finds that there is sufficient evidence to find that the mother ... has failed to provide child support as

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ordered and she is employed and is able to provide support as ordered. The Court also finds that the mother has also violated the visitation order in this case. An Income Withholding Order shall be issued in this case if one has not been entered and the mother ... shall pay a purge for contempt in the amount [of] \$500 by December 13, 2018, or appear for a hearing at 9:00 a.m. on December 13, 2018. Failure to appear or pay may result in the Court placing the mother ... in the Geneva County Jail for contempt."

The mother filed her notice of appeal to this court on November 27, 2018. This court issued an order calling for letter briefs from the parties on the issue of the finality of the juvenile court's November 15, 2018, judgment.

Analysis

"Although neither party has raised the issue of this court's jurisdiction over this appeal, we note that 'jurisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu.' Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987). The question whether a judgment is final is a jurisdictional question, and the reviewing court, on a determination that the judgment is not final, has a duty to dismiss the case. See Jim Walter Homes, Inc. v. Holman, 373 So. 2d 869, 871 (Ala. Civ. App. 1979)."

Hubbard v. Hubbard, 935 So. 2d 1191, 1192 (Ala. Civ. App. 2006).

In Wilkerson v. Wilkerson, 868 So. 2d 1119, 1120 (Ala. Civ. App. 2003), this court considered a case in which the

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father had filed a petition for a modification of his child-support obligation, the mother had answered that petition, and the State of Alabama had intervened and filed, on behalf of the mother, a second answer and a petition for contempt against the father, alleging that he was in arrears on his child-support obligation. Following an ore tenus hearing, the circuit court denied the father's petition to modify his child-support obligation, and, after his purported postjudgment motion was denied, the father appealed to this court. Id. This court determined that the father's appeal was "from a nonfinal judgment because the [circuit] court had failed to adjudicate the petition for contempt," and we therefore dismissed the appeal. Id. at 1120. Following our dismissal of the father's appeal, the circuit court entered a judgment finding the father in contempt for failing to pay child support and entered a separate order setting the matter for a hearing to determine a payment schedule to satisfy the father's child-support arrearage. Id. at 1120. The father filed a second notice of appeal to this court. Id. This court dismissed the father's second appeal, concluding that, because the circuit court's judgment did not state the amount

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of the arrearage owed by the father, not all the rights and liabilities of the parties had been determined and, thus, the judgment was nonfinal. Id. at 1121.

Like in Wilkerson, the juvenile court's judgment in the present case finds the mother in contempt for failing to pay child support but does not state the amount of the mother's child-support arrearage. Thus, the juvenile court's judgment is nonfinal and will not support the mother's appeal. See Wilkerson, 868 So. 2d at 1121; and D.M.P.C.P. v. T.J.C., 91 So. 3d 75, 76-77 (Ala. Civ. App. 2012) (holding that circuit court's failure to adjudicate amount of child-support arrearage after finding father in arrears in payment of pendente lite child support rendered judgment nonfinal and required dismissal of appeal). Accordingly, we dismiss the mother's appeal as being from a nonfinal judgment.

APPEAL DISMISSED.

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