

REL: September 13, 2019

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2019

2180312 and 2180313

S.J.

v.

Jackson County Department of Human Resources

Appeals from Jackson Juvenile Court
(JU-09-274.05 and JU-14-91.03)

MOORE, Judge.

In appeal number 2180312, S.J. ("the mother") appeals from a judgment entered by the Jackson Juvenile Court ("the juvenile court"), in case number JU-09-274.05, terminating her parental rights to M.F., whose date of birth is November 25,

2180312 and 2180313

2001. In appeal number 2180313, the mother appeals from a separate, but almost identical, judgment entered by the juvenile court, in case number JU-14-91.03, terminating her parental rights to L.F., whose date of birth is July 13, 2011. We affirm the juvenile court's judgments.

Procedural History

On November 3, 2017, the Jackson County Department of Human Resources ("DHR") filed separate petitions to terminate the parental rights of the mother to M.F. and L.F. ("the children").¹ After a trial on November 27, 2018, the juvenile court entered separate judgments on December 27, 2018, terminating the mother's parental rights to the children. On January 9, 2019, the mother filed a single notice of appeal, referencing both case number JU-09-274.05 and case number JU-14-91.03.

Standard of Review

A judgment terminating parental rights must be supported by clear and convincing evidence, which is "[e]vidence that, when weighed against evidence in opposition, will produce in

¹The parental rights of the father of the children had been previously terminated.

2180312 and 2180313

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.'" C.O. v. Jefferson Cty. Dep't of Human Res., 206 So. 3d 621, 627 (Ala. Civ. App. 2016) (quoting L.M. v. D.D.F., 840 So. 2d 171, 179 (Ala. Civ. App. 2002), quoting in turn Ala. Code 1975, § 6-11-20(b)(4)).

'[T]he evidence necessary for appellate affirmance of a judgment based on a factual finding in the context of a case in which the ultimate standard for a factual decision by the trial court is clear and convincing evidence is evidence that a fact-finder reasonably could find to clearly and convincingly ... establish the fact sought to be proved.'

"KGS Steel[, Inc. v. McInish], 47 So. 3d [749] at 761 [(Ala. Civ. App. 2006)].

'... [F]or trial courts ruling on motions for a summary judgment in civil cases to which a clear-and-convincing-evidence standard of proof applies, 'the judge must view the evidence presented through the prism of the substantive evidentiary burden[,]' [Anderson v. Liberty Lobby, Inc.], 477 U.S. 242, 254 (1986)]; thus, the appellate court must also look through a prism to determine whether there was substantial evidence before the trial court to support a factual finding, based upon the trial court's weighing of the evidence, that would 'produce in the mind [of the trial court] a firm conviction as to each element of the claim and a high probability as to the correctness of the conclusion.'"

2180312 and 2180313

Ex parte McInish, 47 So. 3d 767, 778 (Ala. 2008). This court does not reweigh the evidence but, rather, determines whether the findings of fact made by the juvenile court are supported by evidence that the juvenile court could have found to be clear and convincing. See Ex parte T.V., 971 So. 2d 1, 9 (Ala. 2007). When those findings rest on ore tenus evidence, this court presumes their correctness. Id. We review the legal conclusions to be drawn from the evidence without a presumption of correctness. J.W. v. C.B., 68 So. 3d 878, 879 (Ala. Civ. App. 2011).

Facts

Jennifer Mason, a social worker for DHR, testified that the most recent protective-services case relating to this family had been opened in 2012 and that the children were ultimately removed from the mother's home and placed in foster care in 2014. According to Mason, the children were removed because of concerns that the children lacked supervision and that the children's needs were not being met and because officials from the school M.F. was attending were frequently contacting DHR with complaints that M.F. was defecating on himself and the school officials either could not reach the

2180312 and 2180313

mother or could not get her to retrieve M.F. from the school.² Elizabeth Neely, a child-welfare supervisor with DHR, testified that DHR had also been concerned that another child of the mother's, G.F., instead of the mother, was the primary caretaker of the children and that the mother had left medications within the reach of L.F. G.F., who was 19 years old at the time of the termination-of-parental-rights trial, was also removed from the mother's home in 2014. At the time of the trial, G.F. was living in an independent-living apartment through a program called "Gateway." The mother's parental rights to G.F. are not at issue in these cases.

Lois Patrella, a clinical psychologist, conducted a psychological evaluation on the mother in 2014. She diagnosed the mother with generalized anxiety disorder, adjustment disorder with depressed mood, and dependent personality disorder. She testified that the mother's overall intelligence quotient was at a "Low/Average" level with a working memory at a "Borderline" level, which, she stated, was a "pretty low score." She testified that the mother had not been capable of parenting the children at that time.

²The mother had never had a driver's license and did not know how to drive, even by the time of the trial.

2180312 and 2180313

According to Mason, the children's father had pleaded guilty to sexually abusing G.F. She testified that the mother had been in a subsequent relationship for a period but that she had not had a boyfriend in the four years preceding the trial. According to Mason, the mother had participated in services and had maintained stable housing and employment during the four years preceding the trial. With regard to services, Mason testified that DHR had provided multiple providers of in-home services and counseling for the mother. Mason testified, however, that the providers of the mother's services had reported that the mother had made very little progress.

Neely testified that DHR had been concerned about the mother's parenting capabilities and that the mother had not made any progress in that area. Neely testified that the mother lacked protective capacity and a knowledge of her full responsibilities. According to Neely, the mother had failed to develop necessary parenting skills, and, she said, it was her opinion that the mother lacks the mental capacity to parent.

2180312 and 2180313

The children were initially placed in foster homes. M.F. however, eventually had to be placed in a more intensive placement and, at the time of the trial, was in a group home because of emotional and behavioral issues. According to Mason, M.F. had had visits with the mother, which, she said, had mostly gone "okay." She indicated that the visitations had been beneficial at times. Mason testified that M.F. was in the "moderate program" at the group home and that he had to complete that program level before he could step down from that placement level to a less restrictive placement. She testified that M.F. was no longer defecating on himself.

Mason testified that, when L.F. was removed from the mother's home, he had had speech issues and could not form basic words. According to Mason, L.F. received speech services through "Early Intervention" and, later, through another provider. At the time of the trial, L.F. was with his long-term foster parents and was doing well in that placement; his foster parents wanted to adopt him. Mason testified that L.F. is very bonded to his foster parents and was fearful of having to leave them. Mason testified that it would be detrimental to take L.F. from his foster home, but, she said,

2180312 and 2180313

it would not be detrimental for him to stop visiting the mother. Jessica Howell, a therapist who had conducted therapy with L.F., also testified that it would be detrimental to remove L.F. from his foster home. Mason testified that L.F. had visited unsupervised in the home of the mother on Fridays after school and every other Saturday for three hours.

The mother's sister, B.J., had presented as a resource. There was disputed evidence about the timeline of when she presented herself, but the mother admitted that she had initially not wanted B.J. as a resource because she had been willing to take only M.F. and L.F. and not G.F. However, at the time of the trial, G.F. was an adult and the mother was willing for B.J. to take custody of the children. B.J.'s home was approved by Tennessee's Department of Child Services; however, DHR was still concerned about placing the children with B.J. Specifically, Neely testified that there had been an allegation of physical abuse with regard to one of B.J.'s own children, although, she said, that allegation had been found "not indicated." Neely also testified that there was an allegation that B.J. had been arrested after attempting to run over her former husband with an automobile.

Discussion

The mother first argues that DHR failed to prove grounds to terminate her parental rights.

Section 12-15-319(a), Ala. Code 1975, provides, in part:

"(a) If the juvenile court finds from clear and convincing evidence, competent, material, and relevant in nature, that the parent[] of a child [is] unable or unwilling to discharge [his or her] responsibilities to and for the child, or that the conduct or condition of the parent[] renders [him or her] unable to properly care for the child and that the conduct or condition is unlikely to change in the foreseeable future, it may terminate the parental rights of the parent[]. In determining whether or not the parent[] [is] unable or unwilling to discharge [his or her] responsibilities to and for the child and to terminate the parental rights, the juvenile court shall consider the following factors including, but not limited to, the following:

"....

"(2) Emotional illness, mental illness, or mental deficiency of the parent, or excessive use of alcohol or controlled substances, of a duration or nature as to render the parent unable to care for needs of the child.

"....

"(7) That reasonable efforts by the Department of Human Resources or licensed public or private child care agencies leading toward the rehabilitation of the parent[] have failed."

2180312 and 2180313

In the present case, Patrella testified that, at the time she conducted her psychological evaluation of the mother, the mother was unable to parent the children. The mother's intellectual and emotional deficiencies had resulted in her abdicating parental responsibilities to G.F. The mother did not adequately supervise the children, and the juvenile court could have considered that to be a contributing factor to the sexual abuse of G.F. by the father, to M.F.'s hygiene problems, and to L.F.'s developmental delays. DHR workers Neely and Mason testified that multiple providers had been employed by DHR in an attempt to rehabilitate the mother in order that she might be able to effectively parent the children. However, the service providers reported very little progress in the mother's parenting skills.

"Rehabilitation efforts succeed when those circumstances that led to the removal of the child have been resolved, [T.B. v. Cullman Cty. Dep't of Human Res., 6 So. 3d 1195, 1199 (Ala. Civ. App. 2008)], so that the child can safely be returned to his or her parent's custody. See Ala. Code 1975, § 12-15-301(12) (defining 'reasonable efforts' as including '[e]fforts made ... to make it possible for a child to return safely to his or her home').

"Conversely, if DHR has proven by clear and convincing evidence that the parent remains unable to adequately care for the child after reasonable efforts have been expended to rehabilitate the

2180312 and 2180313

parent, the juvenile court may find that those reasonable efforts have failed. T.B., supra."

H.B. v. Mobile Cty. Dep't of Human Res., 236 So. 3d 875, 882-83 (Ala. Civ. App. 2017).

The mother argues that her parental rights should not be terminated because she cooperated with DHR's rehabilitation plan and did everything she was asked to do. However, a parent may not regain custody of neglected and abused children merely by cooperating with DHR and participating in all of its rehabilitation efforts. The test is whether, upon completion of those rehabilitation efforts, the conditions or circumstances that led to family separation have been sufficiently cured so that the children can be safely returned to that parent's care free of the dangers that beset the children originally. As this court has explained:

"In assessing the success of reasonable efforts at reunification, the juvenile court is not limited to determining solely whether the parent has complied with the reunification plan or conditions established by DHR. See, e.g., B.L.T. v. V.T., 12 So. 3d 123 (Ala. Civ. App. 2008) (notwithstanding evidence of mother's compliance with DHR's requests, the juvenile court could properly transfer custody of child to relative based on other evidence indicating that the mother had neither the maturity nor the emotional stability to effectively parent the child). A juvenile court may consider such compliance, but only as part of its inquiry as to

2180312 and 2180313

whether the parental conduct, condition, or circumstances that required separation of the child have been satisfactorily eliminated. See H.H. v. Baldwin County Dep't of Human Res., 989 So. 2d 1094, 1104-05 (Ala. Civ. App. 2007) (Moore, J., with Thompson, P.J., and Bryan, J., concurring in the result, and Pittman and Thomas, JJ., dissenting). A parent may follow the plan faithfully yet still remain unable to properly parent the child. See, e.g., B.L.T., supra."

R.T.B. v. Calhoun Cty. Dep't of Human Res., 19 So. 3d 198, 205 (Ala. Civ. App. 2009).

In this case, the evidence indicates that, although the mother did participate in the rehabilitation efforts made by DHR, at the end, she remained, in the opinion of the witnesses who testified before the juvenile court, low functioning, unable to serve in a protective capacity, and neglectful. From the evidence, the juvenile court could have been clearly convinced that, despite the mother's cooperation with all the rehabilitation efforts, the mother remained unable to effectively parent the children. Based on the foregoing, we conclude that there was sufficient evidence to support the conclusion of the juvenile court that the mother was "unable or unwilling to discharge [her] responsibilities to and for the child[ren], or that the conduct or condition of the [mother] renders [her] unable to properly care for the

2180312 and 2180313

child[ren] and that the conduct or condition is unlikely to change in the foreseeable future." 12-15-319(a).

The mother also argues that placement with B.J. was a viable alternative to termination of her parental rights. Initially, we note that this court has held:

"[W]hen family reunification is not reasonably foreseeable, the mere existence of a viable custodial placement alternative 'would not, in and of itself, prevent [a] juvenile court from terminating [a parent's] parental rights' [A.E.T. v. Limestone Cty. Dep't of Human Res.,] 49 So. 3d [1212,] 1219 [(Ala. Civ. App. 2010)]. Under A.E.T., a juvenile court may terminate parental rights if the juvenile court determines that viable options to termination do not serve the best interests of the child."

H.B. v. J.N., 226 So. 3d 205, 209-10 (Ala. Civ. App. 2016). Moreover, "[t]he determination of whether a viable alternative to termination of parental rights exists is a question of fact to be decided by the juvenile court." J.B. v. Cleburne Cty. Dep't of Human Res., 991 So. 2d 273, 282 (Ala. Civ. App. 2008). "The trial court must consider the best interest of the child[ren] when looking at less drastic alternatives." Haag v. Cherokee Cty. Dep't of Pensions & Sec., 489 So. 2d 586, 588 (Ala. Civ. App. 1986). In the present case, the evidence indicated that the children were doing well in their

2180312 and 2180313

respective placements. Mason testified that M.F., who was 18 years old at the time of the trial, needed to complete the moderate program at the group home before he could step down to a less restrictive placement. With regard to L.F., the evidence indicated that he was closely bonded with his long-term foster family, who desired to adopt him, and that it would be detrimental to him to remove him from their home. Based on that evidence, the juvenile court could have been clearly convinced that placement with B.J. was not in either child's best interest.

Conclusion

Based on the foregoing, we affirm the juvenile court's judgments.

2180312 -- AFFIRMED.

2180313 -- AFFIRMED.

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