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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2019

2180368 and 2180369

A.A., Sr.

v.

Jefferson County Department of Human Resources

Appeal from Jefferson Juvenile Court, Bessemer Division
(DR-17-65 and DR-17-69)

DONALDSON, Judge.

A.A., Sr. ("the father"), appeals from judgments of the Jefferson Juvenile Court, Bessemer Division ("the juvenile court"), adjudicating A.A., Jr., and K.A. to be dependent. The judgments are not final, and "[t]his court must dismiss an

2180368 and 2180369

appeal taken from a nonfinal judgment." Stanford v. Feige, 816 So. 2d 501, 503 (Ala. Civ. App. 2001). Therefore, for the reasons discussed herein, the appeals are dismissed.

Facts and Procedural History

The father and Vi.A. ("the mother") are the parents of V.A.A. ("the eldest daughter"), A.A., Jr., K.A., and Va.A. ("the youngest daughter").

On November 10, 2016, the Jefferson County Department of Human Resources ("DHR") filed complaints in the juvenile court alleging that A.A., Jr., and K.A. ("the sons") were dependent. Upon DHR's request, the juvenile court entered pickup orders for the sons. DHR also initiated dependency proceedings regarding the eldest daughter and the youngest daughter. DHR further alleged that "[the father had] stated that he also want[ed] to relinquish custody of [the youngest daughter]."

After conducting a shelter-care hearing, the juvenile court entered an order in each child's case, granting pendente lite custody of the youngest daughter to DHR and granting pendente lite custody of the rest of the children to B.B. ("the maternal aunt"). In the orders, the juvenile court ruled that the parents and the youngest daughter were not to have

2180368 and 2180369

any contact but granted supervised visitation to the parents with the rest of the children.

The juvenile court appointed a guardian ad litem and a court appointed special advocate to represent the children's best interests.

On January 31, 2017, after having conducted a preliminary hearing, the juvenile court entered orders dismissing the eldest daughter's case because she had reached the age of 18 and continuing the visitation and custody arrangements of the other children.¹ Along with the maternal aunt, the orders named E.B. ("the maternal uncle") as a pendente lite custodian of the sons.

On June 13, 2017, after having conducted a preliminary and permanency hearing, the juvenile court rendered orders that were later entered on June 15, 2017. In the orders, the

¹"[A] person can be adjudicated a dependent child only if that person is under the age of 18." A.C. v. In re E.C.N., 89 So. 3d 777, 779 (Ala. Civ. App. 2012) (holding that juvenile court lacked subject-matter jurisdiction over dependency petition regarding a person who turned 18 years old before the entry of the judgment); see § 12-15-102(3), Ala. Code 1975 (defining "child" as "[a]n individual under the age of 18 years, or under 21 years of age and before the juvenile court for a delinquency matter arising before that individual's 18th birthday").

2180368 and 2180369

juvenile court continued the existing custody and visitation arrangements and set the matter for a "permanency hearing" on September 12, 2017.

On June 13, 2017, the father filed a "Motion for Hearing on Father's Entitlement to Custody of His Sons," in which he stated:

"Comes now [counsel for the father], and moves the Court for an Order setting a hearing within the next two weeks on his entitlement vel non to custody of his two minor sons.

"As grounds for the motion, [the father] would show unto the Court that there has been no hearing, of which he has had notice, to determine whether he is an unfit parent. ...

"Under Alabama law, [the father] has a prima facie right to custody of his sons. ...

"WHEREFORE, the premises considered, [the father] prays that the Court will specially set down this motion within the next two weeks; and that unless the Plaintiff DHR carries its burden of proving that he is an unfit parent for his sons, the Court will grant to him his constitutional right of custody of his sons. ..."

Later on June 13, 2017, the mother and the father filed several objections to the orders rendered on June 13, 2017.

On June 14, 2017, the juvenile court entered orders in the sons' cases stating that the mother had requested a trial and that the issues raised by the father's motions and the

2180368 and 2180369

parents' objections would be addressed at the "dependency trial."

On June 20, 2017, the juvenile court conducted a trial. At the beginning of the trial, the parties and the juvenile court discussed the subject matter of the trial. The juvenile-court judge stated: "I just want it on the record. I want everybody to be clear as to what we're about to do. We're about to enter a dependency that involves the custody issue as well." During the trial, the juvenile court excluded testimony from witnesses pertaining to the disposition of the children on the basis that such testimony was not relevant to the issue of dependency. At the conclusion of the trial, the juvenile court stated:

"This trial today was a dependency trial and a custody trial. It was not a dispositional trial.

"When there's a dispositional trial, [(addressing the father's counsel)] then you can bring the witnesses that you think are needed on a limited basis to proffer the character as to where the minor children dispositionally should be placed throughout the dependency of this matter. Today was a dependency and a custody trial that you asked for and requested."

2180368 and 2180369

On July 12, 2017, the father filed a "Motion for Decision on Father's Right to Custody of His Minor Sons," in which he stated:

"A prompt determination by the Court of [the father's] entitlement vel non to custody of his [sons] is essential. While [the father] strongly believes that there has been no evidence of his unfitness [as] a father, the Court may see it differently. In any event, [the father] urgently implores the Court to please issue a final order on custody of his minor sons, one way or the another.
...

"In sum, [the father] simply begs the Court to promptly issue a decision on his Motion for Custody of his minor sons."

On July 13, 2017, the juvenile court entered judgments finding the youngest daughter and the sons to be dependent. In the judgments, the juvenile court described the trial that had occurred on June 20, 2017, as follows:

"THIS MATTER [CAME] BEFORE THE COURT ON JUNE 20, 2017 FOR A DEPENDENCY AND CUSTODY TRIAL. THERE IS AN OPEN DEPENDENCY ACTION INVOLVING THE THREE MINOR CHILDREN. THE TRIAL COMMENCED AND CONCLUDED ON THE SAME DAY. ... THE COURT CONDUCTED AN ORE TENUS TRIAL
....

"There were no [pretrial] motions discussed by any of the attorneys. There was a very extended discussion regarding why we were here. Per [the father's counsel], his client wanted the custody matter heard and that he never requested a trial. That this court had issued an order for a trial and they were here and ready. The court attempted to

2180368 and 2180369

remind [the father's counsel] that he had filed this custody issue in an open Child Support case. Requesting custody of the two minor male children. But, the vehicle that he used did not pertain to the males at all. The CS-2017-900017.00 is a case filed by 'DHR' Child Support Division, requesting support from [the father] as it concerns [the youngest daughter] who was now in 'DHR' custody. [DHR's counsel] also stated ... that the parent's attorney had requested the trial and this court had informed them that within the next ten (10) days a trial date would be available. ... The court went around the table to make sure all parties were aware that we were here for a dependency and custody trial."

In addition to the findings of dependency, the juvenile court ordered in the judgments that "[c]ustody of the minors shall remain as previous[ly] ordered. [The father's] Motion for Custody of the two male minors is Denied." In the judgments, the juvenile court also ordered that "[t]his matter remains set for a review as previously ordered." As explained by the juvenile-court judge at the trial, the orders rendered on June 13, 2017, and entered on June 15, 2017, had previously scheduled a "review hearing" for September 12, 2017.

On July 17, 2017, the father filed notices of appeal to the Jefferson Circuit Court, Bessemer Division ("the circuit court"), regarding the juvenile court's judgments in the sons' cases. On October 3, 2017, the circuit court entered orders transferring the appeals to this court for us to make a

2180368 and 2180369

determination regarding "whether [the juvenile-court judge had] designated a court reporter to transcribe a record of the proceedings in accordance with the provisions of Rule 10(b)(2) of the Alabama Rules of Appellate Procedure and Alabama Rule of Juvenile Procedure 20(B)."

On October 3, 2017, the father filed notices of appeal to this court challenging the circuit court's October 3, 2017, orders. We elected to treat the notices of appeal as petitions for the writ of mandamus. We granted the petitions in part and issued a writ directing the circuit court to set aside its orders transferring the appeals to our court. We held that,

"because the father appealed to the circuit court, the circuit court has the responsibility to determine whether adequate records in the juvenile cases are available. The responsibility for that determination includes ensuring any necessary preparation of the records, such as the transcription of the June 20, 2017, hearing in the juvenile court."

Ex parte A.A., 263 So. 3d 1063, 1067 (Ala. Civ. App. 2018).

On November 16, 2018, the circuit court entered an order determining that the records in the sons' cases in the juvenile court were adequate for appellate review, and it transferred the appeals in the sons' cases to this court.

2180368 and 2180369

On May 17, 2019, after the record had been compiled, the appeals were submitted on the briefs of the father and DHR. After reviewing the briefs, we requested that the parties submit supplemental letter briefs to address whether the judgments were sufficiently final to invoke our jurisdiction over the appeals. We asked "whether the judgments of July 13, 2017, made a ruling on custody that was sufficient to make the judgments final. See, e.g., T.C. v. Mac.M., 96 So. 3d 115 (Ala. Civ. App. 2011)." The father submitted a letter brief arguing that the judgments were final because, he said, the judgments determined that the sons were dependent, awarded custody of the sons to the maternal aunt and maternal uncle, and denied the father's "Motion for Hearing on Father's Entitlement to Custody of His Sons." DHR submitted a letter brief, stating, in relevant part:

"On July 13, 2017, the juvenile court entered an order adjudicating [the sons and the youngest daughter] to be dependent and continued custody 'as previously ordered.' ... Pursuant to T.C. v. Mac.M., 96 So. 3d 115 (Ala. Civ. App. 2011), the juvenile court's orders of custody entered November 17, 2016, January 31, 2017, June 16, 2017, and July 13, 2017 were pendente lite. Although the juvenile court adjudicated the children dependent in the July 13, 2017, order, there was not an award of custody 'incident to that determination' which would have created a final, appealable judgment. J.J. v.

2180368 and 2180369

J.H.W., 27 So. 3d 519 (Ala. Civ. App. 2008). While the intent of the juvenile court was likely to make a final disposition of custody, the order appears to have fallen short of achieving that goal. Therefore, DHR avers that the Court of Civil Appeals lacks jurisdiction over these matters."

We decided to ask the juvenile court to clarify the July 13, 2017, judgments. On June 27, 2019, we entered the following order:

"The juvenile court is reinvested with jurisdiction of this matter for a period of 14 days from the date of this order to clarify whether the order entered on July 13, 2017, was intended to resolve only the question of the children's dependency, leaving the ultimate disposition of the children's custody to a later date, or whether, by stating that '[c]ustody of the [children] shall remain as previous[ly] ordered,' the juvenile court intended the order to include a final disposition of the children's custody."

We did not receive a response. To ensure that the juvenile court, and not the circuit court, had received the reinvestment order, we reissued the June 27, 2019, order again on July 12, 2019, reinvesting the juvenile court with jurisdiction for 14 days to clarify the July 13, 2017, judgments.

On July 29, 2019, more than 14 days after this court issued our reinvestment order a second time, an order was entered in the juvenile court. Among other things, the July

2180368 and 2180369

29, 2019, order noted that the July 13, 2017, judgments adjudicated the sons and the youngest daughter to be dependent and stated that the juvenile court had conducted a permanency hearing. The July 29, 2019, order purports to grant custody of the youngest daughter to DHR, to grant custody of the sons to the father and the mother, to discontinue child support, and to set the matter for another hearing to be held on October 23, 2019. The July 29, 2019, order was apparently signed by a referee and not by the juvenile-court judge who entered the July 13, 2017, judgments.

Discussion

We first address the July 29, 2019, order that was entered after this court reinvested the juvenile court with jurisdiction. Such an order is void if it addresses matters outside the scope of an appellate court's mandate. See Ex parte DuBose Constr. Co., 92 So. 3d 49, 58 (Ala. 2012). We reinvested the juvenile court with jurisdiction for a specific purpose--to clarify whether it intended the July 13, 2017, judgments to include a final disposition of the children's custody. The order entered in response was not from the juvenile-court judge who entered the July 13, 2017, judgments.

2180368 and 2180369

Moreover, the rulings in the July 29, 2019, order do not clarify the July 13, 2017, judgments and far exceed our instructions. Among other rulings, the July 29, 2019, order purported to grant custody of the sons to the father and the mother and eliminated the parents' child-support obligation. The July 29, 2019, order, therefore, was entered outside the scope of our order reinvesting the juvenile court with jurisdiction. Furthermore, the July 29, 2019, order was entered beyond the period in which jurisdiction had been reinvested in the juvenile court. We reinvested jurisdiction in the juvenile court for a limited period. After that period expired, jurisdiction reverted to this court. When this court has jurisdiction, "the trial court loses jurisdiction to act except in matters entirely collateral to the appeal." Ward v. Ullery, 412 So. 2d 796, 797 (Ala. Civ. App. 1982). Therefore, the July 29, 2019, order was entered without jurisdiction and is void.

We turn, now, to the appeals before us from the July 13, 2017, judgments. "[J]urisdictional 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.

2180368 and 2180369

1987). A nonfinal order cannot support an appeal. T.C. v. Mac.M., 96 So. 3d 115, 116 (Ala. Civ. App. 2011), aff'd, Ex parte T.C., 96 So. 3d 123 (Ala. 2012). In T.C. v. Mac.M., we stated:

"This court has explained the circumstances under which a juvenile court's order or judgment is sufficiently final to support an appeal:

"'Although a juvenile court's orders in a dependency case are, in one sense, never "final" because the court retains jurisdiction to modify its orders upon a showing of changed circumstances, see C.L. v. D.H., 916 So. 2d 622 (Ala. Civ. App. 2005); Committee Comments, Rule 4, Ala. R. App. P., this court has always treated formal dependency adjudications as final and appealable judgments despite the fact that they are scheduled for further review by the juvenile court.'

D.P. v. Limestone Cnty. Dep't of Human Res., 28 So. 3d 759, 762 (Ala. Civ. App. 2009) (holding that an order finding, with regard to the father, that reasonable efforts at reunification were no longer required of the Department of Human Resources was a permanency order that was sufficiently final to support an appeal; that order also expressly left in place previous awards of legal custody incident to dependency findings).

"In J.J. v. J.H.W., 27 So. 3d 519 (Ala. Civ. App. 2008), this court held that an order finding a child dependent and awarding custody to one party was sufficiently final to support the appeal, even though further review of certain motions filed by the parties concerning visitation were scheduled for a later review hearing. This court noted that the

2180368 and 2180369

order from which the appeal arose 'indicates an intent to dispose of all other pending matters,' 27 So. 3d at 521, and explained:

"'Under our caselaw, a formal determination by a juvenile court of a child's dependency coupled with an award of custody incident to that determination will give rise to an appealable final judgment even if the custody award is denominated as a "temporary" award and further review of the case is envisioned.'

"27 So. 3d at 522 (emphasis added). See also E.D. v. Madison Cnty. Dep't of Human Res., 68 So. 3d 163, 167 (Ala. Civ. App. 2010) (concluding that an order was sufficiently final to support an appeal when it 'addressed, among other things, the disposition of the child pursuant to the juvenile court's finding of dependency').

". . . .

"In this case, at the close of the September 21, 2010, hearing, the juvenile court expressly stated that it did not intend to determine the issue of the disposition of the child at that time. The juvenile court's subsequent order, entered on September 22, 2010, was not final because it did not contain a dependency finding 'coupled with an award of custody incident to that determination.' J.J. v. J.H.W., 27 So. 3d at 522. The only portion of the September 22, 2010, order that could be said to address custody is the handwritten provision: 'until 10/12/2010 as orders previously entered.' Thus, the juvenile court left in place its award of pendente lite custody of the child to the maternal grandparents. We therefore conclude that the September 22, 2010, order was an interlocutory order not capable of supporting the father's appeal."

96 So. 3d at 117-19 (footnote omitted).

2180368 and 2180369

In these cases, the father moved the court to determine his entitlement to custody of the sons on the ground that the juvenile court had not found him to be an unfit parent. The juvenile-court judge's comments in the record indicate that she determined that the father's motion was a request to be heard on the issue of dependency. The juvenile court emphasized at the trial that the matter being heard would not include a disposition of the children. Accordingly, we conclude that, in the judgments, the juvenile court intended the term "custody" in its references to a "dependency and custody trial" and in its denial of the "[the father's] Motion for Custody of the two male minors" to refer to the custody to which the father would have been entitled if the sons had been found not dependent. The judgments expressly leave the sons in the pendente lite custody of the maternal aunt and the maternal uncle, as previously ordered. As a result, the judgments do not include findings of dependency coupled with awards of custody incidental to those findings. We, therefore, must dismiss the appeals because they are taken from nonfinal judgments.

2180368--APPEAL DISMISSED.

2180368 and 2180369

2180369--APPEAL DISMISSED.

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

Moore and Edwards, JJ., concur in the result, without
writings.