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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

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P.I.M.

v.

Jefferson County Department of Human Resources

Appeal from Jefferson Juvenile Court  
(JU-15-915.02)

EDWARDS, Judge.

In January 2017, the Jefferson County Department of Human Resources ("DHR") filed a petition in the Jefferson Juvenile Court ("the juvenile court"), seeking to terminate the parental rights of P.I.M. ("the mother") to A.M.M. ("the

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child"). In May 2018, the juvenile court entered a judgment terminating the parental rights of the mother. After her timely postjudgment motion directed to the termination-of-parental-rights judgment was denied by operation of law, see Rule 1(B), Ala. R. Juv. P., and Rule 59.1, Ala. R. Civ. P., the mother, through counsel, filed a notice of appeal; the mother's appeal was assigned appeal number 2170945. The mother's counsel also filed contemporaneously with the notice of appeal a motion to withdraw as counsel for the mother. The juvenile court granted that motion and appointed new counsel to represent the mother on appeal. Because the mother's notice of appeal had been filed more than 14 days after the denial of the mother's postjudgment motion, we dismissed the mother's appeal on August 15, 2018. P.I.M. v. Jefferson Cty. Dep't Human Res. (No. 2170945, August 15, 2018), \_\_\_ So. 3d \_\_\_ (Ala. Civ. App. 2018) (table).

On August 17, 2018, the mother filed a Rule 60(b), Ala. R. Civ. P., motion in the juvenile court. On September 5, 2018, this court's certificate of judgment issued in appeal number 2170945. On that same date, the mother filed a notice of appeal, having concluded that her Rule 60(b) motion had

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been denied by operation of law; that appeal was assigned appeal number 2171141. On January 8, 2019, the mother filed in the juvenile court and in this court a motion for leave to file a revised Rule 60(b) motion; she also filed a revised Rule 60(b) motion in the juvenile court. Because the mother's Rule 60(b) motion was not capable of being denied by operation of law, and because her Rule 60(b) motion was therefore still pending in the juvenile court, this court, on January 29, 2019, dismissed the mother's appeal as having been taken from a nonfinal judgment. P.M. v. Jefferson Cty. Dep't Human Res. (No. 2171141, January 29, 2019), \_\_\_ So. 3d \_\_\_ (Ala. Civ. App. 2019) (table). We did not rule on the mother's motion for leave to file a revised Rule 60(b) motion, because it had become moot. This court's certificate of judgment in appeal number 2171141 issued on February 19, 2019.

On April 22, 2019, the juvenile court issued an order denying the mother's Rule 60(b) motion and her revised Rule 60(b) motion. The mother has timely appealed the order denying her Rule 60(b) motion. We dismiss the appeal.

We have explained that, as stated in Rule 60(b) itself, a party must seek leave of an appellate court to file a Rule

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60(b) motion during the pendency of an appeal in that court. See ArvinMeritor, Inc. v. Handley, 12 So. 3d 669, 693 (Ala. Civ. App. 2007). If a party neglects to do so, the trial court does not acquire jurisdiction over the Rule 60(b) motion. See Jenkins v. Covington, 939 So. 2d 31, 34 (Ala. Civ. App. 2006) (explaining that "it was incumbent upon the defendants to obtain leave from the appropriate appellate court ... in order for the defendants to file a valid motion under Rule 60(b) [while an appeal was pending] and in order for the trial court to have jurisdiction to rule upon that motion"). In addition, we have explained that the pendency of an appeal extends to the date that this court issues its certificate of judgment and not merely to the date that this court issues a decision. Ex parte Keeler, 262 So. 3d 1225, 1228 (Ala. Civ. App. 2017) (quoting Landry v. Landry, 91 So. 3d 88, 90 (Ala. Civ. App. 2012)). Therefore, as we explained in Keeler, a Rule 60(b) motion filed after the announcement of a decision of this court but before the issuance of this court's certificate of judgment and without leave from this court does not invoke the jurisdiction of the trial court over that motion. Keeler, 262 So. 3d at 1228.

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The mother's initial Rule 60(b) motion was filed after this court had dismissed her appeal in appeal number 2170945. However, we had not yet issued our certificate of judgment when the mother filed that motion. Thus, like the trial court in Keeler, the juvenile court in the present case never acquired jurisdiction over the mother's initial Rule 60(b) motion.

The mother's revised Rule 60(b) motion was filed during the pendency of the mother's second appeal, i.e., appeal number 2171141. Although the mother properly sought leave from this court when she filed her revised Rule 60(b) motion, this court did not grant the requested leave; instead, we dismissed the mother's second appeal, mooting the mother's motion. Therefore, the juvenile court also did not acquire jurisdiction over the mother's revised Rule 60(b) motion. See Keeler, 262 So. 3d at 1228.

"[I]t is a fundamental principle of appellate procedure, one that we note ex mero motu, that an appeal will not properly lie from a void judgment entered by a trial court." Jenkins, 939 So. 2d at 34. Because the juvenile court did not acquire jurisdiction over the mother's initial Rule 60(b)

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motion or her revised Rule 60(b) motion, the April 22, 2019, order denying those motions is void and will not support the mother's appeal. See Keeler, 262 So. 2d at 1228. Accordingly, we dismiss the mother's appeal. See Brown v. Foster, 785 So. 2d 1141, 1142 (Ala. Civ. App. 2000) (dismissing an appeal from a trial court's order purportedly denying a Rule 60(b) motion that had been filed without leave of this court).

APPEAL DISMISSED.

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