**Rel: June 5, 2020**



# ALABAMA COURT OF CIVIL APPEALS

**OCTOBER TERM, 2019-2020**

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**2180986 and 2180987**

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**M.H.**

**v.**

**Calhoun County Department of Human Resources**

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**2181048 and 2181049**

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**J.D.C.**

**v.**

**Calhoun County Department of Human Resources**

**Appeals from Calhoun Juvenile Court**
**(JU-17-186.02 and JU-17-187.02)**

2180986, 2180987, 2181048, and 2181049

THOMPSON, Presiding Judge.

On July 11, 2018, the Calhoun County Department of Human Resources ("DHR") filed petitions in the Calhoun Juvenile Court ("the juvenile court") seeking to terminate the parental rights of M.H. ("the mother") and J.D.C. ("the father") to their two minor children. The mother answered, opposing DHR's petitions, and she filed counterclaims seeking an award of custody of the children. The father also filed answers opposing DHR's termination petitions.

The juvenile court conducted an ore tenus hearing. On August 16, 2019, the juvenile court entered judgments terminating the parental rights of the mother and the father to the two children. The mother timely appealed on August 27, 2019. The mother's appeals were assigned appeal numbers 2180986 and 2180987. The father filed a postjudgment motion on August 30, 2019. That postjudgment motion was denied by operation of law, and the father timely appealed. The father's appeals were assigned appeal numbers 2181048 and 2181049.

On January 6, 2020, the mother's counsel filed a suggestion of death stating that the mother died on December

5, 2019. An appeal is not abated upon the death of a party to the appeal. See Rule 43(a), Ala. R. App. P. ("When the death of a party has been suggested, the proceeding shall not abate, but shall continue or be disposed of as the appellate court may direct."). However, this court noticed, ex mero motu, that, given the mother's death, the mother's appeals of the judgments terminating her parental rights might have been rendered moot. "[M]ootness implicates a court's subject-matter jurisdiction." Talladega Cty. Comm'n v. State ex rel. City of Lincoln, [Ms. 1180395, Feb. 21, 2020] ___ So. 3d ___, ___ (Ala. 2020). For that reason, on January 14, 2020, this court issued an order reinvesting the juvenile court with jurisdiction to conduct a hearing and to enter a new judgment or judgments in compliance with C.J. v. T.J., 225 So. 3d 115 (Ala. Civ. App. 2016), discussed infra. Also on January 14, 2020, this court, ex mero motu, entered an order that unconsolidated the mother's appeals from the father's appeals.

After conducting a hearing, the juvenile court entered a January 30, 2020, amended judgment in which it again determined that the children's best interests would be served by the termination of the mother's parental rights. On

February 14, 2020, this court entered an order stating that it would consider the possible mootness of the mother's appeals upon submission. After submission, this court has decided to again consolidate the mother's appeals and the father's appeals in order to consider all matters pertaining to the children at issue in one opinion.

As an initial matter, we address the issue whether this court has jurisdiction over the mother's appeals. If issues raised in an appeal are moot, this court lacks jurisdiction over the appeal. Talladega Cty. Comm'n v. State ex rel. City of Lincoln, supra; K.L.R. v. K.G.S., 201 So. 3d 1200, 1203 (Ala. Civ. App. 2016).

An appeal of a judgment involving an award of monetary damages does not automatically become moot upon the death of a party. See, e.g., Slamen v. Slamen, 254 So. 3d 188, 191 n. 1 (Ala. 2017); Cottom v. Cottom, 275 So. 3d 1158, 1159 (Ala. Civ. App. 2018); International Mgmt. Grp., Inc. v. Bryant Bank, 274 So. 3d 1003, 1005 (Ala. Civ. App. 2018); and Woodruff v. Gazebo East Apartments, 181 So. 3d 1076, 1080 (Ala. Civ. App. 2015). The mother's appeals, however, do not

involve monetary judgments but, instead, implicate only personal rights.

> "'"A moot case or question is a case or question in or on which there is no real controversy; a case which seeks to determine an abstract question which does not rest on existing facts or rights, or involve conflicting rights so far as plaintiff is concerned."' Case v. Alabama State Bar, 939 So. 2d 881, 884 (Ala. 2006) (quoting American Fed'n of State, County & Mun. Employees v. Dawkins, 268 Ala. 13, 18, 104 So. 2d 827, 830-31 (1958)). 'The test for mootness is commonly stated as whether the court's action on the merits would affect the rights of the parties.' Crawford v. State, 153 S.W.3d 497, 501 (Tex. App. 2004) (citing VE Corp. v. Ernst & Young, 860 S.W.2d 83, 84 (Tex. 1993)). 'A case becomes moot if at any stage there ceases to be an actual controversy between the parties.' Id. (emphasis added) (citing National Collegiate Athletic Ass'n v. Jones, 1 S.W.3d 83, 86 (Tex. 1999)).
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> "... 'A moot case lacks justiciability.' Crawford, 153 S.W.3d at 501. Thus, '[a]n action that originally was based upon a justiciable controversy cannot be maintained on appeal if the questions raised in it have become moot by subsequent acts or events.' Case, 939 So. 2d at 884 (citing Employees of Montgomery County Sheriff's Dep't v. Marshall, 893 So. 2d 326, 330 (Ala. 2004))."

Chapman v. Gooden, 974 So. 2d 972, 983-84 (Ala. 2007).

Our supreme court has explained:

> "Mootness is a time dimension of standing. See In re Allison G., 276 Conn. 146, 156, 883 A.2d 1226, 1231 (2005) ('One commentator has described mootness as "the doctrine of standing set in a time frame:

> [t]he requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." H. Monaghan, "Constitutional Adjudication: The Who and When," 82 Yale L.J. 1363, 1384 (1973).'). See also Presiding Judge Yates's special writing in Auburn Medical Center, Inc. v. Alabama State Health Planning & Development Agency, 848 So. 2d 269 (Ala. Civ. App. 2002), in which she stated:
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> > "'"Justiciability is a compound concept, composed of a number of distinct elements. Chief among these elements is the requirement that a plaintiff have 'standing to invoke the power of the court in his behalf.'" Ex parte State ex rel. James, 711 So. 2d 952, 960 (Ala. 1998), quoting Ex parte Izundu, 568 So. 2d 771, 772 (Ala. 1990). ...
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> > > "'"Mootness doctrine encompasses the circumstances that destroy the justiciability of a suit previously suitable for determination. It is not enough that the initial requirements of standing and ripeness have been satisfied; the suit must remain alive throughout the course of litigation, to the moment of final appellate disposition."
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> > "'13A Charles A. Wright et al., Federal Practice & Procedure § 3533, at 211 (2d ed. 1984) (footnote omitted).'
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> "848 So. 2d at 272-73 (Yates, P.J., concurring in the result) (emphasis added)."

Pharmacia Corp. v. Suggs, 932 So. 2d 95, 98 (Ala. 2005).

In these cases, the question is whether the mother's death during the pendency of her appeals of the judgments that terminated her parental rights rendered the appeals moot. This court has considered a similar issue in C.J. v. T.J., 225 So. 3d 115 (Ala. Civ. App. 2016). In that case, a juvenile court entered a judgment terminating the parental rights of C.J., the mother in that case, to her minor child, and C.J. appealed. While the appeal was pending in this court, C.J. died, and her attorney filed in this court a suggestion of death and a motion to dismiss C.J.'s appeal. 255 So. 3d at 116. This court held that C.J.'s appeal of the judgment terminating her parental rights was not automatically mooted because that judgment also implicated the rights of C.J.'s minor child, explaining:

> "Although this state has not considered the specific question whether the death of a parent while an appeal from a termination-of-parental-rights judgment is pending moots that appeal, other states have considered that question. Courts in Georgia, Oregon, and New Jersey have held that the intervening death of a parent renders moot that parent's appeal from a termination-of-parental-rights judgment. See In re A.O.A., 172 Ga. App. 364, 323 S.E.2d 208 (1984); In re Holland, 290 Or. 765, 625 P.2d 1318 (1981); and New Jersey Div. of Youth & Family Servs. v. P.F. (In re I.R., a minor), (Docket No. FN-16-116-07) (N.J. Super. Ct. App. Div., Jan. 2, 2009) (not reported in A.2d).

> "In In re A.O.A., the Court of Appeals of Georgia held, without discussion, that the father's appeal from a judgment terminating his parental rights had been mooted as a result of the father's intervening death. 172 Ga. App. at 364, 323 S.E.2d at 208-09. In In re Holland, the Supreme Court of Oregon held that the appeal filed by the mother from a judgment terminating her parental rights to her children had been mooted by the mother's intervening death, but the court noted that '[t]he rights of the children to any benefits which may accrue from their relationship to their mother (i.e., insurance or social security proceeds) have not been asserted, but they will not be foreclosed by a determination that their mother's case is moot.' 290 Or. at 768, 625 P.2d at 1319. In P.F., the appellate division of the Superior Court of New Jersey held that the appeal filed by a parent, who subsequently died while the appeal was pending, did 'not have any practical effect on the initial controversy,' and it dismissed the appeal as moot.
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> "On the other hand, courts in Florida and Texas have held that the intervening death of a parent following the filing of a notice of appeal from a judgment terminating the parent's parental rights does not necessarily moot that parent's appeal. See C.A. v. Department of Children & Families, 16 So. 3d 888 (Fla. Dist. Ct. App. 2009); and In re S.N., 272 S.W.3d 45 (Tex. App. 2008).
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> "In C.A., the Fourth District Court of Appeals of Florida considered the question whether the father's death, which resulted from an automobile accident that occurred while his appeal from a judgment terminating his parental rights to his child was pending, rendered his appeal moot. The court noted that the Florida Department of Children and Family Services, a party to the case, had averred 'that[,] even if the final judgment [terminating the father's parental rights] were soundly based and affirmed, it may not now be in the

best interests of the child to do so' because 'a [termination-of-parental-rights judgment] may have adverse legal consequences for [the child] in regard to any interest she may have in a wrongful death action related to her father's death.' C.A., 16 So. 3d at 889. In determining how to proceed, the court initially noted that 'the overriding concern in [termination-of-parental-rights] cases is for the best interests of the child, not the parents.' 16 So. 3d at 889. The court then reasoned that '[t]he term best interests of the child is broad enough to encompass property interests of the child related to her natural parent,' id., and that 'the death of the father should not render moot the jurisdiction of either [the court of appeals] or the trial court as to the collateral property rights affected by the [father's] death,' 16 So. 3d at 890. The court further reasoned that, '[r]ather than rendering [the appeal] moot, the death of the father simply raises new issues as to whether termination is in [the child's] best interests.' Id. The court noted that there was no basis in the record from which it could determine whether, considering the father's intervening death, termination of the father's parental rights would be in the best interests of the child. Id. Therefore, it abated the appeal and relinquished jurisdiction to the trial court to take additional evidence on that issue and to determine 'whether, considering the best interests of the child, a judgment terminating the parental rights of the father should be made final in spite of collateral consequences.' Id.

"In In re S.N., a Texas Court of Appeals considered whether a father's intervening death mooted an appeal from a judgment terminating his parental rights to his child. Initially, that court noted that an appeal concerning purely personal rights would be mooted by the death of the party who was seeking to protect that right, but, the court said, an appeal concerning a property right would not be rendered moot. 272 S.W.3d at 57. The court

> recognized that, if the termination-of-parental-rights judgment were to be reversed, 'the parent-child relationship between [the father] and [the child] would be restored, and [the child] would potentially be entitled to a share of his estate.' Id. Because a property right of the child was at issue, the court concluded that the father's death did not moot the appeal. Id.
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> "We find the reasoning of the cases decided in Florida and Texas persuasive. '"It is well settled [in Alabama] that the paramount concern in proceedings to terminate parental rights is the best interest of the child."' B.H. v. M.F.J., 197 So. 3d 997, 1000 (Ala. Civ. App. 2015) (quoting R.S. v. R.G., 995 So. 2d 893, 903 (Ala. Civ. App. 2008)). In the present case, both the appellee and the guardian ad litem have asserted that it might not be in the best interests of the child for the judgment terminating [C.J.'s] parental rights to stand because that judgment could deprive the child of her property rights, specifically, the rights of the child to inherit from [C.J.] and/or to receive proceeds from any action arising from the wrongful death of [C.J.]. Because this case does not involve merely a personal interest of [C.J.] that ceased to exist at her death but, instead, involves a property interest of the child that exists because of [C.J.'s] death, we conclude that this appeal is not moot."

C.J. v. T.J., 225 So. 3d at 117-19 (emphasis added). Thus, this court dismissed the appeal with instructions to the juvenile court to determine whether the termination of C.J.'s parental rights remained in the child's best interests given any property interests that might have arisen as a result of C.J.'s death. C.J. v. T.J., 225 So. 3d at 119.

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In these appeals, after the mother's counsel filed the suggestion of death, this court entered its January 14, 2020, order requiring the juvenile court to consider whether any property rights in favor of the children might exist because of the mother's death and whether it remained in the children's best interests for the mother's parental rights to be terminated. The juvenile court conducted a hearing and entered a January 30, 2020, amended judgment in which it found:

> "The Court took testimony regarding the living situation of the mother, the circumstances of the mother's death, and any possible litigation regarding her death.
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> "All parties stipulated that the mother lived in extreme poverty, and to the best information available, owned no property and had no estate at the time of her death. Testimony was also taken that the mother had no work history to speak of. To the best information currently available, the mother had been seriously ill for a period of time prior to her death, and the cause of death appears to be natural.
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> "The Court having determined that there is no divisible estate of the mother and that the possibility of any litigation regarding the death of the mother is extremely remote, finds that it remains in the best interest of the children to terminate the mother's parental rights."

The juvenile court's termination judgments, as amended on January 30, 2020, conclude, in pertinent part, that grounds exist warranting the termination of the mother's parental rights, that there are no viable alternatives to the termination of her parental rights, that no property rights exist or might arise in favor of the children as a result of the mother's death, and that the children's best interests are served by the termination of the mother's parental rights.

In the appellate brief submitted to this court on behalf of the mother, the mother's counsel challenges only the sufficiency of the evidence regarding whether the mother's parental rights were properly terminated under § 12-15-319, Ala. Code 1975, and whether viable alternatives to the termination of her parental rights existed. The mother's counsel does not challenge the juvenile court's January 30, 2020, determinations that the children would have no inheritance or other property rights as a result of the mother's death; in fact, she admits in the appellate brief submitted on behalf of the mother that no property rights accrued in favor of the children as a result of the mother's death. The mother's counsel also does not challenge the

juvenile court's finding in its January 30, 2020, amended judgment that the best interests of the children continued to be served by a termination of the mother's parental rights. In the absence of an argument and a showing that those findings are erroneous, this court must presume that those factual findings are correct. B.D.S. v. Calhoun Cty. Dep't of Human Res., 881 So. 2d 1042, 1052 (Ala. Civ. App. 2003) ("A trial court's determination of factual issues following the presentation of ore tenus evidence is presumed to be correct and will not be disturbed on appeal absent a showing of palpable error.").

The mother's counsel contends that the mother's appeals are not mooted because, she contends, a reversal based on the merits of her argument that a viable alternative to termination existed would have a "practical effect," e.g., the children might be placed with a relative. However, that issue pertains to the mother's personal rights, i.e., whether there is a viable alternative to the termination of the mother's rights to the children. "[T]he basis for the requirement that viable alternatives be pursued before the termination of parental rights grew out of the strict-scrutiny

analysis that had to be applied to any state action interfering with the fundamental right of a parent to the care, custody, and companionship of his or her child." A.E.T. v. Limestone Cty. Dep't of Human Res., 49 So. 3d 1212, 1217 (Ala. Civ. App. 2010) (emphasis added). In A.E.T., supra, the court discussed the issue whether a juvenile court could terminate parental rights even if a viable alternative to termination existed when there was no chance for the parent and child to be reunited. See A.E.T., 49 So. 3d at 1217-19. This court concluded that "the existence of ... a potentially viable placement alternative would not, in and of itself, prevent the juvenile court from terminating the [parent's] parental rights, if reunification of the [parent] and the child were no longer a foreseeable alternative." 49 So. 3d at 1219.

"'[I]t is not within the province of appellate courts to decide abstract, hypothetical, or moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow.'" City of Birmingham v. Southern Bell Tel. & Tel. Co., 234 Ala. 526, 529, 176 So. 301, 303 (1937) (quoting 4 C.J.S., Appeal and Error, § 40, pp.

117-18). See also South Alabama Gas Dist. v. Knight, 138 So. 3d 971, 977 (Ala. 2013) ("A matter is moot if a court decision will not have 'a more-than-speculative chance' of affecting a party's rights in the future."); Rice v. Sinkfield, 732 So. 2d 993, 993 (Ala. 1998) ("The plaintiffs' request for modification of the 1993 consent judgment -— which is based on the 1990 federal census -- is moot because it would not affect future legislative elections."); and Kids' Klub, Inc. v. State Dep't of Human Res., 874 So. 2d 1075, 1084 (Ala. Civ. App. 2003) (declining to reach an issue and determining that issue to be moot when "a decision favorable to [the appellant] would provide it no practical relief").

As already indicated, there is no question that any issues pertaining to the mother's personal rights were mooted by the death of the mother. If this court were to reverse the termination-of-parental-rights judgments, such a holding would not operate to restore the mother's personal, parental rights. As a result of the mother's death, there is no possibility that the mother will be reunited with the children.

The arguments in the brief submitted on behalf of the mother pertain solely to the mother's personal interests in

her parental rights to the children. Accordingly, "[a]ny opinion on the issues presented would no longer affect the rights of [the mother] or provide [the mother] with any 'actual relief' from which a 'practical result can follow.'" Florence Surgery Ctr., L.P. v. Eye Surgery Ctr. of Florence, LLC, 121 So. 3d 386, 389 (Ala. Civ. App. 2013) (quoting Caldwell v. Loveless, 17 Ala. App. 381, 382, 85 So. 307, 307 (1920)). We conclude that, given the issues raised in the brief filed on behalf of the mother, the mother's appeals are mooted by her death, and this court lacks jurisdiction over the appeals. See K.L.R. v. K.G.S., 201 So. 3d at 1203 ("[T]he issues raised in the appeal are moot, and the appeal must be dismissed."); and Pharmacia Corp. v. Suggs, supra.

We next address the merits of the father's appeals. The record indicates the following facts pertinent to the issues raised by the father. The father testified that he and the mother had been in a relationship for 13 years. At the time of the termination hearing, the children were 9 and 11 years old. The parents and the children resided in North Carolina until late 2016, when the family moved to Alabama. In Alabama, the family lived in a "camper."

In March 2017, DHR received reports causing its social workers to investigate the family. DHR social workers Patricia Conner and Teresa Houston, among others, testified on behalf of DHR. According to their testimony, the children were taken into protective custody after an incident in which the mother "cut" herself. The father testified that the mother had cut herself only one other time during their 13-year relationship. However, he also stated that he had never witnessed the mother cutting herself but that he had sometimes seen the after-effects of such an incident. The mother testified regarding her history of cutting, and she stated that she had rarely cut herself once the children were born. We note that none of the witnesses defined for the juvenile court what was meant by "cutting" or whether the incident resulting in the children's being placed in protective custody might have been interpreted as a possible suicide attempt by the mother. Given the incident, as well as the dirty condition of the camper, which was also crammed with liquor bottles, DHR, as noted earlier, took the children into protective custody.

At the initial March 2017 Individualized Service Plan ("ISP") meeting, DHR offered the parents parenting classes, family counseling, visitation, and other assessments. The mother was immediately provided individual counseling, but the father was not offered that counseling until his paternity was established in late 2017 or early 2018. Conner testified that DHR had always considered the father to be the children's father and was able to offer him some services. However, she explained that DHR could not make individual referrals or obtain Medicaid reimbursement for providers for individual services for the father until his paternity was established.

The father and the mother attended family counseling. However, in early 2018, DHR arranged for individual counseling for the father based on a recommendation from his psychological evaluation. The father refused to attend individual counseling, stating that he did not need it.

The father testified that, although he had submitted to several random drug screens, he had tested positive for drugs only once, and that was for "benzos." He stated that he must have accidentally taken some of the mother's medications on that occasion. However, on cross-examination, DHR presented

evidence indicating that the father had later submitted to a hair-follicle test that was positive for opiates, oxycodone, and hydrocodone. The father admitted that he did not have a prescription for any of those prescription medications. He stated that he might have again accidentally used the mother's medications. The father's other drug screens were negative. Although DHR was concerned about the mother's possible abuse of prescription medications, it did not appear to be concerned about the father's abusing those medications or taking illegal drugs, as it did not drug screen the father regularly or present evidence at the termination hearing concerning his possible use or abuse of drugs. However, the foregoing illustrates one of several instances in which the juvenile court could have determined that the father's testimony explaining facts not favorable to him was not always credible.

The father has been consistently employed throughout the time the children have been in foster care. The father first worked for a knife manufacturer, then, in early 2018, he began working for a construction company. The father testified at the termination hearing that he was earning $15 per hour at

his full-time employment. The father had never paid child support for the children.

As mentioned, at the time the children were taken into protective custody in March 2017, the family was living in a camper. After the children were taken into protective custody, the parents moved repeatedly between motels or hotels. In the fall of 2017, the parents were living in a tent in a park near a Walmart store. The father testified that, in October 2017, T.C., a man they had met at the park, offered to allow the parents to live in his basement. The father stated that the parents accepted that offer because it was growing too cold to continue to live in the tent.

The parents lived in a tent in T.C.'s basement from approximately October 2017 through April 2019. The father stated that the parents paid T.C. $500 per month in rent. The father admitted that T.C. would not allow DHR to visit or inspect the home. The father testified that it was never his intent that the children be returned to the parents' custody while they were living in T.C.'s home.

The father stated that the relationship with T.C. became strained and that, either in April or May 2019, the parents

moved into a hotel. The father explained that, at the time of the August 2019 termination hearing, he and the mother had been living in the hotel for three or four months. The father testified that he and the mother had moved because they could no longer get along with T.C. The father conceded that he had not informed DHR social workers that he and the mother had moved, and he agreed that the hotel was not a suitable place for the children to return. The father admitted that, at the time of the termination hearing, he could not provide a home for the children. However, he stated that he would be able to afford an apartment within six weeks after the termination hearing.

Houston, the DHR social worker assigned to the case from January 2019 through the termination hearing, testified that she had had no contact with the parents other than at a review hearing. Houston stated that the parents refused services and had not maintained contact with DHR during the time she worked on the case. Rather, she stated, the parents' position was that they preferred that custody of the children be awarded to M.O.H., a maternal aunt of the children.

The primary focus of the two days of testimony in the termination-of-parental-rights hearing was the parents' contention that M.O.H. was a suitable relative placement for the children that constituted a viable alternative to the termination of their parental rights. We note that the parents had offered other people as possible placements for the children, but those people were either unwilling or unable to serve as a placement or were not relatives of the family. The father does not address those possible placements in his appellate brief, so we will not address the reasons DHR rejected those people as appropriate placements for the children.

M.O.H. is married to the mother's brother, M.H. ("the uncle"). The uncle has an extensive criminal history, and the parents have no relationship with him. M.O.H. and the uncle have been married for 19 years, but they have been separated for 13 years. M.O.H. stated that she had not had contact with the uncle in several years and that she did not know the uncle's whereabouts at the time of the termination hearing.

According to M.O.H., the parents and the children had lived "off and on" with M.O.H. during the time they had lived

in North Carolina and before they moved to Alabama.[1] M.O.H.'s age is not set forth in the record on appeal. She has two adult children, neither of whom live with her. In 1993, M.O.H. was investigated by North Carolina's Department of Social Services ("NCDSS"). However, Conner testified that, because of the length of time that has elapsed since that investigation, the pertinent NCDSS records have been destroyed. M.O.H. admitted that she had known that the children were in foster care since March 2017 but that she had not contacted DHR to become a placement for the children. The parents provided Conner with M.O.H.'s name some time in early 2018, after DHR changed the children's permanency plan to "termination."

Conner testified that she contacted M.O.H. in March 2018 and that M.O.H. expressed her willingness to serve as a placement for the children. DHR then arranged for NCDSS to conduct an evaluation of M.O.H.'s home. When NCDSS contacted M.O.H. in March 2018 to conduct that home evaluation, however,

[1]The reason for the parents' move to Alabama is not revealed in the record. We note that the father answered vaguely about North Carolina's Department of Social Services' contacts with the family and the timing of those contacts, but the record does not indicate that those contacts were the reason the family moved from North Carolina to Alabama.

M.O.H. refused to allow the NCDSS workers to come to her home, which she shared with her mother. M.O.H. explained to NCDSS that another family member had just moved into the family home and that there would not be sufficient space for the children.

In late April 2018, M.O.H. contacted Conner to say that she had obtained her own apartment and would again like to arrange a home evaluation so that she could be considered as a placement for the children. Conner then arranged again for NCDSS to conduct a home evaluation. That evaluation was ultimately conducted and approved by NCDSS, and DHR learned of that approval in September 2018. However, the ISP team in Alabama, which comprised seven members, did not immediately approve the transfer of the children to M.O.H.'s home. Conner explained that the members of the ISP team were concerned that M.O.H. had had involvement with NCDSS and there was no explanation of the nature of that involvement, that the children had not seen M.O.H. in two years, that the children said they did not remember M.O.H.,[2] and that the uncle might have contact with the children.

[2]In her testimony, M.O.H. speculated that the children might not have remembered her because DHR social workers referred to her a "Martha," but her name within the family is "Marty."

DHR established a schedule of visitation for M.O.H. M.O.H. began contacting the children by telephone in late September or early October 2018. In January 2019, she traveled by train to Alabama to visit the children. Conner testified that she picked up M.O.H. from the train station and transported her on the two-and-a-half-hour trip to where the children lived. M.O.H. testified that the visits, which were supervised in a truck-stop restaurant, went well.

In late February 2019, M.O.H. traveled to Alabama for what was either her third or fourth visitation with the children, and she stayed overnight with the parents before the visit. Suzanne Liner, a DHR services provider, testified that on February 25, 2019, she picked up M.O.H. from DHR's office to transport her on the two-hour trip to the town in which the children were living in their therapeutic foster home. The reason the children were placed in a therapeutic foster home is discussed later in this opinion. Liner stated that M.O.H. fell asleep approximately 30 minutes into the trip and that, when they arrived at the meeting place, Liner was unable to awaken M.O.H. Paramedics were called and transported M.O.H. to a local hospital.

Liner testified that, while she was sitting with M.O.H. in the hospital emergency room, M.O.H. pulled a prescription bottle from her pocket and put the bottle to her mouth. Liner admitted that she did not know whether M.O.H. had actually taken any medication. However, Liner testified that she informed the hospital personnel of that incident. The mother's attorney successfully objected to Liner's attempt to testify regarding what the treating physician said in response to her report.

M.O.H. testified that she had had a "brain infection" (probably encephalitis, although M.O.H. could state only that she believed that that was the diagnosis) and that she had remained in Alabama for three days before returning to North Carolina. DHR canceled all visitation between M.O.H. and the children after that date.

M.O.H. stated that she is in good health. However, M.O.H. stated that she receives disability income for degenerative disk disease in her back and that she also has fibromyalgia, a bad hip, and restless-leg syndrome. M.O.H. takes several medications for those conditions, including Percocet and a muscle relaxer. In addition, M.O.H. takes

medications for depression and anxiety. M.O.H. also acknowledged that she takes medications for diabetes and is seeking treatment from a neurologist with regard to the February 25, 2019, incident she suffered in Alabama. At the time of the February 25, 2019, incident, M.O.H. was diagnosed with congestive heart failure, and she admitted that she takes two medications for that condition.

We note that, during her testimony, M.O.H. stated that her hospitalization occurred in September or October 2018 and that she had visited the children a number of times. After a lengthy exchange, M.O.H. conceded that DHR's time line, set forth above, was accurate. It is not clear from the record whether M.O.H. was confused about the timing and the number of visitations or whether her initial testimony was intentionally misleading.

Houston testified that she thought M.O.H.'s health conditions precluded her as a viable placement for the children. Houston acknowledged that she had not met M.O.H. before the termination hearing and that, based on her observations of M.O.H. at the termination hearing, she could

not observe any condition that would prevent M.O.H. from caring for the children.

M.O.H. receives $843 per month in disability income. Her rent and utilities total approximately $200 per month. M.O.H. stated that she could support the children. Questioning from the parents' attorneys brought up the concept of a "kinship placement," pursuant to which M.O.H. might receive additional state support for the benefit of the children. However, other questioning indicated that because M.O.H. remained married to the uncle, who has a criminal record, she would not qualify for that status and that she would not qualify for one year following a divorce from the uncle.

M.O.H. testified that, only a couple of months before the termination hearing, NCDSS had placed in her home her two-year-old great-niece. M.O.H. testified that she was properly caring for that child and that she could also take care of the two children at issue in these appeals.

M.O.H. lives near other members of the parents' extended family in North Carolina. Neither parent presented evidence regarding those extended family members' relationships to the children or the children's familiarity with those extended

family members. In her testimony, M.O.H. stated that she would abide by any order specifying that the parents not have unsupervised contact with the children. The father testified that he has a good job in Alabama and that he and the mother were not currently planning to move back to North Carolina if the children were placed with M.O.H.

The children are in a therapeutic foster home. Alex Teal and Sheila Grantham, the counselors for the children, testified that the 11-year-old child has an attachment disorder and has been diagnosed as having an explosive-temper disorder. That child's tantrums sometimes last hours. The nine-year-old has been diagnosed with attention-deficit disorder, and he is often violent toward other children. Teal stated that both children have progressed in this current foster home and that both children have benefited from the stability and routine that the home has provided. Grantham testified that it would not be in the children's best interests to remove them from their current foster home, where they are responding well to stability and are progressing well.

E.S. ("the foster mother") testified that both children's behavioral problems are amplified in the days immediately preceding a visit with the parents, and even more so when they were visiting M.O.H. The foster mother stated that the 11-year-old had soiled his pants during tantrums before those visits. The foster mother testified that she and her husband have been foster parents for 38 years and that they have had more than 100 children in their home during that time. The foster mother has adopted two of those previous foster children; one is an adult and the other, who is 14 years old, resides in the home with the foster mother, her husband, and the children at issue in these appeals. The foster mother and her husband testified that they want to adopt the children. The foster mother denied that she had encouraged the children in their bad reactions to visiting the parents or in their statements that they wanted to be adopted.

The children each testified at the termination hearing. In pertinent part, each child testified that he wanted the parents' parental rights terminated so that he could be adopted by the foster parents. Each child also testified that he had little to no recollection of M.O.H. and that he had not

wanted and did not want to visit her. The children's testimony was filled with vague answers such as "I don't know" to many questions, and the value of much of their testimony is questionable. In essence, the children testified that they no longer enjoyed their visitations with the parents or M.O.H., that they each wanted to stay in the home of the foster parents, and that they each wanted to be adopted by the foster parents.

At the time of the termination hearing, the parents still had only monthly, supervised visitation. The record indicates that the parents had visited the children regularly and that they had missed only one visit at the end of May 2019 or the beginning of June 2019. The father insisted that the visits went well but that they were made more difficult by the fact that there was nothing to do at the restaurant at which they visited the children in the months immediately preceding the termination hearing. The father also stated that the topics of conversation were somewhat limited. The record indicates that DHR social workers had had to caution the father not to tell the children during visitations that they would soon be home or that they would be moving to North Carolina to live

with M.O.H.; such statements upset the children. The father admitted that both children had spoken to him during visitations about their desire to be adopted by the foster parents. The father testified, however, that he thought the children were simply used to living in that home.

In his appellate brief to this court, the father challenges the evidentiary support for the juvenile court's August 16, 2019, termination judgments. The grounds warranting a termination of parental rights are set forth in § 12-15-319, Ala. Code 1975. With regard to the consideration of a petition seeking to terminate parental rights, this court has explained:

> "A juvenile court is required to apply a two-pronged test in determining whether to terminate parental rights: (1) clear and convincing evidence must support a finding that the child is dependent; and (2) the court must properly consider and reject all viable alternatives to a termination of parental rights."

B.M. v. State, 895 So. 2d 319, 331 (Ala. Civ. App. 2004) (citing Ex parte Beasley, 564 So. 2d 950, 954 (Ala. 1990)). The appellate courts must apply a presumption of correctness in favor of the juvenile court's judgment in a termination-of-parental-rights action. J.C. v. State Dep't of Human Res.,

986 So. 2d 1172, 1183 (Ala. Civ. App. 2007). "Additionally, we will reverse a juvenile court's judgment terminating parental rights only if the record shows that the judgment is not supported by clear and convincing evidence." Id.

As an initial matter, we note that, throughout the two days of testimony at the ore tenus hearing, the parents' position was that the children should be placed in the home of M.O.H. However, in his appellate brief, the father also challenges the determination that grounds existed warranting the termination of his parental rights.

At the time of the termination hearing, although he visited regularly, the father had provided no support for the children. The father had moved into a hotel in the months before the termination hearing because, he said, he could no longer tolerate living with his previous landlord. The evidence indicates that the father knew the children could not be returned to the basement of his landlord's house but that he had elected to stay in that residence for more than one year rather than to seek other housing that might enable the children to return to his custody. The father testified that he was employed and earning $15 per hour, and, he said, he

could obtain an apartment within a few weeks to provide an appropriate home for the children. However, the father admitted that he had been earning $15 per hour since at least March 2019. It appears, therefore, he could have, but did not, attempt to provide a home for the children at least since that time.

The father had not taken part in some of the offered reunification services, and by January 2019 he had stopped participating in any services. Houston testified that the parents had had no contact with DHR after January 2019 and that they wanted the children to be placed with M.O.H. The father testified that he and the mother had focused on spending their extra income to offset M.O.H.'s expenses in traveling to Alabama to visit the children rather than in saving to obtain an apartment or a home of their own. The father admitted that he had instead focused on having the children placed in M.O.H.'s home. The father was given ample opportunity to adjust his circumstances to meet the needs of the children. See § 12-15-319(a). However, he failed to do so, and, for that reason, we cannot say that the juvenile court erred in determining that grounds existed warranting the

termination of his parental rights. A.D.B.H. v. Houston Cty. Dep't of Human Res., 1 So. 3d 53, 63 (Ala. Civ. App. 2008). See also L.T. v. W.L., 47 So. 3d 1241, 1248 (Ala. Civ. App. 2009) (affirming a termination judgment when "[t]he mother fail[ed] to recognize that she need not be unable to parent her child when the evidence demonstrate[d] that she [was] unwilling to discharge her responsibilities to and for the child" and was content to leave the child in the custody of others). Given the evidence, we hold that the record supports a conclusion that the children are dependent and that the father was either unable or unwilling to adjust his circumstances to meet the needs of the children.

The father's primary argument on appeal is that the juvenile court erred in determining that there were no viable alternatives to the termination of his parental rights. The father argues only that M.O.H. is willing to serve as a placement for the children. However, M.O.H.'s willingness, and the approval of her home by NCDSS, is not determinative of her viability as a relative placement for the children. The record indicates that M.O.H. is related to the mother and the children only by marriage and that she has no contact with the

uncle, to whom the children are biologically related. Of far greater concern, however, is M.O.H.'s health. M.O.H. has a number of health conditions, including fibromyalgia, degenerative disk disease, anxiety, depression, diabetes, and congestive heart failure. She takes a great deal of medication to address the symptoms of those conditions. She also now has a two-year-old great-niece living with her. The children have special needs because of their behavioral issues, and they are in a therapeutic foster home. M.O.H.'s myriad of health problems and medications calls into question her ability to meet the children's needs and to deal with their behavioral issues.

It is clear that M.O.H. loves the parents and the children and wants to help them. At best, in testifying regarding the time line of her visits with the children and when she was hospitalized, M.O.H. was confused; at worst, she was untruthful. Either conclusion could have negatively impacted the juvenile court's determination of whether M.O.H. could serve as an appropriate placement alternative for the children. However, the juvenile court was in the best position

to observe M.O.H. as she testified and to evaluate her credibility and demeanor.

> "'"The trial court, as the finder of fact, is required to resolve conflicts in the evidence." Ethridge v. Wright, 688 So. 2d 818, 820 (Ala. Civ. App. 1996).' D.M. v. Walker County Dep't of Human Res., 919 So. 2d 1197, 1214 (Ala. Civ. App. 2005). Because the juvenile court had the responsibility and the opportunity to observe the witnesses and assess their demeanor and credibility, see [Fitzgerald v.] Jeter, 428 So. 2d [84,] 85 [(Ala. Civ. App. 1983)]; [Ex parte] Fann, 810 So. 2d [631,] 633 [(Ala. 2001)], its decision that [M.O.H.] was not a viable alternative for placement of the child is presumed to be correct."

J.C. v. State Dep't of Human Res., 986 So. 2d at 1196.

The existence of M.O.H. as a possible placement for the children does not, "in and of itself, prevent the juvenile court from terminating the father's parental rights, if reunification of the father and the child were no longer a foreseeable alternative." A.E.T. v. Limestone Cty. Dep't of Human Res., 49 So. 3d at 1219. In A.E.T., supra, the child preferred to remain in the home of his foster parents, and this court noted that it "has permitted a juvenile court to consider the child's wishes and '"the retention of the child in the same environment"' as factors to be considered in a termination-of-parental-rights proceeding." A.E.T., 49 So. 3d

at 1219. In that case, this court also stated, among other things, that the juvenile court must consider the child's best interests in determining whether a viable alternative to termination exists; in that case, this court affirmed the juvenile court's determination that no viable alternative to termination existed. A.E.T., supra.

The evidence indicates that both children, who had been out of their parents' custody for two-and-a-half years at the time of the termination hearing, did not want to return to the parents' custody or to live with M.O.H. The children insisted in their testimony at the termination hearing, and had told the parents during visitations, that they wanted to be adopted by the foster parents. Although the parents questioned the reliability of the children's testimony and whether they might have been impacted or influenced by other factors, it is undisputed that the children have benefited from the stability provided in their current foster home; their counselors did not believe that uprooting the children again would serve their best interests. The record contains evidence indicating that the children need and benefit from stability, which they have in their current foster home. Thus, the juvenile court

could have determined that the children's best interests were served by rejecting M.O.H. as a viable alternative to the termination of the parents' parental rights. J.C., supra.

> "It is clear that the juvenile court carefully considered the evidence presented to it regarding [M.O.H.] as a possible relative resource for the children. The juvenile court determined, under the facts of this case, both that [M.O.H.] was not a viable alternative to termination and that placing the children with her would not be in the children's best interests. Those determinations are within the discretion of the juvenile court, and they are entitled to a presumption of correctness on appeal."

A.H. v. Madison Cty. Dep't of Human Res., 215 So. 3d 560, 570 (Ala. Civ. App. 2016). See also M.H.J. v. State Dep't of Human Res., 785 So. 2d 372, 376 (Ala. Civ. App. 2000) ("Given all these factors, we conclude that the trial court's determination that the grandmother is not a viable alternative to termination is supported by the evidence presented.").

2180986--APPEAL DISMISSED.

2180987—-APPEAL DISMISSED.

2181048--AFFIRMED.

2181049--AFFIRMED.

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

Moore, J., concurs in the result, without writing.