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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2020

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D.H.E.

v.

W.D. and M.D.

**Appeal from Tuscaloosa Juvenile Court
(JU-14-419.04)**

DONALDSON, Judge.

D.H.E. ("the mother") appeals from a judgment of the Tuscaloosa Juvenile Court ("the juvenile court") terminating her parental rights to her son, S.G.V. III ("the child"). We reverse and remand.

Facts and Procedural History

The mother, who was born in November 1998, was 20 years old at the time of trial in 2019. The mother testified that she had been born during the marriage of K.C., the mother's biological mother who lost her parental rights to the mother at some point during the mother's minority, and C.E. ("the maternal grandfather"), who is the mother's legal father and the child's maternal grandfather but is not the mother's biological father. The mother testified that, during her early years, she lived with K.C.'s mother but that, at some point after K.C. and the maternal grandfather had divorced, she began living at the maternal grandfather's house. The maternal grandfather subsequently married J.E., who adopted the mother in 2008 or 2009. The mother testified that J.E. has a drinking problem, that J.E. had abused the mother when she was a minor, and that the maternal grandfather had done nothing to stop the abuse.

The child was born out of wedlock in May 2014 when the mother was 15 years old. The child does not have a legal father, but the mother testified that S.G.V., Jr. ("the alleged father"), a male who was approximately the same age as

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the mother and lived near the maternal grandfather's house when the child was conceived, is the biological father of the child. The mother testified that she continued to live at the maternal grandfather's house while she was pregnant.

Shortly after the child's birth, C.V. ("the alleged paternal grandmother"), the mother of the alleged father and the alleged paternal grandmother of the child, filed a petition in the juvenile court alleging that the child was dependent and seeking custody of the child. Following a hearing, the juvenile court, in July 2014, entered an order stating that the parties had stipulated that there was "probable cause as to dependency," vesting the alleged paternal grandmother with sole physical custody of the child pendente lite, vesting the alleged paternal grandmother and the maternal grandfather with joint legal custody of the child pendente lite, and granting the mother supervised visitation pendente lite. That order also prohibited K.C. from having any contact with the child. The mother testified that K.C. has a history of substance abuse and that, when the July 2014 order was entered, K.C.'s then paramour had a criminal record.

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Thereafter, the maternal grandfather and the mother, representing themselves without counsel, filed a pro se motion seeking emergency physical custody of the child based on allegations that the alleged paternal grandmother was not properly caring for the child. In response to that motion, the juvenile court, on October 1, 2014, entered an order vesting the maternal grandfather and J.E. with emergency physical custody of the child and setting a 72-hour hearing for October 2, 2014. Following the 72-hour hearing, the juvenile court entered an order finding that "probable cause [as to dependency] remains"; vesting the maternal grandfather and J.E. with sole custody of the child pendente lite; granting the mother, the alleged paternal grandmother, and the alleged father visitation pendente lite; and maintaining the prohibition of contact between K.C. and the child. At some point after the entry of that order, the alleged father and the alleged paternal grandmother ceased having any contact with the child.

The mother testified that, on her 16th birthday in November 2014, the maternal grandfather looked through the data on her cellular telephone and, when he saw that she had

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had contact with her biological father, "kicked [her] out" of his house. The mother further testified that she did not then have an automobile, so she had to leave the maternal grandfather's house on foot. The mother testified that she had gone to K.C.'s house for temporary shelter and that, after two days, she had gone back to the maternal grandfather's house and asked him to allow her to resume living there. The mother further testified that the maternal grandfather had refused to allow her to resume living with him and that she had learned that the child was no longer living at the maternal grandfather's house. After the maternal grandfather refused to let her resume living with him, the mother returned to K.C.'s house. The mother testified that, after she had returned to K.C.'s house, K.C. helped the mother pack her belongings and sent her to Baldwin County with a 37-year-old man to spend a few days with him. The 37-year-old man had sex with the mother even though she was only 16 and abused her. The mother testified that she had subsequently returned to Tuscaloosa County a few days after traveling to Baldwin County and was back in Tuscaloosa County before the end of November 2014.

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The record indicates that, in December 2014, the juvenile court held an adjudicatory and dispositional hearing. The mother testified that she did not receive notice of that hearing and, consequently, did not appear at that hearing. Following that hearing, the juvenile court, on December 16, 2014, entered an order finding that the child was dependent, vesting the maternal grandfather with custody of the child, granting the alleged paternal grandmother visitation, and prohibiting the mother from having any contact with the child pending further order of the juvenile court. That order further provided: "This matter is CLOSED and REMOVED FROM THE DOCKET. The Court specifically retains jurisdiction over all issues concerning the child's custody and other dispositional matters." (Capitalization in original.)

On April 17, 2015, W.D. and M.D. ("the custodians") filed a petition alleging that the child was dependent and seeking custody of the child. In that petition, the custodians alleged that the maternal grandfather had placed the child in the custodians' care on December 19, 2014; that the 16-year-old mother was unfit to have custody; that the identity of the father was unknown; and that the maternal grandfather "[was]

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in full agreement with the [custodians'] obtaining custody of the child."

The mother testified that she had never heard of the custodians before they filed their dependency petition, and it is undisputed that the custodians are not related by blood or marriage to the child. M.D. testified that the custodians did not know the maternal grandfather or his counsel before his counsel telephoned M.D. on December 14, 2014, and asked her if she would be willing to adopt the child. M.D. testified that she had answered in the affirmative, that the maternal grandfather had subsequently interviewed the custodians, and that the maternal grandfather had then delivered the child to the custodians on December 19, 2014, and had assured the custodians that they could adopt the child. When M.D. was asked what circumstances would have prompted the maternal grandfather's counsel to telephone her about adopting the child, M.D. testified that, long before December 2014, she had told an acquaintance that she wanted a second child but would have to adopt it because M.D. could not give birth to another child and that the acquaintance was related to an employee of the local juvenile-detention facility. The record contains no

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indication that the maternal grandfather had sought the approval of the juvenile court before placing the child in the care of the custodians. According to M.D., when the maternal grandfather delivered the child to the custodians, the custodians did not know that the child had a mother whose parental rights to the child had not been terminated.

In May or June 2015, the mother began living with T.K.S., a woman who had adopted the mother's sister but is not otherwise related to the mother. The mother testified that she had had no further contact with K.C. after the mother went to live with T.K.S. and that the mother no longer has a relationship with the maternal grandfather.

In June 2015, the mother and the custodians appeared at a hearing regarding the custodians' dependency petition. The record does not contain a transcript of that hearing. Following that hearing, the juvenile court, on June 19, 2015, entered an order finding that there existed "probable cause as to dependency," vesting the custodians with sole custody of the child pendente lite, granting the mother supervised visitation pendente lite, and reserving the issue of child support for further hearing. The juvenile court's December 16,

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2014, order, which prohibited the mother from having any contact with the child pending further order of the juvenile court, had prevented the mother from seeing the child for approximately six months when the juvenile court entered its June 19, 2015, order granting her supervised visitation.

In March 2016, when the mother was 17 years old, the juvenile court held another hearing at which the mother and the custodians appeared. The record does not contain a transcript of that hearing. Following that hearing, the juvenile court, on March 8, 2016, entered an order stating that the parties had stipulated that the child was dependent, finding that the child was dependent based on that stipulation, vesting sole physical custody of the child in the custodians, vesting joint legal custody in the custodians and the mother, and granting the mother supervised visitation with the child. That order also provided: "Mother, [who] is under eighteen years old[,] shall pay \$0 child support" Finally, that order provided: "This matter is CLOSED and REMOVED FROM THE DOCKET. The Court specifically retains jurisdiction over all issues concerning the child's custody

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and other dispositional matters." (Capitalization in original.)

On May 24, 2017, the mother filed a petition seeking unsupervised visitation with the child. On August 17, 2017, the custodians filed a petition asking the juvenile court to terminate the mother's parental rights. In their petition, the custodians alleged that the mother had abandoned the child, that reasonable efforts to rehabilitate the mother had failed, that the mother had not provided for the material needs of the child or paid any child support to the custodians, that the mother had not maintained consistent contact or communication with the child, that the mother had not taken advantage of the visitation afforded by the juvenile court's orders, and that the mother had not made any effort to adjust her circumstances to meet the needs of the child. The mother filed an answer denying the allegations upon which the custodians based their termination-of-parental-rights claim. The mother also filed a counterclaim seeking custody of the child. The custodians filed an answer to the mother's counterclaim in which they denied the allegations upon which she based her custody claim.

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The record indicates that, on December 19, 2017, the juvenile court held a hearing regarding the mother's petition seeking unsupervised visitation and that the mother, the mother's appointed counsel, the custodians, the custodians' retained counsel, and the child's guardian ad litem appeared at that hearing. Based on an agreement reached by the parties at that hearing, the juvenile court entered a pendente lite visitation order granting the mother unsupervised visitation.

The juvenile court consolidated the mother's visitation-modification action and the custodians' termination-of-parental-rights action for trial and held the trial on April 23 and November 5, 2019. The mother and the custodians were the only witnesses who testified at the trial.

The mother testified that she had begun working part-time at a fast-food restaurant while she was a senior in high school and that she had graduated from high school on the honor roll in May 2017, when she was 18 years old. The mother testified that she had been admitted to a community college and had started taking classes on the Internet but had not completed the classes necessary to earn a degree. The mother further testified that, in July 2017, she had left her part-

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time job at the fast-food restaurant to begin working at another restaurant. She remained in that job until March 2019, when she left to take a job at a lumber company. On the first day of trial on April 23, 2019, the mother testified that she was then earning \$8 per hour and working 34 hours per week at the lumber company and that, after she had worked there for 90 days, she would qualify for coverage under the lumber company's group health and dental insurance plan and for an increase in the amount she was paid. On the second day of trial on November 5, 2019, the mother testified that she was still working for the lumber company, that she was covered by the lumber company's group health and dental insurance plan, that her pay had been raised to \$9.50 per hour, and that she was working 40 hours per week.

The mother testified that, by the summer of 2017, she had saved enough money from her earnings to buy a used automobile for \$2,500 in cash. The mother further testified that, in October 2017, the power steering on the automobile had failed while she was driving it, which caused her to have a one-automobile accident that damaged the automobile beyond repair. She further testified that, although she had liability

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insurance, she did not have comprehensive insurance that would pay her for the loss of the automobile. From October 2017 until December 2018, the mother did not have an automobile, and, in order to travel to visitations with the child during that period, she had to either borrow an automobile or get someone else to drive her. The mother testified that, in December 2018, she had bought another used automobile with money she had saved. She testified that driving long distances in that automobile was expensive because its gas mileage was only 12.5 miles per gallon. On the second day of trial on November 5, 2019, the mother testified that, subsequent to the first day of trial on April 23, 2019, she had bought another used automobile and that she had liability insurance covering it.

The mother testified that, in November 2017, she had rented her own apartment in Reform. The mother further testified, however, that she did not have health insurance at that time, that, as a result of bills arising from two hospitalizations, one for a ruptured appendix that required her to undergo an appendectomy and a second one for the removal a kidney stone from one of her kidneys, her income had

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not been sufficient to keep paying the rent on the apartment, and that, consequently, she had had to move out of the apartment after approximately four or five months. The mother testified that, after she had moved out of the apartment in Reform, she and her then fiancé L.H. had moved into a mobile home owned by L.H.'s grandmother where the mother lived without paying rent. The mother testified that she had moved out of that mobile home in September 2018 when her relationship with L.H. ended. The mother testified that, after she had moved out of that mobile home in September 2018, she had begun living with B.L., T.K.S.'s biological daughter, and B.L.'s family, which consisted of B.L.'s husband and three children. The mother testified that she had continued to live with B.L. and her family until March 2019 when the mother moved into a mobile home in Gordo that was owned by W.S., her present boyfriend, and that she does not pay rent to live in that mobile home. On the second day of trial on November 5, 2019, she testified that she was still living there.

The mother testified that she had never been arrested, that she had never been given a traffic ticket, and that she had never taken illegal drugs. The mother testified that W.S.

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had never been arrested, that he does not use illegal drugs, and that he has held the same job for 13 years. The mother testified that the custodians had never asked her to pay child support. She further testified that she had bought the child Christmas and birthday gifts, which she keeps at her residence so that he can play with them when he visits her. The mother testified that she was capable of caring for the child and that she wanted to do so. The mother admitted, however, that her present income at the lumber company would not be sufficient to pay rent, to pay for health insurance on the child, and to pay the other expenses of supporting the child. She testified that she does not receive welfare benefits or food stamps.

The mother testified that she had visited the child regularly when she was allowed to do so by the juvenile court's orders. She admitted that she had missed some visits, but she testified that she had had good reasons for missing those visits, such as her lacking transportation when the visit was scheduled, the occurrence of inclement weather when the visit was scheduled, or her posing a risk to the child's

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health because she had been exposed to B.L.'s children when they were ill.

The custodians testified that they had never seen the mother act inappropriately around the child and that she had been easy to work with when the visitation schedule had to be changed because of the custodians' making plans that conflicted with a scheduled visitation. M.D. testified on the first day of trial on April 23, 2019, that the mother had missed four visits so far in 2019. The custodians testified that, when they dropped him off for visitation with the mother, the child sometimes cried and clung to M.D.; however, the custodians admitted that the child was sometimes excited to see the mother. On the second day of trial on November 5, 2019, M.D. testified that the mother had not missed any visits with the child between April 23, 2019, and November 5, 2019.

The custodians had been married approximately 19 years when the actions were tried. They have a biological son ("the biological son") who was 12 years old when the actions were tried. M.D. testified that the biological son and the child treat each other like they are brothers. M.D. testified that the child thinks that M.D. is his mother and that W.D. is his

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father. According to M.D., the child has not been told that the mother is his mother, and he refers to the mother by her first name.

M.D. testified that, for approximately two years, the custodians have allowed the child to go to the maternal grandfather's house for a visit with the maternal grandfather and J.E. every other Friday and that there have been occasions when the child has spent the night at the maternal grandfather's house. M.D. testified that she did not have any concerns with respect to the maternal grandfather's ability to care for the child. M.D. testified that she did not think it was confusing to the child for him to visit the maternal grandfather. According to M.D., the child calls the maternal grandfather "Paw Paw." M.D. testified that, when the child was older, she would explain to the child what his relationship with the maternal grandfather is and that she would tell him about the mother. M.D. testified that, if the juvenile court terminated the mother's parental rights, the custodians would still allow the child to see the mother because M.D. believed that that was in the child's best interests. M.D. testified that she did not want to eliminate the mother from the child's

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life; she merely wanted to formalize the custodians' parental relationship with the child by adopting him. M.D. also testified that, if the juvenile court terminated the mother's parental rights, the custodians would still allow the child to visit the maternal grandfather.

M.D. testified that she had worked in the claims department at an insurance company for 9 years, that she works 40 hours per week, that her employer pays her \$18.60 per hour, and that her employer provides her with health, dental, vision, and life insurance. She further testified that the child is covered under the health insurance provided by her employer. M.D. testified that W.D. has worked for his employer for 18 years and that he earns between \$18 and \$19 per hour. M.D. testified that the custodians earn enough money to support the child. M.D. testified that the mother had never been to any of the child's doctor appointments or to any of his baseball practices or games. M.D. testified that, since the custodians have been caring for the child, six hours is the longest period that the child has been with the mother. The custodians testified that their main concern with respect to the mother's ability to care for the child was the mother's

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financial situation. They testified that their main reservation about continued visitation with the mother is that sometimes the child does not want to go to the visits. They admitted that, on occasions when the child wanted to go to a birthday party or a baseball game instead of visiting the mother, the mother had deferred to the child's wishes and let him attend those events instead of visiting her. The record contains no evidence indicating that the mother had ever mistreated the child. The mother introduced photographs into evidence that depicted the child with a happy expression on his face during her visits with him. M.D. testified that the mother had maintained consistent contact with the custodians since the custodians were first vested with physical custody of the child.

With regard to the consistency of the mother's visiting the child, M.D. testified that it concerned her that the mother had not visited the child from February 25, 2017, to April 22, 2017, a period of approximately two months. Based on M.D.'s written records of the mother's visits, the mother canceled her visit on February 25, 2017, to attend a concert and a family reunion; the mother canceled her March 11, 2017,

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visit because the mother had been exposed to B.L.'s sick children and did not want to risk passing on an illness to the child; the mother canceled her March 25, 2017, visit because the weather was inclement that day; the mother canceled her April 8, 2017, visit because she was taking the ACT college-entrance exam that day; and M.D. canceled the mother's April 22, 2017, visit because the child was sick. M.D. testified that whenever she canceled or rescheduled one of the mother's visits, the mother was always very accommodating.

On November 6, 2019, the juvenile court entered a final judgment that terminated the mother's parental rights to the child. In pertinent part, the juvenile court's judgment states:

"The Court proceeded to hear oral testimony and receive evidence, having considered applicable law, including Alabama Code [1975,] § 12-15-319, and based upon clear and convincing evidence presented at the hearing, the Court hereby makes the following findings:

"....

"4. The child ... was born [in] May ... 2014 to [the mother]. The child was first placed in the legal custody of the [custodians] ... on June 19, 2015. The child is currently in the joint legal custody of the [custodians] and the mother by an order of this Court [entered] on March 8, 2016. In that order the [custodians] were awarded 'primary

physical custody,' which this Court interprets to be sole physical custody, subject to the mother's specific parenting time.

"5. The mother is unable or unwilling to discharge her responsibilities to and for the child and ... the conduct or cond[i]tion of the mother renders her unable to properly care for the child and ... such conduct or condition is unlikely to change in the foreseeable future.

". . . .

"Based upon the clear and convincing evidence presented and considering the best interests of the minor child, the Court hereby finds that the Petition for Termination of Parental Rights is due to be granted and it is hereby ORDERED, ADJUDGED and DECREED as follows:

"1. Any and all parental rights of [the mother] to the child ... are hereby permanently terminated.

". . . .

"3. The permanent care, custody, and control of the minor child ... shall be with the [custodians].

(Capitalization in original.)

The mother timely appealed to this court. The trial was recorded stenographically by a licensed court reporter who was present at the trial, and her stenographic recording has been transcribed and included in the record on appeal. Therefore, this court has jurisdiction over this appeal pursuant to Rule 28(A)(1)(c)(ii), Ala. R. Juv. P.

Standard of Review

"[W]e 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. F.I. v. State Dep't of Human Res., 975 So. 2d [969] at 972 [(Ala. Civ. App. 2007)]." J.C. v. State Dep't of Human Res., 986 So. 2d 1172, 1183 (Ala. Civ. App. 2007). Clear and convincing evidence is

""[e]vidence that, when weighed against evidence in opposition, will produce in 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. Proof by clear and convincing evidence requires a level of proof greater than a preponderance of the evidence or the substantial weight of the evidence, but less than beyond a reasonable doubt."

""§ 6-11-20[(b)](4), Ala. Code 1975.'

"L.M. v. D.D.F., 840 So. 2d 171, 179 (Ala. Civ. App. 2002)."

J.C., 986 So. 2d at 1184 (emphasis omitted).

"On appeal from ore tenus proceedings, this court presumes the correctness of the juvenile court's factual findings. See J.C. v. State Dep't of Human Res., 986 So. 2d 1172 (Ala. Civ. App. 2007). This

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court is bound by those findings if the record contains substantial evidence from which the juvenile court reasonably could have been clearly convinced of the fact sought to be proved. See Ex parte McInish, 47 So. 3d 767 (Ala. 2008) (explaining standard of review of factual determinations required to be based on clear and convincing evidence)."

C.C. v. L.J., 176 So. 3d 208, 211 (Ala. Civ. App. 2015).

"[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."

Ex parte McInish, 47 So. 3d 767, 778 (Ala. 2008) (quoting KGS Steel, Inc. v. McInish, 47 So. 3d 749, 761 (Ala. Civ. App. 2006) (Murdock, J., concurring in the result)).

Analysis

The mother first argues that the juvenile court's judgment terminating her parental rights should be reversed because, she says, it is not supported by clear and convincing evidence establishing grounds for termination of her parental rights.

"The termination of parental rights is an extreme matter and is not to be considered lightly. Ex parte Beasley, 564

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So. 2d 950 (Ala. 1990). "Inasmuch as the termination of parental rights strikes at the very heart of the family unit, a court should terminate parental rights only in the most egregious of circumstances." Beasley, 564 So. 2d at 952.'

"S.M.W. v. J.M.C., 679 So. 2d 256, 258 (Ala. Civ. App. 1996)."

A.A. v. Jefferson Cty. Dep't of Human Res., 278 So. 3d 1247, 1253 (Ala. Civ. App. 2018).

When the judgment terminating the mother's parental rights was entered on November 6, 2019, Ala. Code 1975, § 12-15-319(a), provided, in pertinent 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:

"(1) That the parent[] ha[s] abandoned the child, provided that in these cases, proof shall not be required of reasonable efforts to prevent removal or reunite the child with the parents.

"....

"(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.

"....

"(9) Failure by the parent[] to provide for the material needs of the child or to pay a reasonable portion of support of the child, where the parent is able to do so.

"(10) Failure by the parent[] to maintain regular visits with the child in accordance with a plan devised by the Department of Human Resources, or any public or licensed private child care agency, and agreed to by the parent.

"(11) Failure by the parent[] to maintain consistent contact or communication with the child.

"(12) Lack of effort by the parent to adjust his or her circumstances to meet the needs of the child in accordance with agreements reached, including agreements reached with local departments of human resources or licensed child-placing agencies, in an administrative review or a judicial review."¹

¹Section 12-15-319(a) was amended effective March 11, 2020, by Act No. 2020-34, Ala. Acts 2020, after the trial of this case. The amendment added, among other things, § 12-15-319(a)(13), which provides that the juvenile court should also consider "[t]he existence of any significant emotional ties that have developed between the child and his or her current foster parent or parents" as a factor in determining whether

This court has stated:

"The parental "responsibilities" referred to in § 12-15-319(a) include the duties to protect, to educate, to care for, to provide for, to maintain, and to support children. See Ex parte M.D.C., 39 So. 3d 1117, 1121 (Ala. 2009) (quoting M.D.C. v. K.D., 39 So. 3d 1105, 1110 (Ala. Civ. App. 2008) (Moore, J., dissenting)). Because the statute is phrased in present and future terms, a juvenile court may terminate a parent's parental rights only if clear and convincing evidence shows that the parent is currently unable to discharge his or her parental duties properly, see D.O. v. Calhoun Cnty. Dep't of Human Res., 859 So.2d 439, 444 (Ala. Civ. App. 2003), and that the conduct or condition that prevents the parent from assuming or exercising proper care will likely persist in the foreseeable future. See D.M. v. Walker Cnty. Dep't of Human Res., 919 So. 2d 1197, 1211 (Ala. Civ. App. 2005).'

"S.U. v. Madison Cty. Dep't of Human Res., 91 So. 3d 716, 720 (Ala. Civ. App. 2012)."

A.A., 278 So. 3d at 1251-52 (emphasis added).

In reviewing the factors to be considered in § 12-15-319(a), we observe that the record contains no evidence indicating that the mother had abandoned the child. The record contains no evidence indicating that either the Department of Human Resources or a licensed child-care agency had provided

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the mother with any services to assist her in rehabilitating herself; therefore, the record contains no evidence indicating that any such efforts had failed. The mother did not pay child support, but her child-support obligation had been established by order at \$0, and the evidence indicates that the mother did not have the financial ability to pay anything more than nominal child support. The mother testified that she had given the child Christmas and birthday presents for him to play with when he visited her. The record indicates that the mother missed some of her visits with the child as of the time of the first day of trial in April 2019, but by the time of the second day of trial in November 2019 the mother was not missing any visits. "We cannot conclude that ... missed visitations alone constitute evidence sufficient to clearly convince a reasonable fact-finder that termination of the [mother's] parental rights was warranted. See, e.g., K.W. v. J.G., 856 So. 2d 859, 872 (Ala. Civ. App. 2003) (reversing termination-of-parental-rights judgment despite the parent's having missed some visitations with the child)." D.W. v. Jefferson Cty. Dep't of Human Res., [Ms. 2180683, Oct. 18, 2019] ___ So. 3d ___, ___ (Ala. Civ. App. 2019). It is

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undisputed that the mother maintained consistent contact with the custodians since the custodians were first vested with physical custody of the child. With respect to whether the mother adjusted her circumstances to meet the needs of the child, the undisputed evidence indicates that, despite being "kicked out" of the maternal grandfather's house on her 16th birthday, the mother eventually found shelter at T.K.S.'s house, continued her education, graduated from high school on the honor roll, has been continuously employed since taking a part-time job in her senior year of high school, and has bought her own automobiles. Moreover, the undisputed evidence established that the mother had never been arrested, had never been given a traffic ticket, and had never taken any illegal drugs. Furthermore, the record contains no evidence indicating that the mother has ever mistreated the child, and both custodians testified that they had never seen the mother do anything inappropriate around the child. It is true that the evidence indicates that the mother does not presently earn enough money to rent her own apartment or to financially support the child on her own; however, given the upward trajectory of the mother's employment history as reflected in

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the record, we cannot conclude that the mother would not be able to provide suitable housing and to financially support the child "in the foreseeable future." § 12-15-319(a); see A.A., supra.

The record reflects that the custodians are providing a nurturing and caring environment for the child and that the child is flourishing in their care. The intentions of the custodians in caring for the child are commendable. See, e.g., L.M.W. v. D.J., 116 So. 3d 220, 225 (Ala. Civ. App. 2012); L.R. v. C.G., 78 So. 3d 436, 444 (Ala. Civ. App. 2011). But terminating the mother's parental rights requires more than proving that the custodians can provide a better home for the child than the mother, because "the party seeking to terminate parental rights has the burden to present clear and convincing evidence showing that the [mother] is not capable or is unwilling to discharge ... her parental responsibilities and that there are no viable alternatives to terminating parental rights." Ex parte T.V. 971 So. 2d 1, 4 (Ala. 2007). As we stated in A.A.,

"considering the high evidentiary burden applicable to termination-of-parental-rights cases, C.O.[v. Jefferson Cty. Dep't of Human Res.], 206 So. 3d [621] at 627 [(Ala. Civ. App. 2016)], and the lack

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of evidentiary support for the judgment, we cannot conclude that this case presents the "most egregious of circumstances" so as to warrant a termination of the mother's parental rights. S.M.W. [v. J.M.C.], 679 So. 2d [256] at 258 [Ala. Civ. App. 1996)]."

278 So. 3d at 1253. Therefore, we reverse the juvenile court's judgment terminating the mother's parental rights and remand the cause for further proceedings consistent with this opinion. Because we have reversed the juvenile court's judgment based on the mother's first argument, we do not reach her viable-alternatives argument.

REVERSED AND REMANDED.

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

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