

REL: November 5, 2020

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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

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K.M.

v.

S.R.

**Appeal from Montgomery Juvenile Court  
(JU-19-94.02)**

MOORE, Judge.

K.M. ("the mother") appeals from a judgment entered by the Montgomery Juvenile Court ("the juvenile court") finding Kh.M. ("the child") dependent and awarding custody of the

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child to S.R. ("the custodian"). We affirm the juvenile court's judgment.

On September 23, 2019, the custodian filed in the juvenile court a petition alleging that the child was dependent and requesting custody of the child. After a trial, the juvenile court entered a judgment on February 21, 2020, adjudicating the child dependent and awarding custody of the child to the custodian. That same day, the mother filed a motion to alter, amend, or vacate the judgment, pursuant to Rule 59, Ala. R. Civ. P., and a motion for relief from the judgment, pursuant to Rule 60(b)(2), Ala. R. Civ. P. The mother argued in her Rule 59 motion that it was not in the best interest of the child to reside with the custodian and asserted various facts regarding the custodian's fitness to care for the child; she did not, however, challenge the sufficiency of the evidence supporting the adjudication of the dependency of the child. The mother asserted in her Rule 60(b)(2) motion that she had newly discovered evidence supporting her argument that it was not in the best interest of the child to be placed with the custodian. On March 4, 2020, the mother filed her notice of appeal. Pursuant to Rule

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4(a)(5), Ala. R. App. P., the mother's notice of appeal was held in abeyance pending the juvenile court's timely ruling on, or the denial by operation of law of, her Rule 59 motion challenging the February 21, 2020, judgment. See Rule 1(B), Ala. R. Juv. P. (providing that, in juvenile courts, postjudgment motions must be ruled upon within 14 days or they are deemed denied by operation of law). The juvenile court entered an order on March 9, 2020, purporting to deny both the mother's Rule 59 motion and her Rule 60(b) motion. However, as it relates to the mother's Rule 59 motion, that order was a nullity because it was entered outside the 14-day period for ruling on that motion, which was denied by operation of law on March 6, 2020, see Rule 1(B), Ala. R. Juv. P.; therefore, the mother's appeal of the February 21, 2020, judgment quickened on March 6, 2020. See Rule 4(a)(5), Ala. R. App. P.

On appeal, the mother argues that the juvenile court's February 21, 2020, judgment adjudicating the child dependent was not supported by sufficient evidence and that, therefore, the juvenile court erred in awarding custody of the child to

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the custodian.<sup>1</sup> However, the juvenile court did not make specific findings of fact in its judgment, and the mother's Rule 59 motion did not challenge the sufficiency of the evidence to support the adjudication of dependency.

"In New Properties, L.L.C. v. Stewart, 905 So. 2d 797, 801-02 (Ala. 2004), our supreme court held: '[I]n a nonjury case in which the trial court makes no specific findings of fact, a party must move for a new trial or otherwise properly raise before the trial court the question relating to the sufficiency or weight of the evidence in order to preserve that question for appellate review.'"

L.M. v. Jefferson Cnty. Dep't of Human Res., 68 So. 3d 859, 861 (Ala. Civ. App. 2011).

In the present case, the mother failed to raise in her Rule 59 motion the issue of the sufficiency of the evidence to support the juvenile court's adjudication of dependency. Although the juvenile court did expressly find the child dependent, "under [New Properties, L.L.C. v.] Stewart[, 905 So. 2d 797, 801-02 (Ala. 2004)], a mere adjudication of

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<sup>1</sup>On appeal, the mother does not raise any argument with regard to the denial of her Rule 60(b)(2) motion. Additionally, it does not appear that the mother timely appealed from the March 9, 2020, order denying that motion. See, e.g., Thompson v. State ex rel. Jett, [Ms. 2180977, Aug. 28, 2020] \_\_\_ So. 3d \_\_\_ (Ala. Civ. App. 2020). Therefore, we do not address the trial court's ruling on that motion.

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dependency does not equate to a specific finding of fact that will excuse the filing of a postjudgment motion raising the issue of the sufficiency of the evidence to support the finding of dependency." C.M.R. v. L.W., 144 So. 3d 370, 383 (Ala. Civ. App. 2014) (Moore, J., concurring in the result). Based on the foregoing, we conclude that the mother failed to preserve for appellate review her argument challenging the sufficiency of the evidence to support the adjudication of dependency.<sup>2</sup> Therefore, we affirm the juvenile court's February 21, 2020, judgment.

AFFIRMED.

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

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<sup>2</sup>To the extent that the mother argues that the juvenile court erred by failing to make specific findings of fact, we note that she cites no law supporting that proposition. See, e.g., White Sands Grp., L.L.C. v. PRS II, LLC, 998 So. 2d 1042, 1058 (Ala. 2008) ("Rule 28(a)(10) [, Ala. R. Civ. P.,] requires that arguments in briefs contain discussions of facts and relevant legal authorities that support the party's position. If they do not, the arguments are waived."). Therefore, we will not address that argument.