REL: October 1, 2021

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2021

2200236

L.P.M.

v.

E.P. and Talladega County Department of Human Resources

2200241

S.G.

v.

E.P. and Talladega County Department of Human Resources

Appeals from Talladega Juvenile Court
(JU-18-100176.01)

EDWARDS, Judge.

In October 2018, the Talladega County Department of Human Resources ("DHR") filed in the Talladega Juvenile Court ("the juvenile court") a petition seeking to declare L.L.G. ("the child"), the child of L.P.M. ("the mother") and S.G. ("the father"), dependent. In January 2019, the juvenile court awarded pendente lite custody of the child to her maternal grandmother, E.P. ("the maternal grandmother"). Nearly 22 months later, after a trial held on November 5, 2020, the juvenile court entered a judgment declaring the child dependent and awarding custody of the child to the maternal grandmother. The mother and the father each filed timely postjudgment motions, which the juvenile court denied after having extended the time for ruling on those motions for an additional 14 days pursuant to Rule 1(B), Ala. R. Juv. P. Both the mother and the father then filed timely notices of appeal. This court consolidated the appeals.

In our review of these appeals, we are governed by the following principles. A "dependent child" is defined in Ala. Code 1975, § 12-15-102(8), to include:

> "a. A child who has been adjudicated dependent by a juvenile court and is in need of care or supervision and meets any of the following circumstances:
>
> > "1. Whose parent, legal guardian, legal custodian, or other custodian subjects the child or any other child in the household to abuse, as defined in subdivision (2) of [Ala. Code 1975, §] 12-15-301[,] or neglect as defined in [§] 12-15-301, or allows the child to be so subjected.
> >
> > "2. Who is without a parent, legal guardian, or legal custodian willing and able to provide for the care, support, or education of the child.
> >
> > "....
> >
> > "6. Whose parent, legal guardian, legal custodian, or other custodian is unable or unwilling to discharge his or her responsibilities to and for the child.
> >
> > "....
> >
> > "8. Who, for any other cause, is in need of the care and protection of the state."

"[T]he test [for determining whether a petitioner has established dependency] is whether [the petitioner] has presented clear and convincing evidence demonstrating that the parental conduct or condition currently persists to such a degree as to continue to prevent the parent from properly caring for the child." M.G. v. Etowah Cnty. Dep't of Hum.

Res., 26 So. 3d 436, 442 (Ala. Civ. App. 2009) (plurality opinion). The juvenile court may consider the totality of the circumstances when making a finding in a dependency proceeding. G.C. v. G.D., 712 So. 2d 1091, 1094 (Ala. Civ. App. 1997); see also D.P. v. State Dep't of Hum. Res., 571 So. 2d 1140 (Ala. Civ. App. 1990). This court cannot reweigh the evidence presented to the juvenile court, and we cannot revisit its conclusions about the credibility of the witnesses before it. See Ex parte R.E.C., 899 So. 2d 272, 279 (Ala. 2004). Although the juvenile court's factual findings in a dependency case when the evidence has been presented ore tenus are presumed correct, F.I. v. State Dep't of Hum. Res., 975 So. 2d 969, 972 (Ala. Civ. App. 2007), a finding of dependency must be supported by clear and convincing evidence. Ala. Code 1975, § 12-15-310(b). When reviewing a dependency judgment on appeal, "[t]his court does not reweigh the evidence but, rather, determines whether the findings of fact made by the juvenile court are supported by evidence that the juvenile court could have found to be clear and convincing." K.S.B. v. M.C.B., 219 So. 3d 650, 653 (Ala. Civ. App. 2016). That is, this court

> "'must ... look through ["the prism of the substantive evidentiary burden," Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254 (1986),] to determine whether there was substantial evidence before the trial court to support a factual finding, based upon the trial court's weighing of the evidence, that would "produce in the mind [of the trial court] a firm conviction as to each element of the claim and a high probability as to the correctness of the conclusion."'"

K.S.B., 219 So. 3d at 653 (quoting Ex parte McInish, 47 So. 3d 767, 778 (Ala. 2008), quoting in turn Ala. Code 1975, § 25-5-81(c)).

The following facts were adduced at the trial. The child was born on October 2, 2018, and was placed in the physical custody of the maternal grandmother upon the child's release from the hospital. According to Sheena Cornelius, a DHR caseworker, DHR's initial concerns, which arose before the child's birth, were domestic violence between the mother and the father. Cornelius said that the mother had discussed her desire to reside in a domestic-violence shelter with DHR caseworkers as early as July or August 2018 but that the mother had finally left the father and taken up residence in a shelter in October 2018, around the time the child was born. Cornelius indicated that the mother had gone to a domestic-violence shelter two separate times in October 2018.

In addition, Cornelius testified that the mother had also admitted to using methamphetamine, which, she said, had resulted in DHR's imposing upon the mother the requirement that she undergo random drug screenings. Cornelius testified that DHR had also required the mother to attend domestic-violence counseling, substance-abuse counseling, and anger-management classes. Regarding DHR's plans for the father, Cornelius testified that he, too, was required to undergo random drug screenings and to attend domestic-violence counseling, substance-abuse counseling, and anger-management classes.

Cornelius testified that the mother and the father had complied with the requirements of their individualized service plan ("ISP") and noted that, as she recalled, the parents also might have completed parenting classes. Cornelius described the parents as having consistently visited with the child and stated that the parents and the child had a bond. She also said that the parents' counselor had indicated to DHR that the parents had made major improvements during their sessions with her. Cornelius indicated that the father had had a positive hair-follicle drug test, but the details of the test results were not admitted based on the

hearsay objection of the father's counsel. However, the father himself testified that a December 2019 hair-follicle test had been positive for methamphetamine, a drug he insisted he had not ingested. According to Cornelius, the parents' urine tests had always been negative for illegal substances and their May 21, 2020, hair-follicle tests were also negative for any illegal substances.

Cornelius indicated that DHR still had concerns about domestic violence between the mother and the father. However, she said that DHR had received no reports of domestic violence in the parents' home since 2018. In addition, she testified that the parents had had another child and that DHR had no concerns about the parents having custody of that child.

The father testified that he had never hit the mother or given her a black eye. He admitted, however, that he might have pushed her during an altercation that occurred around the time the child was born when the mother had admitted to having used methamphetamine while pregnant. He described the altercation with the mother as the "one hiccup" in their relationship, which, he said, began in 2017. The father also admitted that

he had domestic-violence convictions spanning several years, which counsel characterized as "a long history" but which the father described as "4 to 5 convictions over 20 years"; the father commented that he had always pleaded guilty if he had, in fact, committed violence on the victim. When questioned about a domestic-violence conviction based on a guilty plea he had entered in a 2019 district-court criminal case, the father indicated that the victim in that case had to have been the mother; he appeared to lack any recollection of its details, however. At the request of the guardian ad litem for the child, the juvenile court took judicial notice of the records of the district court in the 2019 domestic-violence case, which had apparently been assigned to the juvenile-court judge in his capacity as a district-court judge. Those records were not admitted into evidence.

The father denied using drugs of any kind. He said that the mother had admitted to drug use but that he had never seen her engage in drug use. Consistent with Cornelius's testimony that the parents' counselor had reported improvement during counseling, the father testified that counseling was going "very good." He also commented that he had

volunteered to complete parenting classes and that he had, in fact, completed the classes.

The maternal grandmother testified that she was 67 years old and that she had had the child in her home since October 4, 2018, initially pursuant to a safety plan through DHR. She said that her household consisted of her; her husband, M.P.; her granddaughter, I., and her grandson, A., who are both children of the mother and of whom the maternal grandmother has custody; and the child. The maternal grandmother said that she had been awarded custody of I. and A. as a result of the drug use of the mother and the domestic violence between the mother and the father of I.

According to the maternal grandmother, she feared for the child's safety if she were to be returned to the custody of the parents. She testified that she had long been aware of the abusive nature of the parents' relationship and that she had not known the mother and the father to have a healthy relationship; she also testified that the mother had previously revealed to her that the father was abusive. She recounted at least two occasions during which she had observed the mother with

blood on her person; she said that one incident had occurred before the child's birth and the other after. She also said that she had observed bruises on the mother during visitations; that the mother had worn sunglasses to a visit, presumably to hide a black eye; and that the mother had appeared, at times, to be wearing makeup to cover facial bruises. She also said that she had observed the mother with a black eye approximately three or four months before the November 2020 trial. When asked if the mother had a "long history of drug usage" and "a long history of hooking up with men who beat her up," the maternal grandmother answered both questions in the affirmative.

The mother testified that she had admitted to DHR that she had used methamphetamine while pregnant on one occasion. However, she said that that was the only time she had ever used that drug and that that was the last time she had used any illegal substance. She pointed out that all of her drug screens had been negative.

The mother also admitted that she and the father had had a physical altercation in October 2018, which she described as their having "tussled" around in their automobile after she had been informed that the child

would not be permitted to come home with her from the hospital. After being cautioned that she was under oath, the mother admitted that the corner of her eye had been bruised as a result of what she thought was the father's elbow colliding with her face "because I was hitting him." However, she said that the October 2018 physical altercation was the only time the father had hit her and the only time she had had a black eye. She specifically denied having arrived at the maternal grandmother's house bloodied, and she said that the maternal grandmother "exaggerates and makes things up as she goes." The mother insisted that she and the father had not engaged in any domestic violence since the October 2018 altercation.

Like the father, the mother said that counseling had been going "fantastic." She indicated that it had strengthened her relationship with the father and said that their issues were "issues of the past." She testified that "[t]he past two years have been the best two years of my whole life, period," and that, "[a]s far as how I feel, what I'm doing, [I'm] being a better person, a better mother"; she also said that she had "never

been in a relationship this great in my whole life." She described the father as an "amazing father."

On appeal, the mother and the father both argue that the evidence admitted at trial is not sufficient to sustain a finding that the child was, at the time of trial, dependent based on the conduct or condition of the parents. They rely on their testimony that they no longer engaged in domestic violence and that their relationship had improved through counseling, the lack of testimony from Cornelius indicating that DHR had knowledge of continuing domestic violence in the home, and the fact that both parents had tested negative for illegal substances throughout 2020. However, although the parents attempt to cast doubt on the maternal grandmother's testimony that she saw evidence of domestic violence in the form of bruises and a black eye on the mother after the 2018 altercation, including a black eye only a few months before the November 2020 trial, the juvenile court was not required to discount her testimony, which conflicted with that of the mother and the father regarding whether the domestic violence between the parents had ceased. See Ex parte R.E.C., 899 So. 2d at 279 (quoting Clemons v. Clemons, 627 So. 2d 431, 434 (Ala.

Civ. App.1993)) (" 'In ore tenus proceedings, the trial court is the sole judge of the facts and of the credibility of the witnesses ....' ").

In addition, the parents overlook that the juvenile court took judicial notice of the "records" in the 2019 district-court criminal, domestic-violence case. Although the juvenile court appears to have erred by doing so, no party objected to the juvenile court's having done so, and any evidence yielded by the records in the 2019 district-court domestic-violence case could properly have been considered by the juvenile court.[1]

---

[1]A court may take judicial notice of its own records in an appropriate case, but, "[g]enerally, a court may not take judicial notice of the records of another court." Municipal Workers Compensation Fund, Inc. v. Morgan Keegan & Co., 190 So. 3d 895, 910 (Ala. 2015) (discussing in detail when a court may take judicial notice of certain court records). As this court explained in Lyle v. Eddy, 481 So. 2d 395, 397 (Ala. Civ. App.1985):

> "While a judge may take judicial notice of his own court's records, Boone v. Director of Department of Public Safety, 337 So. 2d 6 (Ala. Civ. App.1976), there is no authority allowing a judge to judicially notice the record of proceedings from a prior court. In fact, the law is quite clearly to the contrary. One of the better statements of the law on this issue is found in C. Gamble, McElroy's Alabama Evidence § 484.02(2) (3rd ed. 1977), where it is stated:
>
> > " 'The circuit court takes judicial notice of all parts of its record of the case in hand. For a proper

See Ex parte Neal, 423 So. 2d 850, 852 (Ala.1982) ("The trial court is not in error if inadmissible [evidence] comes in without objection and without a ruling thereon appearing in the record. The [evidence] is thus generally admissible and not limited as to weight or purpose."); see also Byrd v. State, 363 So. 2d 115, 119 (Ala. Crim. App. 1978) ("As to the question of

---

> purpose, the circuit court takes judicial notice of its own record in another case if, but only if, the pleadings in the case in hand refer to the record in the other case. However, the circuit court cannot take judicial notice of its record in another case for the purpose of supplying evidence in the case at hand, as the record in the other case must be introduced in evidence if it is to be considered as evidence.
>
> " 'No court takes judicial notice of the records of another court.' (Citations omitted. Emphasis ours.)
>
> "See also Crossland v. First National Bank, 233 Ala. 432, 172 So. 255 (1937) (circuit court cannot take judicial notice of the record of the supreme court or probate court)."

Thus, the juvenile court lacked the authority to take judicial notice of the records of the district court, even though the juvenile-court judge is also the district-court judge. However, as noted in the text, the failure of either parent to object resulted in the juvenile court's ability to consider the evidence in those records.

whether the trial court was in error in taking judicial notice of this particular fact, we note that the appellant failed to interpose a proper objection. Further, we have examined the record and nowhere does it indicate that an objection was ever made on this point .... Without proper objection interposed, the question is not preserved for review.").

No party placed the records of the 2019 district-court domestic-violence case into evidence so that this court could review the information contained in those court records to determine whether it supported the juvenile court's ultimate decision that the child is dependent.[2] "We note that '[w]here ... evidence before the trial court ... is not preserved for the appellate court, the evidence is conclusively presumed to support the trial court's [judgment].' " Henning v. Henning, 26 So. 3d 450, 453 (Ala. Civ.

[2]In situations in which a court takes judicial notice of its records to provide evidence in a matter (as opposed to only taking judicial knowledge of the existence of an action, order, or judgment), the records should be made a part of the record like any other exhibit. Municipal Workers Compensation Fund, Inc. v. Morgan Keegan & Co., 190 So. 3d 895, 911 (Ala. 2015) (quoting Charles W. Gamble & Robert J. Goodwin, McElroy's Alabama Evidence § 484.02(2) (6th ed. 2010)) (" '[T]he circuit court cannot take judicial notice of its record in another case for the purpose of supplying evidence in the case at hand, as the record in the other case must be introduced in evidence if it is to be considered as evidence.' ").

App. 2009) (quoting White v. White, 589 So. 2d 740, 743 (Ala. Civ. App.1991)); see also M.J.C. v. G.R.W., 69 So. 3d 197, 206 (Ala. Civ. App. 2011) (presuming that "medical records ... not contained in the record on appeal[ ] ... support[ed] the juvenile court's findings"). In the present case, the record is missing evidence that the juvenile court considered in making its determination, and we are required to presume that information in that missing evidence supports the juvenile court's judgment insofar as it determined that the child was dependent. Accordingly, the judgment of the juvenile court is affirmed.

2200236 -- AFFIRMED.

2200241 -- AFFIRMED.

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

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