

Rel: October 8, 2021

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2200372 and 2200373

M.C.A.

v.

Etowah County Department of Human Resources

**Appeal from Etowah Juvenile Court
(JU-21-9.01 and JU-21-10.01)**

THOMPSON, Presiding Judge.

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(A), Ala. R. App. P.; § 12-15-314, Ala. Code 1975; A.G. v. Ka.G., 114 So. 3d 24, 26-27 (Ala. 2012); Ex parte Fann,

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810 So. 2d 631, 633 (Ala. 2001); Ex parte Bryowsky, 676 So. 2d 1322, 1324 (Ala.1996); Ex parte J.M.S., 303 So. 3d 155, 158 (Ala. Civ. App. 2020); E.D. v. Lee Cnty. Dep't of Hum. Res., 266 So. 3d 740, 746 (Ala. Civ. App. 2018); J.P. v. D.P., 260 So. 3d 862, 871 (Ala. Civ. App. 2018); N.G. v. Blount Cnty. Dep't of Hum. Res., 216 So. 3d 1227, 1233–34 (Ala. Civ. App. 2016); and B.H. v. Tuscaloosa Cnty. Dep't of Hum. Res., 161 So. 3d 1215, 1218 (Ala. Civ. App. 2014).

Moore, Edwards, and Fridy, JJ., concur.

Hanson, J., dissents, with writing.

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HANSON, Judge, dissenting.

I respectfully dissent from the affirmance of the dependency judgments entered by the Etowah Juvenile Court as to minor children E.V.A. and E.C.A. ("the children"). Recent caselaw confirms that a child cannot properly be deemed dependent if that child has a fit custodial parent. See E.D. v. Lee Cnty. Dep't of Hum. Res., 266 So. 3d 740, 743-47 (Ala. Civ. App. 2018). The children in this case have such a parent: their mother, O.P. ("the mother"), who was awarded joint legal and physical custody of the children with M.C.A. ("the father") in January 2020 by a consent divorce judgment entered by the Calhoun Circuit Court.

At no point in the juvenile-court proceedings did the Etowah County Department of Human Resources ("DHR") allege that the mother had failed to discharge her responsibilities as to the children, and the record in these appeals indicates that, throughout the investigative and protective process leading up to the filing of dependency petitions as to the children and pending the adjudication thereof, DHR has at all times elected to keep the children in the mother's care. Indeed, at trial, a DHR witness conceded that DHR's sole current concern was that the father,

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whom the children's older half sister has accused of having made illicit advances, "has unsupervised visits" with the children and that "[i]f he was awarded supervised visits, then we wouldn't have any objections." For all that appears in the record regarding the conduct of the father directed toward the half sister, DHR has clearly been content to place the children at issue in these cases in the care of the mother throughout its involvement with the family, belying the proposition that the mother is unwilling or unable to act as a parent. Cf. T.B. v. Lee Cnty. Dep't of Hum. Res., 216 So. 3d 1246, 1250 (Ala. Civ. App. 2016) (indicating support for an argument that "a judgment adjudicating a child dependent but awarding a ... parent long periods of unsupervised visitation is inconsistent"). Further, to the extent that DHR's appellate counsel seeks to glean evidence from the record arguably supporting the proposition that the mother has somehow contributed to the dependency of the children by failing to protect them from the father, I do not view that evidence as amounting to clear and convincing evidence necessary to avoid dismissal of a dependency action as required by the Alabama Juvenile Justice Act, see Ala. Code 1975, §§ 12-15-310(b) & 12-15-311(a).