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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2200498 and 2200499

A.R.

v.

Etowah County Department of Human Resources

**Appeals from Etowah Juvenile Court
(JU-20-30.01 and JU-20-31.01)**

EDWARDS, Judge.

In January 2020, the Etowah County Department of Human Resources ("DHR") was notified about the death of the infant son of A.R.

2200498 and 2200499

("the mother"). The DHR on-call worker, Shayna Douthard, spoke with the mother at the hospital and requested that the mother submit to a drug test; the mother refused. Later, Douthard and the mother visited the home of the mother's mother, H.B. ("the maternal grandmother"), where the mother became distraught and stated in front of Douthard that she wanted to run her automobile off of a cliff. Douthard contacted emergency services, and the responding officers convinced the mother to check into the psychological ward of a local hospital. Once the mother was admitted to the hospital, she was tested for the presence of illegal substances and was positive for cocaine and benzodiazepine, the latter of which she had been provided at the hospital earlier in the day. As a result of the mother's emotional distress and hospitalization, DHR took custody of the mother's three other children, J.R., K.R., and M.R. Relevant to these appeals, DHR also filed in the Etowah Juvenile Court ("the juvenile court") petitions seeking to have J.R. and K.R. declared dependent.¹

¹The petition relating to J.R., whose date of birth is November 12, 2009, was assigned case number JU-20-30.01, and the petition relating to K.R., whose date of birth is December 21, 2010, was assigned case number JU-20-31.01. DHR also filed a dependency petition relating to M.R., but

2200498 and 2200499

Initially, all three children were placed with the maternal grandmother; subsequently, DHR located R.S., the father of J.R., and B.J.W., the father of K.R., and began providing services to both R.S. and B.J.W. and conducting home studies on each father. The maternal grandmother later tested positive for cocaine on a hair-follicle drug test, prompting DHR to remove J.R., K.R., and M.R. from her custody. At that time, DHR placed J.R. with her paternal grandmother, L.F. ("the paternal grandmother"), with whom R.S. lived; DHR required R.S. to move out of the paternal grandmother's home pending the completion of a home study and R.S.'s completion of services. DHR placed K.R. with her paternal uncle, R.C. DHR placed M.R. in foster care.

After a trial held in February 2020, the juvenile court entered on March 2, 2020, a judgment in each dependency action, declaring J.R. and K.R. dependent and awarding their legal custody to DHR. The mother did not file a postjudgment motion or a notice of appeal directed to the March 2, 2020, judgments. Instead, on April 9, 2020, she filed in the dependency

the outcome of that dependency action is not before us in these appeals.

2200498 and 2200499

actions motions "to modify order of adjudication of dependency/disposition"; she amended her motions on April 13, 2020. In her motions and amended motions, the mother alleged that she had been cleared of any involvement in the death of her infant son, that she had been compliant with all requirements imposed on her by DHR, and that she had passed all drug tests administered to her after the date J.R. and K.R. ("the children") were taken into DHR's custody. The juvenile court denied the mother's motions on April 20, 2020.

On June 1, 2020, the children's guardian ad litem moved to suspend the mother's visitation with the children based on the mother's having tested positive for cocaine at the end of May. The juvenile court granted the guardian ad litem's motion and suspended the mother's visitation until she produced three consecutive clean drug screens. The mother also tested positive for cocaine in August 2020.

In June 2020, after completing its home study and after R.S. had completed services recommended by DHR, DHR allowed R.S. to return to the home he shared with the paternal grandmother, where J.R. had resided since March 13, 2020. On August 10, 2020, after completing its

2200498 and 2200499

home study and after B.J.W. had completed recommended services, DHR placed K.R. with B.J.W. As a result, on August 13, 2020, DHR filed in each dependency action a motion seeking to transfer the custody of J.R. or K.R. to her respective father. The juvenile court set DHR's motions for an evidentiary hearing to be held on September 24, 2020. However, that evidentiary hearing was not held in September 2020.

On January 21, 2021, the mother filed in the dependency actions motions entitled "motion to dismiss and return children back to the mother." In those motions, the mother alleged that the children were no longer dependent, if they ever were, that she had completed all required services, and that she had not had a positive drug test since August 26, 2020. In addition, she averred that DHR had begun allowing her to have unsupervised visitation with M.R.

In compliance with Ala. Code 1975, § 12-15-315, the juvenile court held a permanency hearing on January 25, 2021. The juvenile court entered an order in each action on January 27, 2021, finding that DHR had made reasonable efforts to finalize the permanency plan for each child, which it stated was "return to or remain with parent." Those orders

2200498 and 2200499

also stated that "[t]he conditions or circumstances leading to the removal of the child have been corrected and it is now safe to return the child home."

After the conclusion of the trial held on February 10, 2021, and March 5, 2021, the juvenile court entered a judgment in each dependency action on March 9, 2021, transferring custody of J.R. to R.S. and custody of K.R. to B.J.W. In those judgments, the juvenile court ordered the mother to pay child support to the fathers and awarded the mother visitation in the following provision:

"3. The mother shall have visitation with the ... children for a minium of two hours every other weekend.

"a. The mother's visitation shall remain supervised for no less that three months, and then the parties may allow the mother to have unsupervised visitation.

"b. For the mother's visitation with [J.R.], the supervised visitation shall occur in Guntersville, Alabama.

"c. For the mother's visitation with [K.R.], the supervised visitation shall occur in Talladega, Alabama."

The judgments also instructed DHR to close its cases on J.R. and K.R.

2200498 and 2200499

The mother filed in each dependency action a postjudgment motion and an amended postjudgment motion on March 19, 2021. She amended her motions a second time on April 1, 2021, and also filed in each dependency action a motion for relief from judgment pursuant to Rule 60(b), Ala. R. Civ. P. The mother's postjudgment motions, as amended, were denied by operation of law on April 2, 2021.² Rule 1(B), Ala. R. Juv. P. On April 13, 2021, the mother filed a notice of appeal in the dependency actions pertaining to J.R. and K.R. See note 1, supra. We consolidated the mother's appeals.

On appeal, the mother raises two arguments. She first contends that the juvenile court lacked jurisdiction to award custody of the children to their respective fathers because, she says, DHR failed to establish that the children were dependent at the time of the custodial dispositions. Secondly, she complains that the juvenile court erred in failing to make a specific visitation award.

²The Rule 60(b) motions, however, were not capable of being denied by operation of law and remain pending in the juvenile court. See Ex parte R.S.C., 853 So. 2d 228, 234 (Ala. Civ. App. 2002).

2200498 and 2200499

The juvenile court's factual findings in a dependency case when the evidence has been presented ore tenus are presumed correct, T.D.P. v. D.D.P., 950 So. 2d 311 (Ala. Civ. App. 2006), and "'[t]his presumption is based on the [juvenile] court's unique position to directly observe the witnesses and to assess their demeanor and credibility.'" Ex parte T.V., 971 So. 2d 1, 4 (Ala. 2007) (quoting Ex parte Fann, 810 So. 2d 631, 632 (Ala. 2001)). 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 [Ala. Code 1975, §] 12-15-301[,] or neglect[,] as defined in [Ala. Code 1975, §] 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

2200498 and 2200499

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."

In addition, 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).

A finding of dependency must be supported by clear and convincing evidence. Ala. Code 1975, § 12-15-310(b). 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. v. M.C.B., 219 So. 3d 650, 653 (Ala. Civ. App. 2016) (quoting Ex parte McInish, 47 So. 3d 767, 778 (Ala. 2008), quoting in turn Ala. Code 1975, § 25-5-81(c)). However, we are not permitted to reweigh the

2200498 and 2200499

evidence presented to the juvenile court. D.M. v. Jefferson Cnty. Dep't of Hum. Res., 232 So. 3d 237, 242 (Ala. Civ. App. 2017).

Amanda Currie, the caseworker assigned to these cases, testified at trial that the children were removed from the mother's custody after DHR received a report about the death of the mother's infant son. Shayna Douthard, the on-call worker that responded to the report, explained that the mother had been understandably distraught on the date of the infant son's death and that the mother had made a statement that Douthard took to indicate the mother's desire to harm herself, which resulted in the mother's hospitalization. Douthard said that the mother had refused to submit to a drug test when Douthard first requested one but that the mother had admitted to taking one half of a pill of an unspecified substance. Douthard testified that the mother had been tested upon her admission to the hospital later in the day; that test, according to Douthard, was positive for cocaine.³

³As noted above, the mother also tested positive for benzodiazepine. Testimony from a January 2020 hearing contained in the record indicates that the mother was given Ativan, a benzodiazepine, at the hospital earlier in the day after the death of her infant son.

2200498 and 2200499

Douthard testified that she had initially planned to enter into a safety plan with the mother but that the mother's emotional state and ultimate hospitalization had prevented the mother from being capable of entering a safety plan with DHR. Douthard said that DHR had decided to place the children with the maternal grandmother because Douthard had noticed that they had things at the maternal grandmother's house when Douthard had visited it with the mother. According to Douthard, the maternal grandmother had indicated that the mother and the children had been living with her until approximately three weeks before the death of the mother's infant son.

Currie testified that the mother had had a history with DHR; however, Currie admitted that many of the reports concerning the mother had been resolved as "not indicated." Nonetheless, Currie said that DHR had concerns that the mother had a long history of drug use, which was borne out by the mother's positive drug test in January 2020. In addition, Currie testified, and the mother admitted, that the mother had tested positive for cocaine again in May 2020 and in August 2020. Currie explained that the mother's intermittent positive drug tests were

2200498 and 2200499

concerning to DHR because they suggested that she continued to use cocaine and that, perhaps, she had not tested positive on other drug tests merely because the drug had left her system before she was tested.

Douthard testified that DHR had opened an investigation of the mother after the death of her infant son. According to Douthard, the mother had been found "indicated" for "physical abuse, risk of serious harm, neglect, [and] inadequate supervision." Douthard did not further explain the "indicated finding" but testified that the mother had not appealed the determination.

Currie admitted that the mother had completed almost all the services recommended in her individualized service plan ("ISP"). According to Currie, the mother had completed a psychological evaluation, had engaged in counseling to address anger-management and parenting issues, had continued to utilize CED Mental Health for therapy and medication monitoring, had maintained housing and employment throughout most of the period when these cases were pending, and had completed outpatient drug treatment shortly before the 2021 trial. However, Currie said that the mother was often angry at DHR and was

2200498 and 2200499

loud and belligerent at ISP meetings. She described the mother as "less willing" than the children's fathers to meet DHR's requests. When asked why DHR was concerned about the mother's "attitude" toward DHR, Currie remarked that, although the mother had completed anger-management classes, it appeared that she might need additional assistance to manage her anger.

Currie explained that DHR had asked B.J.W. to complete a parenting class, a home study, and two random drug tests before placement of K.R. with him could be accomplished. She described B.J.W. as having been cooperative and willing to comply with DHR's requests. Currie said that B.J.W. had been negative for any substances on both drug tests and that DHR had no indications that B.J.W. engaged in drug use. She also testified that B.J.W. had a criminal history, but, she said, it was approximately 10 years old and DHR had not had any concerns about that history or K.R.'s placement with B.J.W.

Regarding R.S., Currie testified that he was initially more angry about the situation with J.R. than B.J.W. had been about the situation with K.R. However, Currie said that R.S. had undergone anger-

2200498 and 2200499

management classes, parenting classes, counseling, and two random drug screens as required by his ISP. Currie remarked that R.S.'s attitude had improved considerably and that J.R.'s placement in the home he shared with the paternal grandmother had gone well.

The mother's counsel repeatedly asked Currie about DHR's decision to seek to have custody of the children placed with their respective fathers. Currie explained that DHR's goal was not solely to reunify a child to the parent from whom the child had been removed but to place the child in the custody of a suitable parent. She explained that the children deserved to be in a permanent custodial setting, that the children were safe in the homes of their respective fathers, and that their best interests would be served by continuing those placements so that the children could achieve permanency.

B.J.W. testified that he had had placement of K.R. since August 2020. He said that K.R. was doing well in his home and that she was a good child and a good student. He admitted that K.R. sometimes had what he called an "attitude" upon her return from visitations with the mother and that she had occasionally exhibited some rudeness or defiance

2200498 and 2200499

toward his wife, A.W. ("the stepmother"). According to B.J.W., K.R. had made friends in their neighborhood and had some cousins near her age to play with. B.J.W. indicated that he was concerned about K.R.'s safety in the care of the mother; he recounted a situation during which the mother had contacted him to tell him that a man was threatening to kill her and the child. He said that he and the mother had a strained relationship and that contact with her was initiated through the stepmother. B.J.W. also remarked that he had often had difficulty contacting the mother in the past and that he had not been able to arrange regular visits with K.R.

R.S. testified that he had had J.R. in his home since June 2020. He said that he had worked with DHR to ensure J.R.'s placement, even moving out of the house he shared with his mother for two months so that DHR could complete its home study on him. He said that he had visited with J.R. fairly regularly before J.R. was removed from the mother's custody, but, he said, the mother had not followed the visitation order that had been in place. Although R.S. said that he and the mother had not previously been on bad terms, he said that their relationship had deteriorated and that they had not had contact in the recent past. Like

2200498 and 2200499

B.J.W., R.S. also remarked that the mother had sometimes been difficult to contact.

The mother testified that she had refused to take a drug test when Douthard first requested one on the day her infant son died. She explained that she did not want to take a drug test because she knew she had taken a pill two days before but that she had not known what the pill was; she said that she had purchased the pill from "James" and that she later learned that it was an illicit drug commonly referred to as "ecstasy." The mother also admitted that she knew why she had tested positive for cocaine, but she did not further elaborate.

The mother denied having a drug problem, stating that January 2020 was the first time she had ever used cocaine or ecstasy; she later testified that she had used ecstasy in 2008. Regarding her use of drugs in January 2020, the mother remarked that she had been in "a bad place mentally." She admitted that she had used cocaine twice since January 2020 -- in May 2020 and August 2020. She said that she had taken drugs on those occasions because she was "lonely" and "everyone was coming at me negatively" and "to feel numb." She complained that Currie had never

2200498 and 2200499

told her she was doing a good job and that Currie had put the fathers "on a pedestal." When the juvenile court questioned her about why she would use drugs when she was seeking a return of the children's custody, the mother said that she "felt like she'd never get them back."

The mother's first argument is that the juvenile court lacked jurisdiction to make its custody awards because, she says, the children were not dependent at the time of those dispositions. The mother is correct that a juvenile court lacks jurisdiction to enter a custody award if a child is not dependent at the time of disposition. See H.C. v. S.L., 251 So. 3d 793, 794 (Ala. Civ. App. 2017). The juvenile court explicitly declared the children dependent in its March 2021 judgments, commenting that the mother's conduct had rendered the children dependent and in need of the care and protection of the state, pursuant to Ala. Code 1975, § 12-15-102(8), specifying that the mother had subjected the children to abuse and was incapacitated as defined in Ala. Code 1975, § 12-15-301(4) & (10).⁴ The juvenile court also specifically determined

⁴The juvenile court cited to former § 12-15-301(2) and former § 12-15-301(8), which defined "abuse" and "parental incapacity," respectively.

2200498 and 2200499

that "it will not be safe to return the ... children home" and determined that the children each had "a parent who is ready, willing, and able" to provide for their care, i.e., their respective fathers.

This case is unlike E.H. v. Calhoun County Department of Human Resources, 323 So. 3d 1226, 1231 (Ala. Civ. App. 2020), in which the Calhoun Juvenile Court "made no factual findings relating to the mother's conduct, condition, or circumstances at the time of the entry of the judgment." In the present case, the juvenile court's judgments recited the facts relating to the mother's continued, sporadic positive drug tests as one factor supporting its determination that the mother was not sufficiently rehabilitated to resume custody. The juvenile court also pointed out the "indicated" finding against the mother. In addition, at the close of the evidence at the trial, the juvenile court remarked that it had concerns about the mother's credibility. Thus, we are able to discern facts from the judgments and the record that would support the conclusion that

Those definitions are now found in § 12-15-301(4) and § 12-15-301(10), respectively. Section 12-15-301(4) now defines "child abuse"; the definition has changed in certain respects that do not impact the meaning of the term.

2200498 and 2200499

the juvenile court determined that the children remained dependent at the time of the March 2021 judgments and, therefore, had jurisdiction to enter judgments relating to the children's custody.

Insofar as the mother contends that the January 29, 2021, permanency orders, which declared that "the conditions or circumstances leading to the removal of the child[ren] have been corrected and it is now safe to return the child[ren] home," supports a conclusion that the children no longer remained dependent, we note that the juvenile court clearly held the opposite in the March 2021 judgments after hearing evidence over a two-day trial. Testimony at the trial included statements by Currie that DHR had determined that the children could be returned to their respective fathers because those fathers had completed recommended services, had received approval for placement, and had been serving as placements for the children without issues or concerns; DHR had already requested a transfer of custody to the fathers and not back to the mother. Although we agree with the mother that the evidence demonstrated that the mother had been permitted unsupervised visitation with M.R., the juvenile court did not permit reunification of the mother

2200498 and 2200499

and that child in March 2021, indicating that, after hearing the evidence over the two-day trial, it was not yet comfortable with such reunification. We find no basis for reversal in the alleged inconsistency between the January 2021 permanency order and the March 2021 judgments.

The mother also argues that the evidence presented to the juvenile court did not clearly and convincingly support the conclusion that the children remained dependent based on her conduct and condition. Although the mother is correct that the record contains evidence indicating that she had complied with DHR's ISP requirements, the mother had been found "indicated" for "physical abuse, risk of serious harm, neglect, [and] inadequate supervision" resulting from the circumstances surrounding the death of her infant son. The record also contains evidence indicating that the mother had continued to at least sporadically use cocaine even while she was being randomly tested for illegal substances. The mother's reasons for her cocaine use were "being lonely" and "everyone coming at her negatively," indicating that, at least as of August 2020, she had not yet made any significant progress toward overcoming her drug use or taking responsibility for her part in the

2200498 and 2200499

situation in which she found herself. Her inconsistent testimony about her drug use was sufficient to support the juvenile court's apparent concerns about the mother's credibility. The juvenile court noted in its judgments that the mother had made additional progress after August 2020 but still determined that the mother was not yet ready to resume custody of the children, especially because the children were safely placed with their respective fathers, who had satisfied DHR and the juvenile court that they were fit custodians. The juvenile court's findings that the children remained dependent because of the mother's conduct and condition are adequately supported by the evidence presented, and we therefore reject the mother's argument that the March 2021 judgments are due to be reversed on that basis.

The mother's second argument on appeal is that the juvenile court's visitation provisions lack sufficient specificity and essentially leave the particulars of the mother's visitation to the discretion of the respective fathers of the children. This court has long recognized that the determination of the appropriate visitation to be awarded a parent of a dependent child is within the discretion of the juvenile court. M.C. v.

2200498 and 2200499

Jefferson Cnty. Dep't Hum. Res., 198 So. 2d 518, 520 (Ala. Civ. App. 2015).

However, we have also explained that the juvenile court's discretion is not unbridled. A.M.B. v. R.B.B., 4 So. 3d 468, 471 (Ala. Civ. App. 2007). A juvenile court's visitation order is subject to reversal when it leaves visitation to the discretion of a custodian or lacks specific details regarding the time, place, frequency, and length of the awarded visitation.

See, e.g., K.B. v. Cleburne Cnty. Dep't Hum. Res., 897 So. 2d 379, 388 (Ala. Civ. App. 2004) (reversing a visitation award that did not set out a specific schedule for visitation); R.K.J. v. J.D.J., 887 So. 2d 915, 919 (Ala. Civ. App. 2004) (reversing a visitation award permitting the noncustodial parent visitation "at reasonable times and places" because the order "place[d] too much control over the noncustodial parent's relationship with the children in the hands of the custodial parent" and because the "visitation judgment [wa]s likely to increase the chances of further litigation over visitation matters"). We have also observed that judgments containing visitation orders lacking specificity are due to be reversed based on the fact that those orders are "unduly vague and could lead to additional litigation over visitation matters." K.F. v. Cleburne Cnty. Dep't

2200498 and 2200499

of Hum. Res., 78 So. 3d 983, 991 (Ala. Civ. App. 2011); R.K.J., 887 So. 2d at 919.

Although the visitation provisions in the March 2021 judgments do not leave visitation entirely to the discretion of the fathers, the provisions are far too vague. Although the provisions award the mother "a minimum of two hours [of supervised visitation] every other weekend" with each child, the judgments do not specify a date when visitation is to begin, who is to supervise visitation, or which day of the weekend and what time of day visitation is to occur with each child. The judgments are especially troublesome in this particular instance because the mother has two children to visit for some unspecified two-hour period "every other weekend" in two separate cities. Conceivably, each father could set visitation for Saturday at the same time or so close together that the mother could not travel between the two cities. The visitation provisions do not create a clear right to certain specified visitation in the mother, permit too much flexibility in the timing of the mother's visitation, and will likely lead to further litigation. Accordingly, we reverse the juvenile court's judgments insofar as they award the mother unspecified rights to

2200498 and 2200499

visitation with the children, and we remand the cases to the juvenile court for it to enter clear and specific visitation orders in each action.

2200498 -- AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

2200499 -- AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

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