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# ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2021

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2200552, and 2200553**

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**Ex parte K.G. and B.G.**

**PETITIONS FOR WRIT OF MANDAMUS**

**(In re: Calhoun County Department of Human Resources**

**v.**

**K.G. and B.G.)**

**(Calhoun Juvenile Court, JU-20-47.02, JU-20-48.02,  
JU-20-49.02, JU-20-50.02, JU-20-52.02, JU-19-1160.02,  
and JU-19-1202.02)**

THOMPSON, Presiding Judge.

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The Calhoun County Department of Human Resources ("DHR") filed in the Calhoun Juvenile Court ("the juvenile court") separate petitions in which it sought to have the seven minor children of K.G. ("the mother") and B.G. ("the father") declared dependent. The materials submitted to this court indicate that, in its dependency petitions, DHR alleged that, on January 13, 2020, the mother gave birth to her seventh child, H.G., at home and "inside the toilet," that H.G. suffered head injuries as a result of that home birth, and that H.G., the mother, and the father each tested positive for methamphetamine at a local hospital immediately following H.G.'s birth.

On January 17, 2020, the day following the filing of DHR's dependency petitions, the juvenile court entered shelter-care orders with regard to each of the parents' seven minor children in which it, among other things, awarded DHR pendente lite custody of the children. On March 5, 2020, the juvenile court entered orders, based on the agreement of the parties, in which it found each of the parents' seven children dependent and ordered that custody of each of the children remain with DHR.

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On May 12, 2020, the mother was arrested on a charge of chemical endangerment of a child in connection with her pregnancy with H.G. and the birth of H.G.

On January 5, 2021, DHR separate petitions in which it sought to terminate the parents' parental rights to each of the seven children. In those petitions, DHR alleged that the parents had failed to meet the needs of the children, that both parents had substance-abuse issues that rendered them incapable of properly parenting the children, and that the condition of the parents was unlikely to improve in the foreseeable future. In the termination-of-parental-rights petitions, DHR did not reference the events of January 13, 2020, that had resulted in the children being placed in DHR's custody or the criminal charges pending against the mother.

On January 28, 2021, the juvenile court entered orders in each of the dependency actions finding that DHR had made reasonable efforts toward reuniting the mother and the father with the children, that such efforts toward reunification had failed, and that no further reunification efforts were required of DHR.

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In March 2021, the mother filed in each of the seven termination-of-parental-rights actions a motion to stay those actions pending the resolution of the criminal case against her. In her motions to stay, the mother cited her concern that proceeding with the termination actions would violate her right against self-incrimination granted by the Fifth Amendment to the United States Constitution. The juvenile court conducted oral arguments on the motions to stay. On April 13, 2021, the juvenile court entered an order in each of the termination actions in which it denied the mother's motion to stay filed in the action.

The mother and the father filed in this court joint petitions for a writ of mandamus with regard to the April 13, 2021, orders denying the motions to stay. However, although during the hearing on the mother's motions to stay, the father orally expressed an intent to "join" the mother's motions to stay, the father did not file a motion to stay in any of the termination-of-parental-rights actions. The juvenile court's April 13, 2021, orders addressed the only pending motions to stay, i.e., those motions filed by the mother. Thus, there is no adverse ruling with regard to the father from which the father can properly seek relief by way of a

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We turn to the arguments asserted by the mother. As an initial matter, we note that the mother asserts an argument that her right against self-incrimination is threatened by proceeding with the termination-of-parental-rights actions while the criminal case is still pending against her. She also asserts a separate argument that allowing her to be questioned pertaining to her alleged continued drug use after the children were placed in DHR's custody would expose her to potential additional criminal charges and that, therefore, the presentation of such evidence would also amount to a violation of her right against self-incrimination. We discuss those arguments separately. We first analyze the mother's argument concerning the possible threat to her Fifth Amendment right against self-incrimination posed by proceeding with the termination actions while the criminal case against her is still pending, and, later in this opinion, we address the mother's contention concerning a possible threat to her right against self-incrimination purportedly posed

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by allowing her to be questioned pertaining to alleged conduct for which the mother is not currently facing criminal charges.

"This Court has consistently held that the writ of mandamus is an extraordinary and drastic writ and that a party seeking such a writ must meet certain criteria. We will issue the writ of mandamus only when (1) the petitioner has a clear legal right to the relief sought; (2) the respondent has an imperative duty to perform and has refused to do so; (3) the petitioner has no other adequate remedy; and (4) this Court's jurisdiction is properly invoked. Ex parte Mercury Fin. Corp., 715 So. 2d 196, 198 (Ala. 1997)."

Ex parte Flint Constr. Co., 775 So. 2d 805, 808 (Ala. 2000). A petition for a writ of mandamus will be granted only upon the showing of an abuse of the trial court's discretion. Ex parte Rawls, 953 So. 2d 374, 377 (Ala. 2006).

Our supreme court has explained a person's right against self-incrimination as follows:

"Under the Fifth Amendment to the Constitution of the United States, '[n]o person ... shall be compelled in any criminal case to be a witness against himself.' The privilege against self-incrimination must be liberally construed in favor of the accused or the witness, Hoffman v. United States, 341 U.S. 479, 71 S. Ct. 814, 95 L. Ed. 1118 (1951), and is applicable not only to federal proceedings but also to state proceedings, Malloy v. Hogan, 378 U.S. 1, 84 S. Ct. 1489, 12 L. Ed. 2d 653 (1964). 'The fact that the privilege is raised in a civil

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proceeding rather than a criminal prosecution does not deprive a party of its protection.' Wehling v. Columbia Broadcasting System, 608 F.2d 1084, 1086 (5th Cir. 1979), citing with approval Lefkowitz v. Cunningham, 431 U.S. 801, 91 S. Ct. 2132, 53 L. Ed. 2d 1 (1977); McCarthy v. Arndstein, 266 U.S. 34, 45 S. Ct. 16, 69 L. Ed. 2d 158 (1924). The test is whether the testimony might later subject the witness to criminal prosecution:

"To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result.'

"Hoffman v. United States, supra, 341 U.S. at 486, 71 S. Ct. at 818; accord, Malloy v. Hogan, supra."

Ex parte Baugh, 530 So. 2d 238, 241 (Ala.1988). See also Ex parte Butts, 183 So. 3d 931, 934 (Ala. 2015) (holding that "[t]he right against self-incrimination guaranteed by Art. I, § 6[, Ala. Const. 1901], is coextensive with that guaranteed by the Fifth Amendment" to the United States Constitution); and Ex parte Rawls, 953 So. 2d at 378 (citing Hill v. State, 366 So. 2d 318, 322 (Ala. 1979), and recognizing that Art. I, § 6, Ala. Const. 1901, although containing language different from that of the Fifth

2200547, 2200548, 2200549, 2200550, 2200551, 2200552, and 2200553 Amendment to the United States Constitution, also provides for a right against self-incrimination).

A civil action is not required to be stayed simply because a criminal case is pending against a party and that party asserts his or her right against self-incrimination. Ex parte Rawls, 953 So. 2d at 378. Rather, the determination regarding whether to grant a stay based upon an argument that a party's right against self-incrimination might be violated is a matter within the discretion of the trial court. Id. In exercising that discretion, the trial court must balance the interests of the parties. Ex parte Baugh, 530 So. 2d at 244. Our supreme court set forth the following factors to be considered by the trial court when exercising its discretion to determine whether to grant a stay when a party asserts his or her right against self-incrimination:

"(1) whether the civil proceeding and the criminal proceeding are parallel, see Ex parte Weems, 711 So. 2d 1011, 1013 (Ala. 1998); (2) whether the moving party's Fifth Amendment protection against self-incrimination will be threatened if the civil proceeding is not stayed, see Ex parte Windom, 763 So. 2d 946, 950 (Ala. 2000); and (3) whether the requirements of the balancing test set out in Ex parte Baugh, 530 So. 2d [238] at 244 [(Ala. 1998)], and Ex parte Ebbbers, 871 So. 2d 776, 779 (Ala. 2003), are met."



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Ex parte Rawls, 953 So. 2d at 378. In Ex parte Ebbbers, 871 So. 2d 776  
(Ala. 2003), our supreme court set forth a number of factors that should  
be considered in applying the balancing test set forth in Ex parte Baugh,  
supra, to determine whether a party's Fifth Amendment right against self-  
incrimination "outweigh[s] the potential prejudice to the other party in the  
civil proceeding." R.M. v. Elmore Cnty. Dep't of Hum. Res., 75 So. 3d 1195,  
1203 (Ala. Civ. App. 2001). In Ex parte Ebbbers, supra, our supreme court  
explained that, when balancing the factors in determining whether a  
potential threat to a party's Fifth Amendment right against self-  
incrimination warrants a stay of a civil action (such as the termination-of-  
parental-rights actions at issue in these petitions), a court should:

"consider the following factors that have been identified by  
federal cases:

"1. The interest of the [party opposing the  
stay ('the nonmovant')] in proceeding expeditiously  
with the civil litigation, or any particular aspect of  
it, and the potential prejudice to the [nonmovant]  
of a delay in the progress of that litigation.

"2. The private interest of the [party seeking  
the stay ('the movant')] and the burden that any  
particular aspect of the proceedings may impose on  
the [movant].

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"3. The extent to which the [movant's] Fifth Amendment rights are implicated/the extent to which the issues in the criminal case overlap those in the civil case.

"4. The convenience of the court in the management of its cases, and the efficient use of judicial resources.

"5. The interest of persons not parties to the civil litigation.

"6. The interest of the public in the pending civil and criminal litigation.

"7. The status of the criminal case, including whether the party moving for the stay has been indicted.

"8. The timing of the motion to stay."

871 So. 2d at 789-90 (citations to federal cases omitted).

The mother argues that the basis for DHR's termination-of-parental-rights actions amounts to the same ground on which the mother is facing a criminal charge, i.e., the mother contends that her substance-abuse issues are the basis for both the termination actions and the pending criminal-endangerment charge. According to the mother, requiring her to defend DHR's termination actions would require her to answer questions

2200547, 2200548, 2200549, 2200550, 2200551, 2200552, and 2200553 that could result in a violation of her Fifth Amendment right against self-incrimination. Thus, the mother argues that this court should issue a writ ordering the juvenile court to stay the termination actions until the criminal case against the mother is resolved.

In its January 5, 2021, petitions to terminate the parents' parental rights, DHR alleged, in pertinent part, that the mother has a history of excessive use of alcohol or controlled substances that rendered her unable to properly care for the children, that the mother was unable or unwilling to properly parent the children, and that she had failed to make efforts to adjust her circumstances to meet the needs of the children. In its termination petitions, DHR did not address the events of January 13, 2020. See, generally, § 12-15-319, Ala. Code 1975.<sup>1</sup>

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<sup>1</sup>Section 12-15-319, which sets out the factors to be considered in determining whether a parent's parental rights should be terminated, provides, in pertinent part:

"(a) If the juvenile court finds from clear and convincing evidence, competent, material, and relevant in nature, that the parents of a child are unable or unwilling to discharge their responsibilities to and for the child, or that the conduct or condition of the parents renders them 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 parents. In a hearing on a petition for termination of parental rights, the court shall consider the best interests of the child. In determining whether or not the parents are unable or unwilling to discharge their 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:

"....

"(2) Emotional illness, mental illness, or mental deficiency of the parent, or excessive use of alcohol or controlled substances, of a duration or nature as to render the parent unable to care for the needs of the child.

"....

"(7) That reasonable efforts by the Department of Human Resources or licensed public or private child care agencies leading toward the rehabilitation of the parents have failed.

"....

"(9) Failure by the parents 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 parents to maintain regular visits with the child in accordance with a

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In both this court and in the juvenile court, DHR has responded to the mother's arguments by contending that, during the hearing on the petitions to terminate the parents' parental rights, it would not address the reason the children were removed from the parents' custody. In other words, DHR has stated that it will not reference or present evidence pertaining to the circumstances of H.G.'s birth or the fact that the mother had been arrested and was facing a chemical-endangerment charge in connection with her pregnancy with H.G. It is DHR's position that the

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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 parents 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.

"(13) The existence of any significant emotional ties that have developed between the child and his or her current foster parent or parents ...."

2200547, 2200548, 2200549, 2200550, 2200551, 2200552, and 2200553 mother's conduct after the children were placed in DHR's custody warrants the termination of her parental rights. Specifically, DHR's attorney alleged that the mother was abusing illegal substances throughout the time the children have been in DHR's custody and that she had not cooperated with DHR or participated in the services DHR had offered to enable her to reunite with the children. DHR argues to this court that the mother is unable to demonstrate that the juvenile court abused its discretion by denying her motions for a stay of the termination-of-parental-rights actions.

This court has considered cases involving a trial court's exercise of its discretion in ruling on a motion for a stay when a party has asserted that his or her Fifth Amendment right against self-incrimination would be violated by proceeding with a dependency or termination-of-parental-rights action. In R.M. v. Elmore County Department of Human Resources, supra, the juvenile court in that case conducted a hearing on termination-of-parental-rights petitions filed by the Elmore County DHR, and the Elmore County DHR sought to present evidence regarding incidents of abuse of one of the parents' two children ("the daughter") and of neglect

2200547, 2200548, 2200549, 2200550, 2200551, 2200552, and 2200553 of one or both of the children. At the same time, felony child-abuse charges pertaining to the alleged abuse and neglect of the daughter were pending against the parents. The parents in moved for a stay of the termination actions pending the resolution of the criminal cases against them, citing their concern about the potential violation of their Fifth Amendment rights against self-incrimination. The juvenile court denied the motions for a stay and entered judgments terminating the parental rights of the parents. 75 So. 3d at 1198. On appeal, this court reversed the termination judgments, concluding that the juvenile court had abused its discretion in denying the parents' motions for a stay. This court held that the termination actions and the criminal cases were parallel proceedings, that the questions asked by the attorney for the Elmore County DHR had sought to elicit testimony relevant to the pending criminal charges, see 75 So. 3d at 1202,<sup>2</sup> and that, under the circumstances of that case, the harm

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<sup>2</sup>Among other things, in discussing the questioning of the parents that this court concluded might implicate the parents' Fifth Amendment rights, this court stated:

"At the termination hearing, the mother asserted her Fifth Amendment right against self-incrimination in response

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to the parents' rights outweighed any potential harm to the Elmore

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to numerous questions, including: why she and the father had separated; whether she was living in a shelter for abused and battered women; why she had entered DHR's custody as a child; whether, as a child, her mother had physically abused her; whether she had been sexually abused as a child; whether she had been indicted by a grand jury and, if so, why; on what charges she had been incarcerated; whether she had a history of mental-health problems and, if so, the extent and details of that history; whether she or the father had ever locked or chained the refrigerator to prevent the children from obtaining food from it; whether [the daughter] had a habit of getting up at night in search of food; whether she or the father had ever locked the children in their rooms; and whether she had ever abused or neglected the children.

"At the termination hearing, the father asserted his Fifth Amendment right against self-incrimination to numerous questions, including: why he and the mother had separated; on what charges he had been incarcerated; whether he had ever been concerned for the health of his children during the time they had lived with the mother and/or him; whether, in his opinion, [the daughter] had ever appeared malnourished; whether he had ever placed a lock on the refrigerator; whether he had ever struck his children; whether he had ever been afraid of the mother or afraid that she might harm one of the children; and whether the mother had ever threatened to harm herself or commit suicide."

R.M. v. Elmore Cnty. Dep't of Hum. Res., 75 So. 3d at 1202.



2200547, 2200548, 2200549, 2200550, 2200551, 2200552, and 2200553 County DHR's cases and the children's need for permanency. 75 So. 3d at 1202-1204.

In Ex parte M.J.W., 62 So. 3d 531 (Ala. Civ. App. 2010), the children's father died of the effects of a controlled substance, and the mother was indicted on charges of criminally negligent homicide and unlawful distribution of a controlled substance in connection with the father's death. The children's aunt filed a dependency action seeking an award of custody of the children, and the mother moved to stay the action pending the resolution of the criminal charges against her. 62 So. 3d at 532-33. The juvenile court in that case entered an order in which it granted the mother's motion in part, staying a final determination on the dependency action, but it denied that motion insofar as it pertained to the issue of the pendente lite custody of the children. The mother filed a petition for a writ of mandamus in this court, arguing that the consideration of the issue of pendente lite custody of the children should have also been stayed. This court denied the mother's mandamus petition. In reaching our holding, this court noted that, at the time the aunt filed her dependency petition in the juvenile court, the children remained in the

2200547, 2200548, 2200549, 2200550, 2200551, 2200552, and 2200553 mother's custody. We concluded that, although the criminal action and the dependency action were parallel proceedings and much of the same evidence would be elicited in them, the risk of prejudice or harm to the children from not making a pendente lite custody determination was sufficiently great to allow that issue to be considered by the juvenile court. Ex parte M.J.W., 62 So. 3d at 536. This court, explaining that protecting the children from harm was a primary concern in the dependency action, stated:

"The juvenile court, by denying the mother's motion to stay the proceeding so that pendente lite custody of the children could be determined, recognized that the children, as third parties to the dependency action, had a substantial interest in the matter and that, in such circumstances, the juvenile court was required to proceed in a manner so as to protect the children from the substantial risk of harm."

Similarly, in C.J. v. Department of Children & Families, 756 So. 2d 1108 (Fla. Dist. Ct. App. 2000), a father was criminally charged with murder in connection with the October 1998 death of one of his two minor children. The Florida Department of Children and Families ("DCF") filed a February 1999 petition to terminate the parents' parental rights to the surviving child. The father filed a motion to continue, which the trial court

2200547, 2200548, 2200549, 2200550, 2200551, 2200552, and 2200553 in that case denied. The hearing on the termination petition was conducted in June 1999, and the parents' parental rights were terminated by an August 1999 judgment. 756 So. 2d at 1109. On appeal, the father argued that the trial court had erred in denying his motion to continue until after the resolution of the murder charge. The appellate court rejected that argument and explained that, in determining whether to grant a motion for a continuance in a termination-of-parental-rights action based on an allegation that a parent's right against self-incrimination was threatened, a court must balance

"two primary concerns. First and foremost is the best interest of the child, which ordinarily requires a permanent placement at the earliest possible time. ... The second consideration is affording fairness to the parents involved.

"In this case, the father is charged with the first degree murder of another child. Depending on the complexity of the issues and whether the death penalty is involved, this type of case can take anywhere from one to three years to be trial ready. Absent exceptional circumstances, it would be unreasonable to postpone a determination on the termination of parental rights issue for such an excessive period of time. Accordingly, we cannot conclude that the trial court abused its discretion in denying the requested continuance. Although [the father] had a trial date for his murder case, trial dates in such cases are often meaningless. Counsel made no representation that the case was certain to be tried on that

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day and all indications were to the contrary.<sup>1</sup> Moreover, [the child] had been taken from her parents eight months earlier and was in desperate need of permanent placement.

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"<sup>1</sup>We can conceive of situations where a brief delay might be perfectly reasonable. For example, where a parent charged with a crime advises the trial judge that he or she has filed a demand for speedy trial in his or her criminal case and would therefore have to be tried on those charges within sixty days--a first request for a brief continuance to accommodate that schedule might be warranted."

C.J. v. Department of Child. & Fams., 756 So. 2d at 1109-10 (emphasis added). See also People ex rel. D.A.J., 757 N.W.2d 70, 73-74 (S.D. 2008) (holding that a trial court did not err in denying a father's motion for a continuance, based on Fifth Amendment concerns, of a juvenile adjudicatory hearing in an action that had been pending for more than one year when the father's criminal trial had not yet been scheduled and the best interests of the child required that the hearing proceed).

In her mandamus petitions filed in this court, the mother contends that the criminal case against her and the termination-of-parental-rights actions are parallel proceedings. The mother argues that the juvenile court erred in implicitly determining that the proceedings were not

2200547, 2200548, 2200549, 2200550, 2200551, 2200552, and 2200553 parallel. In the termination cases, however, DHR has assured the juvenile court that it will limit its presentation of evidence to evidence of the mother's conduct after the children were placed in DHR's custody. For that reason, DHR contends that the criminal case arising out of the mother's pregnancy with H.G. and the events surrounding that child's birth on January 13, 2020, is not parallel to the pending termination actions. We agree with DHR. Thus, the termination actions, as they are framed by DHR, are "not parallel proceedings involving the same act" or acts as those upon which the criminal case against the mother is based such that the mother's Fifth Amendment right against self-incrimination would be violated by allowing the termination actions to proceed. Ex parte Rawls, 953 So. 2d at 379.<sup>3</sup>

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<sup>3</sup>The mother has not argued as an alternative request for relief in her mandamus petitions that the juvenile court be required to amend its April 13, 2021, orders to specify the restrictions on DHR's presentation of evidence in the trial of the termination-of-parental-rights actions. Therefore, we do not reach that issue. However, we note that any variance by DHR from the conditions under which it represented to the juvenile court that it would prosecute the actions would constitute a basis for objection by the mother, and, if necessary, a ground for argument on appeal of any adverse judgments that the juvenile court might enter against the mother.

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The mother also contends that the second Rawls factor, i.e., whether the mother's right against self-incrimination would be threatened if the termination-of-parental-rights actions are not stayed, should be decided in her favor. See Ex parte Rawls, 953 So. 2d at 378. The mother maintains that any argument asserted in the termination actions that she has not adjusted her circumstances to meet the needs of the children, see § 12-15-319(a)(12), Ala. Code 1975, would necessitate testimony about the reason the children were placed in DHR's custody.

In Ex parte Rawls, supra, our supreme court held, in part, that a husband's right against self-incrimination could be implicated by proceeding with a divorce action while a criminal case involving an allegation that the husband had stalked his wife was pending. In response to a statement in a dissenting opinion noting that the husband had not been asked about the stalking incident during discovery in the divorce action, the court stated that, "even if discovery has been completed and even if [the husband] has not yet been asked an incriminating question, because of the overlap in these proceedings, he will likely be asked at trial questions that would cause him to incriminate himself. His

2200547, 2200548, 2200549, 2200550, 2200551, 2200552, and 2200553 Fifth Amendment right is clearly threatened." Ex parte Rawls, 953 So. 2d at 382.

These cases, however, are distinguishable from Ex parte Rawls, supra, and from R.M., supra, because DHR has stated that it will not present evidence or question the mother concerning the mother's drug use during her pregnancy with H.G. or the facts surrounding the resulting criminal charge in seeking to terminate the mother's parental rights. Thus, in these cases, the mother will not face questions regarding the events that form the basis of the criminal charge against her. See note 2, supra (discussing the questions posed in R.M., supra, that could have implicated the parents' rights against self-incrimination). There will be no overlap in the evidence presented in the termination-of-parental-rights actions and any evidence that might be presented in support of the criminal charge against the mother. Accordingly, we cannot say that the mother has demonstrated that her right against self-incrimination will be threatened or impacted if the termination actions are allowed to proceed. See In re Rough, 35 Or. App. 161, 167, 581 P.2d 100, 104 (1978) (rejecting an argument that proceeding with a termination-of-parental-rights action

2200547, 2200548, 2200549, 2200550, 2200551, 2200552, and 2200553 implicated a mother's right against self-incrimination when "the sole purpose in calling the mother to the stand was to inquire as to her previous commitment to the state hospital" and when "[n]o evidence relevant to the issue of neglect was sought or adduced, and her testimony is not relevant to any possible criminal prosecution for neglect").

The mother also maintains that the juvenile court erroneously resolved against her the last factor discussed in Ex parte Rawls, supra, i.e., "whether the requirements of the balancing test set out in Ex parte Baugh, 530 So. 2d [238] at 244 [(Ala. 1988)], and Ex parte Ebbers, 871 So. 2d 776, 779 (Ala. 2003), are met." 953 So. 2d at 378. The mother contends that the juvenile court erred in concluding that her right against self-incrimination did not outweigh DHR's arguments in favor of allowing the termination-of-parental-rights actions to proceed. She also argues that the juvenile court erred in determining that the children's need for permanency outweighed her interests in obtaining a stay. In making that argument, the mother relies on R.M., supra, for the proposition that permanency for the children "may not be achieved at any cost." 75 So. 3d at 1203. However, in R.M., unlike in this case, this court had concluded



2200547, 2200548, 2200549, 2200550, 2200551, 2200552, and 2200553 that "the civil and criminal proceedings substantially overlap[ped] and significantly threaten[ed] the mother's and the father's Fifth Amendment rights," and that "both the mother and the father had been indicted on felony child-abuse charges. Thus, those factors weighed heavily in favor of staying the termination hearing." Id. In these cases, because of the position DHR has taken in the termination-of-parental-rights actions, the evidence necessary to prove the pending criminal charge will not overlap the evidence presented in the termination actions and impact the mother's right against self-incrimination. Thus, contrary to the mother's arguments, the juvenile court's prioritizing the children's need for stability and permanency will not be "achieved at any cost." R.M., 75 So. 3d at 1203. DHR's agreement not to use against the mother in the termination actions any evidence pertaining to the basis of the criminal charge against the mother has eliminated any potential threat to the mother's Fifth Amendment right against self-incrimination.

The mother has presented no evidence regarding the length of time she seeks to stay the termination-of-parental-rights actions. In other words, she has not presented any evidence, or asserted any argument,

2200547, 2200548, 2200549, 2200550, 2200551, 2200552, and 2200553 that the time until her criminal charge is resolved will be brief. See C.J. v. Department of Child. & Fams., supra; and People ex rel. D.A.J., supra. Thus, there is no indication regarding the length of time the mother is advocating that a permanency determination for the children be postponed.

The mother insists, correctly, that her constitutional rights should have weighed heavily when the juvenile court considered whether to grant the mother's motion to stay based on Fifth Amendment considerations. DHR's position as it relates to the currently pending charge against the mother, however, is that it will not implicate the mother's constitutional rights in seeking to terminate the mother's parental rights. The materials submitted to this court by the parties demonstrate that the juvenile court did consider those constitutional concerns as well as the factors set forth in Ex parte Rawls, supra. In its April 13, 2021, orders denying the mother's motions to stay, the juvenile court stated that it had considered

"the oral arguments of counsel, the limited time frame related to the mother's criminal charge, the permanency plan for the children, the length of time the children have been in care, and the impact an extended delay in obtaining permanency could have upon the children."

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The trial court's April 13, 2021, orders demonstrate that it considered the factors set forth in Ex parte Rawls, supra, and balanced the mother's right against self-incrimination against the interests of the children to obtain stability and permanency. We hold that the juvenile court did not abuse its discretion in determining that, given the facts of these cases, in balancing the rights of DHR, the children, and the mother, the mother's motions to stay based on an alleged threat to her Fifth Amendment right against self-incrimination were due to be denied.

As already indicated in this opinion, DHR has alleged that the mother continued to use illegal drugs after the children were placed in DHR's custody and that it intends to present evidence regarding that alleged drug use during the hearing in the termination-of-parental-rights actions. As a part of her arguments in her briefs submitted in support of her mandamus petitions, the mother has insisted that the juvenile court should have stayed the termination-of-parental-rights actions because, she says, any questioning regarding whether she has used illegal drugs at any point in time would impact her Fifth Amendment right against self-incrimination.

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However, the mother has made no allegation, and she has presented no evidence indicating, that any law-enforcement agency is investigating her or considering bringing charges against her for any alleged ongoing use of illegal or controlled substances.

"While [Ex parte Ebbers], 871 So. 2d 776 (Ala. 2003),] confirms that there does not have to be an existing criminal investigation to stay a civil proceeding on Fifth Amendment grounds, there must be some evidence presented from which the trial court can determine that the person claiming the privilege has a reasonable apprehension of criminal prosecution. Importantly, as Ebbers reminds, it is for the trial court, not the party moving for the stay, to assess whether the movant's apprehension of a risk of self-incrimination is reasonable under all of the attendant circumstances."

Braden v. Jim Bishop Chevrolet, Inc., 897 So. 2d 1040, 1047 (Ala. 2004).

In these cases, the mother has not alleged or demonstrated that she has a "reasonable apprehension" of being prosecuted for any alleged drug use during the time the children have been in DHR's custody. See Ex parte Steinberg, [Ms. 1190576, Jan. 15, 2021] \_\_ So. 3d \_\_, \_\_ (Ala. 2021) ("A party requesting a stay of a civil case on the basis of the Fifth Amendment must "clearly demonstrate[]" that the party "is the subject of an ongoing, and overlapping, criminal investigation." (quoting Ex parte

2200547, 2200548, 2200549, 2200550, 2200551, 2200552, and 2200553 McDaniel, 291 So. 3d 847, 853 (Ala. 2019), quoting in turn Ex parte Ebbers, 871 So. 2d at 785)).

Moreover, in the absence of existing criminal charges or any pending criminal investigation, the mother's concerns about the potential for criminal charges is speculative. A stay based on Fifth Amendment concerns is not appropriate when the party's concerns about self-incrimination are speculative or conclusory. Ex parte Ebbers, 871 So. 2d at 788 ; Ex parte Hill, 674 So. 2d 530, 533 (Ala. 1996); Ex parte Salter, 87 So. 3d 1211, 1216 (Ala. Civ. App. 2012). See also Ex parte Moore, 804 So. 2d 245, 246-47 (Ala. Civ. App. 2001) ("The privilege against self-incrimination may be invoked to ward off a real danger, as opposed to a speculative possibility, of prosecution."); Ex parte Coastal Training Inst., 583 So. 2d 979, 981 (Ala. 1991) (holding that the trial court erred in failing to grant a stay when there was an ongoing criminal investigation against the party moving for the stay); Ex parte Edmondson, 238 So. 3d 85, 89 (Ala. Civ. App. 2017) (holding that a stay may not be based on speculation that a Fifth Amendment right might be implicated); and In re D.P., 327 Ill. App. 3d 153, 160, 763 N.E.2d 351, 357, 261 Ill. Dec. 351, 387 (2001)

2200547, 2200548, 2200549, 2200550, 2200551, 2200552, and 2200553 (" '[S]peculation cannot ... establish [a] violation of the privilege against compulsory self-incrimination.' " (citation omitted)).

With regard to questioning pertaining to the mother's alleged use of illegal drugs or abuse of controlled substances after the time the children were placed in foster care, the mother has failed to identify in her mandamus petitions any threat to, or impact on, her Fifth Amendment right against self-incrimination. Accordingly, we conclude that the mother has failed to demonstrate that the juvenile court erred in denying her motions to stay the termination-of-parental-rights actions based on that argument. Ex parte Steinberg, supra.

The mother has failed to demonstrate a clear, legal right to relief in her petitions filed in this court.

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2200547 -- PETITION DENIED.

2200548 -- PETITION DENIED.

2200549 -- PETITION DENIED.

2200550 -- PETITION DENIED.

2200551 -- PETITION DENIED.

2200552 -- PETITION DENIED.

2200553 -- PETITION DENIED.

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