

Rel: July 23, 2021

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2021

2200617

Ex parte C.J.

PETITION FOR WRIT OF MANDAMUS

(In re: T.P. et al. v. C.J. and T.J.)

(Jefferson Juvenile Court, JU-20-1049.01)

2200623

Ex parte C.J.

PETITION FOR WRIT OF MANDAMUS

(In re: T.P. et al. v. C.J. and T.J.)

(Jefferson Juvenile Court, JU-20-1050.01)

THOMPSON, Presiding Judge.

C.J. ("the mother") petitions this court for writs of mandamus directing the Jefferson Juvenile Court ("the juvenile court") to vacate all the orders it issued after February 18, 2021, in the underlying dependency actions regarding the mother's children, A.R.J. and N.M.J. ("the children"), and to enter orders dismissing the petitions filed by T.P., the mother's sister, alleging that the mother's children are dependent.¹ We deny the mother's mandamus petitions.

¹The majority of the juvenile court's orders included in the materials before this court indicate that F.H., another sister of the mother, is also a petitioner seeking a determination that the mother's children are dependent. In her mandamus petitions, the mother asserts that F.H. is not a party in the underlying dependency actions because, she says, F.H. has not moved to intervene in the actions or filed independent dependency petitions. The materials before us do not indicate when F.H. was added as a petitioner. However, we note that, although only T.P. signed the dependency petitions included in the materials before us, the juvenile court's order entered after the emergency ex parte hearing conducted on August 14, 2020, indicates that F.H. is a petitioner and that she was present at that hearing.

2200617 and 2200623

Facts and Procedural History

On August 13, 2020, T.P. filed petitions with the juvenile court's intake officer, alleging that, pursuant to § 12-15-102(8)a.2., Ala. Code 1975, the children were dependent. Specifically, T.P. alleged that the children were without a parent, legal guardian, or custodian willing and able to provide for their care, support, and education and that they were in need of care or supervision, that the children resided with the mother and T.J. ("the father"), and that the mother and the father were not maintaining safe housing for the children and were exhibiting behaviors that were unsafe and inappropriate for the well-being of the children. T.P. further alleged that the parents drank to excess, left the children unsupervised, and failed to meet appropriate hygienic standards. T.P. attached to her petitions affidavits executed by herself and A.W., a friend of the mother, averring that the mother and the father had engaged in alcohol abuse and violent behaviors in front of the children, that the children were not being adequately fed and supervised, and that, because of ongoing renovations, the mother and father's house was unsafe for the children.

2200617 and 2200623

On August 14, 2020, the juvenile court conducted an emergency ex parte hearing at which T.P.; F.H., another sister of the mother; and the children's guardian ad litem were present. After considering ore tenus evidence, the juvenile court found, based on a preponderance of the evidence, that the entry of emergency orders of protection and restraint to prevent the abuse and/or neglect of the children was required. The juvenile court ordered that the children be placed in the custody of T.P. and that the mother and the father have no contact with the children until further orders were entered.

On August 17, 2020, the juvenile court conducted a shelter-care hearing at which the mother, the father, T.P., F.H., and the guardian ad litem were present. After considering ore tenus evidence, the juvenile court, among other things, placed the children in T.P.'s temporary custody, ordered specified and supervised visitation between the parents and the children, and ordered the guardian ad litem to investigate and explore various individuals as possible relative placements.

On February 18, 2021, T.P. filed in each action a motion entitled "verified notice of relinquishment of minor children and verified motion

2200617 and 2200623

to dismiss private dependency petition." T.P. made the following allegations in the motion:

"1. This matter is set for hearing on April 1, 2021 for pre-trial.

"2. Throughout the pendency of this case, [T.P.] has been continually harassed and threatened by [the mother and the father].

"3. The mother has now undertaken to send threatening emails to [T.P.] regarding [T.P.'s] legal counsel and has attempted to bully her into relinquishing the children.

"4. [T.P.] has been caused to expend thousands of dollars on the minor children, legal counsel and the educational needs of the children to the detriment of her own family.

"....

"6. T.P. moved this court on November 9, 2020, to require the parents to undergo drug, alcohol, and psychological testing. Said motion has not been heard by this court, but [T.P.] has been ordered to submit to hair follicle testing when she is not on trial. [T.P.] did undergo testing but results have been pending since her test.

"7. [T.P.] has grave concerns over the relinquishment of these children; however, the mother and father have caused alarm, harassment and threats to befall [T.P.] and her family to the point that they are afraid on a daily basis.

"8. [T.P.] gives notice that she will be relinquishing the minor children to state custody, whether it be Colorado [where T.P.

2200617 and 2200623

resides] or Alabama at the latest, Friday afternoon, the 19th of February, 2021.

"9. [T.P.] moves this court to dismiss her petition and order the mother and father to be restrained from discussing, posting, or communicating with [her] and her family."

In support of her motion, T.P. attached a copy of an email from the mother, in which the mother disparages T.P.'s attorney.

On February 18, 2021, the mother filed a document entitled "stipulation of dismissal and motion to strike as moot," stating:

"1. [Rule 41,] Alabama Rules of Civil Procedure[,] states in pertinent part:

" '(a) Voluntary dismissal: Effect thereof. (1) BY PLAINTIFF; BY STIPULATION. Subject to the provisions of Rule 23(e), of Rule 66, and of any statute of this state, an action may be dismissed by the plaintiff without order of court (i.) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii.) by filing a stipulation of dismissal signed by all parties who have appeared in the action.'

"2. [T.P.] has filed a motion to dismiss this action. As a result this matter is dismissed without further action from the court. Ex parte Foushee, 902 So. 2d 73 (Ala. Civ. App. 2004)(mother entitled to mandamus relief vacating orders entered after voluntary dismissal).

2200617 and 2200623

"3. Neither [the father nor the mother] have filed an answer or a motion for summary judgment.

"4. [The m]other provides this motion as an affirmative stipulation of dismissal of this action. See Greene v. Town of Cedar Bluff, 965 So. 2d 773 (Ala. 2007)(After the parties of a lawsuit filed a stipulation of dismissal under Rule 41, the trial court lacked authority to entertain the suit.)

"5. Additionally, the mother moves to strike all the spurious and unfounded claims set forth in the motion of [T.P.] ... pursuant to Rule 12(f)[, Ala. R. Civ. P.].

"6. Rule 12(f) states in pertinent part:

" '(f) Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within thirty (30) days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.'

"7. The allegations of intimidation or pressure are contradicted by the email provided with the motion. It cannot be seriously argued that mother was somehow abusive when the message is peppered with statements of love and affection directed toward [T.P.].

"....

"9. The motion is moot as the matter has been dismissed pursuant to Rule 41.

2200617 and 2200623

"10. Further, the inclusion of DHR [the Department of Human Resources] is not warranted as DHR has already investigated the parents and found that there is no indication of abuse or neglect."

The mother attached to her stipulation and motion copies of documents generated by the Jefferson County Department of Human Resources ("DHR") regarding its investigation of reports of neglect of the children received on August 14, 2020, and its determination that there had been insufficient evidence to support findings that the mother or the father had neglected the children by providing inadequate supervision. The father also filed a response to T.P.'s notice of relinquishment and motion to dismiss. In his response, the father agreed that the dependency actions should be dismissed and acknowledged that DHR had investigated allegations that he and the mother had provided inadequate supervision of the children and had returned a "not indicated" finding.

On February 23, 2021, the guardian ad litem filed a motion for an immediate hearing, alleging, in pertinent part:

"2. [T.P.] has indicated that she wishes to relinquish custody of the children, due to the constant harassment and threats from the parents, as well as the disruption to her children's lives.

2200617 and 2200623

"3. However, absent an order from this court, [T.P.] will not relinquish custody of the children to their parents, as both [T.P.] and the undersigned believe that returning the children to their parents is not in the children's best interest.

"4. [The m]other has taken the position that [T.P.'s] motion is the functional equivalent of a Rule 41(a) dismissal ... and is demanding the children be returned. Upon information and belief, the parents even flew to Colorado on Friday, February 19, 2021, in the mistaken assumption that they would take custody of the children.

"5. It is the opinion of the undersigned that it is in the best interest of the children to remain with [T.P.] until such time as an alternative resource may be located and a home evaluation conducted. [T.P.] has agreed to retain custody of the minor children until such an order is entered.

"6. All parties in this matter would benefit from an immediate hearing to determine the placement of the children at the time [T.P.] does eventually relinquish, as well as whether or not this court will add the Department of Human Resources as a party to this action."

On February 24, 2021, the mother filed in each action a "motion for order of execution" in which she asked the juvenile court to order the return of her children and to enforce the dismissal of the actions. In her motion, the mother alleged:

"1. This case was dismissed pursuant to the notice/motion of [T.P.] on February 18, 2021.

2200617 and 2200623

"2. Since that time the remaining parties, mother and father, have stipulated dismissal.

"3. Consistent with Alabama Rules of Civil Procedure[, Rule] 41, this case has been dismissed by the notice/motion of [T.P.].

"4. [The m]other requests a writ be issued directing the assistance, if necessary, of any peace officer to ensure [T.P.] surrenders the children ... into the custody of [the mother and the father].

"5. [The m]other has been informed that without such an order [T.P.] will not turn over the children."

On April 1, 2021, the juvenile court conducted a hearing on all outstanding motions. T.P., F.H., the mother, the father, and the guardian ad litem were present. After considering the pleadings, ore tenus testimony, and the arguments of the parties, the juvenile court, on April 5, 2021, entered an order in each action, holding, in pertinent part:

"1. Temporary custody of the children is hereby vested in W.J.T.[, the children's maternal grandfather]

"2. The motion for home evaluation by the guardian ad litem is hereby GRANTED. DHR shall conduct a home evaluation on [W.J.T.] The guardian ad litem shall do an independent home evaluation at the home of [W.J.T.].

2200617 and 2200623

"3. Motion to add party filed by the guardian ad litem is hereby GRANTED. DHR is hereby added as a party to these proceedings.

"4. The mother and the father shall have daytime visitation to be supervised by [W.J.T.], as agreed to and arranged by the parties. The mother and the father shall not live in the home with the children or stay overnight in the same home as the children.

"5. CASA [court-appointed special advocate] is hereby appointed in these cases."

On May 7, 2021, the juvenile court conducted a hearing at which T.P., the mother, the father, the guardian ad litem, W.J.T., a DHR representative, and a court-appointed special advocate were present. After considering the pleadings and the arguments of the parties, the juvenile court entered an order setting the cases for trial on September 7, 2021,² ordering that all existing orders of the court would remain in effect, and awarding the parents daytime, supervised visitation with the children.

²Nothing before us indicates that the parties have challenged the timing of the hearing.

2200617 and 2200623

On May 18, 2021, the mother filed her petitions for writs of mandamus. On May 20, 2021, this court ordered the respondents to answer. On June 3, 2021, the juvenile-court judge filed her answer.³

Standard of Review

" "Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court." "

"Ex parte K.N.L., 872 So. 2d 868, 870 (Ala. Civ. App. 2003)(quoting Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995))."

Ex parte Foushee, 902 So. 2d 73, 74 (Ala. Civ. App. 2004).

Discussion

The mother contends that the juvenile court "exceeded its discretion by continuing to issue orders and otherwise exercise jurisdiction over the private dependency petitions" after T.P. filed her motion to dismiss the

³W.J.T. filed an answer. However, his answer does not address the issue presented in the mandamus petitions; therefore, his answer will not be discussed in this opinion. DHR did not to file an answer.

2200617 and 2200623

dependency actions. According to the mother, T.P.'s motion, entitled "verified notice of relinquishment of minor children and verified motion to dismiss private dependency petition," was filed pursuant to Rule 41, Ala. R. Civ. P., and, consequently, she asserts, the filing of that motion terminated the juvenile court's jurisdiction over the cases and any orders entered by the juvenile court after T.P. filed her motion are void.

In support of her contention that the underlying cases were dismissed when T.P. filed her motion to dismiss, the mother cites Ex parte Foushee, supra. In that case, the Dale Circuit Court entered a judgment divorcing a mother and a father and ordering the father to pay child support. After the divorce, the mother and the children moved to Coffee County. Subsequently, the Alabama Department of Human Resources, on behalf of the mother, filed an action in the Dale Circuit Court seeking to modify the father's child-support obligation. Before the father filed an answer or a motion for a summary judgment, the mother, at a scheduling hearing, moved to dismiss the child-support action. The trial court acknowledged the dismissal of the case in a notation on the case-action summary. The father then filed a postjudgment motion and an emergency

2200617 and 2200623

motion for temporary custody of the children. The trial court, after considering the father's motions, set aside the dismissal and awarded emergency temporary custody of the children to the father. Subsequently, after conducting a hearing to address the father's motions, the trial court awarded the father continued custody of the children. The mother filed a petition for a writ of mandamus asking this court to order the trial court to vacate all of its orders entered after the dismissal of her child-support action and to return custody of the children to her. This court granted the mother's petition and issued the writ, holding that the mother's motion to dismiss the modification action had been filed pursuant to Rule 41; that she had been entitled to a voluntarily dismissal of the modification action because the father had not yet filed an answer or a motion for a summary judgment; that the dismissal of the modification action had been effective when her motion was filed; and that "[n]either the father nor the trial court had any authority to challenge or to prevent the mother's exercise of that right." 902 So. 2d at 75.

2200617 and 2200623

In her answer to the mother's mandamus petitions, the juvenile-court judge maintains that, because the underlying cases address whether children within the juvenile court's jurisdiction are dependent and in need of supervision, she has an imperative statutory duty to guard and protect these children by conducting an evidentiary hearing to determine whether these children are dependent. Therefore, she reasons that, under the facts of these cases, this statutory duty supersedes the operation of Rule 41 and that T.P.'s filing of a motion to dismiss, in and of itself, did not dismiss the dependency petitions. The juvenile-court judge notes that T.P. properly invoked the juvenile court's jurisdiction, that the parents appeared in the dependency actions, that the parents have been defending against the allegations in the petitions, and that she has "repeatedly found it necessary to restrain the parents' contact with the children in order to protect the health and safety of the children." Thus, in essence, the juvenile-court judge contends that the parents have "answered" the dependency petitions. Additionally, the juvenile-court judge questions whether T.P.'s "verified notice of relinquishment of minor children and verified motion to dismiss private dependency petition" was filed pursuant

2200617 and 2200623

to Rule 41(a). The juvenile-court judge maintains that a fair reading of the motion leads to the conclusion that it was not T.P.'s intent for the children to be returned to the parents or for the dependency cases to be dismissed; rather, she asserts, T.P.'s intention was to relinquish custody of the children because of the parents' harassment and the additional expense she was incurring caring for the children. For the foregoing reasons, the juvenile-court judge contends that the underlying dependency cases were not dismissed pursuant to Rule 41(a) by the filing of T.P.'s motion and that it had jurisdiction to enter its orders after T.P. had filed her motion.

Our supreme court has consistently held that when a plaintiff files a notice pursuant to Rule 41(a)(1), Ala. R. Civ. P., the action is dismissed. For example, in Ex parte Sealy, L.L.C., 904 So. 2d 1230 (Ala. 2004), the supreme court considered whether a trial court had exceeded its discretion by not dismissing an action after the plaintiff had filed a notice of dismissal, pursuant to Rule 41(a)(1). The court opined:

"Rule 41(a)(1) and (2), Ala. R. Civ. P., provides, in pertinent part:

" '(a) Voluntary Dismissal: Effect Thereof.

" '(1) By Plaintiff; by Stipulation. Subject to the provisions of Rule 23(e), of Rule 66, and of any statute of this state, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice

" '(2) By Order of Court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action may be dismissed but the counterclaim shall remain pending for adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.'

"(Emphasis added.) 'The committee comments to Rule 41 state that this rule is substantially the same as the federal rule, and we normally consider federal cases interpreting the federal rules of procedure as persuasive authority.' Hammond v. Brooks, 516 So. 2d 614, 616 (Ala. 1987).

"It is well settled that '[d]ismissal on motion under subdivision (2) of Rule 41(a)] is within the sound discretion of

2200617 and 2200623

the court.' Bevill v. Owen, 364 So. 2d 1201, 1202 (Ala. 1979); see also MetFuel, Inc. v. Louisiana Well Serv. Co., 628 So. 2d 601 (Ala. 1993). By contrast, review of a dismissal pursuant to subdivision (1) is de novo. See Marex Titanic, Inc. v. Wrecked & Abandoned Vessel, 2 F.3d 544, 545 (4th Cir. 1993); Matthews v. Gaither, 902 F.2d 877, 879 (11th Cir. 1990). This is so, because 'Rule 41(a)(1) affords the plaintiff an unqualified right to dismiss' its action before the filing of an answer or a summary-judgment motion. Clement v. Merchants Nat'l Bank of Mobile, 493 So. 2d 1350, 1353 (Ala. 1986) (emphasis added); see also Marex Titanic, Inc., 2 F.3d at 546. Conversely, Rule 41(a)(1) affords the trial court no discretion. See Williams v. Ezell, 531 F.2d 1261, 1264 (5th Cir. 1976).

"The effect of a notice of dismissal pursuant to Rule 41(a)(1) was succinctly explained in Reid v. Tingle, 716 So. 2d 1190, 1193 (Ala. Civ. App. 1997). There, the Court of Civil Appeals said:

" 'A voluntary dismissal under Ala. R. Civ. P. 41 terminates the action when the notice of the plaintiff's intent to dismiss is filed with the clerk. See ... Hammond v. Brooks, 516 So. 2d 614 (Ala. 1987). The committee comments to Rule 41, Ala. R. Civ. P., note that the rule is "substantially the same as the corresponding federal rule." See Ala. R. Civ. P. 41, Committee Comments on 1973 Adoption. In interpreting [Fed.] R. Civ. P. 41(a)(1), the Fifth Circuit stated:

" ' "Rule 41(a)(1) is the shortest and surest route to abort a complaint when it is applicable. So long as plaintiff has not been served with his adversary's answer or motion for

summary judgment he need do no more than file a notice of dismissal with the Clerk. That document itself closes the file. There is nothing the defendant can do to fan the ashes of that action into life and the court has no role to play. This is a matter of right running to the plaintiff and may not be extinguished or circumscribed by adversary or court. There is not even a perfunctory order of court closing the file. Its alpha and omega was the doing of the plaintiff alone."

"'American Cyanamid Co. v. McGhee, 317 F.2d 295, 297 (5th Cir. 1963).'

"716 So. 2d at 1193 (second emphasis added).

"Although cases involving a Rule 41(a)(1) dismissal 'are not perfectly analogous to cases in which the ... court lacks subject matter jurisdiction, both contexts present the question of the court's continuing power over litigants who do not, or no longer, have a justiciable case before the court.' Chemiakin v. Yefimov, 932 F.2d 124, 128 (2d Cir. 1991). Thus, it is sometimes stated that a Rule 41(a)(1) dismissal deprives the trial court of 'jurisdiction' over the 'dismissed claims.' Duke Energy Trading & Mktg., L.L.C. v. Davis, 267 F.3d 1042, 1049 (9th Cir. 2001); see Safeguard Business Sys., Inc. v. Hoeffel, 907 F.2d 861, 864 (8th Cir. 1990); see also Gambale v. Deutsche Bank AG, 377 F.3d 133, 139 (2d Cir. 2004); Netwig v. Georgia Pacific Corp., 375 F.3d 1009, 1011 (10th Cir. 2004); Meinecke v. H & R Block of Houston, 66 F.3d 77, 82 (5th Cir. 1995); Williams v. Ezell, 531 F.2d 1261, 1264 (5th Cir. 1976)('The court had no power or discretion to deny plaintiffs'

2200617 and 2200623

right to dismiss or to attach any condition or burden to that right. That was the end of the case and the attempt to deny relief on the merits and dismiss with prejudice was void.').

"Similarly stated, '[t]he effect of a voluntary dismissal without prejudice is to render the proceedings a nullity and leave the parties as if the action had never been brought.' In re Piper Aircraft Distrib. Sys. Antitrust Litig., 551 F.2d 213, 219 (8th Cir. 1977). Moreover, ' "[i]t carries down with it previous proceedings and orders in the action, and all pleadings, both of plaintiff and defendant, and all issues, with respect to plaintiff's claim." ' Id. (quoting 27 C.J.S. Dismissal and Nonsuit § 39 (1959)). ...

"In opposition to these principles, [the defendant] cites Harvey Aluminum, Inc. v. American Cyanamid Co., 203 F.2d 105 (2d Cir. 1953), a 'vintage [case] support[ing] the notion that, when a case has advanced substantially beyond the pleadings, so that the merits of the controversy have been "squarely raised," a voluntary dismissal may no longer be obtained by the plaintiff.' Woody v. City of Duluth, 176 F.R.D. 310, 314 (D. Minn. 1997) (discussing Harvey). However, 'Harvey has received a "cool reception" ' in the federal circuits, Johnson Chemical Co. v. Home Care Prods., Inc., 823 F.2d 28, 30 (2d Cir. 1987) (quoting Thorp v. Scarne, 599 F.2d 1169, 1175 (2d Cir. 1979)), abrogated on other grounds, Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990), and, even in its own circuit, has been 'limited to its "extreme" facts.' Johnson Chemical, 823 F.2d at 30 (quoting Santiago v. Victim Serv. Agency of the Metropolitan Assistance Corp., 753 F.2d 219, 222 (2d Cir. 1985), overruling on other grounds recognized by Valley Disposal, Inc. v. Central Vermont Solid Waste Mgmt. Dist., 71 F.3d 1053 (2d Cir. 1995)). ...

2200617 and 2200623

"In this case, it is undisputed that neither an answer nor a motion for a summary judgment was filed before [the plaintiff] filed its notice of dismissal That notice ipso facto deprived the trial court of the power to proceed further with the action and rendered all orders entered after its filing void."

904 So. 2d at 1234-1236. Thus, our supreme court has held that the timely filing of a notice of dismissal pursuant to Rule 41(a)(1), and this court in Ex parte Foushee has held that a plaintiff's oral motion to dismiss, before the defendant has filed an answer or a motion for a summary judgment results in the immediate dismissal of the case and deprives the trial court of jurisdiction to conduct further proceedings in the case.

We observe that Ex parte Foushee and Ex parte Sealy did not involve the dismissal of a case filed pursuant to the Alabama Juvenile Justice Act, § 12-15-101 et seq., Ala. Code 1975, in which the jurisdiction of the juvenile court to protect the best interest of children had been properly invoked and, as a consequence of hearings conducted by the juvenile court before the Rule 41 motion was filed, the juvenile court had removed the children from the custody of their parents. Our supreme court has recognized:

2200617 and 2200623

" '[I]t is the [juvenile] court's duty to scrupulously guard and protect the interests of children,' Ex parte Fann, 810 So. 2d 631, 638 (Ala. 2001), and the stated purpose of the Alabama Juvenile Justice Act, codified at Ala. Code 1975, § 12-15-101 et seq., 'is to facilitate the care [and] protection ... of children who come under the jurisdiction of the juvenile court.' § 12-15-101(a)[, Ala. Code 1975]."

Ex parte M.J.W., 62 So. 3d 531, 536 (Ala. Civ. App. 2010). See W.T.M. v. S.P., 889 So. 2d 572, 580 (Ala. Civ. App. 2003)("[W]e have long stated in both child-custody and dependency cases that the primary concern is the best interests and welfare of the child."), and Price v. Price, 440 So. 2d 1110, 1110 (Ala. Civ. App. 1983)("The paramount consideration for a court in a child custody case is the best interests and welfare of the child."). See also § 12-15-101(d), Ala. Code 1975 (providing that the Alabama Juvenile Justice Act "shall be liberally construed to the end that each child coming under the jurisdiction of the juvenile court shall receive the care, guidance, and control, preferably in his or her own home, necessary for the welfare of the child and the best interests of the state"). Thus, when a juvenile court's jurisdiction is properly invoked, the juvenile court operates under a mandatory duty " 'to scrupulously guard and protect the interests of children' " within its jurisdiction.

2200617 and 2200623

These cases require this court to balance the duty of the juvenile court to protect the interests of the children against the application of a procedural rule of court mandating the dismissal of an action when the prosecuting party no longer desires to pursue the action. Rule 41(a) dictates that if a petitioner who has filed a dependency action no longer desires to pursue the action and the respondent has not filed an answer or summary-judgment motion, the petitioner should be able to dismiss his or her action without any action of the juvenile court. However, in a case in which a dependency petition has been filed, the juvenile court has conducted hearings at which the respondents have appeared, and the juvenile court has entered orders removing the children from the custody of the respondents and placing the children in the temporary custody of another person, logic and the duty of the courts to protect children dictate that the juvenile court, considering its statutory duty, has the authority to conduct a hearing to determine whether the interests of the children are being protected by the dismissal of the case. These unique circumstances militate in favor of authorizing a juvenile court to conduct a hearing to address a petitioner's motion to dismiss. Thus, when

2200617 and 2200623

balancing the right of the petitioner to dismiss the action against the duty of the juvenile court to protect the children within its jurisdiction, we conclude that, when the respondents have appeared before the juvenile court and defended against the claims asserted in a dependency petition, the juvenile court's jurisdiction to entertain a dependency case after the children have been removed from the respondents' custody is not necessarily terminated by the petitioner's filing a motion pursuant to Rule 41(a)(1); rather, a juvenile court, under those unique circumstances, has jurisdiction to conduct a hearing to address the motion and to determine whether the interests of the children at issue will be protected by dismissing the action. By conducting a hearing on the dependency petitioner's motion to dismiss, the petitioner's right to dismiss the action is effectively balanced against the juvenile court's duty to scrupulously protect the children from the risk of harm and the interest of the children in living in a home free from substantial risk of harm. Cf. Ex parte M.J.W., supra (holding that the compelling interest in protecting the children outweighed a mother's interest in staying a civil proceeding to

2200617 and 2200623

protect her Fifth Amendment right until after resolution of criminal charges against her).

Applying the foregoing, we conclude the juvenile court did not exceed its discretion by refusing to dismiss the underlying dependency cases. In these cases, the juvenile court conducted a hearing to address, among other matters, T.P.'s motion to dismiss. The materials before us indicate that the underlying cases involve allegations of dependency, that the juvenile court conducted a shelter-care hearing at which both the mother and the father were present, and that the juvenile court removed the children from the mother and father's custody and placed them in T.P.'s custody. When T.P. filed her motion to dismiss, it was incumbent upon the juvenile court to determine the best interests of the children. The juvenile court conducted a hearing at which it heard ore tenus evidence⁴ and determined that the best interests of the children would be served by placing the children in the custody of W.J.T. and by setting the cases for trial. The juvenile-court judge's answer and the documents filed in

⁴A transcript of the hearing is not included in the materials before this court.

2200617 and 2200623

support of her answer indicate that the juvenile-court judge, as well as the guardian ad litem, has genuine concerns about the safety of the children. The juvenile court could have recognized that the children had a substantial interest in the matters and that, in such circumstances, it was required to proceed in a manner so as to protect the children from substantial risk of harm. Therefore, we cannot conclude that the juvenile court exceeded its discretion by failing to dismiss the underlying cases. Cf. Funderburk v. Russell Cnty. Dep't of Hum. Res., [Ms. 2190981, June 18, 2021] ___ So. 3d ___, ___ (Ala. Civ. App. 2021)(holding that, although a juvenile court had dismissed the action, the juvenile court had jurisdiction, in light of its duty to protect the best interest of the children, to entertain the allegations made in the dismissed action).

Conclusion

Based on the foregoing, the mother has not demonstrated a clear, legal right to the requested relief or that the juvenile court had an imperative duty to dismiss the underlying dependency cases. Therefore, the petitions are denied.

2200617 and 2200623

2200617 -- PETITION DENIED.

2200623 -- PETITION DENIED.

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

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