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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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V.B.

v.

Jefferson County Department of Human Resources

**Appeal from Jefferson Juvenile Court, Bessemer Division
(JU-19-1701.01)**

MOORE, Judge.

V.B. ("the father") appeals following dependency proceedings held before the Bessemer Division of the Jefferson Juvenile Court ("the juvenile court"). We dismiss the appeal.

Procedural Background

The procedural history pertinent to our disposition of this appeal is as follows. On October 8, 2019, the Jefferson County Department of Human Resources ("DHR") filed a petition in the juvenile court alleging that Vi.B. ("the child") was dependent. A referee appointed by the juvenile court conducted a shelter-care hearing, after which the referee filed findings and recommendations that the child be placed in the custody of DHR, that K.H. ("the mother") be awarded supervised visitation with the child, and that there be no contact between the father and the child; on October 10, 2019, the juvenile-court judge assigned to the case ratified those findings and recommendations.¹

The dependency proceedings continued throughout 2019 and 2020, with the juvenile court eventually ordering the child to be transferred back to the physical custody of the mother but maintaining its order

¹Section 12-15-106, Ala. Code 1975, allows for the appointment of a referee to handle various juvenile and child-support cases. Section 12-15-106(g) provides that "[t]he finding and recommendations of the referee shall become the order of the juvenile court when ratified by the original signature of a judge with authority over juvenile matters."

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precluding the father from having any contact with the child. Eventually, the referee scheduled a permanency hearing for March 1, 2021. Following that hearing, which the father did not attend, the referee filed findings and recommendations that the mother be awarded sole legal and sole physical custody of the child, that the father have no contact with the child, and that the case be closed to further court review. On that same date, the father, acting pro se, filed a "motion to reconsider," which states:

"I [the father] have been sitting in the lobby of the courts this morning waiting for court because I haven't heard from my lawyer. I called several times with no answer. [My lawyer] didn't contact me himself so I did not have the code to even attend virtual court. I showed the Judge and Sheriff where I called and the Judge also called the number that [my attorney] gave me ... and still no answer so I'm filing a motion to reconsider the case of [the child]."

On March 2, 2021, the juvenile-court judge entered a judgment ratifying the referee's March 1, 2021, findings and recommendations, thereby closing the case. At almost the same time, the referee set the father's "motion to reconsider" for a hearing to take place on March 8, 2021.²

²In a motion filed in the juvenile court, the father represented that the referee had conducted that hearing, had orally denied the motion to reconsider, but had not issued any written findings or recommendations.

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On March 15, 2021, the father's attorney filed an "Objection to Hearing Before Referee," purporting to object to the referee's "hearing of the above-styled cause," referring to the dependency action. On April 21, 2021, the juvenile-court judge set the case for a status conference to take place on June 9, 2021. After that status conference, the juvenile-court judge entered an order noting that the father had filed an objection to the referee's hearing the case but indicating that the case already had been closed on March 2, 2021.

On June 22, 2021, the father filed a motion to vacate the March 2, 2021, judgment closing the case, arguing, among other things, that the March 2, 2021, judgment was void because it had been entered by the juvenile court without subject-matter jurisdiction and in a manner that violated his due-process rights. The juvenile-court judge did not act on that motion before the father filed a notice of appeal on July 20, 2021.

The record does not contain a transcript of the March 8, 2021, hearing or any ruling on the motion to reconsider by the referee or the juvenile court. Hence, we do not address whether a referee can validly hear and adjudicate a postjudgment motion. See J.P.T. v. H.T., 254 So. 3d 894, 899 (Ala. Civ. App. 2017).

Analysis

Before we may consider the substance of the appeal, we must first ascertain whether we have appellate jurisdiction. See F.V.O. v. Coffee Cnty. Dep't of Hum. Res., 145 So. 3d 11, 15 (Ala. Civ. App. 2012), rev'd on other grounds, Ex parte F.V.O., 145 So. 3d 27 (Ala. 2013). With regard to juvenile-court cases, this court has appellate jurisdiction over only final judgments. See Ex parte T.C., 96 So. 3d 123 (Ala. 2012) (construing Ala. Code 1975, § 12-15-601). Generally speaking, a final judgment that triggers a right to appeal is a judgment that terminates the proceedings before the court by resolving all the claims in controversy among the parties within the cognizance of the court. See Marshall Cnty. Dep't of Hum. Res. v. J.V., 203 So. 3d 1243, 1247 (Ala. Civ. App. 2016). In the context of dependency proceedings, an order disposing of the custody of a dependent child and closing the case for further review, like the March 2, 2021, judgment does in this case, ordinarily ends the proceedings and

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amounts to a final, appealable judgment. See, e.g., J.B. v. Jefferson Cnty. Dep't of Hum. Res., 252 So. 3d 674, 675 (Ala. Civ. App. 2017).³

However, § 12-15-106(f), Ala. Code, 1975, grants a party an unqualified right to a rehearing before a juvenile-court judge of a matter heard and decided by a referee if the party makes a written request for such rehearing within 14 days of the filing of the referee's findings and recommendations. In Ex parte Quarles, 197 So. 3d 499 (Ala. Civ. App. 2015), this court held that an order entered by a juvenile-court judge ratifying a referee's findings and recommendation to close a dependency case was not a final judgment "because that judgment remained subject to the parties' right to a rehearing, and the mother [in that case had] timely filed her request for a rehearing." 197 So. 3d at 503.

In the present case, on March 1, 2021, the same date that the referee filed the findings and recommendations, one of which was that the case be

³Dependency proceedings are unique in that multiple final judgments, each of which is subject to appellate review, may be entered in the same case, see D.P. v. Limestone Cnty. Dep't of Hum. Res., 28 So. 3d 759 (Ala. Civ. App. 2009), and we do not mean to imply that only a judgment "closing" the case will be considered a final judgment for purposes of appeal.

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closed, the father filed the "motion to reconsider." On March 15, 2021, the father's attorney filed an objection to the referee's hearing the matter. Arguably, those two filings, when taken together, could be construed as a timely written request for a rehearing before the juvenile-court judge of the matters decided by the referee on March 1, 2021. If so, under Ex parte Quarles, the March 2, 2021, judgment would not be a final judgment because the juvenile-court judge would have had an imperative statutory duty to conduct a rehearing and to adjudicate anew the matters determined by the referee at the March 1, 2021, hearing.

However, during the June 9, 2021, status conference, the juvenile-court judge, after reviewing the procedural posture of the case, explicitly stated that the father had not filed a request for a rehearing. The juvenile-court judge stated:

"If there was a request for a rehearing that had been filed subsequent to the last hearing within the fourteen day period, then that matter would be before the court, but that is not what happened. There was an objection to the referee."

An "objection to the referee" is an objection filed pursuant to Ala. Code 1975, § 12-15-106(b)(4), pursuant to which a party may object to a hearing

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before a referee. The juvenile-court judge noted that the father had objected only to the referee's continuing to hear the case and stated that, because at that point the case was closed and no further hearings were contemplated, the objection was moot. The father did not interject at any point to state that he had, in fact, impliedly requested a rehearing by moving for reconsideration of the case and by objecting to the referee's presiding over any further hearings. Furthermore, the father does not assert in his brief to this court that he had effectively requested a rehearing, see Schiesz v. Schiesz, 941 So. 2d 279, 289 (Ala. Civ. App. 2006) ("It is not the function of this court to advocate a position on behalf of an appellant or to create a legal argument for the appellant."). In its brief, DHR argues that the "motion to reconsider" was treated by the parties and the juvenile court as a postjudgment motion to set aside the March 2, 2021, judgment on the ground of excusable neglect and that the objection to the referee precluded the referee only from conducting any further hearings on that postjudgment motion or any other matters after March 15, 2021.

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Having determined that the March 2, 2021, judgment is a final judgment that was not subject to a rehearing request, we must next address whether the father timely filed a notice of appeal from that judgment. In J.D. v. M.B., 226 So. 3d 706, 709 (Ala. Civ. App. 2016), this court stated, in pertinent part:

" 'The timely filing of the notice of appeal is a jurisdictional act.' Thompson v. Keith, 365 So. 2d 971, 972 (Ala. 1978). 'Lack of subject matter jurisdiction may not be waived by the parties and it is the duty of an appellate court to consider lack of subject matter jurisdiction ex mero motu.' Ex parte Smith, 438 So. 2d 766, 768 (Ala. 1983) (citing City of Huntsville v. Miller, 271 Ala. 687, 127 So. 2d 606 (1958), and Payne v. Department of Indus. Relations, 423 So. 2d 231 (Ala. Civ. App. 1982))."

We conclude that the father did not invoke the appellate jurisdiction of this court to review the March 2, 2021, judgment by filing his notice of appeal on July 20, 2021.

A party aggrieved by a final judgment of a juvenile court generally has 14 days to file a notice of appeal of that judgment. See Rule 4(a)(1), Ala. R. App. P.; Rule 28(D), Ala. R. Juv. P. A postjudgment motion filed before the entry of a final judgment becomes effective on the date of the entry of the judgment and tolls the time for filing a notice of appeal. New

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Addition Club, Inc. v. Vaughn, 903 So. 2d 68 (Ala. 2004). In juvenile proceedings, subject to certain exceptions not applicable here, a postjudgment motion may remain pending for 14 days before it is denied by operation of law. See Rule 1(B), Ala. R. Juv. P. A juvenile court loses jurisdiction to take any further action on a postjudgment motion after it is denied by operation of law. See, e.g., S.D.C. v. N.L., 864 So. 2d 1089, 1091 (Ala. Civ. App. 2002). A party to a juvenile proceeding has 14 days from the date the postjudgment is denied to file a notice of appeal. See Rule 4(a)(1), Ala. R. App. P. Construing the father's "motion to reconsider" as a premature postjudgment motion that became effective on March 2, 2021,⁴ and noting that the juvenile court never ruled on the postjudgment motion⁵ so that it was denied by operation of law on March 16, 2021, the father had until March 30, 2021, to file his notice of appeal;

⁴Although the father filed an objection to the referee's hearing the case on March 15, 2021, that motion was not a postjudgment motion within the ambit of Rule 59, Ala. R. Civ. P., because it did not challenge any aspect of the juvenile court's March 2, 2021, judgment. Accordingly, the objection did not toll the time for taking an appeal from that judgment.

⁵See note 2, supra.

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any actions taken by the father and any orders entered by the juvenile-court judge thereafter are legal nullities that could not have extended that deadline.⁶ The father did not timely file his notice of appeal. Rule 2(a)(1), Ala. R. App. P., provides that "[a]n appeal shall be dismissed if the notice of appeal was not timely filed to invoke the jurisdiction of the appellate court."

Although we must dismiss this appeal, we note that the father argues to this court that the March 2, 2021, judgment is void for lack of subject-matter jurisdiction and because it was entered in a manner inconsistent with due process. The record shows that, on June 22, 2021, before he filed his notice of appeal, the father moved the juvenile-court judge to vacate the March 2, 2021, judgment on those same grounds. Nothing in our opinion should be construed as precluding the juvenile-court judge from considering the merits of that motion, which we interpret

⁶In his amended notice of appeal, the father designates the June 9, 2021, order of the juvenile court as the final judgment. He also refers to the June 9, 2021, order as the final judgment in his brief to this court. Because the juvenile court had already lost jurisdiction over the case, the June 9, 2021, order is a nullity with no legal effect. See S.D.C. v. N.L., 864 So. 2d 1089, 1091 (Ala. Civ. App. 2002).

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as a Rule 60(b)(4), Ala. R. Civ. P., motion. See Harville v. Harville, 568 So. 2d 1239 (Ala. Civ. App. 1990) (holding that a trial court retains jurisdiction to adjudicate a Rule 60(b) motion that is filed before the notice of appeal and that the party need not obtain leave of the appellate court to obtain a ruling on the motion); Ex parte R.S.C., 853 So. 2d 228, 233 (Ala. Civ. App. 2002) (holding that a Rule 60(b) motion is not denied by operation of law and may remain pending in a juvenile court for more than 14 days).

APPEAL DISMISSED.

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