Rel: August 5, 2022

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2022

2200841

J.C.L.

v.

J.B.L.

Appeal from Autauga Juvenile Court
(JU-21-13.01)

THOMPSON, Presiding Judge.

J.B.L. ("the father") filed in the Autauga Juvenile Court ("the juvenile court") a petition seeking to terminate the parental rights of J.C.L. ("the mother") to a minor child born of their marriage in 2009. After conducting a hearing at which ore tenus evidence was received, the

juvenile court entered a judgment on June 30, 2021, granting the father's petition. The mother has timely appealed.

The record reveals the following pertinent facts. The mother and the father married in 2004. At the time of their marriage, the mother had two children, Ki.H. and Ko.H., from a previous relationship; those two children were then approximately 11 years old and 4 years old, respectively.

Approximately four years after the child's birth, the mother and the father separated, and the mother filed an action in the Autauga Circuit Court ("the circuit court") seeking a divorce from the father. The mother's testimony at the June 24, 2021, hearing in this matter indicates that, after the parties separated, the mother moved to Irondale, a suburb of Birmingham, to live in a home owned by her mother and in which Ki.H. was living while he attended a nearby college. The father, the child, and Ko.H. remained living in the marital residence in Prattville.

On December 18, 2014, the circuit court entered a divorce judgment that incorporated a settlement agreement reached by the parties that addressed the division of marital property, child custody, and child support. In pertinent part, that judgment provided:

"2. CHILD CUSTODY

"A. The parties shall have joint legal and physical custody of the minor child …, but this custodial agreement shall only go into effect once the [mother] relocates to a residence which is thirty (30) straight-line miles or less from the current marital residence. Until then, the parties shall have joint legal custody but with the [father] having primary physical custody. So long as the [mother] is more than thirty (30) straight line miles from the marital residence, the [father] shall have the final decision-making authority as to those issues materially impacting the child. … The [father's] address shall be used for determining which school district the child shall attend. He shall have the final decision-making authority for all issues related to the education and health of the child. The [mother] shall have the final decision-making authority for all issues dealing with the extra-curricular activities in which the child shall participate, but the same must be conducted or at least originate in Autauga County, plus all issues dealing with religion.

"….

"3. CHILD SUPPORT

"The [father] shall pay $300 in the amount of child support to the [mother] beginning that first day of the first month after she permanently relocates to a residence that is thirty (30) straight-line miles or less from the current marital residence. The same shall continue each month thereafter in the same amount until the child reaches the age of majority (i.e., 19), becomes self supporting, becomes emancipated, or becomes married. This amount is an upward deviation [from the amount recommended in the child-support guidelines] as agreed to by the [father] so as to facilitate a prompt resolution.

"4. CUSTODIAL PERIODS

> "Both patties shall have equal access to and equal custodial periods of time with the minor child at all reasonable times and places, as the parties mutually agree, including but not limited to the following:
>
> > "a. Once the [mother] has relocated to a permanent residence that is no more than thirty (30) straight-line miles from the current marital residence, the parties shall then enjoy week-on/week-off custodial periods of time with the child. …
> >
> > "…
> >
> > "m. The [mother] shall not live more than thirty (30) straight-line miles from the current marital residence unless she is willing for the [father] to have the child in his custodial care in the same manner as now set forth by the pendente lite order in this case. Thus, she would be entitled to the child for two (2) weekends in a row, then the [father] would have the child for the next one (1) weekend. This rotation schedule shall apply so long as she lives in a location more than thirty (30) miles from the current marital residence. Only her holiday custodial times would remain the same."

At the June 24, 2021, termination-of-parental-rights hearing, the mother testified that she did not move within 30 straight-line miles of the parties' former marital residence, and, for that reason, the father had maintained "primary physical custody" of the child. We note that an award of "primary physical custody" of a child is, under Alabama law, actually an award of sole physical custody, as that term is defined in §

30-3-151(5), Ala. Code 1975. S.J.H. v. N.T.S., 301 So. 3d 843, 847 n.4 (Ala. Civ. App. 2020); Whitehead v. Whitehead, 214 So. 3d 367, 371 (Ala. Civ. App. 2016).

On May 21, 2018, the circuit court entered a judgment modifying the parties' divorce judgment; that modification judgment incorporated the terms of a settlement agreement reached by the parties. That judgment provided, in pertinent part, that the father would have sole custody of the child, that the mother would receive a standard schedule of visitation with the child, and that the parties would enter into family counseling to address any ongoing issues; the cost of the family counseling was to be equally divided between the parties. The May 21, 2018, modification judgment did not set forth any child-support obligation for the mother.

Approximately one year later, on July 25, 2019, the circuit court entered a second modification judgment with regard to the parties' divorce judgment. In that July 25, 2019, modification judgment, the circuit court noted that the mother had failed to appear at the hearing upon which that judgment was based. That judgment states, in part:

> "The record of testimony is ample in this matter and does not need to be recited in this order, other than to state

the [mother] has shown a clear disregard for the provisions of this Court's orders and has failed to consider the best interests of the minor child. The [mother] has exhibited a complete failure to communicate with the [father]. She has also completely failed to cooperate in the previously agreed-upon counseling with Thea Langley. The [child's] guardian ad litem and the counselor both reported serious concerns about the [mother's] lack of cooperation and ability to make rational decisions.

"The weekend prior to the hearing was extremely eventful and included the filing of emergency orders to suspend visitation, involvement of local law enforcement, and other events that were upsetting to all involved. The events of the weekend could have easily been avoided had the [mother] communicated or co-parented with the [father]. The [father] testified to his repeated inability to contact the minor child while in the custody of the [mother]. Furthermore, the Court noted that one of the [mother's] children has resided with the [father] since the time of the initial divorce, even though there is no blood relation between the two. The [father], the counselor, and the guardian ad litem were unanimous in their requests that the [mother's] visitation be suspended. These requests were supported by the evidence presented.

"The parties initially shared joint legal and physical custody of the minor child in their settlement agreement in [the original divorce action]. This joint custody was predicated upon the [mother] relocating to within thirty (30) miles of Prattville, where the parties and minor child lived during the marriage. This was modified to grant the [father] primary physical custody and joint legal custody between the parties in [the first modification action], with the [mother] receiving visitation. The current petition seeks to suspend the [mother's] visitation, limit her communication with the minor child, and require payment of child support.

> "Now, after full and final consideration of the testimony presented, together with the pleadings, exhibits, argument of counsel, recommendation of the counselor, and recommendation of the guardian ad litem, it is hereby: ORDERED, ADJUDGED and DECREED as follows:
>
> "CUSTODY: The [father] has sole physical custody of the minor child; therefore the Alabama Supreme Court's standard established in Ex parte McLendon, 455 So. 2d 863 (Ala. 1984), is inapplicable in this matter. The [father] was previously vested with sole physical custody of the minor child through the [May 21, 2018, judgment] in [the first modification action]. The [father] shall retain sole physical custody of the minor child. Based upon the evidence presented and the recommendations of the guardian ad litem and the counselor, the [mother's] visitation with the minor child shall be suspended. The [mother's] communication with the minor child shall be limited and monitored as set forth below. The [mother] may have her visitation rights [restored] upon filing a petition to modify this Court's order and meeting the applicable legal standards to prove that visitation is in the best interests of the minor child.
>
> "1.) LEGAL CUSTODY: The [father] is vested with sole legal custody of [the child]."

(Capitalization in original.)

In addition, in its July 25, 2019, modification judgment, the circuit court ordered the mother to pay $240.03 per month in child support, required the parties to continue counseling, and awarded the mother telephone visitation with the minor child on Tuesday and Thursday nights. The circuit court also found the mother in contempt and ordered

her to pay $3,500, as well as one-half of the guardian ad litem's fee. The mother did not appeal the July 25, 2019, modification judgment.

On February 21, 2021, the father filed in the juvenile court the verified termination-of-parental-rights petition that initiated this action. In his verified petition, the father alleged, among other things, that the mother had failed to visit the child since the entry of the July 25, 2019, modification judgment and that she had had no contact with the child since March 2020, when the mother telephoned the child to wish her a happy birthday. The father also alleged that the mother had mental-health issues that caused her to exercise poor judgment, and, he asserted, it was in the child's best interests for the mother's parental rights to be terminated. We note that nothing in the record currently before this court indicates that the father, who has remarried, desired that his new wife adopt the child.

In support of his petition seeking to terminate the mother's parental rights, the father submitted, among other things, documents indicating that the child's guardian ad litem had filed a contempt action against the mother in an attempt to enforce that part of the July 25, 2019,

modification judgment that required the mother to pay one-half of the guardian ad litem's fee.

The mother did not immediately respond to the father's termination-of-parental-rights petition, and, therefore, the father moved for a default judgment. The juvenile court scheduled that motion for a hearing. The mother then filed an answer in opposition to the father's petition. The juvenile court entered an order canceling the hearing on the father's motion for a default judgment and scheduling the matter for a final hearing on June 24, 2021.

Only the mother testified at the June 24, 2021, ore tenus hearing. In short, the mother admitted that she had neither visited the child nor contributed to the child's support since the entry of the July 25, 2019, modification judgment. The mother stated that she had tried to parent the child through June 2019 but that it then became too stressful to deal with the father. According to the mother, visitation with the child became more difficult to arrange after the father remarried; at approximately that same time, she said, the child's schedule became more busy with extracurricular activities. The mother admitted that she had done

nothing to emotionally support the child except to pray for her, and, she stated, that was "more than enough."

The majority of the questioning of the mother on cross-examination did not concern her relationship with the child but, rather, was dedicated to impeaching various statements the mother made in her direct testimony. For example, the mother testified that, in total, she earned between $2,700 and $3,800 per month. However, on cross-examination, the mother admitted that, in her affidavit of substantial hardship submitted in support of her request for a court-appointed attorney in the termination-of-parental-rights action, she had claimed income of between $1,400 and $1,800 per month. We also note that, at the time of the termination hearing, the mother tested positive for amphetamines and methamphetamine. The mother disputed the results of the drug screen, however, and insisted that she was not using illegal drugs. The mother stated that she took Adderall "as needed," and she produced a prescription bottle containing that medication. However, the mother admitted that, based on the number of days since she had last filled that prescription, she should have had at least 12 additional pills in that prescription bottle. The mother stated that she did not keep all of her

medication in that prescription bottle; the mother testified that she kept some pills at her home. Other aspects of the mother's testimony were also questioned on cross-examination in an attempt to challenge the mother's credibility. No useful purpose would be served by setting forth the details of that testimony.

During the mother's testimony, the juvenile court allowed the parties to take a short break, and, when the parties returned from that break, they announced that they had reached an agreement. The transcript contains the following discussion of that settlement agreement:

> "[MOTHER'S ATTORNEY]: Judge, if I could start with -- [the father's attorney] and I have had some settlement talks in the break, and we have this matter settled in regards to -- I will let [the father's attorney] talk about the part of what [the father's] side of the equation offers to this settlement.
>
> "But as far as our part, the Court has heard testimony for most of the morning from [the mother], and during that testimony, [the mother] admitted to a two-year period where she did not contact the child, did not visit with the child, did not have any financial support for the child, basically, a prima facie case of what [the father's] petition alleged as far as abandonment and things of that nature.
>
> "Judge, as far as our settlement agreement today, [the mother] would stipulate to that testimony and evidence being a prima facie case for the [termination-of-parental-rights petition] to be granted today.

"THE COURT: Okay.

"[MOTHER'S ATTORNEY]: And I would ask the Court to ask [the mother] if she does stipulate to that, and I told her that you would probably ask her if that's the case. And then I'll let [the father's attorney] talk about, from his side, what [the mother] is -- what [the mother] will get for stipulating to that today.

"THE COURT: Okay. [The mother], you heard what your counsel just told me, and I want to know, do you affirm the statements that he made?

"[MOTHER]: Yes.

"THE COURT: You do?

"[MOTHER]: (Witness nods head.)

"THE COURT: You're nodding your head yes, and I believe I heard you say 'yes.'

"[MOTHER]: Yes.

"THE COURT: And this is a voluntary agreement that you're entering into; is that correct?

"[MOTHER]: Yes.

"THE COURT: Or a voluntary stipulation?

"[MOTHER]: Yes.

"THE COURT; And that is in the affirmative. Okay. [Father's attorney], go ahead.

"[FATHER'S ATTORNEY]: Judge, in exchange for that voluntary stipulation by [the mother], there are certain debts that we have identified during her examination, being debts owed to [the guardian ad litem], debts owed to Thea Langley. We have now learned of a current debt that is being assessed against her by Louis Colley, the mediator. [The father] agrees to satisfy those debts in exchange for the stipulation. Furthermore, he will file by and through my office a what I'll refer to as a .03 DR petition so that we can then go in that document, reference the [termination-of-parental-rights action], and then so state that her obligation to pay child support is zero, which was part of the basis of the bargain of the [termination-of-parental-rights] stipulation.

"There are other moneys that she owes for contempt within that -- within the court order that [the circuit court] entered in what I've identified as the [July 25, 2019] .02 order. We will also stipulate that that -- those contempt claims have been satisfied. So, in essence, we'll say there is no future child support, all arrears have been satisfied, all interest related to arrears has been satisfied, all contempt moneys have been satisfied, and all interest related to the contempt claims.

"In other words, we'll pay all the debts to the people that she owes the debt to as related to this litigation process, and we will forgive her of any additional moneys that she may owe us.

THE COURT: And, [father], that is your agreement as well?

"[THE FATHER]: Yes, ma'am.

"[MOTHER'S ATTORNEY]: [Father's attorney], also, the Thea Langley fees, did he talk --

"[FATHER'S ATTORNEY]: Yeah, I said that.

"[MOTHER'S ATTORNEY]: Okay. I'm sorry.

"[MOTHER]: Also, can I get the money back I paid [the guardian ad litem] today?

"[FATHER'S ATTORNEY]: Now, I'm not agreeing for any -- I'm not agreeing to let any money that's already in [the guardian ad litem's] hands -- to take that out."

The hearing ended, and, on June 30, 2021, the juvenile court entered a judgment terminating the mother's parental rights. In that June 30, 2021, termination judgment, the juvenile court found, among other things:

"1. By stipulation from the [mother], as placed on the record in open court, the [father's] burden of proof so as to warrant the termination of the [mother's] parental rights was met. Such is based upon clear and convincing evidence as presented before this Court via live testimony of the [mother], wherein it was established the lack of effort of the [mother] to adjust her circumstances to meet the needs of the child. The [mother] has failed to maintain communication with the minor child since 2019. Furthermore, the Court finds the [mother] has been unwilling to discharge her parental responsibilities for the minor child, and there exists no viable alternative consistent with the child's best interests than this termination of parental rights of the [mother].

"….

"4. In exchange for the stipulation, the [father] agreed to clear those debts of the [mother] as related to the Autauga County, Alabama Domestic Relations matter, case number DR-14-900139.00; -.01, and -.02. Specifically, these debts relate to Thea Langley, [the guardian ad litem], and Louis

> Colley, Esquire;[1] plus, those debts owed by the [mother] to the [father]. To that end, the [father] shall cause to be filed a petition for modification in that case number to be designated as DR-14-900139.03, wherein he shall seek a modification of the [mother's] child-support obligation and so state that no other monies are due to him in that matter, referencing this matter therein. The new child-support obligation will be $0."

The mother filed a postjudgment motion in which she contended that the termination of her parental rights was not in the child's best interests and that the agreement incorporated into the June 30, 2021, termination judgment was "impermissibly linked to a waiver of a child-support arrearage, making such agreement a product of duress due to the threat of the father for contempt regarding such support." The juvenile court denied the mother's postjudgment motion, and the mother timely appealed.

On appeal, the mother advances only two arguments. The mother first argues that the agreement into which she entered during the June 24, 2021, hearing was not sufficient to support the June 30, 2021, termination judgment. Specifically, the mother contends that she did not stipulate to all the facts necessary to support the termination of her

[1]The record indicates that Louis Colley served as a mediator in the domestic-relations actions between the parties in the circuit court.

parental rights. Our supreme court has explained that there is a two-pronged test for a juvenile court to apply in determining whether to terminate parental rights:

> "First, the court must find that there are grounds for the termination of parental rights, including, but not limited to, those specifically set forth in [what is now § 12-15-319, Ala. Code 1975]. Second, after the court has found that there exist grounds to order the termination of parental rights, the court must inquire as to whether all viable alternatives to a termination of parental rights have been considered. …
>
> "Once the court has complied with this two-prong test -- that is, once it has determined that the petitioner has met the statutory burden of proof and that, having considered and rejected other alternatives, a termination of parental rights is in the best interest of the child -- it can order the termination of parental rights."

Ex parte Beasley, 564 So. 2d 950, 954-55 (Ala. 1990).

The mother contends that the parties did not stipulate that there were no viable alternatives to the termination of her parental rights and that there was no evidence to support a finding that there were no viable alternatives to termination. Although the juvenile court did not specifically state that it was terminating the mother's parental rights on the basis of abandonment pursuant to § 12-15-319(a)(1), Ala. Code 1975, the evidence supports such a finding. It is well established that when a parent has abandoned a child, it is not necessary for a party seeking to

terminate parental rights to demonstrate that there is no viable alternative to termination. D.M. v. Jefferson Cnty. Dep't of Hum. Res., 232 So. 3d 237, 242 (Ala. Civ. App. 2017); C.F. v. State Dep't of Hum. Res., 218 So. 3d 1246, 1251 (Ala. Civ. App. 2016).

Regardless, the record does not support the mother's argument that the juvenile court did not have before it evidence of or a stipulation to a lack of viable alternatives. At the June 24, 2021, hearing, the mother specifically stipulated that the father had met his burden of establishing a prima facie case for the termination of her parental rights. "'"A stipulation is a judicial admission, dispensing with proof, recognized and enforced by the courts as a substitute for legal proof." Spradley v. State, 414 So. 2d 170, 172 (Ala. Crim. App 1982).'" L.F. v. Cullman Cnty. Dep't of Hum. Res., 175 So. 3d 183, 185 (Ala. Civ. App. 2015) (quoting K.D. v. Jefferson Cnty. Dep't of Human Res., 88 So. 3d 893, 896 (Ala. Civ. App. 2012)). Thus, as is explained below, by stipulating that the father had met his prima facie burden for terminating her parental rights, the mother agreed that the father did not need to present evidence on the issue of alternatives to the termination of her parental rights.

In Ex parte Beasley, supra, our supreme court explained that the prima facie case for the termination of parental rights comprises two prongs, i.e., that there are grounds for termination under § 12-15-319, Ala. Code 1975, and that there are no viable alternatives to termination. Under Alabama law, "the party seeking to terminate parental rights has the burden of proving both prongs of the test set forth in Ex parte Beasley, supra." C.E.W. v. P.J.G., 14 So. 3d 166, 170 (Ala. Civ. App. 2009) (citing Ex parte T.V., 971 So. 2d 1, 4-5 (Ala. 2007)). In her stipulation before the juvenile court, the mother agreed that the father had met that burden for terminating her parental rights, i.e., that he had established his burden under Ex parte Beasley, supra. Accordingly, the mother has failed to demonstrate that the juvenile court erred in determining that her stipulation at the June 24, 2021, hearing was not sufficient to meet the test set forth under Ex parte Beasley, supra.

The mother's other argument asserted in her appellate brief is that she should not be bound by the settlement agreement into which she entered during the June 24, 2021, hearing. Generally, agreements reached by the parties and set forth in open court are deemed to be binding. L.E.W. v. M.J.L., 200 So. 3d 1171, 1174 (Ala. Civ. App. 2015).

See also Rule 47, Ala. R. App. P. ("[A]greements made in open court or at pretrial conferences are binding, whether such agreements are oral or written."). However, in this case, the mother argues that the juvenile court erred in incorporating the parties' agreement made in open court into the June 30, 2021, termination judgment because, she says, she entered into that agreement under duress. "'"[D]uress is defined as subjecting a person to improper pressure which overcomes his will and coerces him to comply with demands to which he would not yield if acting as a free agent."'" Kruse v. City of Birmingham, 67 So. 3d 910, 915-16 (Ala. Civ. App. 2011) (quoting BSI Rentals, Inc. v. Wendt, 893 So. 2d 1184, 1189 (Ala. Civ. App. 2004), quoting in turn Head v. Gadsden Civil Serv. Bd., 389 So. 2d 516, 519 (Ala. Civ. App. 1980)). Providing that a party entered into an agreement under duress may, under certain circumstances, prevent the enforcement of the agreement. See, e.g., Claybrook v. Claybrook, 56 So. 3d 652, 654 (Ala. Civ. App. 2010); Tidwell v. Tidwell, 505 So. 2d 1236, 1238 (Ala. Civ. App. 1987) ("Alabama recognizes that upon showing of duress or undue influence a party may be relieved of contractual obligations.").

In arguing that she entered into the agreement under duress, the mother contends that her level of indebtedness created by the earlier circuit-court judgments and by her failure to pay child support forced her to agree to the termination of her parental rights. In this case, there is no evidence in the record to support the mother's argument that she assented to the settlement agreement under duress.[2] The mother's postjudgment motion, in which she first raised the issue of duress, was not verified, and the mother did not submit any evidence in support of

[2]In her appellate brief, the mother fails to identify or allege that there were any specific facts that demonstrate that she entered into the agreement to terminate her parental rights under duress. The mother contends that the juvenile court appointed an attorney to represent her and that her testimony demonstrated that she owed several debts, including an amount for a child-support arrearage. She then contends that there is nothing in the record to demonstrate that her agreement to terminate her parental rights in exchange for the alleviation of her debts was in the child's best interests.

We note, however, that, although the juvenile court granted the mother's request for an appointed attorney, the mother's testimony at the June 24, 2021, hearing was that her income was substantially higher than the amount of income she had claimed on her affidavit of substantial hardship submitted in support of her request for an appointed attorney. The mother never testified that she could not afford to pay the $240.03 per month in child support she had been ordered to pay in the July 25, 2019, modification judgment; rather, when asked why she did not contribute to the child's support, the mother questioned why her visitation with the child had been suspended.

her postjudgment motion; for example, she did not submit an affidavit in support of her postjudgment motion in which she alleged duress. See Claybrook v. Claybrook, 56 So. 3d 652 (Ala. Civ. App. 2010) (reversing a trial court's denial of a postjudgment motion alleging that an agreement had been entered into under duress when the movant had submitted evidence in support of that postjudgment motion and the trial court had not held an evidentiary hearing on the postjudgment motion before denying it); see also Whitman v. Whitman, 75 So. 3d 1192, 1194 (Ala. Civ. App. 2011). Moreover, the mother in this case did not request a hearing on her postjudgment motion. Therefore, the record is devoid of any evidence tending to support the mother's contention that she entered into the settlement agreement in the termination-of-parental-rights action under duress. Dunn v. Dunn, 124 So. 3d 148, 151 (Ala. Civ. App. 2013). The mother has failed to demonstrate that the juvenile court erred in refusing to set aside the June 30, 2021, termination judgment based on her unsupported allegation that she had entered into the agreement upon which that judgment was based under duress.

We note that, as a part of her argument on the issue of duress, the mother briefly questions whether the juvenile court's judgment is in the

child's best interests. The mother does not elaborate on that statement, does not further mention the child's best interests, and fails to reference any of the facts of this case that might be relevant to the child's best interests. In her appellate brief, the mother states only that "[t]here is nothing about the agreement suggesting that such was done for the best interests of the child but merely a financial arrangement." It appears that that one-sentence assertion forms the basis for the dissent's contention that the mother "implies that the judgment terminating her parental rights does not serve the child's best interests because it contemplates a waiver of the child's right to child support." ___ So. 3d at ___ (Moore, J., dissenting).

We disagree that that one sentence "implies" the argument advanced in the dissent. Furthermore, in contravention of Rule 28(a)(10), Ala. R. App., the mother has cited no authority in support of what the dissent has characterized as an "implied" argument. ___ So. 3d at ___.

> "'"It is not the function of this court to search a record on appeal to find evidence to support a party's argument," and "it is not the function of the appellate court 'to make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority or argument.'"'"

H.W. v. Morgan Cnty. Dep't of Hum. Res., 166 So. 3d 142, 145 (Ala. Civ. App. 2014) (quoting Perry v. State Pers. Bd., 881 So. 2d 1037, 1040 (Ala. Civ. App. 2003), quoting in turn Hughes v. Hughes, 754 So. 2d 636, 637 (Ala. Civ. App. 1999), quoting in turn Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994)).

The dissent attempts to broadly expand part of the holding in Ex parte R.H., 311 So. 3d 761, 771 (Ala. Civ. App. 2020), in which this court, ex mero motu, considered an issue that had not been properly argued by the petitioner. That case involved extreme facts -- the guardian ad litem for the child at issue had filed a motion in the Marshall Juvenile Court seeking an order that would allow the child's physicians to place a "Pediatric Palliative and End of Life" ("PPEL") care order in the child's medical file; the effect of the PPEL care order would have been to allow the natural death of the child, who had a painful and terminal medical condition. In her petition for a writ of mandamus challenging an order granting that request, the mother in that case raised several issues including whether the juvenile court could properly appoint the child's guardian ad litem to execute the PPEL care order, an issue the mother had not argued in the juvenile court; this court disagreed as to whether

the mother's argument as to that issue in her petition for a writ of mandamus was adequate. This court also noted that, "[o]rdinarily, when a petitioner has not raised a point in support of the issuance of a writ of mandamus before the lower court, that point is not preserved for the appellate court's consideration." Ex parte R.H., 311 So. 3d at 771. However, this court did not apply in that particular case the rules that an issue must be raised in the lower court to preserve the issue for consideration by an appellate court and that this court may not raise issues not identified by the petitioner or appellant; this court explained that, under the extraordinary circumstances of the case, the child's right to life overrode the technical rules of our courts:

> "In this case, the juvenile court committed an indisputable error of law in appointing [the guardian ad litem] as the representative of the child because [the guardian ad litem] is not within the class of persons eligible to act as a representative for a qualified minor under § 22-8A-3(18)[, Ala. Code 1975]. That error has far more profound implications than a mere irregularity in the proceedings. The challenged order allows [the guardian ad litem] to execute a PPEL care order designed to withhold life-sustaining treatment from the child although [the guardian ad litem] does not have any custodial power over the child. That error directly impacts the fundamental right of the child to life. See United States Constitution, amend. V ('No person shall be ... deprived of life ... without due process of law ...'), and amend. XIV, § 1 ('... nor shall any State deprive any person of life ... without due process of law ...'). The child lacks any capacity, legal or

> actual, to raise this issue on his own. His fundamental rights should not be disregarded based on the failure of the mother to comply with technical procedural rules for preserving issues for mandamus review. To prevent an injustice of such magnitude, this court exercises its limited discretion to correct the error sua sponte."

Ex parte R.H., 311 So. 3d at 772 (emphasis added).

There is nothing in the language of Ex parte R.H., supra, indicating that this court or its members should, under different facts that do not implicate a life-or-death decision regarding a child, disregard the rules governing our courts and create, elaborate upon, analyze, and support with citations to authority an argument not advanced by any of the parties.[3] The dissent has not identified any extraordinary facts of this case that would warrant doing so.

[3]Also, the facts of this case support a conclusion that, as a part of her chosen litigation strategy, the mother elected not to assert the issues advanced by the dissent. The record demonstrates that the mother has avoided contributing to the child's support for years. There is nothing in the record or in the language of the mother's appellate brief indicating that the mother sought, as relief in this court, a reinstatement of her child-support arrearages or the formulation by this court of an argument that might (had this court reversed the June 30, 2021, termination judgment) prompt the father to seek child support from her. The dissent, by addressing issues not raised, developed, or supported by the mother, could well be advocating an issue that the mother considered but elected not to raise before this court.

Moreover, in Ex parte R.H., supra, this court considered issues that implicated the authority of the child's own guardian ad litem to take action on behalf of the child. In pointing out that the child in Ex parte R.H. had no "capacity, legal or actual, to raise this issue on his own," this court recognized that it was considering the authority of the child's own -- and only -- representative to make a life-or-death decision on behalf of the child. Ex parte R.H., 311 So. 3d at 792. In other words, under the peculiar facts of that case, the only representative who could validly question the authority of the person making the life-or-death decision for the child was the person authorized to make that decision under the judgment at issue in that case. Although that conflict was arguably not the fault of the guardian ad litem in that case, the child had no disinterested advocate in Ex parte R.H., supra.

In this case, however, the child was represented by able counsel in the juvenile court, and, therefore, the child, through her guardian ad litem, had the ability to assert the argument formulated by the dissent. The child has not done so. The mother is also represented by counsel and appears to have chosen not to advance the argument made by the dissent. See note 3, supra. Also, the father has not appealed to contend that he

should continue to receive child support on behalf of the child. Accordingly, we do not reach the issues advanced in the dissent to this opinion.

We note that several aspects of this matter are unusual and that, under similar circumstances in another case, this court might not affirm. However, this court's review is limited to the issues and arguments presented to and properly argued before it by the parties. Harding v. Pierce Hardy Real Estate, 628 So. 2d 461, 462 (Ala. 1993) ("This court's review is limited to the issues raised on appeal."); Scott v. State ex rel. Thirkill, 500 So. 2d 469, 470 (Ala. Civ. App. 1986) ("[W]e are limited in our review to those issues for which the appellant provides appropriate argument with citations to supporting authority."). Given the arguments set forth in the mother's appellate brief, the father's failure to challenge any portion of the June 30, 2021, termination judgment, and the specific facts and posture of this case, we affirm the juvenile court's judgment terminating the mother's parental rights to the child.

AFFIRMED.

Hanson and Fridy, JJ., concur.

Edwards, J., concurs in the result, without opinion.

Moore, J., dissents, with opinion.

MOORE, Judge, dissenting.

I respectfully dissent. Although I agree with the main opinion that J.C.L. ("the mother") stipulated to all the facts necessary to sustain the judgment terminating her parental rights to her child, J.O.L. ("the child"), that the mother has not proven that her stipulation was procured by duress, and that the mother has not adequately argued that termination of her parental rights does not serve the best interests of the child, I disagree with the main opinion's determination that the mother's failure to adequately argue whether the termination of her parental rights serves the best interests of the child prevents this court from considering that issue.

The main opinion contends that, under Rule 28, Ala. R. App. P., this court is foreclosed from considering issues not properly raised and argued in brief. Although that is the general rule, this court is a court of justice and it may suspend the rules of appellate procedure for good cause, see Rule 2(b), Ala. R. App. P., to assure a just determination of an appeal on its merits. See Rule 1, Ala. R. App. P. More particularly, this court has recently recognized that "'"[t]he duty to protect the rights of minors and incompetents has precedence over procedural rules otherwise limiting

the scope of review and matters affecting the rights of minors can be considered by this court ex mero motu."'" Ex parte R.H., 311 So. 3d 761, 771 (Ala. Civ. App. 2020) (quoting Berry v. Berry, 2018 Pa. Super. 276, 197 A.3d 788, 797 (2018), quoting in turn South Carolina Dep't of Soc. Servs. v. Roe, 371 S.C. 450, 463, 639 S.E.2d 165, 172 (2006)). Pursuant to Ex parte R.H., when the fundamental rights of minors are involved, this court should follow the rule prevailing throughout this country that,

> "in actions involving infants, courts are obliged to see that the infants' rights are adequately protected. Thus, an appellate court generally must notice ... substantial irregularities or prejudicial errors even if objections have not been properly presented on behalf of the infant, and matters affecting the rights of infants can be considered by the reviewing court on its own motion."

43 C.J.S. Infants § 468 (2014) (footnotes omitted).

In this case, the mother implies that the judgment terminating her parental rights does not serve the child's best interests because it contemplates a waiver of the child's right to child support. I believe that, when a consent judgment entered into between the parents of a minor child negatively implicates the child's fundamental right to child support, this court should not be foreclosed from reviewing the judgment to correct that error.

"In a hearing on a petition for termination of parental rights, the court shall consider the best interests of the child." Ala. Code 1975, § 12-15-319(a). Every child has a fundamental right to financial support from both parents. See Willis v. Levesque, 402 So. 2d 1003 (Ala. Civ. App. 1981). Generally speaking, it is against the best interests of a child and is, in fact, "harmful to a child to be denied the benefit of financial support." Ex parte M.D.C., 39 So. 3d 1117, 1130 (Ala. 2009). Our supreme court has long stressed the public policy requiring parents to support their children. In Morgan v. Morgan, 275 Ala. 461, 156 So. 2d 147 (1963), the supreme court rejected, on grounds of public policy, an argument that an agreement between divorced parents releasing the noncustodial parent from a court-ordered child-support obligation should be enforced. The supreme court stated:

> "This argument overlooks well settled legal principles to the effect that [the noncustodial parent's] duty to support his minor children, and the amounts of such support, were imposed by a final decree of a court having full jurisdiction in the premises. The parents are without any warrant in law to later nullify such decree by mutual agreement between themselves so as to deprive the minor children of the support to which they are entitled under the decree of a court of competent jurisdiction. Such agreements are without consideration, and void as a matter of public policy."

275 Ala. at 464, 156 So. 2d at 150.

Our supreme court later clarified that Morgan prevents parents from entering into "a binding agreement simply between themselves to waive or modify child support that has been previously ordered by a court" but that, in some circumstances, such an agreement may be ratified and enforced by a court. Ex parte Tabor, 840 So. 2d 115, 120 (Ala. 2002). The supreme court held, in pertinent part:

> "[C]ourts may not forgive child support already accrued and owing under a prior court order because '[c]ourt-ordered child support payments become final money judgments on the dates that they accrue and are thereafter immune from change or modification.' Frasemer v. Frasemer, 578 So. 2d 1346, 1348 (Ala. Civ. App. 1991) (citing Motley v. Motley, 505 So. 2d 1228 (Ala. Civ. App. 1986)). ...
>
> "However, Alabama cases are clear that court-ratified child-support agreements may prospectively modify support obligations. Indeed, courts frequently modify child-custody and child-support orders based on agreements between the parties. Rule 32, Ala. R. Jud. Admin., specifically contemplates judicial approval of parties' agreements. Rule 32(A)(2) states, in pertinent part, that 'the court shall use the guidelines in reviewing the adequacy of child support orders negotiated by the parties.' (Emphasis added.) ... Certainly, Alabama trial courts have the authority to approve agreements that prospectively modify child-support obligations.
>
> "The only limitation to this well-established rule is that one cannot be permanently relieved from the obligation to support one's children so as to be immune from reimposition if future circumstances require. [Willis v.] Levesque, [402 So. 2d 1003 (Ala. Civ. App. 1981)]. This limitation was recognized

> in Thompson v. Hove, 596 So. 2d 939 (Ala. Civ. App. 1992), where the Court of Civil Appeals stated, 'An agreement, release, or judgment cannot permanently remove the obligation of a parent to provide support for a minor child if circumstances require it in the future.' Id. at 940 ... (emphasis added)."

840 So. 2d at 121.

In this case, the Autauga Juvenile Court ("the juvenile court") entered a consent judgment purporting to relieve the mother of past-due child support and to permanently relieve the mother of any obligation to pay future child support, subject to the approval of the circuit court. However, under Ex parte Tabor, no court, juvenile or circuit, possesses the authority to forgive a child-support arrearage or to terminate future child support, which objectives are, as a matter of law, contrary to the best interests of the affected child.

Under the holding in Ex parte Tabor, a trial court can ratify an agreement of parties to suspend the future child-support obligation of one of the parties. "'When, however, the order establishing the amount of child support is based on an agreement between the parties, as in this case, "the decree should not be modified except for clear and sufficient reasons and after thorough consideration and investigation." [Tucker v. Tucker, 588 So. 2d 495, 497 (Ala. Civ. App. 1991).]'" 840 So. 2d at 122

(quoting Love v. Love, 623 So. 2d 315, 317 (Ala. Civ. App. 1993)). A court undertaking a "thorough consideration and investigation" of a petition to modify child support must, foremost, ascertain whether the facts and circumstances show that the modification would be in the best interests of the child. See Rule 32(A)(1)(g), Ala. R. Jud. Admin.

In this case, the record shows that, after the parties announced their settlement agreement calling, in part, for the suspension of the mother's child-support obligation, the juvenile court questioned the parties to assure that they had consented to the agreement; the juvenile court did not, however, make any inquiry into whether the agreement served the best interests of the child. The agreement and the judgment incorporating that agreement call for the father to submit a petition for modification of child support to the circuit court, so perhaps the juvenile court was merely deferring to the circuit court to make the required best-interests inquiry. However, when the juvenile court terminated the mother's parental rights in contemplation of a suspension of future child support, it was incumbent upon the juvenile court to assure that the suspension of future child support would serve the best interests of the child. See Ala. Code 1975, § 12-15-319(a).

In Ex parte Brooks, 513 So. 2d 614 (Ala. 1987), overruled on other grounds by Ex parte Beasley, 564 So. 2d 950 (Ala. 1990), our supreme court addressed the question "whether a parent's child support obligations may be waived by a joint petition for termination of parental rights." 513 So. 2d at 616. In that case, David Carlton Stephenson and Sharon Reiss Stephenson divorced, and Mrs. Stephenson subsequently gave birth to the parties' child. Mr. Stephenson indicated that he did not want any relationship with the child, and Mrs. Stephenson agreed that it would be best for the child if Mr. Stephenson was not involved in the child's life. The parties jointly filed a petition to terminate Mr. Stephenson's parental rights; the Jefferson Family Court denied the petition, citing a lack of evidence indicating that Mr. Stephenson's continuing legal relationship with the child was harming the child and that the child's future rights to support, parental affiliation, and inheritance would be protected by the termination of Mr. Stephenson's parental rights. Mrs. Stephenson appealed, and this court reversed the judgment, concluding that Mr. Stephenson had abandoned the child and that his parental rights should have been terminated on that ground.

The child's guardian ad litem petitioned the supreme court for a writ of certiorari, and the supreme court reversed the judgment of this court.

In its opinion, the supreme court acknowledged that Mrs. Stephenson had presented adequate evidence indicating that Mr. Stephenson had abandoned the child but concluded that "termination of [Mr. Stephenson's] parental rights appears to be overwhelmingly for the convenience of the parents. By mutual consent, Mr. and Mrs. Stephenson seek to waive [the child's] right to receive support from his father although the child would receive nothing in return." 513 So. 2d at 617. The supreme court held that the statute authorizing termination of parental rights "was not intended as a means for a parent to avoid his obligation to support his child" and that a judgment approving of the termination of the parental rights of Mr. Stephenson "would satisfy the objectives of the parents at the child's expense." 513 So. 2d at 616 and 617. The supreme court said:

> "Our courts are entrusted with the responsibility of determining the best interests of children who come before them. When a child's welfare is threatened by continuation of parental rights, the law provides a means for terminating those rights. When, after consideration of all evidence before it, a court determines that termination of parental rights would not serve the best interest of a child, as in the present case, parental rights should not be terminated. Convenience

> of the parents is not a sufficient basis for terminating parental rights."

513 So. 2d at 617. The supreme court explained that the termination-of-parental-rights statute "was not intended as a means for allowing a parent to abandon his child and thereby ... avoid his obligation to support the child through the termination of parental rights. The courts of this State will not be used in the furtherance of such a purpose." Id. The court concluded that the Jefferson Family Court had correctly denied the joint petition to terminate Mr. Stephenson's parental rights as a proper measure to protect the child's right to receive support from his father. Id.

Ex parte Brooks has since been clarified to explain that a judgment terminating the parental rights of a noncustodial parent does not, by operation of law, terminate the noncustodial parent's obligation to pay child support. See Ex parte M.D.C., supra. Consequently, in most cases, a juvenile court need not consider the impact a judgment terminating parental rights will have on the child's right to financial support, which will continue absent further legal action; however, when a judgment terminating parental rights expressly contemplates that the child will lose such support, Ex parte Brooks illustrates that the juvenile court must determine that the child's best interests are served.

In this case, because the juvenile court ended its inquiry upon determining that the parties had voluntarily entered into the stipulation, the juvenile court did not establish a record proving that the suspension of child support would serve the best interests of the child, as opposed to merely serving the interests of the parents. This court ordered the child's guardian ad litem to brief the question of how the parties' bargain to waive child support in exchange for termination of the mother's parental rights served the best interests of the child in light of Ex parte Brooks. In his brief, the guardian ad litem argues that it would be in the best interests of the child to terminate the mother's parental rights because the mother had abandoned the child and had not financially or emotionally supported the child for over two years. However, those facts mirror the facts in Ex parte Brooks, in which our supreme court determined that termination of parental rights was inappropriate because the termination would do nothing to serve the material, permanency, stability, and safety interests of the child at issue in that case.

On the record before the court, this case cannot be distinguished in any meaningful respect from Ex parte Brooks. In Ex parte Brooks, the

family court conducted a complete trial in which the parties were given a full opportunity to present evidence as to how a termination of parental rights would serve the best interests of the child. In this case, the parties elected to forgo that opportunity in reliance upon the stipulation. The result is the same, however. As in Ex parte Brooks, the record in this case contains no evidence indicating that the father's procurement of the mother's stipulation to the termination of her parental rights by agreeing to a waiver of child support serves the interests of the child. And, as in Ex parte Brooks, the termination of the mother's parental rights appears overwhelmingly to be for the convenience of the parties, who have attempted to contract away the child's right to child support while providing her nothing in return. Cf. S.D.P. v. U.R.S., 18 So. 3d 936, 939 (Ala. Civ. App. 2009) (holding that the judgment terminating parental rights could not be sustained by evidence indicating that a custodial parent wished to have the noncustodial parent out of her life and that the noncustodial parent desired not to pay child support); see also C.M. v. D.P., 849 So. 2d 963, 965 (Ala. Civ. App. 2002) ("A parent's parental rights cannot be terminated merely for the convenience of the parties.").

In Ex parte J.L.P., 230 So. 3d 396, 398 n.1 (Ala. Civ. App. 2017), this court questioned, but did not address, the validity of a judgment terminating the parental rights of a noncustodial parent based on an agreement that the noncustodial parent would be relieved of the duty to pay child support. In this case, I would hold that a juvenile court cannot terminate the parental rights of a noncustodial parent based on an agreement releasing the noncustodial parent from paying child support, even an agreement that is subject to approval by the court that awarded the child support, when the evidence fails to show that the agreement will serve the best interests of the child.

I would reverse the judgment and remand the case to the juvenile court with instructions that it reopen the evidence to allow the parties an opportunity to develop the facts in order for the juvenile court to determine whether the stipulation and agreement of the parties serve the best interests of the child and whether the parental rights of the mother should be terminated based upon the stipulation or a full inquiry. I believe this is the only course of action that will assure that "[t]he courts of this State [have] not be[en] used in the furtherance of [an illegitimate] purpose." Ex parte Brooks, 513 So. 2d at 617.