

Rel: March 11, 2022

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2200607

S.B.

v.

M.B.T. and J.T.

2200647

B.D.

v.

M.B.T. and J.T.

Appeals from Bibb Juvenile Court
(JU-17-103.06)

2200607 and 2200647

THOMPSON, Presiding Judge.

On June 13, 2017, the Bibb Juvenile Court ("the juvenile court") entered a shelter-care order awarding pendente lite custody of B.S.F. ("the child"), who was then approximately six weeks old, to the Bibb County Department of Human Resources ("DHR"). The child's parents are S.B. ("the mother") and D.F. ("the father"). DHR placed the child with M.B.T. and J.T. ("the custodians"); the record indicates that M.B.T. is the mother's cousin.

On September 8, 2017, the juvenile court entered an order adjudicating the child dependent and awarding the custodians pendente lite custody of the child, subject to an award of alternating weekend visitation to the child's maternal grandmother, B.D. ("the maternal grandmother"); the mother was awarded supervised visitation during the visitation periods exercised by the maternal grandmother.

In early February 2018, the juvenile court conducted a dispositional hearing at which neither the mother nor the father appeared. On February 13, 2018, the juvenile court entered a judgment in which it reaffirmed its earlier dependency determination and awarded custody of

2200607 and 2200647

the child to M.B.T.; that judgment did not mention J.T., let alone explicitly award custody to him. In the February 13, 2018, judgment, the juvenile court awarded the maternal grandmother alternating weekend visitation and specified that the maternal grandmother was responsible for arranging and supervising visitation between the mother and the child during her periods of visitation. The juvenile court also specified that the parties were to work together to maintain the relationships between the mother and the child and between the maternal grandmother and the child. The father was awarded four hours of visitation per month with the child at DHR's office.

In June 2018, the custodians filed in the juvenile court a petition seeking to terminate the parental rights of the mother and the father. The custodians provided the maternal grandmother with notice of the termination-of-parental-rights action by serving her with a copy of their petition. Later, on December 6, 2018, the custodians asserted, in the termination-of-parental-rights action, a contempt claim, specially alleging, among other things, that the maternal grandmother had violated the visitation award in the February 13, 2018, judgment by allowing the

2200607 and 2200647

father to visit the child during her visitation periods. Based on that allegation, the custodians sought to have the maternal grandmother held in contempt, and to suspend the maternal grandmother's visitation with the child. On June 20, 2019, the mother filed an answer to the custodians' petition to terminate her parental rights.

A trial of the termination-of-parental-rights action was continued a number of times. One such continuance was granted pending the resolution of drug-related criminal charges against the mother.

After the onset of the COVID-19 pandemic, the juvenile court conducted a virtual ore tenus virtual hearing on April 23, 2020, and, on that same date, it entered an order in which it, among other things, awarded the mother and the maternal grandmother telephone and video visitation with the child; directed the parties to attempt to arrange safe in-person visitation between the mother, the child, and the maternal grandmother, considering the restrictions that had been imposed as a result of the COVID-19 pandemic; required all the parties to submit to hair-follicle drug testing; and again noted that the trial of the termination-of-parental-rights action had been continued pending the

2200607 and 2200647

resolution of the criminal charges against the mother. Thereafter, disputes concerning visitation arose between the custodians, the mother, and the maternal grandmother. On August 21, 2020, after conducting another virtual ore tenus hearing, the juvenile court entered an order allowing the mother and the maternal grandmother in-person visitation with the child but warning the parties that any violations of its February 13, 2018, judgment would place the violator in jeopardy of being held in contempt and could result in the termination of that person's visitation with the child.

On October 28, 2020, the custodians notified the juvenile court of the resolution of the criminal charges that had been pending against the mother and requested that the termination-of-parental-rights action be set for a trial. The juvenile court entered an order on November 10, 2020, setting the trial for January 22, 2021.

On January 18, 2021, the mother moved the juvenile court to again postpone the trial pending the resolution of new criminal charges pending against her. The father filed a similar motion, also asserting that certain criminal charges were pending against him. The juvenile court

2200607 and 2200647

rescheduled the trial three additional times, eventually ordering that the mother submit to a deposition before the trial, which was scheduled for April 28, 2021. The parties conducted the deposition of the mother, and the termination-of-parental-rights action proceeded to trial on April 28, 2021.

On May 10, 2021, the juvenile court entered a 16-page order in which it set forth a detailed recitation of the evidence presented to it and, based on that evidence, made factual findings and conclusions of law. In short, the juvenile court ordered the parental rights of the mother and the father to be terminated.

The mother filed a purported postjudgment motion and a notice of appeal on May 13, 2021.¹ The mother's appeal was assigned appeal number 2200607. On May 21, 2021, the maternal grandmother also filed a purported postjudgment motion, see note 1, *supra*, and a notice of appeal

¹A valid Rule 59, Ala. R. Civ. P., postjudgment motion may be filed only in reference to a final judgment. Momar, Inc. v. Schneider, 823 So. 2d 701, 704 (Ala. Civ. App. 2001); Malone v. Gainey, 726 So. 2d 725, 725 n.2 (Ala. Civ. App. 1999).

2200607 and 2200647

to this court. This court assigned appeal number 2200647 to the maternal grandmother's appeal. This court consolidated the appeals ex mero motu.

Initially, we note that, based on the authority of D.K. v. S.M.S., 297 So. 3d 466 (Ala. Civ. App. 2019), the maternal grandmother is a party to the action below, and, therefore, she has the capacity to prosecute her appeal. In D.K. v. S.M.S., supra, the maternal grandfather of two surviving children petitioned to terminate the parental rights of the children's father, who had been convicted of the murders of the children's sibling and mother. The maternal grandfather had physical custody of the children but shared legal custody of the children with their paternal aunt and uncle, who had been awarded visitation with the children. The maternal grandfather's termination-of-parental-rights petitions did not seek to address the custody and/or visitation rights of the paternal aunt and uncle. In that case, however, the paternal aunt and uncle filed "answers" and moved to dismiss the termination-of-parental-rights petitions. This court held that it was clear that the maternal grandfather and the juvenile court in that case had treated the paternal aunt and uncle as intervenors, and, therefore, this court also treated them as

2200607 and 2200647

intervenors and parties to the termination-of-parental-rights actions. D.K. v. S.M.S., 297 So. 3d at 468-69.

Similarly, in this case, the maternal grandmother was treated below as a party to the custodians' termination-of-parental-rights action. The custodians served the termination-of-parental-rights petition on the maternal grandmother, and the maternal grandmother filed a notice of appearance in the action in October 2018. As a part of their termination-of-parental-rights action, the custodians asserted a contempt claim against the maternal grandmother, to which the maternal grandmother did not respond. However, the maternal grandmother twice moved to continue the trial, and she was asked to submit to hair-follicle drug testing during the pendency of the action. The maternal grandmother also moved the juvenile court for an emergency award of visitation in May 2020, and she participated in a hearing in which she sought to have the custodians held in contempt for denying her visitation; during that hearing, the custodians sought to suspend the maternal grandmother's visitation, a position which the maternal grandmother opposed. In addition, the maternal grandmother fully participated in the proceedings

2200607 and 2200647

and supported the mother in opposing the termination-of-parental-rights petition. Accordingly, given the facts and posture of this matter, we conclude that the maternal grandmother was a party to the custodians' termination-of-parental-rights action and, thus, that she could appeal a final judgment entered in that action. See, e.g., D.K. v. S.M.S., supra.

However, in its May 10, 2021, order, the juvenile court did not address the custodians' contempt claim asserted against the maternal grandmother for alleged violations of the visitation provision of the February 13, 2018, judgment.² The May 10, 2021, order terminated the parental rights of the mother and the father and awarded permanent custody of the child to the custodians, but it did not specify that any other outstanding claim was denied or had been otherwise disposed. Thus, the

²In an order entered before the entry of the May 10, 2021, order, the juvenile court had denied contempt claims asserted against the custodians by the mother and the maternal grandmother based on allegations that they had been denied visitation during the pendency of the termination-of-parental-rights action. We note that the juvenile court cited concerns related to the COVID-19 pandemic in determining that the custodians' reasons for denying that visitation were reasonable under the facts.

2200607 and 2200647

May 10, 2021, order is not final because it did not resolve all the parties' pending claims. A.C. v. C.C., 34 So. 3d 1281, 1287 (Ala. Civ. App. 2009).

On January 31, 2022, this court issued an order reinvesting the juvenile court with jurisdiction for 14 days to determine whether to enter a final judgment in the action. The juvenile court took no action in response to that order. "[T]his court must dismiss an appeal taken from a nonfinal judgment." A.A. v. Jefferson Cnty. Dep't of Hum. Res., 293 So. 3d 955, 956 (Ala. Civ. App. 2019) (quoting Stanford v. Feige, 816 So. 2d 501, 503 (Ala. Civ. App. 2001)). Accordingly, because the maternal grandmother is a party to the action, and because the May 10, 2021, order did not resolve all the pending claims, we dismiss these appeals as having been taken from a nonfinal judgment.

2200607 -- APPEAL DISMISSED.

2200647 -- APPEAL DISMISSED.

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