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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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R.R.

v.

Chilton County Department of Human Resources

**Appeals from Chilton Juvenile Court
(JU-17-168.01 and JU-17-168.02)**

EDWARDS, Judge.

This is the second time that R.R. ("the father") has appeared before this court in relation to the dependency proceedings involving his child, R.E.R. ("the child"). In September 2017, the Chilton County Department of Human Resources ("DHR") filed in the Chilton Juvenile Court ("the

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juvenile court") a petition alleging that the child was a dependent child; that action was assigned case number JU-17-168.01 ("the dependency action"). In December 2017, the juvenile court entered a judgment declaring the child dependent, and the father appealed that judgment, contending that the juvenile court had erred in entering its judgment without having taken testimony or receiving evidence. We reversed the December 2017 judgment. R.R. v. Chilton Cnty. Dep't of Hum. Res., 272 So. 3d 1114 (Ala. Civ. App. 2018).

After the reversal of the December 2017 judgment, the juvenile court held a trial, after which it determined in a judgment entered in November 2018 that the child was dependent based on the conduct of the child's stepmother, P.W.R. ("the stepmother"), and the father's failure to protect the child from the stepmother's emotional abuse. The November 2018 judgment awarded custody of the child to DHR. DHR subsequently placed the child with the child's maternal aunt, Ra.R. ("the maternal aunt").

In December 2019, the maternal aunt filed in the juvenile court a petition seeking to have the child declared dependent and to be awarded custody of the child. The maternal aunt's action was assigned case

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number JU-17-168.02 ("the custody action"). The juvenile court apparently consolidated the custody action with the dependency action, although the record does not contain an order expressly consolidating them.

The juvenile court entered permanency-review orders in the dependency action in August 2019 and August 2020. The August 2020 order states that the father had not visited the child in over a year but concludes "that termination of parental rights is not in the best interest of the child because he is placed with a relative, who is a long-term placement option for the child." In addition, the August 2020 order set the matter for a "final hearing" to be held on January 15, 2021. In an August 26, 2020, order, the juvenile court ordered that a home study be conducted on the father's home.

The stepmother filed a motion to intervene, which DHR opposed; the juvenile court denied that motion on March 5, 2021. The juvenile court conducted the "final dispositional trial" in both the dependency action and the custody action on May 24, 2021, after which the juvenile court entered separate, but almost identical, judgments determining that the child

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remained dependent, awarding custody of the child to the maternal aunt, relieving DHR of the duty to provide further services or monitoring, and awarding the father visitation with the child "at the discretion of the custodian," with the proviso that the father's visits could include the child's siblings but could not include the stepmother. The father timely appealed. This court consolidated the father's appeals ex mero motu.

The following legal principles guide our review of the father's appeals. The juvenile court's factual findings in a dependency case when the evidence has been presented ore tenus are presumed correct. T.D.P. v. D.D.P., 950 So. 2d 311 (Ala. Civ. App. 2006). A "dependent child" is defined in Ala. Code 1975, § 12-15-102(8), to include:

"a. A child who has been adjudicated dependent by a juvenile court and is in need of care or supervision and meets any of the following circumstances:

"1. Whose parent, legal guardian, legal custodian, or other custodian subjects the child or any other child in the household to abuse, as defined in Section 12-15-301[, Ala. Code 1975,] or neglect as defined in Section 12-15-301, or allows the child to be so subjected.

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"2. Who is without a parent, legal guardian, or legal custodian willing and able to provide for the care, support, or education of the child.

"....

"6. Whose parent, legal guardian, legal custodian, or other custodian is unable or unwilling to discharge his or her responsibilities to and for the child."

A finding of dependency must be supported by clear and convincing evidence. Ala. Code 1975, § 12-15-310(b). When a juvenile court has not made specific factual findings in support of its judgment, we must presume that the juvenile court made those findings necessary to support its judgment, provided that those findings are supported by the evidence. K.C. v. Jefferson Cnty. Dep't of Hum. Res., 54 So. 3d 407, 413 (Ala. Civ. App. 2010). In addition, the juvenile court may consider the totality of the circumstances when making a finding in a dependency proceeding. G.C. v. G.D., 712 So. 2d 1091, 1094 (Ala. Civ. App. 1997); see also D.P. v. State Dep't of Hum. Res., 571 So. 2d 1140 (Ala. Civ. App. 1990).

Once "a child is found to be dependent, the juvenile court may make any of [several] orders of disposition to protect the welfare of the child,"

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including to "[t]ransfer legal custody to ... [a] relative or other individual who, after study by the Department of Human Resources, is found by the juvenile court to be qualified to receive and care for the child." Ala. Code 1975, § 12-15-314(a)(3)c. The juvenile court's custodial disposition must, of course, serve the best interest of the child. See K.F. v. Cleburne Cnty. Dep't of Hum. Res., 78 So. 3d 983, 989 (Ala. Civ. App. 2011) (stating that, "after a child has been adjudicated to be dependent, a juvenile court may make any custodial disposition that serves the best interests of the child"). "This court may reverse a judgment determining the custody of a dependent child following a trial at which oral testimony is received only if no credible evidence supports the factual determination that such placement serves the best interests of the child." T.E. v. T.H., 39 So. 3d 1168, 1171 (Ala. Civ. App. 2009).

DHR presented the testimony of three witnesses at the trial: Amanda Martin, the DHR service supervisor; Jennifer Brewer, the DHR caseworker assigned to the child's case beginning in February 2020; and the maternal aunt. The father did not attend the trial; his attorney stated on the record that the father was in the emergency room with one of his

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other children. Neither the father's attorney nor the maternal aunt presented any witnesses.

Martin testified that she was the DHR service supervisor and that the child's case was part of her caseload. She explained that the child had first been removed from the custody of the father after the child's school had contacted DHR to report that the stepmother had called the school to report that the child had "contraband" in his backpack. Apparently, the school had learned that the stepmother had purposefully placed the contraband in the child's backpack and that she had also instigated other complaints against the child under assumed names. Thus, Martin testified, DHR had become involved with the child because of the unusual behavior of the stepmother, which DHR concluded was a form of emotional abuse. In fact, Martin said, DHR had made an "indicated" finding against the stepmother for emotional abuse of the child and that "indicated" finding had been upheld on an administrative-record review.

Martin testified that the child had received counseling to address the emotional abuse inflicted on him by the stepmother, but, she said, the child had discontinued counseling around the time the COVID-19

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pandemic had begun because he had progressed satisfactorily. According to Martin, the child had since resumed counseling because of some indications that he was depressed. She testified that the child did not want to be around the stepmother.

According to Martin, DHR offered services to the father and the stepmother, including a parenting assessment, psychological evaluations, and counseling. Martin testified that, although the father and the stepmother began counseling, they subsequently rescinded their releases permitting DHR access to their counseling records and withdrew from DHR-sponsored counseling and/or classes and did not complete psychological evaluations. She said that, later in 2019, the father requested that he, the child, and the stepmother attend family counseling but indicated that he did not desire DHR to have access to the counseling records; apparently, DHR agreed to permit the child's guardian ad litem to be the person to whom the counselor reported, but, after the family had attended only one session, the father changed counselors and failed to sign a release for the guardian ad litem to receive reports from the new counselor. As a result, Martin explained, the father had never completed

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a parenting assessment, a psychological evaluation, or any form of counseling.

Martin testified that, at the time of the trial, the father had not visited the child in approximately two years. She indicated that an August 2020 permanency-review order had indicated that the father had not visited the child in over one year at that time. She said that the father had attended an August 2020 permanency-review hearing but that he had failed to attend an August 2019 permanency-review hearing.

Regarding the home study ordered by the juvenile court in August 2020, Martin testified that the father had not completed the home-study packet that DHR had submitted to him. She said that he had specifically objected to providing information about the stepmother and the other children living in the house because, she said, he had told her that they were not the issue. In addition to the father's failure to complete the necessary paperwork, the father had not scheduled a time for the necessary home visit, despite the fact that DHR had provided him 27 possible dates. Martin said that the father had indicated that they would be out of town for several weeks and had stated that they would be

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available in January 2021, which was after the date the juvenile court had set for the completion of the home study.

Martin candidly admitted that she was unable to articulate what safety concerns might arise if the child were returned to the custody of the father. She said that the father had barely communicated with DHR and had not had contact with the child, so DHR could determine the state of their relationship. Martin also noted that the father had not complied with services offered by DHR, so DHR could not assess the family's progress toward reunification.

Brewer testified that she had become the child's caseworker in February 2020. She said that, at that time, the father was entitled to supervised visits with the child for an hour every Wednesday afternoon at DHR's offices, provided that he gave notice of his intent to exercise his visitation on the Tuesday before the visit; she said that, to her knowledge, the father had not visited the child. Like Martin, she explained that the father's failure to visit with the child had prevented DHR from assessing their relationship. She also explained that the father's failure to attend family counseling had prevented DHR from assessing the family dynamics

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so that a reunification plan could be developed. Brewer further testified that the father had given DHR a false address and that the juvenile court had had to order him to provide his address during a permanency-review hearing. She also noted that the father had not cooperated with DHR, had not attended two scheduled individualized-service-plan meetings she had conducted, and had not undergone a home study.

Brewer testified that she saw the child once a month. She said that the maternal aunt's house was appropriate and that the child was safe and appeared to be happy in the maternal aunt's custody. Brewer admitted that the child was struggling to maintain his grades and that DHR and the maternal aunt had taken steps to assist him with that issue. She said that DHR had provided counseling and tutoring to the child, whom, she said, his teachers had described not as being unable to maintain passing grades but, rather, as being unmotivated. According to Brewer, the child had expressed that he felt depressed regarding the longevity of the dependency action; she said that he had indicated that he wanted stability and to know where he would be staying. Brewer opined

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that a final decision awarding custody to the maternal aunt would positively impact the child.

The maternal aunt testified that the child had lived in her home since August 28, 2017. She explained that she lived with her fiancé, R.C., and her children, Z.R. and K.R., and that the child had a good relationship with all the members of the family. She also testified that she had adequate income to provide for the child and that she desired to do so on a permanent basis.

The maternal aunt further testified that the child was in the 10th grade and that he was having issues with his grades. She admitted that he would not be promoted to the 11th grade unless he passed certain classes in summer school. She, like Brewer, indicated that the child had been supported by tutoring and that he had recently resumed counseling to see if his self-admitted depression might be causing a lack of motivation. She described the child as becoming anxious and nervous before court dates because he did not want to interact with the father or the stepmother.

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According to the maternal aunt, the child had not spoken to the father or visited with the father. She said that, when the child was initially placed with her, the stepmother had initiated all telephone contact but that the father had refused to do so because, she said, he did not want to be placed on speaker phone, as DHR had instructed the maternal aunt to do to monitor their communications. She said that the father and the stepmother would contact her via text message. The maternal aunt said that she thought that the child should visit with the father but that any visits should be supervised; she said that she or her mother would be available to supervise any visitation that the juvenile court awarded to the father.

On appeal, the father makes three arguments. He first complains that the record fails to contain clear and convincing evidence supporting the juvenile court's judgments. He also argues that the juvenile court erred in awarding him visitation at the maternal aunt's discretion and in requiring that his visits not include the stepmother.

In his argument that the record fails to contain clear and convincing evidence supporting the juvenile court's judgments, the father contends

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that DHR failed to prove that the child should have been removed from the father's home, much less that he should remain outside the father's home. To support his argument, the father contends that the record lacks evidence indicating (1) that the child needed counseling or that his need for counseling was a result of the father's condition or conduct, (2) that the father and the stepmother required psychological evaluations or that those evaluations would be a reasonable effort aimed at reunification, or (3) that services were not offered to the child's siblings, who remain in the home of the father and the stepmother.¹ He also relies on the testimony of Martin, who testified that, because the father had not completed any services and had failed to maintain contact with the child or with DHR, she could not explain the safety issues that might arise if the child were returned to the home of the father.

The juvenile court determined that the child remained dependent without stating specific factual findings to support that conclusion.

¹We are unable to understand how DHR's failure to provide services to the child's siblings, about whom DHR is not concerned, is relevant to a determination of the child's continued dependency.

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However, we may presume that the juvenile court made those findings necessary to support its judgments, provided that those findings are supported by the evidence. K.C., 54 So. 3d at 413. The record contains evidence that would support the conclusion that the child remains dependent because of the effects of the stepmother's emotional abuse, which supports the conclusion that DHR properly sought psychological evaluations of the stepmother and the father to better address her emotional abusiveness and his inability or lack of desire to protect the child, and the father's failure to comply with DHR's reunification services intended to ameliorate the effects of that abuse.

To be sure, DHR's ability to explain why the child still should not be reunited with the father suffered as a result of his failure to participate in services or to cooperate with DHR. The record reflects that DHR knew little about the father's circumstances, mostly because the father had not kept in contact with DHR, had hidden his address from DHR, and had refused to complete the necessary paperwork and to select a time for DHR to perform a home study. The father's reticence to cooperate with DHR is itself significant proof that the father has not addressed the issues that

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had resulted in the child's removal and the dependency finding in the November 2018 judgment. The father had not visited with or maintained any contact with the child in the two years preceding the trial. He did not testify at the trial because, according to his attorney, he was at the emergency room with one of his other children. We have explained, albeit in the context of termination-of-parental-rights actions, that the reunification process requires DHR to make reasonable efforts to rehabilitate a parent but also requires the parent to participate in the services offered by DHR in an attempt to ameliorate the conduct or condition that led to DHR's involvement with the family. Montgomery Cnty. Dep't of Hum. Res. v. A.S.N., 206 So. 3d 661, 673 (Ala. Civ. App. 2016).² The father has barely participated in DHR's reunification efforts

²As we explained in A.S.N.:

"Central to a determination whether reasonable efforts at rehabilitation have failed is not only the consideration whether a parent has complied with the reunification plan established in the [individualized service plans] so that 'the parental conduct, condition, or circumstance that required separation of the child [can be] satisfactorily eliminated,' see R.T.B. v. Calhoun Cty. Dep't Human Res., 19 So. 3d 198, 205 (Ala. Civ. App. 2009), but also whether the parent has made 'himself or

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and has not bothered to maintain, much less improve, his relationship with the child.

The evidence before the juvenile court indicates that, other than the issues with his grades, which might stem from depression, the child is doing well in the placement with the maternal aunt. Martin and Brewer testified that DHR and the maternal aunt had been attempting to assist

herself available to DHR' and has made 'an effort to address his or her issues and improve his or her circumstances.' A.M.F. [v. Tuscaloosa Cnty. Dep't of Hum. Res.], 75 So. 3d [1206,] 1212 [(Ala. Civ. App. 2011).] In A.M.F. we relied on, in part, In re Tiffany B., 228 S.W.3d 148, 159 (Tenn. Ct. App. 2007), overruled on other grounds, In re Kaliyah S., 455 S.W.3d 533, 555 (Tenn. 2015), as authority for the aforementioned principle. The quotation we provided in the parenthetical explanation of the relevance of the citation to In re Tiffany B. is extremely apt here:

" "Reunification of a family, however, is a two-way street, and neither law nor policy requires the Department [of Children's Services] to accomplish reunification on its own without the assistance of the parents. Parents share the responsibility for addressing the conditions that led to the removal of their children from their custody. They must also make reasonable efforts to rehabilitate themselves once services have been made available to them." "

206 So. 3d at 673.

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the child by providing tutoring and resuming counseling sessions to address his depression. Although the father posits that the child's depression and the resulting issues with his grades have as a root cause his removal from the father's custody and his separation from his siblings, the maternal aunt testified that the child does not want to see the father or the stepmother and that he becomes anxious at the prospect of interacting with them at court hearings. The juvenile court had before it sufficient evidence to conclude that the child remained dependent as a result of his father's failure to participate in reunification efforts to address the emotional abuse the child had suffered at the hands of the stepmother and that the child's best interest would be served by awarding custody to the maternal aunt.

However, the father correctly argues that the juvenile court erred in awarding him visitation solely at the discretion of the maternal aunt.

"[W]e have repeatedly explained that failing to set a visitation schedule and allowing visitation to be at the sole discretion of a custodian is error.

"This court has previously held that it is reversible error for a juvenile court to leave the matter of a noncustodial parent's visitation rights

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to the sole discretion of a custodial parent or other legal custodian of the child. See, e.g., L.L.M. v. S.F., 919 So. 2d 307 (Ala. Civ. App. 2005) (reversing a juvenile court's visitation award that placed the father in control of the mother's visitation with the child), and K.B. v. Cleburne County Dep't of Human Res., 897 So. 2d 379 (Ala. Civ. App. 2004) (reversing a juvenile court's visitation award that essentially conditioned the mother's right to visitation with her child upon the consent of the child's aunt and uncle); see also D.B. v. Madison County Dep't of Human Res., 937 So. 2d 535, 541 (Ala. Civ. App. 2006) (plurality opinion reversing a juvenile court's judgment that made the mother's visitation " 'subject to any conditions and limitations deemed to be necessary and appropriate' " by the child's great aunt, who was awarded custody of the child).'

J.C. v. Houston Cnty. Dep't of Hum. Res., 313 So. 3d 1137, 1142 (Ala. Civ. App. 2020) (quoting A.M.B. v. R.B.B., 4 So. 3d 468, 471-72 (Ala. Civ. App. 2007)). Insofar as the juvenile court's judgments fail to award the father visitation at specific dates and times and for specified periods, the judgments are reversed.

The father also challenges the juvenile court's judgments insofar as they restrict the stepmother from visiting with the child. We begin our review of the juvenile court's visitation restriction by acknowledging the

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long-standing principles that the "trial court has broad discretion when making a determination as to the visitation rights it will award a noncustodial parent" and that this court may not reverse a visitation award unless it is unsupported by the evidence or plainly and palpably wrong. Andrews v. Andrews, 520 So. 2d 512, 513 (Ala. Civ. App. 1987).

"In exercising its discretion over visitation matters, "[t]he trial court is entrusted to balance the rights of the parents with the child's best interests to fashion a visitation award that is tailored to the specific facts and circumstances of the individual case." ' Ratliff v. Ratliff, 5 So. 3d 570, 586 (Ala. Civ. App. 2008) (quoting Nauditt v. Haddock, 882 So. 2d 364, 367 (Ala. Civ. App. 2003) (plurality opinion)). A noncustodial parent generally enjoys 'reasonable rights of visitation' with his or her children. Naylor v. Oden, 415 So. 2d 1118, 1120 (Ala. Civ. App. 1982). However, those rights may be restricted in order to protect children from conduct, conditions, or circumstances surrounding their noncustodial parent that endanger the children's health, safety, or well-being. See Ex parte Thompson, 51 So. 3d 265, 272 (Ala. 2010) ('A trial court in establishing visitation privileges for a noncustodial parent must consider the best interests and welfare of the minor child and, where appropriate, as in this case, set conditions on visitation that protect the child.'). In fashioning the appropriate restrictions, out of respect for the public policy encouraging interaction between noncustodial parents and their children, see Ala. Code 1975, § 30-3-150 (addressing joint custody), and § 30-3-160 (addressing Alabama Parent-Child Relationship Protection Act), the trial court may not use an overbroad restriction that does more than necessary to protect the children. See Smith v. Smith, 887 So. 2d 257 (Ala. Civ.

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App. 2003), and Smith v. Smith, 599 So. 2d 1182, 1187 (Ala. Civ. App. 1991)."

Pratt v. Pratt, 56 So. 3d 638, 641 (Ala. Civ. App. 2010).

The father does not cite authority regarding the imposition of restrictions on a parent's visitation rights. However, as discussed in the above-quoted excerpt from Pratt, this court has explained that a trial court may impose restrictions on the visitation rights of a parent if the restrictions have as their purpose the protection of the best interest of the child involved and the restrictions are not more restrictive than necessary to achieve that end. See Smith v. Smith, 887 So. 2d 257 (Ala. Civ. App. 2003), and Smith v. Smith, 599 So. 2d 1182, 1187 (Ala. Civ. App. 1991).

The father contends that the record does not contain evidence supporting the restriction prohibiting the father from visiting the child with the stepmother, i.e., that the record lacks evidence that the restriction is in the child's best interest. We disagree. The record contains evidence, including the juvenile court's November 2018 dependency judgment, indicating that the stepmother had perpetrated emotional abuse on the child and that the father had not acknowledged

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the abuse or protected the child from it. Martin also testified that DHR had found the stepmother "indicated" for emotional abuse of the child. Thus, the juvenile court had evidence from which it could have concluded that the child's best interest would be served by excluding the attendance of the stepmother from the child's visitation with the father.

Having considered the father's arguments on appeal, we affirm the May 2021 judgments of the juvenile court insofar as they determine that the child remains dependent and award the maternal aunt custody of the child. We also affirm that aspect of the judgments that excludes the stepmother from any visitation between the father and the child. However, that aspect of the May 2021 judgments awarding the father visitation at the sole discretion of the maternal aunt is reversed, and the causes are remanded for the juvenile court to set a specific visitation schedule for the father.

2200709 -- AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

2200710 -- AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

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