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## ALABAMA COURT OF CIVIL APPEALS

### OCTOBER TERM, 2021-2022

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**2200746, 2200747, and 200748**

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**K.H.**

**v.**

**Limestone County Department of Human Resources**

**Appeals from Limestone Juvenile Court  
(JU-20-172.02, JU-20-178.02, and JU-20-179.02)**

HANSON, Judge.

In these consolidated appeals, K.H. ("the mother") appeals from judgments entered by the Limestone Juvenile Court ("the juvenile court")

2200746, 2200747, and 2200748 terminating her parental rights to three children ("the children"): H.H., who was born in August 2020; M.S., who was born in December 2018; and A.S., who was born in November 2017. We reverse the judgments and remand the causes with instructions.

On April 9, 2021, the Limestone County Department of Human Resources ("DHR") filed separate verified petitions to terminate the parental rights of the mother and of H.S., the children's father ("the father"), as to the children. Neither parent personally appeared at the ensuing trial on June 1, 2021, at which trial counsel for DHR requested submission of the three cases on the verified petitions only; however, at the request of the mother's attorney, the juvenile court heard limited testimony from a DHR social worker, Samantha Matthews. At the conclusion of Matthews's testimony, the juvenile-court judge informed all counsel present that DHR's petitions would be granted and, on June 1, 2021, the juvenile court entered separate, but almost identical, judgments terminating the parental rights of the mother and the father to the

2200746, 2200747, and 2200748 children. On June 15, 2021, the mother filed her notices of appeal.<sup>1</sup> This court consolidated the appeals ex mero motu.

In her brief on appeal, the mother asserts that there was insufficient evidence to support the juvenile court's judgments terminating her parental rights; she specifically contends that DHR failed to present clear and convincing evidence to support the juvenile court's findings that the mother had abandoned the children, that she had engaged in excessive drug usage, that she had been unwilling to discharge parental responsibilities, and that she had had inconsistent contact with the children. The mother further asserts that DHR failed to present clear and convincing evidence indicating that DHR had exerted reasonable efforts to reunify the mother with the children or that no viable alternatives to the termination of the mother's parental rights existed.

DHR has candidly conceded in its appellate brief that the juvenile court improperly terminated the parental rights of the mother, acknowledging that the abbreviated factual record does not reflect

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<sup>1</sup>The father has not appealed from the judgments terminating his parental rights to the children.

2200746, 2200747, and 2200748 evidence sufficient to support a determination of abandonment or that no viable alternatives to the termination of the mother's parental rights existed. Thus, as was the case in J.B. v. Jefferson County Department of Human Resources, 252 So. 3d 674 (Ala. Civ. App. 2017), " '[t]he posture of the case is in effect a confession of error on the part of the appellee[ ] and a joinder therein by the appellant.' " 252 So. 3d at 676 (quoting Payton v. Sexton, 273 Ala. 224, 225, 137 So. 2d 747, 748 (1962)).

Even if DHR had not conceded those points on appeal, however, the highly attenuated record presented for review does not support affirming of the judgments terminating the mother's parental rights. DHR, as the petitioner, had the burden of proving, by clear and convincing evidence, that the children at issue are dependent and that there are no viable alternatives to termination of the mother's parental rights. See B.M. v. State, 895 So. 2d 319, 331 (Ala. Civ. App. 2004) (citing Ex parte Beasley, 564 So. 2d 950, 954 (Ala. 1990)). There is nothing in the Alabama Juvenile Justice Act § 12-15-101 et seq., Ala. Code 1975, or in the Alabama Rules of Juvenile Procedure indicating that the personal absence of the mother from the trial in these cases vitiated that burden.

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Furthermore, despite the presence of a DHR employee at trial from whom counsel for DHR could have elicited relevant testimony, no competent evidence was adduced to establish that DHR had explored and properly rejected potential viable alternatives to the termination of the mother's parental rights; rather, the juvenile court stated at trial that its determination that "there are no viable alternatives to the termination" of the mother's parental rights would be based upon DHR's averments in its verified petition that DHR had "explored the family resource options and there weren't any relatives that were viable." Although a verified pleading, such as DHR's petition, can potentially be construed as an affidavit, see Christison v. State, 39 Ala. App. 175, 176, 96 So. 2d 701, 702 (1957), an affidavit, in the absence of authority providing otherwise, is mere hearsay and does not constitute substantive evidence. See Associates Fin. Servs. Co. of Alabama v. Barbour, 592 So. 2d 191, 196 (Ala. 1991). Similarly, any desire of the juvenile court to "[l]et this train pass real quick," as stated at the outset of the mere nine pages of testimony received by the juvenile court, is not a valid basis for the termination of parental rights -- an extreme remedy that has been

2200746, 2200747, and 2200748 described, at various times, as being draconian and equivalent to a civil death penalty. See Ex parte Montgomery Cnty. Dep't of Hum. Res., 294 So. 3d 811, 817 (Ala. Civ. App. 2019), and M.E. v. Shelby Cnty. Dep't of Hum. Res., 972 So. 2d 89, 102 (Ala. Civ. App. 2007) (plurality opinion).

Because, as DHR has conceded, the juvenile court erred in terminating the mother's parental rights, that court's judgments, insofar as they terminate the mother's parental rights, are reversed. The causes are remanded "for the entry of judgments consistent with this opinion." H.P. v. Jefferson Cnty. Dep't of Hum. Res., [Ms. 2200467, Oct. 8, 2021] \_\_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Civ. App. 2021). In doing so, however, we note the juvenile court's continuing jurisdiction regarding the children at issue (see Ala. Code 1975, § 12-15-117(a)) and the authority and duty of that court to consider all pertinent and competent evidence presented in connection with any future petition that may be filed seeking the termination of the mother's parental rights. See generally L.M. v. Shelby Cnty. Dep't of Hum. Res., 86 So. 3d 377, 380-84 & nn. 3-4 (Ala. Civ. App. 2011) (rejecting a res judicata challenge to a juvenile court's admission of evidence relating

2200746, 2200747, and 2200748  
to facts and circumstances existing before entry of judgment denying  
earlier termination-of-parental-rights petitions).

2200746 -- REVERSED AND REMANDED.

2200747 -- REVERSED AND REMANDED.

2200748 -- REVERSED AND REMANDED.

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