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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2200809

J.P.

v.

K.W. and J.D.

**Appeal from Henry Circuit Court
(JU-20-158.02)**

HANSON, Judge.

J.P. ("the mother") appeals from an order of the Henry Circuit Court ("the circuit court") purporting to terminate her parental rights to J.M.H.

2200809

("the child"), who was born in September 2018. Because the mother's appeal was taken from a judgment entered without jurisdiction, we dismiss the appeal.

On October 28, 2020, the mother's sister, K.W. ("the aunt"), along with the aunt's common-law husband, J.D. ("the uncle"), filed a petition in the Henry Juvenile Court ("the juvenile court") to terminate the parental rights of the mother and of the child's unknown father. The unknown father was served by publication in January 2021. The juvenile court entered an order on February 25, 2021, determining that the mother's parental rights were due to be terminated; the parental rights of the unknown father were not addressed in that order. Although the juvenile court's order did not adjudicate all claims as to all parties, the mother filed a notice of appeal from that order on March 4, 2021. Because the record in that appeal was not adequate, this court, on March 17, 2021, transferred the mother's appeal to the circuit court for a trial de novo, pursuant to Rule 28(B) and (E), Ala. R. Juv. P.

On June 22, 2021, after an ore tenus proceeding, the circuit court entered an order purporting to terminate the parental rights of the

2200809

mother. The circuit court's order noted that the juvenile court, on April 28, 2021, after the mother had taken her appeal, had entered an order purporting to terminate the parental rights of any father or alleged father of the child. The mother subsequently appealed from the circuit court's order.

Although no party has questioned this court's appellate jurisdiction, we first consider whether we have jurisdiction over this appeal, because "matters of jurisdiction are of such importance that a court may consider them ex mero motu." Reid v. Reid, 844 So. 2d 1212, 1214 (Ala. Civ. App. 2002).

" "It is a well established rule that, with limited exceptions, an appeal will lie only from a final judgment which determines the issues before the court and ascertains and declares the rights of the parties involved." Taylor v. Taylor, 398 So. 2d 267, 269 (Ala. 1981)... A "final judgment is a 'terminal decision which demonstrates there has been a complete adjudication of all matters in controversy between the litigants.'" Dees v. State, 563 So. 2d 1059, 1061 (Ala. Civ. App. 1990) (citing Tidwell v. Tidwell, 496 So. 2d 91, 92 (Ala. Civ. App. 1986)). The question whether a judgment is final is a jurisdictional question, and the reviewing court, on a determination that the judgment is not final, has a duty to dismiss the case.... See Jim Walter

2200809

Homes, Inc. v. Holman, 373 So. 2d 869, 871 (Ala. Civ. App. 1979).'

"Horton v. Horton, 822 So. 2d 431, 433-34 (Ala. Civ. App. 2001). "Once an appeal is taken, the trial court loses jurisdiction to act except in matters entirely collateral to the appeal." ' Horton, 822 So. 2d at 434 (quoting Ward v. Ullery, 412 So. 2d 796, 797 (Ala. Civ. App. 1982))."

S.H. v. Macon Cnty. Dep't of Hum. Res., 195 So. 3d 311, 312 (Ala. Civ. App. 2015).

As noted previously, the juvenile court's February 25, 2021, order did not address the rights of the child's unknown father, who had been properly served by publication in January 2021. That order was thus not a final judgment capable of supporting an appeal. Moreover, the juvenile court did not certify its February 25, 2021, order as a final judgment pursuant to Rule 54(b), Ala. R. Civ. P. See E.H. v. K.H., 221 So. 3d 485, 488 (Ala. Civ. App. 2016) (recognizing the potential applicability of Rule 54(b) in juvenile actions). Therefore, the mother's appeal from the juvenile court's February 25, 2021, order was not taken from a final judgment reviewable by way of appeal, and it was incumbent on the circuit court,

2200809

which sat as the appellate court, to dismiss the appeal as being from a nonfinal judgment.

As previously stated, however, the circuit court conducted a trial de novo and entered an order on June 22, 2021, purporting to terminate the mother's parental rights, opining that the parental rights of any father or alleged father of the child had been validly terminated by the juvenile court on April 28, 2021. The mother's March 4, 2021, notice of appeal challenging the juvenile court's February 25, 2021, order had the effect of divesting the juvenile court of jurisdiction to rule on any remaining issues until the appeal was disposed of. Horton v. Horton, 822 So. 2d 431, 434 (Ala. Civ. App. 2001). Accordingly, although the juvenile court indeed entered an order on April 28, 2021, purporting to terminate the unknown father's parental rights, that order is a nullity. See Searle v. Vinson, 42 So. 3d 767, 771-72 (Ala. Civ. App. 2010). Thus, the circuit court never had jurisdiction to entertain the mother's appeal, and its June 22, 2021, order is void.

Having determined that the circuit court's order from which the mother has appealed is void, we dismiss her appeal with instructions to

2200809

the circuit court to, in turn, dismiss the mother's appeal from the juvenile court's February 25, 2021, order. Upon compliance with this court's mandate, the juvenile court will have jurisdiction to conduct further proceedings on K.W. and J.D.'s petition as it pertains to the parental rights of the unknown father of the child and to thereafter enter a final, appealable judgment.

APPEAL DISMISSED WITH INSTRUCTIONS.

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