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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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C.F.D.

v.

J.P. and S.P.

Appeal from Etowah Juvenile Court
(JU-19-500.01)

MOORE, Judge.

C.F.D. ("the mother") appeals from a judgment entered by the Etowah Juvenile Court ("the juvenile court") finding E.C. ("the child") dependent and awarding custody of the child to J.P. and S.P. ("the

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custodians"). We dismiss the appeal in part insofar as the mother challenges an aspect of the juvenile court's visitation award, because that issue is now moot, and we affirm the judgment insofar as it found the child to be dependent and awarded custody to the custodians.

Procedural History

On November 26, 2019, the custodians filed a petition alleging that the child, whose date of birth is November 21, 2019, was dependent and requesting custody of the child. On the same day, the mother answered the petition and consented to the finding of dependency. After a trial, at which the mother testified that she no longer consented to the dependency finding, the juvenile court entered a judgment on July 7, 2021, finding the child dependent and awarding custody of the child to the custodians. The juvenile court issued the following specific findings of fact with regard to the mother:

"- The mother voluntarily executed an Answer and Waiver dated November 26, 2019 in which she agreed to a finding of dependency and that it was in the best interests of the minor child that the [custodians] be awarded custody. Despite the mother's recent attempt to withdraw her consent, it should be noted that it was ... done nineteen (19) months

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after her original consent was given. All that while, the [custodians] have provided all care and support for the ... child.

"- The mother failed to show up for her scheduled visitation with the ... child before she was scheduled to report to rehab in November, 2019.

"- The mother plead[ed] guilty and was convicted of chemical endangerment (DC-2019-2102) which occurred during her pregnancy with the ... child.

"- The mother plead[ed] guilty and was convicted of numerous other criminal offenses including theft of property (CC-2016-1076); Trafficking Opium (DC-2016-3260); Trafficking Meth[amphetamine] (DC-2016-3259); Unlawful Distribution of Controlled Substance (CC-2020-576 and DC-2019-403); and Promoting Prison Contraband (DC-2019-2103 and DC-2019-815).

"- Despite the fact that the mother informed the [custodians] that she would only be in rehab for a couple of months, they later learned that she was incarcerated as a result of the ... criminal offenses. She was incarcerated from December 5, 2019 through May 1, 2021 and is now in rehab at The Lovelady Center. The earliest that she can be discharged will be in October/November.

"- The mother failed to maintain contact and communication with the ... child during her incarceration[;] from March 8, 2020 through November 21, 2020, she did not have any phone call or video chat with the ... child. On November 22, 2020, the [custodians] set up a video chat for which she did not log on for.

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"- The mother ... ha[s] been unwilling or unable to provide for the care, support or education of the ... child. Since the birth of the ... child, all care, support and education has been provided by the [custodians] without any assistance from the mother"

With regard to the mother's visitation, the judgment provided:

"The mother shall have supervised visits with the ... child every 2nd and 4th Sunday of each month from 2:00 p.m, until 4:00 p.m. After she successfully completes her residential treatment, the visits shall be supervised by the [custodians]. Prior to the mother's successful completion of her residential treatment, she shall visit with 'facetime' [videoconferencing technology] or other available media, at the times agreed upon by the parties."

The mother filed a postjudgment motion on July 21, 2021; that motion was denied on July 27, 2021. The mother filed her notice of appeal on August 3, 2021.

Discussion

On appeal, the mother first argues that there was not clear and convincing evidence establishing that the child was dependent at the time the juvenile court entered the July 7, 2021, judgment containing a custodial disposition. In this case, the juvenile court specifically relied on

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Ala. Code 1975, § 12-15-102(8)a.1., 2., 5., and 6. in its judgment. Those provisions define a "dependent child," in pertinent part, as:

"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.

"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.

"....

"5. Whose parent, legal guardian, legal custodian, or other custodian has abandoned the child, as defined in subdivision (1) of Section 12-15-301.

"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."

In this case, the mother has a history of drug use and criminal activity going back to at least 2016. She was convicted of chemical endangerment of a child as a result of using drugs while she was pregnant with the child. Shortly after the child's birth, she was incarcerated for

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approximately 18 months and then was released to an inpatient-rehabilitation facility, where she had resided for only a little over one month at the time of the trial. The child had not spent time with the mother. Although the mother's opportunities to visit the child had been limited as a result of the mother's incarceration, she had failed to take advantage of certain opportunities. For example, before she reported to serve her sentence, she had failed to show up for a scheduled visitation. Additionally, while incarcerated, she had failed to sign on for a "video chat" that the custodians had set up for her and the child. Although the mother testified that she had been unable to accept the video chat feature, the juvenile court could have disbelieved her explanation. Although the mother was not currently using drugs at the time of trial, she had been incarcerated for 18 months and then had been at a rehabilitation facility for only a little over 1 month. Considering the mother's long history of drug use and criminal activity, coupled with the child's lack of a relationship with the mother, the juvenile court could have been clearly convinced that the child met the definition of a dependent child at the time of the disposition of the child's custody.

The mother also argues that the juvenile court erred by awarding her visitation with the child, before the completion of her inpatient-rehabilitation treatment, "at ... times agreed upon by the parties." In response to the mother's argument, the custodians argue in their brief to this court that this issue is moot because the mother testified that her inpatient treatment should be completed by October or November 2021.¹

The mother did not file a reply brief to challenge that argument.

"The test for mootness is commonly stated as whether the court's action on the merits would affect the rights of the parties." Crawford v. State, 153 S.W.3d 497, 501 (Tex. App. 2004) (citing VE Corp. v. Ernst & Young, 860 S.W. 2d 83, 84 (Tex. 1993)). "A case becomes moot if at any stage there ceases to be an actual controversy between the parties." Id. (emphasis added) (citing National Collegiate Athletic Ass'n v.

¹The juvenile court stated in its judgment that "[t]he earliest that [the mother] can be discharged [from the Lovelady Center] will be in October/November."

Jones, 1 S.W.3d 83, 86 (Tex. 1999)).'

" 'Chapman v. Gooden, 974 So. 2d 972, 983 (Ala. 2007) (first emphasis added). See also Steffel v. Thompson, 415 U.S. 452, 459 n.10, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974) ('[A]n actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.')."

" 'South Alabama Gas Dist. v. Knight, 138 So. 3d 971, 974-75 (Ala. 2013).

" "'[A]n appeal will be dismissed as moot "if an event happening after hearing and decree in circuit court, but before appeal is taken, or pending appeal, makes determination of the appeal unnecessary or renders it clearly impossible for the appellate court to grant effectual relief." ' Masonry Arts, [Inc. v. Mobile Cty. Comm'n], 628 So. 2d [334] at 335 [(Ala. 1993)], quoting Morrison v. Mullins, 275 Ala. 258, 259, 154 So. 2d 16, 18 (1963)."

" 'Estate of Mollett v. M & B Builders, L.L.C., 749 So. 2d 466, 469 (Ala. Civ. App. 1999).'

"Davis v. Davis, 221 So. 3d 474, 480 (Ala. Civ. App. 2016)."

C.J. v T.J., 225 So. 3d 115, 117 (Ala. Civ. App. 2016).

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In the present case, the evidence in the record indicates that the period of visitation to which the mother objects has already expired. Therefore, this court can grant no effectual relief, and the appeal is moot as to this issue. Thus, we dismiss the appeal to the extent that the mother challenges a portion of the visitation award.

Conclusion

Based on the foregoing, we affirm the juvenile court's judgment to the extent that it found the child dependent and awarded custody of the child to the custodians. We dismiss the mother's appeal with regard to the moot visitation issue.

APPEAL DISMISSED IN PART; AFFIRMED.

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