

REL: January 14, 2022

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2200903

A.R.

v.

J.C.R. and T.R.

Appeal from Limestone Juvenile Court
(JU-19-275.01)

MOORE, Judge.

A.R. ("the mother") appeals from a judgment entered by the Limestone Juvenile Court ("the juvenile court") awarding the custody of

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the mother's child, B.H. ("the child"), to the child's maternal grandfather, T.R. ("the maternal grandfather"). We reverse the judgment.

Procedural History

On November 22, 2019, the child's maternal great-grandmother, J.C.R. ("the maternal great-grandmother"), filed a petition alleging that the child was dependent. At the 72-hour hearing, see Ala. Code 1975, § 12-15-308, the mother failed to appear, and the juvenile court awarded the maternal great-grandmother temporary custody of the child. After a trial on the dependency petition, the juvenile court entered a judgment on October 20, 2020, stating that the mother had stipulated that the child was dependent, adjudicating the child dependent, and awarding temporary legal and physical custody of the child to the maternal great-grandmother and the maternal grandfather.

On August 6, 2021, the juvenile court held a "permanency" hearing, at which only the child's guardian ad litem testified. The mother appeared after the presentation of the evidence was completed. During the hearing, the juvenile court made it clear that, because there had been an earlier stipulation of dependency, the only issue to be considered at the

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hearing was "the appropriate permanent location or custody arrangement for [the] child." The juvenile court subsequently entered a judgment on August 9, 2021, stating, in pertinent part:

"The Court having previously found the child to be a dependent child set a Permanency hearing for this date. ...

"....

"The Guardian ad Litem waived the child's presence in the courtroom, but informed the court that the child was nearby if needed for [the] hearing. The mother was not present. The court found that she waived her presence. The mother appeared for court after the close of testimony and evidence.

"After having carefully considered the sworn testimony and evidence submitted, it is ORDERED that the permanent legal and physical custody of the ... child be awarded to the maternal grandfather. ... Visitation with the mother shall be at times and places within the discretion of the [maternal grandfather] taking into consideration the wishes of the ... child."

(Capitalization in original.) On August 10, 2021, the mother filed her notice of appeal."¹

¹Although permanent custody of the child was awarded to the maternal grandfather, the mother identified the maternal great-grandmother as the appellee in the notice of appeal. This court subsequently entered an order directing the mother to immediately file an

Discussion

On appeal, the mother argues that the evidence presented at the August 6, 2021, hearing was insufficient to clearly convince the juvenile court that the child remained dependent.

"Juvenile courts are purely creatures of statute and have extremely limited jurisdiction. See Ex parte K.L.P., 868 So. 2d 454, 456 (Ala. Civ. App. 2003). That limited jurisdiction allows a juvenile court to make a disposition of a child in a dependency proceeding only after finding the child dependent. V.W. v. G.W., 990 So. 2d 414, 417 (Ala. Civ. App. 2008) (quoting K.B. v. Cleburne County Dep't of Human Res., 897 So. 2d 379, 389 (Ala. Civ. App. 2004) (Murdock, J., concurring in the result)) ("[I]n order to make a disposition of a child in the context of a dependency proceeding, the child must in fact be dependent at the time of that disposition."')."

M.D. v. S.C., 150 So. 3d 210, 212 (Ala. Civ. App. 2014) (quoting T.B. v. T.H., 30 So. 3d 429, 431 (Ala. Civ. App. 2009)).

amended notice of appeal naming the maternal grandfather as an appellee and to serve on the maternal grandfather a copy of the amended notice of appeal, the appellant's brief filed by the mother, and the appellee's brief filed by the maternal great-grandmother. This court's order also gave the maternal grandfather 21 days from the date the amended notice of appeal was filed to file any objection he might have to the amendment. The order also gave the maternal grandfather 42 days from the date included on the mother's amended certificate of service to file an appellee's brief. The maternal grandfather did not file an objection to the amended notice of appeal or an appellee's brief.

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In M.D., this court noted:

"In its judgment, the juvenile court found that the child was dependent at the time the dependency proceedings were initiated, which was more than three years before the entry of the June 24, 2013, judgment. However, the juvenile court did not make a finding that the child was dependent such that it could exercise jurisdiction to enter a custody award, or a disposition of the child, pursuant to § 12-15-311(a), Ala. Code 1975, in its June 24, 2013, judgment."

150 So. 3d at 213. Because the juvenile court in M.D. did not find dependency at the time of the disposition of the child's custody, this court "reverse[d] the judgment and remand[ed] the cause for the juvenile court to enter written findings as to whether the child was dependent at the time of the disposition." Id.

Similarly, in the present case, the juvenile court relied on a stipulation of dependency that occurred almost one year before the August 6, 2021, hearing to find the child dependent. "[A] majority of this court has long maintained that a written finding of dependency is not required when that finding may be inferred from the judgment." E.H. v. Calhoun Cnty. Dep't of Hum. Res., 323 So. 3d 1226, 1233 (Ala. Civ. App. 2020) (Moore, J., concurring in the result) (citing E.H.Y. v. Covington Cnty.

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Dep't of Hum. Res., 602 So. 2d 439 (Ala. Civ. App. 1992), and Phillips v. Alabama Dep't of Pensions & Sec., 349 So. 2d 51 (Ala. Civ. App. 1981), in support of the quoted proposition). In this case, however, the juvenile court's statements at the August 6, 2021, hearing indicating that it was considering the disposition of the child only because of the previous stipulation of dependency, coupled with the language of the judgment indicating that it was relying on that previous finding of dependency, make it impossible to infer that the juvenile court found the child dependent at the time of the custodial disposition.

Because the juvenile court failed to find that the child was dependent at the time of the custodial disposition, it lacked jurisdiction to determine the disposition of the child. Therefore, we reverse the juvenile court's judgment and remand the cause with instructions that the juvenile court vacate its August 9, 2021, judgment. On remand, the juvenile court may, if needed, take additional evidence to determine if the child is dependent before making a custodial disposition.

REVERSED AND REMANDED WITH INSTRUCTIONS.

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