REL: March 4, 2022

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2200948 and 2200949

M.L.

v.

Jefferson County Department of Human Resources

Appeals from Jefferson Juvenile Court
(JU-03-61738.05 and JU-10-96534.05)

MOORE, Judge.

In appeal number 2200948, M.L. ("the mother") appeals from a judgment entered by the Jefferson Juvenile Court ("the juvenile court"), in case number JU-03-61738.05, terminating her parental rights to J.D.M., whose date of birth is December 11, 2002. In appeal number

2200949, the mother appeals from a separate, but almost identical, judgment entered by the juvenile court, in case number JU-10-96534.05, terminating her parental rights to L.D.C., whose date of birth is January 19, 2007. We dismiss the appeal from the judgment pertaining to J.D.M., and we affirm the judgment pertaining to L.D.C.

Procedural History

On June 17, 2020, the Jefferson County Department of Human Resources ("DHR") filed a petition to terminate the parental rights of the mother to L.D.C. On October 13, 2020, DHR filed a petition to terminate the parental rights of the mother to J.D.M. After a trial, the juvenile court entered separate, but almost identical, judgments on August 18, 2021, terminating the parental rights of the mother to both J.D.M. and L.D.C. On August 26, 2021, the mother filed her notice of appeal of both judgments.

Standard of Review

A judgment terminating parental rights must be supported by clear and convincing evidence, which is "'"[e]vidence that, when weighed against evidence in opposition, will produce in the mind of the trier of fact

a firm conviction as to each essential element of the claim and a high probability as to the correctness of the conclusion." ' " C.O. v. Jefferson Cnty. Dep't of Hum. Res., 206 So. 3d 621, 627 (Ala. Civ. App. 2016) (quoting L.M. v. D.D.F., 840 So. 2d 171, 179 (Ala. Civ. App. 2002), quoting in turn Ala. Code 1975, § 6-11-20(b)(4)).

> " '[T]he evidence necessary for appellate affirmance of a judgment based on a factual finding in the context of a case in which the ultimate standard for a factual decision by the trial court is clear and convincing evidence is evidence that a fact-finder reasonably could find to clearly and convincingly ... establish the fact sought to be proved.'
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> "KGS Steel[, Inc. v. McInish,] 47 So. 3d [749] at 761 [(Ala. Civ. App. 2006) (emphasis omitted)].
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> "... [F]or trial courts ruling on ... civil cases to which a clear-and-convincing-evidence standard of proof applies, 'the judge must view the evidence presented through the prism of the substantive evidentiary burden[,]' [Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254 (1986)]; thus, the appellate court must also look through a prism to determine whether there was substantial evidence before the trial court to support a factual finding, based upon the trial court's weighing of the evidence, that would 'produce in the mind [of the trial court] a firm conviction as to each element of the claim and a high probability as to the correctness of the conclusion.' "

Ex parte McInish, 47 So. 3d 767, 778 (Ala. 2008). This court does not reweigh the evidence but, rather, determines whether the findings of fact made by the juvenile court are supported by evidence that the juvenile court could have found to be clear and convincing. See Ex parte T.V., 971 So. 2d 1, 9 (Ala. 2007). When those findings rest on ore tenus evidence, this court presumes their correctness. Id. We review the legal conclusions to be drawn from the evidence without a presumption of correctness. J.W. v. C.B., 68 So. 3d 878, 879 (Ala. Civ. App. 2011).

Discussion

A. Appeal No. 2200948

The mother first argues that the juvenile court lacked jurisdiction to enter a judgment terminating her parental rights to J.D.M. because, she contends, the Alabama Juvenile Justice Act ("the AJJA"), Ala. Code 1975, § 12-15-101 et seq., does not confer statutory authority upon the juvenile courts to terminate the parental rights of a parent of a child who is over 18 years of age. We have not located any caselaw precisely addressing this point, which we consider to be a matter of first impression.

Section 12-15-114(c)(2), Ala. Code 1975, which is a part of the AJJA, grants to the juvenile courts of the state original, exclusive jurisdiction over "[p]roceedings for termination of parental rights." Section 12-15-301(18), Ala. Code 1975, which is also a part of the AJJA, defines "termination of parental rights" as "[a] severance of all rights of a parent to a child." (Emphasis added.) Section 12-15-319(a), Ala. Code 1975, also a part of the AJJA, authorizes the juvenile courts to terminate the parental rights of the "parents of a child." (Emphasis added.)

The AJJA generally defines "child" as "[a]n individual under the age of 18 years." Ala. Code 1975, § 12-15-102(3).[1] We note that the term

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[1]Section 12-15-102(3) further defines "child" as an individual who is

> "under 21 years of age and before the juvenile court for a delinquency matter arising before that individual's 18th birthday, or under 19 years of age and before the juvenile court for a child in need of supervision matter or commitment to the State Department of Mental Health or under 19 years of age and before the juvenile court for a proceeding initiated under [Ala. Code 1975, §] 12-15-115(b)(2)."

Those definitions do not apply in the present context, i.e., in a case regarding the termination of parental rights governed by Article 3 of the AJJA.

"child" ordinarily refers to an individual under the age of majority, see Ex parte Christopher, 145 So. 3d 60, 64 (Ala. 2013), which, in Alabama, is 19 years old. See Ala. Code 1975, § 26-1-1. However, in the AJJA, the legislature specifically defined "child" as an individual under 18 years of age while simultaneously defining "minor" as "[a]n individual who is under the age of 19 years and who is not a child within the meaning of" the AJJA." § 12-15-102(18). The legislature clearly intended that "child" and "minor" would have two different meanings for the purposes of the AJJA. Where the term "child" appears in the AJJA, the specific legislated definition controls its meaning. See Pruitt v. Oliver, [Ms. 1190297, Jan. 29, 2021] ___ So. 3d ___ (Ala. 2021).

Applying the plain language of the statutory definition of "child" in the AJJA, we agree with the mother that, in the foregoing statutes regulating the termination of parental rights, the legislature has authorized the juvenile courts to terminate the parental rights of parents to only an individual under 18 years of age. See IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992) ("[W]here plain language is used a court is bound to interpret that language to mean

exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect."). In the absence of some other specific statutory authority, a juvenile court is powerless to terminate the parental rights of a parent of a child who has reached 18 years of age. See generally T.J. v. Calhoun Cnty. Dep't of Hum. Res., 116 So. 3d 1168, 1176 (Ala. Civ. App. 2013) (noting that "juvenile courts only have power as is conferred upon them by statute" and holding that an order of a juvenile court entered without statutory authority is void).

DHR and the guardian ad litem for J.D.M. argue that Ala. Code 1975, § 12-15-117(a), bestows jurisdiction upon the juvenile courts to terminate the parental rights of a parent to a dependent child after that child has reached 18 years of age. Section 12-15-117(a) provides, in pertinent part:

> "Once a child has been adjudicated dependent ..., jurisdiction of the juvenile court shall terminate when the child becomes 21 years of age unless, prior thereto, the judge of the juvenile court terminates its jurisdiction by explicitly stating in a written order that it is terminating jurisdiction over the case involving the child."

DHR and the guardian ad litem for J.D.M. maintain that, pursuant to § 12-15-117(a), a juvenile court that has adjudicated a child to be a dependent child retains jurisdiction over the child, including the power to terminate parental rights relating to the child, until the child attains 21 years of age. In this case, the juvenile court adjudicated J.D.M. a dependent child in 2018, when he was 15 years old; thus, DHR and the guardian ad litem maintain, the juvenile court, which had not explicitly terminated its dependency jurisdiction, could lawfully terminate the parental rights of the mother after J.D.M. turned 18 years of age.

Section 12-15-117(a) is the successor statute to former § 12-15-32, Ala. Code 1975, which was part of the former Alabama Juvenile Justice Act ("the former AJJA"), § 12-15-1 et seq., Ala. Code 1975, and which provided, in pertinent part: "For purposes of [the former AJJA], jurisdiction obtained by the juvenile court in any case of a child shall be retained by it until the child becomes 21 years of age unless terminated prior thereto by order of the judge of the juvenile court ...." This court construed former § 12-15-32 as "repos[ing] <u>statutory and equity powers</u> in the juvenile court to permit it to assume continuing jurisdiction over

minors when their welfare and best interests require it." In re Warrick, 501 So. 2d 1223, 1227 (Ala. Civ. App. 1985) (emphasis added). This court has consistently recognized that former § 12-15-32 conferred upon juvenile courts the equitable power to make, enforce, and modify custody orders regarding a dependent child, see, e.g., Minchew v. Mobile Cnty. Dep't of Hum. Res., 504 So. 2d 310, 311 (Ala. Civ. App. 1987), to the exclusion of other courts. See, e.g., Heller v. Heller, 558 So. 2d 961, 963 (Ala. Civ. App. 1990). This court also recognized that, under former § 12-15-32, once the dependency jurisdiction of a particular juvenile court had attached, that court would retain exclusive, continuing jurisdiction to exercise its statutory power to terminate parental rights. See, e.g., Carter v. Griffin, 574 So. 2d 800, 801 (Ala. Civ. App. 1990); Valero v. State Dep't of Hum. Res., 511 So. 2d 200 (Ala. Civ. App. 1987).

The legislature amended former § 12-15-32 when it enacted the AJJA and § 12-15-117(a). Although this court originally interpreted § 12-15-117(a) as limiting the continuing jurisdiction of juvenile courts solely to dependency, delinquency, and child-in need-of-supervision cases, see Ex parte T.C., 63 So. 3d 627 (Ala. Civ. App. 2010), the legislature again

amended § 12-15-117(a) and enacted Ala. Code 1975, § 12-15-117.1, to clarify and confirm its intent that juvenile courts would retain continuing jurisdiction to modify and enforce judgments entered in all types of cases that were properly initiated in those courts. See Ala. Acts 2012, Act No. 2012-383. Act No. 2012-383 signaled the legislative intent that, despite the difference in the wording from former § 12-15-32, § 12-15-117(a) did not alter the scope of the continuing jurisdiction of juvenile courts. Thus, as under prior law, a juvenile court exercising continuing jurisdiction over a dependency matter may act only in accordance with the equitable and statutory powers set forth in the AJJA.

In contending that § 12-15-117(a) bestows authority on the juvenile courts to terminate the parental rights of a dependent child who is over 18 years of age, DHR and the guardian ad litem have confused two separate jurisdictional concepts. As explained by the United States Supreme Court, in order for a court to enter a valid order, among other things, it must have both jurisdiction over the subject matter, i.e., the nature of the cause of action and the relief sought, and also "authority ... to render the judgment or decree which it assumes to make," which

"depends upon the nature and extent of the authority vested in it by law in regard to the subject-matter of the cause." Cooper v. Reynolds, 77 U.S. 308, 317 (1870). As this court has previously recognized, a juvenile court might have subject-matter jurisdiction over a dependency case, but a juvenile court can enter a valid judgment in a dependency case only as authorized by the AJJA. See generally Ex parte R.H., 311 So. 3d 761, 766 (Ala. Civ. App. 2020) (holding that juvenile court with general subject-matter jurisdiction over dependency case could appoint guardian ad litem only to execute pediatric palliative and end-of-life care order for the benefit of dependent child based on statutory authority). Section 12-15-117(a) confers continuing subject-matter jurisdiction upon juvenile courts, but it does not regulate "the nature and extent of the authority" of the juvenile courts to enter a judgment terminating parental rights, which is controlled by other sections of the AJJA.

Termination-of-parental-rights proceedings are purely statutory in nature, and, like adoption proceedings, they must closely adhere to all statutory requirements. See Ex parte J.M.P., 144 So. 3d 287, 298 (Ala. 2013) (Moore, C.J., dissenting). As explained thoroughly above, the

various statutes regulating termination-of-parental-rights proceedings in the AJJA clearly and unambiguously provide that a juvenile court may terminate the parental rights of a parent only to a "child," an individual under 18 years of age. The legislature could have expanded that definition to include a dependent child subject to the continuing jurisdiction of the juvenile court, see Ala. Code 1975, § 38-7-2(1) (defining "child" for the purposes of the Child Care Act of 1971 as "[a]ny person under 19 years of age, a person under the continuing jurisdiction of the juvenile court pursuant to Section 12-15-117, or a person under 21 years of age in foster care as defined by the Department of Human Resources" (emphasis added)), but the legislature did not do so. Therefore, a juvenile court, even one exercising continuing jurisdiction under § 12-15-117(a), lacks statutory authority to terminate the parental rights of a parent to an individual who is over the age of 18 years.

In this case, DHR filed the petition to terminate the mother's parental rights to J.D.M. on October 13, 2020, when J.D.M. was still 17 years of age; however, he turned 18 years old on December 11, 2020, more than 8 months before the juvenile court entered its judgment terminating

the mother's parental rights to J.D.M. on August 18, 2021. In A.C. v. In re E.C.N., 89 So. 3d 777 (Ala. Civ. App. 2012), this court, relying on the statutory definition of "child" in the AJJA, determined that the Franklin Juvenile Court had lost jurisdiction to adjudicate a dependency petition that had been filed when the subject child was 17 years of age after the child had turned 18 years of age. Likewise, we conclude that a juvenile court lacks jurisdiction to adjudicate a petition to terminate parental rights if, during the pendency of the case, the child at issue reaches 18 years of age so that he or she no longer qualifies as a "child" within the meaning of the AJJA.

The guardian ad litem for J.D.M. asserts that it is the age of the child on the date of the filing of the petition that should determine the jurisdiction of the juvenile court because, he says, in Ex parte L.E.O., 61 So. 3d 1042, 1046 (Ala. 2010), our supreme court stated that "[a] child is dependent if, at the time a petition is filed in the juvenile court alleging dependency, the child meets the statutory definition of a dependent child." However, that statement is obiter dictum, see Ex parte Williams, 838 So. 2d 1028, 1031 (Ala. 2002) ("[O]biter dictum is, by definition, not essential

to the judgment of the court which states the dictum."), which this court did not follow when it determined in A.C. that the age of the child on the date of the entry of the judgment, not on the date of the filing of the petition, controls whether the juvenile court may adjudicate the child dependent. We have not located any binding authority from our supreme court contradicting our reasoning or holding in A.C. Moreover, we note that Ala. Code 1975, former § 12-15-1(3), a part of the former AJJA, had defined "child" to include "an individual under 19 years of age and before the juvenile court for a matter arising before the individual's 18th birthday," but the legislature deleted that alternative definition when it enacted the AJJA. See Ala. Acts 2008, Act No. 2008-277, § 1. We must presume that the legislature intended by that deliberate amendment of the definition of "child" to exclude an individual who turns 18 years of age during the pendency of a juvenile case. See generally Pinigis v. Regions Bank, 977 So. 2d 446, 452 (Ala. 2007) (quoting 1A Norman J. Singer, Statutes & Statutory Construction § 22:30 (6th ed. 2002)) ("[T]he 'amendment of an unambiguous statute indicates an intention to change the law.' ").

In this case, the juvenile court determined that J.D.M. was under 18 years of age at the time the judgment terminating the mother's parental rights was entered, but that finding is clearly erroneous. It is undisputed that J.D.M. was over 18 years of age on the date of the entry of the judgment and, hence, was not a "child" within the meaning of the AJJA. Therefore, the juvenile court lacked the authority to terminate the mother's parental rights to J.D.M. The judgment entered in case number JU-03-61738.05 is void, and we are required to dismiss an appeal that has been taken from a void judgment. See T.J., 116 So. 3d at 1176. Thus, we dismiss appeal number 2200948, albeit with instructions to the juvenile court to vacate the judgment purporting to terminate the mother's parental rights to J.D.M.[2]

B. Appeal No. 2200949

The mother next argues that the juvenile court erred in determining that DHR had used reasonable efforts to reunify her and L.D.C.

[2]We reject DHR's contention that this appeal has become moot solely because J.D.M. is now 19 years of age. See K.J. v. Pike Cnty. Dep't of Hum. Res., 275 So. 2d 1135, 1137 n.1 (Ala. Civ. App. 2018).

> "That [the Department of Human Resources] is generally required to make reasonable efforts to rehabilitate parents of dependent children cannot be questioned. See T.B. v. Cullman Cty. Dep't of Human Res., 6 So. 3d 1195, 1198 (Ala. Civ. App. 2008). That is, [the Department of Human Resources] must make an effort to tailor services to best address the shortcomings of and the issues facing the parents. See H.H. v. Baldwin Cty. Dep't of Human Res., 989 So. 2d 1094, 1105 (Ala. Civ. App. 2007) (opinion on return to remand) (per Moore, J., with two judges concurring in the result). However, we have clearly stated that the law requires reasonable efforts, not maximal ones. M.A.J. v. S.F., 994 So. 2d 280, 291 (Ala. Civ. App. 2008)."

Montgomery Cnty. Dep't of Hum. Res. v. A.S.N., 206 So. 3d 661, 672 (Ala. Civ. App. 2016).

In the present case, the mother's main barrier to reunification with L.D.C. was her continued use of illegal drugs. DHR had been involved with the mother intermittently since 2010, when she first lost custody of L.D.C. At that time, there were concerns that L.D.C.'s father was making and selling methamphetamine; additionally, when the mother was screened for drugs on that occasion, she tested positive for opiates. The mother regained custody of L.D.C. in January 2012; however, later that year, in November 2012, she again tested positive for opiates. At that time, L.D.C. was placed with family friends. The mother regained custody

of L.D.C. in January 2014 and retained custody of him until December 2018, when DHR filed a dependency petition. At that time, L.D.C. and J.D.M. had expressed fear about returning home after school. At the dependency hearing regarding L.D.C., the mother stipulated to L.D.C.'s dependency. At the termination-of-parental-rights trial, the mother admitted that there had been an issue regarding her having tampered with a drug screen on the day of the dependency hearing.

The mother was ordered to complete a substance-abuse assessment, and she eventually completed an assessment on October 26, 2020, at the TriCounty Methadone Clinic. The mother testified that she had first used marijuana at the age of 16, that she had tried and/or used several other drugs, and that she had last used heroin the day before her substance-abuse assessment. Based on the results of the substance-abuse assessment, it was recommended that the mother participate in individual and group counseling and methadone maintenance. At the time of the termination-of-parental-rights trial, the mother had been receiving treatment at the TriCounty Methadone Clinic for 10 months. However, the mother admitted that she had relapsed and had used fentanyl

approximately two months before the trial. Because the mother was receiving treatment aimed at addressing the mother's main barrier to reunification, i.e., the mother's drug use, yet had been unable to remain drug free, we cannot conclude that the juvenile court erred in determining that DHR had made reasonable efforts to reunite the mother with L.D.C.

The mother also briefly argues that her parental rights to L.D.C. should not have been terminated because L.D.C. did not have a definitive adoptive resource. When termination of parental rights will otherwise serve the best interest of the child, "[t]he lack of an identified adoptive resource does not necessarily preclude termination of parental rights." T.L.S. v. Lauderdale Cnty. Dep't of Hum. Res.,119 So. 3d 431, 439 (Ala. Civ. App. 2013). The evidence indicated that L.D.C. had made progress during the times when visitation with the mother had been suspended because of the COVID-19 pandemic and that his behavior had regressed once his in-person visits with the mother had resumed. The juvenile court could have determined from the evidence presented that maintaining a relationship with the mother was not in L.D.C.'s best interest. Therefore, we cannot conclude that, with regard to L.D.C., the juvenile court erred

in determining that it was in the best interest of L.D.C. for the mother's parental rights to be terminated.

Conclusion

In appeal number 2200949, we affirm the judgment terminating the mother's parental rights to L.D.C. In appeal number 2200948, we dismiss the appeal from the judgment terminating the mother's parental rights to J.D.M., albeit with instructions to the juvenile court to vacate its void judgment.

2200948 -- APPEAL DISMISSED WITH INSTRUCTIONS.

2200949 -- AFFIRMED.

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