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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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Ex parte C.L.

PETITION FOR WRIT OF MANDAMUS

(In re: Cleburne County Department of Human Resources

v.

C.L.)

(Cleburne Juvenile Court, JU-19-74.01 and JU-19-75.01)

FRIDY, Judge.

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C.L. ("the mother") petitions this court for a writ of mandamus directing the Cleburne Juvenile Court ("the juvenile court") to vacate its October 14, 2021, order terminating her right to monthly visitation with two of her children, L.M., the child at issue in case no. JU-19-74.01, and R.M., the child at issue in case no. JU-19-75.01. (L.M. and R.M. are hereinafter collectively referred to as "the children.") The Cleburne County Department of Human Resources ("DHR") commenced both actions, which seek the termination of the parental rights of both parents of each child. The trials in both actions are pending. For the reasons discussed below, we deny the petition.

Background

The materials submitted to this court¹ indicate that, on November

¹The materials submitted to this court consists of pleadings and other papers included in the clerk's record, as well as the transcript of the hearing held on the motion of the children's guardian ad litem to terminate the mother's visitation, in which the names of all interested parties, such as the children, the parents, and the foster parents, have been redacted. The redactions have made it difficult for this court to determine who is involved in certain actions or conduct, and we take this opportunity to discourage parties from redacting pertinent information from the materials submitted in support of or in opposition to petitions for the writ of mandamus. This court handles confidential records daily, and

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25, 2019, DHR obtained custody of L.M., who was four months old at the time; DHR then filed a dependency petition regarding L.M., asserting, among other things, that the mother had been charged with felony child abuse in connection with her oldest child ("the sibling") and that the mother's parental rights to the sibling have been terminated. The sibling is not a subject of this mandamus proceeding. L.M. was ultimately found to be dependent and placed in foster care. On December 10, 2019, the juvenile court relieved DHR of its obligation to make efforts to reunify the mother and L.M. based on the child-abuse charges and the termination of the mother's parental rights to the sibling. In January 2020, the mother pleaded guilty to aggravated child abuse and was incarcerated until February 2021. On February 19, 2021, DHR filed a petition seeking the termination of the mother's parental rights to L.M.

On April 25, 2021, the mother filed a motion seeking visitation with L.M. and R.M. and referenced case nos. JU-19-74.01 and JU-19-75.01.

the redaction of submitted materials impedes our ability to conduct a meaningful review of the issues presented.

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That motion is the first document in the materials submitted to this court pertaining to case no. JU-19-75.01. The parties' names have been redacted from the motion for visitation, but the transcript of the hearing on the motion indicates that case no. JU-19-75.01 pertains to R.M. Because the assigned case numbers are consecutive, the actions were probably commenced at the same time, and, therefore, it is likely that, for each document filed and order entered regarding L.M., there is a similar document or order pertaining to R.M.; however, any such documents are not contained in the materials before us. On May 26, 2021, the juvenile court entered an order in case no. JU-19-74.01-- the case involving L.M. -- saying that "the parties had reached an agreement for the mother to visit once prior to the scheduled [termination- of-parental-rights trial] and that a hearing on the matter would not be necessary at this time."

On September 30, 2021, the children's guardian ad litem filed a motion, in both cases involving the children, seeking to terminate their parents' visitation. In the motion, the guardian ad litem asserted that the mother had participated in visits with the children but that, before and after the visits, the children would cry, scream, and "hyperventilat[e] to

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the point of almost vomiting." The guardian ad litem further alleged that there was no significant bond between the mother and the children, that the visits did not benefit the children, and that the juvenile court should terminate her right to the visits.

On October 12, 2021, the juvenile court conducted an evidentiary hearing on the guardian ad litem's motion. Kayla Patterson, a DHR employee, testified that the first time she picked up the children from day care to take them to "the office" to visit the mother, the children, especially L.M., were upset, anxious, and confused. She conceded that the children did not know her very well and did not know where she was taking them. During the visit, however, Patterson said, there were no problems. Once she saw that the children were settled in with the mother, Patterson testified, she left the room. She said that she had no concerns about the children's safety when she made random checks on the supervised visitation. However, L.M. cried again when the visit was over and she had to leave the mother, Patterson said.

Patterson also testified that the children think of their foster parents as "Mama and Daddy." She said that she did not believe the children had

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a bond with the mother. Although the children were not afraid of the mother, Patterson said, they also did not act any differently with her than they did with any other person. She said that the children did not run to the mother when the visits started. The mother disputed that testimony.

The children's foster mother testified that, after their visits with the mother, the children are upset and nervous. For example, the foster mother said that if the children believe one of the foster parents is going to leave the room they "break down." If someone the children do not know pulls into the driveway, she said, the children cry. After a visit, the foster mother said, when she drops the children off at day care, the children kick and scream and it takes time to get them calmed down. According to the foster mother, one of the children had been potty trained for more than a year, but, after visiting with the mother, that child would have "really bad accidents." It takes about two weeks after a visit for the children to return to normal, the foster mother said, adding that she believed the visits traumatize the children.

The mother testified that she had had two visits with the children since completing her criminal sentence. She said that, during their visits,

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the children played with toys and L.M. sat in her lap. She said that it did not take any time for the children to calm down at the outset of the visits.

On October 14, 2021, the juvenile court entered an order in case no. JU-19-74.01 finding that both children exhibit such behavior after their visits with the mother "that it is clear that the trauma the visits cause outweighs any benefit that the visits have." It then terminated the mother's visitation rights.² If the juvenile court entered a similar order in case no. JU-19-75.01, it was not included in the materials submitted to us.

The mother filed a petition for a writ of mandamus on October 28, 2021. The petition was initially dismissed on November 1, 2021, but was reinstated on December 14, 2021, after the filing of a transcript of the hearing regarding the guardian ad litem's motion to terminate the mother's visitation. After a preliminary examination, this court called for answers from the respondents. DHR filed an answer on January 3, 2022, and this court took the petition under submission on January 5, 2022.

²The children's father's visitation was terminated as well, but he did not seek mandamus review.

Analysis

In her petition, the mother contends that the juvenile court exceeded its discretion in terminating her right to visitation with the children pending the trial on DHR's petitions seeking the termination of her parental rights.

"A writ of mandamus is an extraordinary remedy that requires the showing of: (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty on the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the court."

Ex parte McNaughton, 728 So. 2d 592, 594 (Ala. 1998).

Under Alabama law, a juvenile court is authorized to suspend a parent's visitation with a dependent child under appropriate circumstances. § 12-15-314(a)(4), Ala. Code 1975; Y.N. v. Jefferson Cnty. Dep't of Hum. Res., 67 So. 3d 76, 82 (Ala. Civ. App. 2011). Section 12-15-314(a)(4) provides that, in determining the disposition of a dependent child, a juvenile court may "[m]ake any ... order as the juvenile court in its discretion shall deem to be for the welfare and best interests of the [dependent] child." It is well settled that a trier of fact has broad

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discretion to determine a parent's right to visitation with a dependent child and that the best interests and welfare of the child is the primary consideration in determining whether to award visitation and, if so, the extent of that visitation. Minchew v. Mobile Cnty. Dep't of Hum. Res., 504 So.2d 310, 311 (Ala. Civ. App. 1987). See also Y.N. v. Jefferson Cnty. Dep't of Hum. Res., 67 So.3d at 82. Nevertheless, a judgment totally suspending visitation between a noncustodial parent and a child will be "carefully scrutinize[d]." M.R.D. v. T.D., 989 So. 2d 1111, 1114 (Ala. Civ. App. 2008).

The undisputed evidence indicates that L.M. was four months old when she entered foster care. The materials before us do not disclose R.M.'s age at the time he entered foster care, but he, too, is young, based on his attendance at day care instead of school. After DHR obtained custody of the children, the mother pleaded guilty to aggravated child abuse of the sibling -- who is actually the children's half sibling. The mother's parental rights to the sibling have been terminated. The mother was incarcerated for a year for the abuse she perpetrated on the sibling and there is no evidence that the children saw her during that time. The mother testified that, since her release from incarceration, she has seen

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the children twice for an hour each time. The evidence is disputed regarding whether the children ran to see the mother at the start of their visits, but, based on the children's tender ages and the few times the mother had seen them in their lives, the juvenile court reasonably could have determined that there was no bond between the mother and the children and, that as Patterson said, the visitations only confused the children.

Evidence indicates that the children were anxious and nervous after the visits with the mother, as exhibited by their crying if the foster parents left the room or if a stranger pulled into the driveway. The evidence also indicates that the children were also reluctant to leave the foster parents when they were dropped off at day care, kicking and screaming. Finally, the evidence reflects that one of the children had resumed wetting himself after visits, although he had been potty trained for a year.

The juvenile court is charged with the duty and responsibility of resolving disputed issues of fact by weighing the evidence and, when appropriate, assessing the credibility of the witnesses. "An appellate court

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defers to the findings of the [juvenile] court on such matters." S.S. v. Calhoun Cnty. Dep't of Hum. Res., 212 So. 3d 940, 951 (Ala. Civ. App. 2016). Based on the materials before us, we conclude that the juvenile court's determination that the trauma the visits cause the children outweighs any benefit the visits confer on the children.

The mother has failed to demonstrate that she has a clear legal right to visit the children pending the trial on DHR's petitions to terminate her parental rights to the children. Accordingly, the mother's petition for a writ of mandamus is denied.

PETITION DENIED.

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