Rel: August 19, 2022

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2022

2210190 and 2210191

H.F.

v.

Elmore County Department of Human Resources

Appeals from Elmore Juvenile Court
(JU-19-279.02 and JU-19-280.02)

2210192, 2210193, 2210194, and 2210195

A.L.

v.

Elmore County Department of Human Resources

Appeals from Elmore Juvenile Court
(JU-19-279.01, JU-19-279.02, JU-19-280.01, and JU-19-280.02)

FRIDY, Judge.

These six consolidated appeals present for review four identical judgments of the Elmore Juvenile Court ("the juvenile court"). The juvenile court entered two of the judgments in dependency actions pertaining to J.G. and C.L., respectively, who are two of the three children of H.F. ("the mother"), and entered the other two judgments in termination-of-parental-rights actions pertaining to J.G. and C.L., respectively.

All four judgments contained provisions finding that J.G. and C.L., who had each previously adjudicated dependent, remained dependent; terminating the parental rights of the mother and J.F., the legal father of J.G., to J.G.; terminating the parental rights of the mother and A.L., the legal father of C.L., to C.L.; and vesting the Elmore County Department of Human Resources ("DHR") with permanent custody of J.G. and C.L. By finding that J.G. remained dependent and vesting DHR with permanent custody of J.G., the judgment entered in the dependency action pertaining to J.G. was a final judgment regarding that action. Likewise, by finding that C.L. remained dependent and vesting DHR with permanent custody of C.L., the judgment entered in the dependency

action pertaining to C.L. was a final judgment regarding that action. The provisions in those two judgments regarding the termination of the parental rights to those children were surplusage with respect to the dependency actions because the termination of those rights was not at issue in the dependency actions. Similarly, the provisions regarding the termination of C.L.'s parents' parental rights in the judgment entered in the termination-of-parental-rights action pertaining to J.G. were surplusage, and vice versa.

The mother appeals from the two judgments terminating her parental rights to J.G. and C.L. A.L. appeals from all four judgments even though all four do not pertain to him. J.F. did not appeal from any of the judgments. We affirm the juvenile court's judgments terminating the parental rights of the mother and A.L. and the dependency judgment pertaining to C.L., and we dismiss A.L.'s appeals from the judgments pertaining to J.G.

Facts and Procedural History

When the juvenile court tried these actions on October 7, 2021, the mother was thirty-one years old and had three children: P.G., who was

then fourteen years old and is not involved in these appeals;[1] J.G., who was then five years old; and C.L., who was then almost two years old. A.L. was then forty-eight years old. The record does not indicate J.F.'s age. The mother had been married to J.F. when she gave birth to J.G. in 2016 and to C.L. in 2019 and was still married to him when the juvenile court tried these actions; however, she had separated from J.F. at some point and had lived with A.L. for approximately six years when the actions were tried.

DHR first became involved with J.G. and C.L. the day after C.L. was born in October 2019, when it received a report that C.L. had tested positive for amphetamine when he was born. The mother admitted to DHR that she had used methamphetamine in September 2019, the month before C.L.'s birth. A.L. tested positive for methadone at that time. DHR placed P.G. with his maternal grandfather. DHR could not find suitable relatives to care for J.G. and C.L., so, rather than implement a safety plan for them, it removed J.G. and C.L. from the custody of the

[1]P.G. was in the custody of his maternal grandfather when these actions were tried.

mother and A.L., placed J.G. and C.L. in foster care, and commenced dependency actions with respect to J.G. and C.L..

On December 18, 2019, the juvenile court entered orders finding that J.G. and C.L. were dependent and vesting DHR with temporary custody; however, it left the dependency actions open. DHR commenced termination-of-parental-rights actions regarding J.G. and C.L. on April 16, 2021.

J.F., the mother's husband, filed affidavits stating that he is not the biological father of either J.G. or C.L. and stating that he does not persist in claiming his rights as their presumed father by virtue of his being married to the mother when they were born. DHR obtained an order requiring A.L. and C.L. to undergo genetic testing, the results of which indicated that A.L. is the biological father of C.L. DHR subsequently filed a motion seeking an adjudication that A.L. is the legal father of C.L., and the juvenile court's judgment terminating the parental rights of C.L.'s parents, by terminating A.L.'s parental rights to C.L., implicitly adjudicated A.L. the legal father of C.L. The record does not contain any evidence indicating who the biological father of J.G. is, and neither A.L. nor any other man challenged J.F.'s status as the presumed legal father

of J.G. Consequently, J.F. remained the presumed legal father of J.G. when the juvenile court entered its judgments.

The juvenile court set the two dependency actions and the two termination-of-parental-rights actions for a trial on August 6, 2021. On that date, both the mother and A.L. appeared pro se and submitted affidavits of substantial hardship.[2] The juvenile court appointed them separate lawyers, who represented them in all four of the pending actions. The juvenile court also ordered the mother and A.L. to submit to drug tests that same day, August 6, 2022, and continued the trial of the four actions until October 7, 2021. The results of the mother's and A.L.'s drug tests taken on August 6, 2021, were positive for both amphetamine and methamphetamine.

After removing J.G. and C.L. from A.L. and the mother's custody and placing them in foster care in October 2019, DHR offered the mother and A.L. services. Taylor Whitten, one of the DHR caseworkers assigned to the children's cases, testified that DHR had offered the mother and A.L. drug assessments, color-code drug screens, weekly visitation with

[2]The mother had previously been represented by a lawyer she retained, but that lawyer had withdrawn before August 6, 2021.

the children, intensive in-home services, monthly counseling, parenting assessments, parenting classes, psychological evaluations, and outpatient treatment for substance abuse. In addition, Whitten testified that DHR had offered A.L. the opportunity to participate in the Fathers Forward program.

Both the mother and A.L. participated in a drug assessment and subsequently began the outpatient treatment for substance abuse that the drug-assessment provider recommended. A.L. completed his outpatient treatment, but the evidence was in dispute regarding whether the mother completed her outpatient treatment. The mother testified that she did complete it; however, she did not have a certificate from the provider of the outpatient treatment to corroborate her testimony. Whitten testified that the mother did not complete it because, Whitten said, the outpatient-treatment provider dismissed the mother from the program for her failure to maintain contact with the provider. Whitten further testified that, because the mother had not completed the outpatient treatment, DHR had arranged for a second drug assessment for the mother, which might have recommended additional substance-abuse treatment for her; however, the mother did not participate in the

second drug assessment, and, therefore, DHR did not receive a recommendation from the drug-assessment provider that the mother receive additional treatment. Whitten further testified that DHR depends on the recommendations of a drug-assessment provider to determine what services to offer to treat substance abuse and that, because DHR did not receive a recommendation that the mother receive additional substance-abuse treatment, DHR had not offered it to the mother. The mother testified that she had not participated in a second drug assessment because, she said, she did not know that she was supposed to have done that.

The mother testified that, when the first drug-assessment provider recommended outpatient substance-abuse treatment, she had asked the DHR caseworker then assigned to the children's cases, a woman named Shelly, about inpatient substance-abuse treatment, but, according to the mother, Shelly had said that she thought outpatient treatment would work. The mother admitted that, after the outpatient treatment failed, she never asked Whitten for inpatient treatment because, she said, she did not think that DHR offered inpatient treatment. The mother testified that, although she had not been able to refrain from using illicit drugs

altogether, she had not used methamphetamine since December 2020; however, the results of the mother's August 6, 2021, drug test, which was positive for both amphetamine and methamphetamine, contradicts that testimony.

It is undisputed that the mother and A.L. failed to appear for color-code drug screens for several months in 2020 and 2021. The mother testified that A.L. had been working out of town during those months and that she had been with him. A.L. did not attend the parenting classes DHR had offered in 2019 because, he said, the classes conflicted with his work schedule. The mother testified that she had thought that she had completed the parenting classes DHR had offered in 2019 but that DHR told her that she lacked two classes. She testified that she had then attended one of those two classes but not the other one. The mother said that, approximately two weeks before trial, she and A.L. had completed a different parenting course, which they had selected themselves.

Whitten testified that the mother and A.L. did not complete the intensive in-home services that DHR had offered. The mother testified that she did not know what those services were. A.L. initially testified that he did not know what those services were but subsequently testified

that he recalled the worker employed by the in-home-services provider coming to his and the mother's residence several times. Whitten testified that the in-home-services provider terminated its services because, she said, the mother and A.L. continued to use illicit drugs.

The mother was unemployed when the children were removed from her custody, and DHR told her that she should obtain and maintain stable employment. The mother testified that she had subsequently obtained a job assisting a handyman who does home repairs but that she had quit that job the day before the trial because, she said, she had an interview for a higher paying job scheduled the day after the trial. A.L. testified that he had been employed off and on with the same construction company for two years.

When DHR removed J.G. and C.L. from A.L. and the mother's custody in October 2019, the mother and A.L. had been living together in a mobile home. In November 2019, the mother moved out of the mobile home because, she said, DHR had asked her to do so because A.L. was continuing to test positive for methamphetamine. Whitten, on the other hand, testified that it was the mother's counsel who had recommended that the mother move out of the mobile home because of A.L.'s continued

use of methamphetamine. The mother testified that, after moving out of the mobile home, she moved into a one-room guest cottage behind an acquaintance's house where she was still living when these actions were tried. The cottage has electrical power but no running water or bathroom. There is a bathroom located in a separate structure near the cottage, but it cannot be used because, the mother said, the roof of that structure had collapsed. A.L., who was evicted from the mobile home for nonpayment of rent after he temporarily lost his job, moved into the cottage in March or April 2020. The mother and A.L. use the bathroom in the main house in front of the cottage. The mother and A.L. do not have a written lease; their continued occupancy of the cottage depends on an oral agreement with the owner of the cottage. The mother testified that she and A.L. were planning to look for a rental house after the trial. Both the mother and A.L. admitted that the cottage in which they were living was not suitable for a child.

Regarding the color-code drug screens, April Brown, an employee of the Autauga-Elmore County Court Referral Office, testified that, in 2019 and 2020, the mother and A.L. were supposed to undergo forty-one drug screens; that the mother had not appeared for eighteen of those drug

screens; and that A.L. had not appeared for seventeen of them. The mother tested positive for amphetamine on November 6, 2019, November 20, 2019, and February 12, 2020. Brown said that the mother tested positive for methamphetamine on November 10, 2020. A.L. tested positive for amphetamine on November 20, 2019, and tested positive for methamphetamine on December 30, 2020.

In addition to the drug screens at the court-referral office, the mother submitted to a drug screen in court on October 28, 2020, the results of which were positive for amphetamine and methamphetamine. After the results of that positive drug test and a subsequent drug screen indicating that A.L. was positive for methamphetamine on December 30, 2020, the children's guardian ad litem filed motions asking the juvenile court to suspend the mother's and A.L.'s visitation with J.G. and C.L. based on their continued use of illicit drugs. On February 1, 2021, the juvenile court entered orders granting those motions. The mother had consistently visited the children before the juvenile court suspended her visits. Before his visits were suspended, A.L. had consistently visited the children when he was not working out of town.

Sonia Martin, who was qualified at trial as an expert in the field of emotional bonding, testified that she had conducted a bonding assessment regarding J.G. and C.L. Martin opined that J.G. and C.L. did not have a significant emotional bond with the mother. Martin said that she tried to assess the bond between A.L. and C.L.; however, A.L. would not respond to her texts and voice-mail messages requesting his cooperation. Martin opined that J.G. and C.L. are bonded with their respective foster parents and that they are thriving in their foster parents' homes. She further testified that she strongly recommended that the juvenile court place J.G. and C.L. in the permanent custody of their foster parents.

J.G.'s foster mother testified that her family loves J.G., that he interacts with them as though he is a member of the family, and that she and her husband intended to adopt J.G. if the juvenile court terminated his parents' parental rights. Likewise, C.L.'s foster mother testified that her family loves C.L. and that she and her husband intended to adopt him if the juvenile court terminated his parents' parental rights.

Carter Taunton, another one of the DHR caseworkers assigned to J.G.'s and C.L.'s cases, testified that DHR had investigated a report that

the mother and A.L. had endangered P.G., the mother's oldest child, who is not involved in these appeals. The mother and A.L. had taken custody of P.G. after P.G.'s maternal grandfather, P.G.'s custodian, had a stroke. DHR found that the mother and A.L. had used illicit drugs around P.G. During DHR's investigation of that report, P.G., the mother, and A.L. tested positive for methamphetamine. P.G.'s maternal grandfather tested negative for illicit drugs. On October 5, 2021, DHR made an administrative finding that the report that the mother and A.L. had committed child abuse with respect to P.G. was "indicated."

Whitten testified that DHR had sent letters to seventeen of J.G.'s and C.L.'s relatives, inquiring whether they would be willing to serve as relative resources for J.G. and C.L. Only two of those relatives responded to the letters, and neither was interested in serving as a relative resource.

Following the trial, the juvenile court, as noted previously, entered identical judgments in all four actions. Among other things, those judgments contained the juvenile court's express findings that it had had the opportunity to observe the mother's appearance since October 24, 2019; that it had had the opportunity to observe A.L.'s appearance since October 28, 2020; and that the deterioration in their appearances since

those dates was consistent with persistent and long-term use of illicit drugs. As noted previously, the judgments entered in the dependency actions made a final disposition of those actions by finding that J.G. and C.L. remained dependent and vesting DHR with permanent custody of J.G. and C.L. The judgment entered in the termination-of-parental-rights action pertaining to J.G. terminated the parental rights of the mother and J.F., J.G.'s presumed legal father. The judgment entered in the termination-of-parental-rights action pertaining to C.L. terminated the parental rights of the mother and A.L., C.L.'s legal father.

The mother timely appealed from the judgments entered in the two termination-of-parental-rights actions. A.L. timely appealed from the judgments entered in both dependency actions as well as the judgments entered in both termination-of-parental-rights actions. J.F. did not appeal from any of the judgments.

Standard of Review

This court will reverse a juvenile court's judgment terminating parental rights only if the record shows that the judgment is not supported by clear and convincing evidence. J.C. v. State Dep't of Hum. Res., 986 So. 2d 1172, 1183 (Ala. Civ. App. 2007). "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." S.J. v. Jackson Cnty. Dep't of Hum. Res., 294 So. 3d 804, 807 (Ala. Civ. App. 2019). Clear and convincing evidence is evidence 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." § 6-11-20(b)(4), Ala. Code 1975. "Proof by clear and convincing evidence requires a level of proof greater than a preponderance of the evidence or the substantial weight of the evidence, but less than beyond a reasonable doubt." Id.

Analysis

I.

The Mother's Appeals: Appeal Numbers 2210190 and 2210191

On appeal, the mother does not dispute that she has an ongoing drug addiction, that her drug of choice is methamphetamine, and that she has not successfully overcome her addiction despite DHR's providing her with a drug assessment, color-code drug screens, and outpatient treatment for substance abuse. She argues, however, that DHR did not

make reasonable efforts to rehabilitate her because, she says, DHR did not offer her inpatient treatment for substance abuse.

Whether DHR has made reasonable efforts to rehabilitate a parent and whether those efforts have failed or succeeded are questions of fact to be determined by the juvenile court. See K.C. v. Jefferson Cnty. Dep't of Hum. Res., 54 So. 3d 407, 413 (Ala. Civ. App. 2010). Parents share the responsibility for addressing the conditions that led to the removal of their children. See A.M.F. v. Tuscaloosa Cnty. Dep't of Hum. Res., 75 So. 3d 1206, 1212 (Ala. Civ. App. 2011). They must make reasonable efforts to rehabilitate themselves once services have been made available to them. Id.

In this case, the juvenile court expressly found that DHR had made reasonable efforts to rehabilitate the mother and that those efforts had failed. The undisputed evidence indicated that the mother had not completed the parenting classes that DHR had offered in 2019, that she had not completed the intensive in-home services that DHR had provided, and that she had not appeared for a significant number of color-code drug screens. The testimony was in dispute regarding whether she had completed the outpatient treatment for substance abuse that DHR

provided; the mother testified that she had completed it, while Whitten testified that the outpatient-treatment provider had dismissed the mother from the program before she had completed it because, the provider had told Whitten, the mother had not maintained contact with the provider. The juvenile court, as the sole judge of the facts and of witness credibility, see Woods v. Woods, 653 So. 2d 312, 314 (Ala. Civ. App. 1994), reasonably could have found that Whitten's testimony that the outpatient-treatment provider had dismissed the mother from the program before she had completed it was credible and that the mother's conflicting testimony was not credible. Based on such a finding and the undisputed evidence indicating that the mother had not fully complied with other services that DHR had offered, the juvenile court reasonably could have been clearly convinced that the mother had not made a reasonable effort to rehabilitate herself using the services that DHR had provided her and that providing her with inpatient treatment for substance abuse would have been futile. See A.M.F., supra. Therefore, we cannot reverse the juvenile court's judgments terminating the mother's parental rights to J.G. and C.L. based on her first argument.

The mother next argues that DHR failed to prove by clear and convincing evidence that there were no viable alternatives to termination of her parental rights because, she says, maintaining the status quo was a viable option. This court has held that "maintaining the status quo is a viable option to terminating parental rights when the parent and the child enjoy a relationship with some beneficial aspects that should be preserved such that it would be in the child's best interests to continue that relationship." S.N.W. v. M.D.F.H., 127 So. 3d 1225, 1230 (Ala. Civ. App. 2013) (emphasis added). In the present cases, based on Martin's expert testimony, the juvenile court reasonably could have been clearly convinced that no emotional bond existed between the mother and J.G. and C.L. and that, consequently, it would not be in the best interests of J.G. and C.L. to continue their relationship with the mother. Therefore, we cannot reverse the juvenile court's judgments terminating the mother's parental rights to J.G. and C.L. based on the mother's second argument.

II.

A.L.'s Appeal from the Judgment Terminating His Parental Rights to C.L.: Appeal Number 2210195

A.L. does not dispute that he has an ongoing drug addiction, that his drug of choice is methamphetamine, and that he has not successfully overcome his addiction despite DHR's providing him with a drug assessment, color-code drug screens, and outpatient treatment for substance abuse. He argues, however, that DHR did not make reasonable efforts to rehabilitate him because it did not provide him with inpatient treatment for substance abuse. The undisputed evidence indicated that A.L. did not attend the parenting classes offered by DHR in 2019, that he did not complete the intensive in-home services offered by DHR, and that he did not appear for a substantial number of color-code drug screens. Although he completed outpatient treatment for substance abuse, he continued to use amphetamine and methamphetamine just as he had before he received that treatment. Based on A.L.'s failure to comply fully with the other services DHR provided and his failure to show any progress in overcoming his drug addiction despite his receiving outpatient treatment for it, the juvenile court reasonably could have been clearly convinced that A.L. had not made a reasonable effort to rehabilitate himself and that DHR's providing him with inpatient treatment for substance abuse would have been futile. See A.M.F., supra.

A.L. next argues that the juvenile court erred in terminating his parental rights to C.L. because, he says, maintaining the status quo was a viable option. The record contains no evidence indicating that C.L. would benefit from maintaining a relationship with A.L. A.L. elected not to cooperate with Martin's bonding assessment; however, the juvenile court reasonably could have been clearly convinced that A.L. did not have a meaningful relationship with C.L. because C.L. had been in foster care since the day after he was born. Therefore, we cannot conclude that maintaining the status quo would be beneficial to C.L. such that it would be in the best interests of C.L. to continue the relationship with A.L. and, consequently, we cannot reverse the juvenile court's judgment terminating A.L.'s parental rights to C.L. based on his viable-option argument.

III.

A.L.'s Appeal from the Judgment
Finding C.L. Dependent: Appeal Number 2210194

A.L. does not argue that the juvenile court erred in finding C.L. dependent. Therefore, we affirm that judgment.

IV.

A.L.'s Appeals from the Judgments

Pertaining to J.G.: Appeal Numbers 2210192 and 2210193

A.L. is not the legal father of J.G. Consequently, the judgments finding J.G. dependent and terminating the parental rights of J.F., the presumed legal father of J.G., did not aggrieve A.L. "'"A party cannot claim error where no adverse ruling is made against him."'" S.L. v. J.L.C., 282 So. 3d 26, 33 (Ala. Civ. App. 2019) (quoting Alcazar Shrine Temple v. Montgomery Cnty. Sheriff's Dep't, 868 So. 2d 1093, 1094 (Ala. 2003), quoting in turn Holloway v. Robertson, 500 So. 2d 1056, 1059 (Ala. 1986)). Therefore, we dismiss A.L.'s appeals 2210192 and 2210193.

2210190 -- AFFIRMED.

2210191 -- AFFIRMED.

2210192 -- APPEAL DISMISSED.

2210193 -- APPEAL DISMISSED.

2210194 -- AFFIRMED.

2210195 -- AFFIRMED.

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