

Rel: May 6, 20022

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2210203

S.J.

v.

Henry County Department of Human Resources

2210207

J.B.

v.

Henry County Department of Human Resources

Appeals from Henry Juvenile Court
(JU-19-81.02)

THOMPSON, Presiding Judge.

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This is the second time S.J. ("the father") and J.B. ("the mother") have been before this court. The record indicates that, in April 2020, the Henry County Department of Human Resources ("DHR") filed a petition in the Henry Juvenile Court ("the juvenile court") seeking to terminate the mother's and the father's parental rights to their minor child born in March 2018. R.J., the child's paternal grandmother, intervened in the action and sought an award of custody of the child. The juvenile court conducted a hearing on all the pending claims.

On May 21, 2021, the juvenile court entered a judgment in which it terminated the parental rights of the mother and the father and denied the paternal grandmother's claim seeking an award of custody of the child. The paternal grandmother timely appealed on May 26, 2021; that appeal was assigned appeal number 2200669. The father filed a notice of appeal on June 3, 2021, which became effective on June 4, 2021, when his postjudgment motion was denied. See Rule 4(a)(5), Ala. R. App. P. The father's appeal was assigned appeal number 2200700. The mother also timely appealed on June 3, 2021, and this court assigned appeal number

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2200695 to her appeal. This court consolidated the three appeals ex mero motu. On February 4, 2022, this court affirmed, without an opinion, the juvenile court's judgment with regard to all three appeals, i.e., appeal numbers 2200669, 2200695, and 2200700. R.J. v. Henry Cnty. Dep't of Hum. Res. (No. 2200669, Feb. 4, 2022), ___ So. 3d ___ (Ala. Civ. App. 2022) (table); J.B. v. Henry Cnty. Dep't of Hum. Res., (No. 2200695, Feb. 4, 2022), So. 3d ___ (Ala. Civ. App. 2022) (table); and S.J. v. Henry Cnty. Dep't of Hum. Res. (No. 2200700, Feb. 4, 2022), ___ So. 3d ___ (Ala. Civ. App. 2022) (table).

In September 2021, during the pendency of their previous appeals to this court, the mother and the father each filed in the juvenile court a Rule 60(b), Ala. R. Civ. P., motion for relief from the May 21, 2020, termination-of-parental-rights judgment. In their respective motions, the mother and the father each argued that she or he was entitled to relief from the termination-of-parental-rights judgment on the basis of ineffective assistance of counsel. See Ex parte E.D., 777 So. 2d 113, 116 (Ala. 2000) ("[A] Rule 60(b) motion, under certain circumstances, ... can be an

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appropriate means by which a parent facing the termination of parental rights can present claims of ineffective assistance of appointed counsel.").

On November 19, 2021, the juvenile court entered orders purporting to deny the mother's and the father's Rule 60(b) motions; in doing so, the juvenile court erroneously concluded that the Rule 60(b) motions had been denied by operation of law pursuant to Rule 59.1, Ala. R. Civ. P.¹ Regardless, the juvenile court's November 19, 2021, orders purported to effectively deny the mother's and the father's Rule 60(b) motions. The mother and the father each filed a timely notice of appeal challenging the

¹A Rule 60(b) motion is not subject to the time limitations imposed by Rule 59.1. See Rule 59.1, Ala. R. Civ. P. ("No postjudgment motion filed pursuant to Rules 50, 52, 55, or 59[, Ala. R. Civ. P.,] shall remain pending in the trial court for more than ninety (90) days"); Ex parte Enriquez, 316 So. 3d 664, 666 n.1 (Ala. Civ. App. 2020) ("Rule 59.1, Ala. R. Civ. P., does not operate on Rule 60(b) motions"); Rhodes v. Rhodes, 38 So. 3d 54, 63 (Ala. Civ. App. 2009) ("[T]he 90-day period for ruling on postjudgment motions announced in Rule 59.1, Ala. R. Civ. P., applies only to motions filed under Rules 50, 52, 55, and 59, and not those filed under Rule 60(b)."); and Conway v. Housing Auth. of Birmingham Dist., 676 So. 2d 344, 345 (Ala. Civ. App. 1996) ("Because Conway's motion sought relief under Rule 60(b) and not under Rule 50, 52, 55, or 59, it was not denied by operation of law pursuant to Rule 59.1 after 90 days had expired from the time it was filed.").

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November 19, 2021, orders. The father's appeal of the purported denial of his Rule 60(b) motion was assigned appeal number 2210203, and the mother's appeal of the purported denial of her Rule 60(b) motion was assigned appeal number 2210207. This court, again, consolidated the appeals ex mero motu.

At the same time these appeals were submitted to this court, the mother filed a motion to dismiss her appeal, stating that she agreed with an argument in DHR's brief that the juvenile court had lacked jurisdiction to rule on the Rule 60(b) motions. The father has not filed a similar motion in this court.

Rule 60(b) provides a method for seeking relief from a final judgment under certain circumstances, and it specifies, among other things, that "[l]eave to make the motion need not be obtained from any appellate court except during such time as an appeal from the judgment is actually pending before such court."

The mother's and the father's appeals from the May 21, 2021, termination-of-parental-rights judgment -- appeal number 2200695 and

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appeal number 2200700, respectively -- were pending before this court at the time the mother and the father filed their September 2021 Rule 60(b) motions seeking relief from the termination-of-parental-rights judgment. Thus, the mother and the father were each required to obtain leave of this court in order to file a Rule 60(b) motion challenging the judgment that was before this court for appellate review. Rule 60(b). This court has held that when a party's appeal of a judgment is before an appellate court, the party must seek the permission of that appellate court in order to challenge by way of a Rule 60(b) motion the same judgment. P.I.M. v. Jefferson Cnty. Dep't of Hum. Res., 297 So. 3d 409, 411 (Ala. Civ. App. 2019); Jenkins v. Covington, 939 So. 2d 31, 34 (Ala. Civ. App. 2006). In the absence of leave from that appellate court to file a Rule 60(b) motion with regard to a judgment being reviewed by an appellate court, the Rule 60(b) motion is invalid, and the trial court does not obtain jurisdiction to rule on that motion. P.I.M. v. Jefferson Cnty. Dep't of Hum. Res., 297 So. 3d at 411; Keeler v. Anderson Auto., LLC, 262 So. 3d 1225, 1229 (Ala. Civ. App. 2017).

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"Because an appeal was pending, it was incumbent upon the [mother and the father] to obtain leave from [this] court ... in order ... to file a valid motion under Rule 60(b) ... and in order for the [juvenile] court to have jurisdiction to rule upon that motion." Jenkins v. Covington, 939 So. 2d at 34. Neither the mother nor the father sought this court's permission to file a Rule 60(b) motion in the juvenile court while their appeals of the termination-of-parental-rights judgment were pending in this court. Accordingly, the juvenile court did not acquire jurisdiction over the Rule 60(b) motions, and its November 19, 2021, orders purporting to deny those motions were void for lack of jurisdiction. P.I.M. v. Jefferson Cnty. Dep't of Hum. Res., supra. A void judgment will not support an appeal, and, therefore, we dismiss the mother's and the father's appeals from the November 19, 2021, orders. Id.; Keeler v. Anderson Auto., LLC, 262 So. 3d at 1229. The mother's motion to dismiss is denied as moot.

2210203 -- APPEAL DISMISSED.

2210207 -- APPEAL DISMISSED.

Moore, Edwards, Hanson, and Fridy, JJ., concur.