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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2022

2210106 and 2210107

A.B.

v.

Montgomery County Department of Human Resources

Appeals from Montgomery Juvenile Court
(JU-17-291.04 and JU-17-291.05)

EDWARDS, Judge.

On April 2, 2021, the Montgomery County Department of Human Resources ("DHR") filed a petition in the Montgomery Juvenile Court ("the juvenile court") seeking to terminate the parental rights of A.B.

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("the mother") to her child, B.B. ("the child"); that action was assigned case number JU-17-291.04. On April 14, 2021, the mother filed a petition seeking the return of the child to her custody; that action was assigned case number JU-17-291.05. After a trial was held on both actions in September 2021, the juvenile court entered in both actions an identical judgment on October 8, 2021, denying the mother's custody petition and terminating the mother's parental rights to the child. The mother filed a timely notice of appeal to this court in each action, and those appeals were assigned case numbers 2210106 and 2210107, respectively. We consolidated the appeals ex mero motu.

The termination of parental rights is governed by Ala. Code 1975, § 12-15-319. That statute provides, in part:

"(a) If the juvenile court finds from clear and convincing evidence, competent, material, and relevant in nature, that the parent[] of a child [is] unable or unwilling to discharge [his or her] responsibilities to and for the child, or that the conduct or condition of the parent[] renders [him or her] unable to properly care for the child and that the conduct or condition is unlikely to change in the foreseeable future, it may terminate the parental rights of the parent[]. In a hearing on a petition for termination of parental rights, the court shall consider the best interests of the child. In determining whether or not the parent[] [is] unable or unwilling to

discharge [his or her] responsibilities to and for the child and to terminate the parental rights, the juvenile court shall consider the following factors including, but not limited to, the following:

"....

"(2) Emotional illness, mental illness, or mental deficiency of the parent, or excessive use of alcohol or controlled substances, of a duration or nature as to render the parent unable to care for the needs of the child.

"(3) That the parent has tortured, abused, cruelly beaten, or otherwise maltreated the child, or attempted to torture, abuse, cruelly beat, or otherwise maltreat the child, or the child is in clear and present danger of being tortured, abused, cruelly beaten, or otherwise maltreated as evidenced by the treatment of a sibling.

"....

"(7) That reasonable efforts by the Department of Human Resources or licensed public or private child care agencies leading toward the rehabilitation of the parent[] have failed.

"....

"(9) Failure by the parent[] to provide for the material needs of the child or to pay a reasonable portion of support of the child where the parent is able to do so.

"....

"(11) Failure by the parent[] to maintain consistent contact or communication with the child.

"(12) Lack of effort by the parent to adjust his or her circumstances to meet the needs of the child in accordance with agreements reached, including agreements reached with local departments of human resources or licensed child-placing agencies, in an administrative review or a judicial review.

"(13) The existence of any significant emotional ties that have developed between the child and his or her current foster parent or parents, with additional consideration given to the following factors:

"a. The length of time that the child has lived in a stable and satisfactory environment.

"b. Whether severing the ties between the child and his or her current foster parent or parents is contrary to the best interest of the child.

"c. Whether the juvenile court has found at least one other ground for termination of parental rights."

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The test a juvenile court must apply in a termination-of-parental-rights action is well settled:

"A juvenile court is required to apply a two-pronged test in determining whether to terminate parental rights: (1) clear and convincing evidence must support a finding that the child is dependent; and (2) the court must properly consider and reject all viable alternatives to a termination of parental rights. Ex parte Beasley, 564 So. 2d 950, 954 (Ala. 1990)."

B.M. v. State, 895 So. 2d 319, 331 (Ala. Civ. App. 2004). A juvenile court's judgment terminating parental rights must be supported by clear and convincing evidence. P.S. v. Jefferson Cnty. Dep't of Hum. Res., 143 So. 3d 792, 795 (Ala. Civ. App. 2013). "Clear and convincing evidence" 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.'" L.M. v. D.D.F., 840 So. 2d 171, 179 (Ala. Civ. App. 2002) (quoting Ala. Code 1975, § 6-11-20(b)(4)). Although a juvenile court's factual findings in a judgment terminating parental rights based on evidence presented ore tenus are presumed correct, K.P. v. Etowah Cnty. Dep't of Hum. Res., 43 So. 3d 602, 605 (Ala. Civ. App. 2010), "[t]his

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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." K.S.B. v. M.C.B., 219 So. 3d 650, 653 (Ala. Civ. App. 2016). That is, this court

"'must ... look through [\"the prism of the substantive evidentiary burden,\" Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254 (1986),] 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.\"'"

K.S.B., 219 So. 3d at 653 (quoting Ex parte McInish, 47 So. 3d 767, 778 (Ala. 2008), quoting in turn Ala. Code 1975, § 25-5-81(c)).

The record reveals that the child was removed from the custody of the mother in September 2018, after the mother left the child in the care of J.J., her roommate, and, on the advice of Dr. Rusheng Zhang, a psychiatrist employed by Montgomery Area Mental Health Authority, Inc. ("MAMH"), entered an inpatient facility for treatment. At some point after the mother entered the inpatient facility, J.J. became intoxicated, attempted to leave the child with another person, and then knocked the

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child to the ground and hit him in the head with a chair. Because the mother could not be located, DHR took custody of the child.

The mother testified that, around the time the child was removed from her custody, she had been recently homeless and had had difficulty maintaining stable employment. She said that she had moved in with J.J. shortly before she had attended a mental-health appointment that had been made while she was living at a homeless shelter. She said that she had not known that J.J. was an alcoholic before moving in with J.J.

The mother denied any current mental-health issues. She explained that her earlier inpatient treatment had arisen from issues from her childhood that Dr. Zhang had urged her to confront. She said that she had checked out of the inpatient facility upon learning about the child being injured by J.J. but that DHR had not been willing to return the child to her custody. She said that she had then returned to a different inpatient mental-health facility to complete counseling relating to her childhood issues.

The mother testified that she had undergone a psychological evaluation in 2018 but that, because of her work schedule, she had been

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unable to make it to the appointments that DHR had made for her to undergo a more recent psychological evaluation. She said that she had recently completed mental-health treatment at MAMH's facility. She presented as documentary evidence a June 2021 letter from Dr. Zhang and Catherine Smith, her counselor at MAMH's facility, stating that the mother had been compliant with her treatment plan, that she had satisfactorily completed mental-health treatment, and that she had been released from further care at MAMH's facility. The mother said that, at DHR's request, she had begun seeing Barbara Cummings-Jackson for individual therapy.

The mother said that she was currently employed at a fast-food restaurant and that she was training for a management position. She said that she earns \$10 per hour and that she works 40 or more hours per week. The mother testified that her hours were typically from 3:00 p.m. or 4:00 p.m. to 1:00 a.m. or 1:30 a.m. According to the mother, she would receive a raise if she was promoted to a management position.

The mother testified that she had rented a two-bedroom apartment in June 2021 with the assistance of what the mother referred to as the

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"Montgomery Homeless Coalition" and a former boyfriend, Q.W. She said that, although the Montgomery Homeless Coalition had paid some of her rent payments, she could afford to pay her rent and expenses. She testified that her monthly rent was \$669, that her rent included water service, and that her electricity bill had varied between \$30 and \$86 per month. She also said that she spent around \$100 per month on food.

The mother admitted that she had had an issue with substance abuse, but, she said, she had not used illegal drugs in the year preceding the trial. She presented a certificate indicating that she had completed outpatient drug treatment offered by Reclamation Center of Alabama, Inc., in December 2020. The mother admitted that she had continued to receive positive results on her drug tests but insisted that she did not use drugs. She said that she had requested of her DHR caseworker that she be allowed to undergo drug testing at a different facility but that, although the caseworker had indicated that she would accede to that request, the caseworker had continued to send her to the same drug-testing facility.

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The mother denied having any criminal history. However, she admitted that she had been cited for several traffic violations, including violations for speeding and for driving with a suspended license. The mother indicated that she had been unaware that she had not paid all the fines associated with those traffic violations or that warrants had been issued for her arrest in both Montgomery County and Elmore County for nonpayment of those fines. At the time of the trial, the mother did not have an automobile and relied on public transportation or rides from friends or family members.

Classy Riley Singleton, the DHR caseworker assigned to the mother's case from September 2018 to February 2021, testified that the mother had not completed what DHR had required of her. Singleton explained that the mother had completed a psychological evaluation in December 2018 and that the "diagnoses" were "persistent depressive disorder, cannabis and cocaine abuse, and life phases, trauma phases." That psychological evaluation is contained in the record on appeal; the evaluation makes no mention of the mother having any diagnosis related to trauma and instead refers to the mother as suffering from "phase of

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life problem." Dr. Curry Hammack, the psychologist who performed the evaluation, stated that the mother "has a lot going on and a lot to work through" and that she would need the assistance of professionals, such as counselors, to assist her in overcoming her admitted substance-abuse issues and in resolving her problems with establishing financial security so that she could secure transportation and make it to all the necessary appointments for treatment and counseling. Dr. Hammack indicated that the mother would have to work at overcoming the obstacles facing her but that the task was "doable."

Singleton's testimony indicated that the mother had not received mental-health treatment at all in 2019 or 2021 but also, contradictorily, that the mother had seen a physician at MAMH's facility on April 18, 2019.¹ The records from MAMH contained in the record on appeal state that the mother did, in fact, see Dr. Zhang in April 2019. The records from MAMH indicate that the mother disclosed her previous substance-abuse issues to her counselors and that substance abuse was addressed,

¹A vast majority of Singleton's testimony was composed of "yes" or "no" answers to leading questions.

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in conjunction with her depression, during her counseling sessions. As previously noted, the mother testified and presented documentary evidence indicating that she had been released from care at MAMH's facility. Singleton, however, indicated that the mother had not complied with recommended mental-health treatment.

At the time of the trial, the mother was being counseled by Barbara Cummings-Jackson, who testified that she had first seen the mother in June 2021. Cummings-Jackson testified that the mother had been consistent in following her treatment plan in June, August, and September 2021 but that the mother had not consistently attended appointments in July 2021. Cummings-Jackson also complained that the mother could have been more diligent in completing homework assignments, which, she said, the mother had completed but in a less than timely manner. Cummings-Jackson indicated that she was not clear about what mental-health issues the mother had, indicating that she had only recently seen the mother's 2018 psychological evaluation and that she had just begun counseling the mother regarding her mental-health issues. Although Cummings-Jackson indicated that the mother

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presently lacked the necessary "protective capacity" to parent the child, she stated that the mother would eventually be able to parent the child adequately if she continued to work through her issues in counseling.

Cummings-Jackson had also provided two sessions of family counseling to both the mother and the child jointly. According to Cummings-Jackson, the child was articulate and well-adjusted, expressed love for the mother, and desired to return to the mother's custody. She noted, however, that the child was also very attached to his foster family, the members of which he identified as his mother, his father, and his siblings, and that severing the child's bond with the foster family would be detrimental to him. Cummings-Jackson also stated that the child would suffer harm if his relationship with the mother were permanently severed; she testified that the child should continue to have contact with the mother, even if he remained in the custody of the foster family.

Singleton further indicated that the mother had never admitted to using cocaine or marijuana, that the mother had not always submitted to random drug screens, and that the mother had not completed drug

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treatment. However, the record contains the results of several drug tests to which the mother had clearly submitted and a certificate indicating that she had completed an outpatient drug-treatment program. The mother had, in fact, admitted her previous drug use to Dr. Hammack, to her counselors at MAMH's facility, and to Cummings-Jackson. As previously mentioned, however, the mother denied any current drug use, despite the fact that her hair-follicle drug-test results from January 2021, April 2021, June 2021, and August 2021 indicated that she had been using marijuana. The mother tested negative for illegal substances on the urine drug tests that were contemporaneously administered with the hair-follicle drug tests in April 2021, June 2021, and August 2021; the record does not contain the results of a urine drug test administered in January 2021.

The child, who was seven years old at the time of the trial, testified in camera. He explained that he liked his foster family and referred to the foster parents' children as his brother and his sister. He also said that he has "two moms and two dads." According to the child, he visits with the mother every other week and speaks to her on the telephone

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every Wednesday. He said that, "if I can't go back with my mom, I really want my foster mom to adopt me. But I can still see my mom and call her because I know where she lives and I know her phone number."

A.G., the child's foster mother, testified that the child had lived in her home for one year and nine months as of the time of the trial. She indicated that she considered the child to be her own and stated that she would not want him to go back into foster care with another family. She said that the child was attached to her and that disrupting the bond he had with the foster family would hurt him. She testified that she would adopt the child if the mother's parental rights were terminated but that she would continue to allow the mother to have contact with the child. She explained that she had a good relationship with the mother and that the child loves the mother and the child loves her. Although she testified that the mother spoke with the child every other week, she indicated that she sometimes had the child initiate telephone contact with the mother and also that, if too much time elapsed between contact between the mother and the child, the child tended to act out.

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Singleton testified that DHR had investigated several of the child's relatives as potential placements. One of those relatives, D.B., the child's maternal aunt, had even gone so far as to file a petition seeking custody of the child. However, Singleton explained, D.B. had withdrawn her petition after having a verbal altercation with the mother and indicating that she no longer had a desire to serve as a placement for the child. Regarding the other potential relative placements, who included D.T., L.T., and T.M., Singleton said that none of them had indicated a desire to assume custody of the child. Singleton also testified that the child was bonded to the foster parents. She admitted, however, that the child was equally bonded to the mother. When pressed on cross-examination, Singleton admitted that permanent placement of the child with the foster family might be an option available to DHR.

The mother's current DHR caseworker, Santana McCall, testified that the mother had not completed a second psychological evaluation that DHR had attempted to set up on three occasions. Although McCall admitted that the mother had indicated that she had a conflict with her work schedule on two of those occasions, she said that she did not know

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why the mother had failed to attend the third appointment. According to McCall, the mother had not missed a visitation with the child since McCall became her caseworker in February 2021. Like Singleton, McCall pointed out that the mother was not attending mental-health counseling at MAMH's facility, but she did not appear to have knowledge of the letter discharging the mother from further treatment at MAMH's facility. Although McCall admitted that the mother had, in fact, completed some of the requirements of her individualized service plan, which does not appear in the record, McCall stated that she did not believe that the mother should have custody of the child. McCall also denied having concerns that termination of the mother's parental rights would have a major effect on the child. Unlike Singleton, McCall was adamant that DHR could not place the child in the permanent custody of the foster parents and that the child must be adopted by them to obtain permanency.

On appeal, the mother makes no argument concerning the denial of her petition seeking custody of the child. Accordingly, she has waived any argument regarding the judgment insofar as it denied her custody

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petition. L.C. v. Jefferson Cnty. Dep't of Hum. Res., 330 So. 3d 849, 857 (Ala. Civ. App. 2021) ("It is well settled that arguments not raised in an appellate brief are deemed waived."). We therefore affirm the judgment entered in case number JU-17-291.05 (appeal number 2210107).

In her brief on appeal, the mother attacks some of the juvenile court's findings relating to the factors supporting the termination of her parental rights. She also argues that DHR failed to establish that no viable alternative to the termination of her parental rights existed. Specifically, the mother relies on P.M. v. Lee County Department of Human Resources, 335 So. 3d 1163, 1165 (Ala. Civ. App. 2021), to support her argument that maintenance of the status quo is a viable alternative to the termination of her parental rights under the circumstances presented in this case. Based on the facts and circumstances of this particular case, we agree, and we conclude that that issue is dispositive of the mother's appeal from the judgment terminating her parental rights.

As we explained in P.M., when foster parents are amenable to continued contact between the child and the parent and when the

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evidence suggests that such contact is beneficial for the child, maintenance of the status quo or permanent placement with the foster parents can be a viable alternative to the termination of a parent's parental rights. P.M., 335 So. 3d at 1172. The evidence in P.M. is quite similar to the evidence presented in this case. The mother in P.M. had a bond with the child in that case, and the child's foster parents, P.C. and J.C., who were relatives of the mother, recognized that bond and were willing to continue to nurture it while providing the child with a safe and stable home.² Id. at 1171. P.C. and J.C. ("the relative foster parents") indicated that they expected the mother to have continued involvement in the child's life regardless of whether her parental rights were terminated, but the relative foster parents also expressed a desire to adopt the child if the mother's rights were terminated. Id. at 1171.

We explained in P.M.:

"We cannot agree that the juvenile court had sufficient evidence to support the conclusion that no viable alternatives to the termination of [the mother's] parental rights existed. The mother contends that maintenance of the status quo was

²Although the foster parents in P.M. were related to the mother in that case, we do not find that fact to be significant to the holding in P.M.

a viable alternative in the present case. She argues that placement of the child in the custody of the relative foster parents while awarding her continued visitation would permit her to maintain what she characterizes as 'a significant relationship and bond' and a 'beneficial relationship' with the child.

"The mother admitted that the child was bonded to the relative foster parents. She also admitted that removing the child from their care was not in the child's best interest. However, because the relative foster parents testified that, if termination of parental rights did not occur, they would be willing to exercise custody of the child, the mother contends that continued placement with the relative foster parents is a viable alternative to the termination of her parental rights. We agree.

"The relative foster parents might desire to adopt the child, but they clearly indicated that they both intended and expected the mother to have continued involvement in the child's life. J.C. specifically commented that the mother had 'made steps in the right direction' and remarked that she felt that the mother deserved additional 'chances' to establish and maintain her progress toward rehabilitation. Although there was no bonding assessment performed to determine the level of bonding between the mother and the child, [Sonia] Martin[, the bonding expert,] testified that she could not opine that the mother and the child lacked a bond, and [Donna] McLeod[, the family's caseworker,] testified that she had observed what appeared to be a bond between the mother and the child. The relative foster parents both testified that they would be there to provide care to the child and to give him the stability he needed for as long as was necessary. Thus, the evidence supports a conclusion that continued placement with the relative foster parents would serve the child's best interest

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while also maintaining the mother's relationship with the child. See Ex parte A.S., 73 So. 3d 1223, 1228 (Ala. 2011) (determining that continued custody with a grandmother was a viable alternative to termination of parental rights when the grandmother had indicated that she would want the mother to have visitation with the children). The evidence does not clearly and convincingly support the juvenile court's conclusion that no viable alternative to the termination of the mother's parental rights existed or establish a basis for rejecting continued placement with the relative foster parents."

P.M., 335 So. 3d at 1172.

Like the relative foster parents in P.M., the foster mother in this case testified that she has a good relationship with the mother, that the child loves the mother, and that she intended to allow the child and the mother to have continued contact no matter the outcome of the termination-of-parental-rights proceeding. Singleton admitted that the mother and the child have a bond. McCall testified that the mother regularly visited the child; the foster mother testified that the mother and the child communicated regularly by telephone; and the child testified that he spoke with his mother regularly. The child indicated a desire both to be returned to the custody of his mother and to remain in the custody of the foster mother, but he also indicated that he desired

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and expected to be able to maintain a relationship with the mother even if he were to be adopted. Cummings-Jackson testified that severing the bond between the mother and the child would harm the child and that the mother and the child should continue to have contact. DHR presented no evidence indicating that the mother's conduct or condition, including her potential use of marijuana or her potential mental-health issues, had been or would be detrimental to the child such that the child's continued visitation with the mother would be harmful to him.

In short, the evidence does not support the conclusion that no viable alternative to the termination of the mother's parental rights exists. Instead, the evidence suggests that the mother's parental rights can remain intact while the child is provided a safe and stable home with the foster mother, who is willing to permit continued contact between the mother and the child.

"The termination of parental rights is an extreme matter and is not to be considered lightly. Ex parte Beasley, 564 So. 2d 950 (Ala. 1990). "Inasmuch as the termination of parental rights strikes at the very heart of the family unit, a court should terminate parental rights only in the most egregious of circumstances." Beasley, 564 So. 2d at 952."

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D.W. v. Jefferson Cnty. Dep't of Hum. Res., 295 So. 3d 1107, 1113 (Ala. Civ. App. 2019) (quoting S.M.W. v. J.M.C., 679 So. 2d 256, 258 (Ala. Civ. App. 1996)). We should not forget that "the primary focus of a court in cases involving the termination of parental rights is to protect the welfare of children and at the same time to protect the rights of their parents." Ex parte Beasley, 564 So. 2d 950, 952 (Ala. 1990). Accordingly, we reverse the judgment of the juvenile court in case number JU-17-291.04 (appeal number 2210106), and we remand the cause for the entry of a judgment consistent with this opinion.

2210106 -- REVERSED AND REMANDED WITH INSTRUCTIONS.

2210107 -- AFFIRMED.

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