

Rel: October 28, 2022

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2022-2023

2210356

C.C.

v.

C.T. and K.T.

**Appeal from Madison Juvenile Court
(JU-18-542.03)**

THOMPSON, Presiding Judge.

On October 21, 2021, C.T. ("the aunt") and K.T. ("the uncle") filed in the Madison Juvenile Court ("the juvenile court") a petition seeking to terminate the parental rights of C.C. ("the mother") and D.R. ("the father") to their child born in 2017. The juvenile court conducted a

hearing at which it received evidence ore tenus on January 10, 2022, and on that same day it entered a judgment. On January 18, 2022, the mother filed a postjudgment motion, and the juvenile court denied that motion on January 24, 2022. The mother timely appealed. The father did not appeal the juvenile court's judgment.

The record demonstrates that on May 21, 2019, the juvenile court entered a judgment awarding the aunt and the uncle, the mother's sister and brother-in-law, custody of the child and awarding the mother visitation rights. This action represents the second time the aunt and the uncle have sought to terminate the parents' parental rights. The record does not contain the pleadings or a transcript from the earlier termination-of-parental-rights action. However, the parties submitted into evidence a copy of the juvenile court's August 5, 2020, judgment denying the aunt and the uncle's first petition to terminate the parents' parental rights. In that judgment, the juvenile court set forth "guidelines" for the mother and the father to follow to avoid the termination of their parental rights to the child. The guidelines set for the mother were as follows:

"The mother should be given every opportunity to correct her affliction to alcohol, which has already cost her her medical

career. She has made a few failed attempts of rehabilitation but has completed none. Her child, for now, is safe and happy in another's home. But, more troubling to the Court, is the decisions to give up her children ([the mother] has another child not involved in this case who currently resides out of state with her father, a different man [than the father in this case]) for new relationships or booze; should there be reoccurrences of this behavior, or should the Court see no immediate change for her self-improvement, the Court would be left with affirmative evidence that termination of parental rights would be the only viable alternative. The decision here is a final chance for change."

(Emphasis added.)¹

In October 2021, the aunt and the uncle filed the current petition to terminate the mother's and the father's parental rights. In that petition, the aunt and the uncle alleged that the mother was again abusing alcohol. At the January 10, 2022, hearing, only the mother and

¹The guidelines set for the father were as follows:

"[T]he father has been unable to care for this child due to his past incarcerations, of which there have been many. In fact, this court did not award any visitation last year because of it. Fair play would necessitate that he be given an opportunity to change his past indiscretions before all parental rights are terminated, even if this court is highly skeptical that the needed change will occur. [The father] is overrun with his drug and anger issues. He has next to no self-control, as exhibited in court proceedings. However, before this child is exposed to him, the father must earn his right to visit the child. Should he not make positive change in a short while, he will limit the court's choices."

the uncle testified. The father was incarcerated and did not appear. The mother testified that she was living in Alabama. The record indicates that the mother has four children -- one with a former husband and three with the father of the child in this case. The mother stated that she gave birth to twins in November 2020 and that she has maintained custody of those two children; the twins are not at issue in this appeal. The mother testified that she and the father had an altercation approximately three months after the twins were born during which the father broke into her home by kicking in the back door; the father was later arrested and incarcerated, and the mother believed that it was because of that incident. According to the mother, after the altercation she stopped communicating with the father.

The mother testified, that in February 2021, she began abusing alcohol again while struggling with postpartum depression after the birth of the twins and following the incident during which the father broke into her home. After her relapse, the mother placed the twins with their maternal grandmother and checked herself into a residential treatment facility in Texas. According to the mother, she returned to Alabama after completing 42 days of treatment and spending an

additional 90 days in the "sober living" quarters at the facility. The mother, who was 37 years old at the time of the January 10, 2022, hearing, also stated that she has been dealing with substance-abuse issues since she was in her late 20s. The mother said that she had not yet completed all 12 steps in her recovery program. At the time of the hearing, the mother testified, she had not relapsed and had been sober for over eight months, which equaled the longest period she has ever remained sober during recovery.

At the time of the January 10, 2022, hearing, the mother was employed, but she said that she planned to begin what she considered to be a better job seven days after the hearing. The mother stated that she had continuously paid child support for the child while he was in the custody of the aunt and the uncle and that she had missed only one child-support payment, which she had paid the next month. Although the mother had been awarded custody of her oldest daughter, she testified that that daughter resides with her former husband. According to the mother, the former husband has been paying the mother \$400 each month "to maintain a home" for their daughter. The mother admitted

that, in the past four years, she had lived in approximately ten different places.

The mother testified that she speaks to the child on the phone frequently, as often as "maybe every other day," and that she visits him often. The mother explained that she speaks to the child on the phone more often than she visits him. The uncle disputed that testimony, stating that the mother does not call the child often and that, "[o]ther than holidays, there really has [not] been much planning ... and [not] much asking to come over and see [the child]." The uncle admitted, however, that the mother usually arranges visits with the child through the aunt.

The mother testified, and the uncle agreed, that there is some tension between the uncle and her. According to the mother, the uncle has told her that he hated her and that he was very angry after the entry of the August 5, 2020, judgment denying his and the aunt's first petition to terminate the mother's parental rights. The mother testified that she does not wish to remove the child from the aunt and the uncle's custody, and she acknowledged that the child would be exposed to instability if he were placed in her custody.

The uncle explained that his "disdain" for the mother arises from his anticipation that he and the aunt will have to deal with possible behavior problems he believes will arise from the child knowing that the aunt and the uncle are not his biological parents. Additionally, according to the uncle, the child will not understand that he is better off with the aunt and the uncle. The uncle also testified that he believed that if the juvenile court did not terminate the mother's and the father's parental rights, the parties could be locked in continual litigation over custody of the child.

The uncle testified that, if the juvenile court terminated the mother's parental rights, the aunt and the uncle would like to adopt the child but would allow the mother to see the child so long as she remains sober. One of the uncle's concerns in relation to the child's relationship with his parents, he said, was that the mother would resume her "love-hate" relationship with the father. According to the uncle, the mother has not demonstrated that she will not continue in a relationship with the father upon his release from incarceration. The uncle also stated that he was concerned that if the mother was to resume contact with the father, she would have a relapse that would negatively affect the child. The uncle

testified that he and the aunt believed that terminating the parents' parental rights would provide the child stability within their family.

At the conclusion of the January 10, 2022, hearing, the juvenile-court judge acknowledged that the court had history with the parties and that it would rely on that history and what it remembered from the testimony at the August 2020 hearing on the aunt and the uncle's first termination-of-parental-rights petition. The juvenile-court judge further stated that he did not believe, based on "the testimony that [he] heard back in 2020 and [the mother's] testimony [at the January 10, hearing], that [the mother] will provide [the child] with the necessary -- emotional support -- that he needs on a daily basis." As a result, the juvenile court terminated the parental rights of both the mother and the father. In its January 10, 2022, judgment, the juvenile court determined that it was in the best interests of the child to place the child in the aunt and the uncle's permanent custody.

"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." B.M. v. State, 895 So. 2d 319, 331 (Ala. Civ. App. 2004) (citing Ex parte Beasley, 564 So. 2d 950, 954 (Ala. 1990)).

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." S.P. v. Madison Cnty. Dep't of Hum. Res., 315 So. 3d 1126, 1130 (Ala. Civ. App. 2020) (quoting J.C. v. State Dep't of Hum. Res., 986 So. 2d 1172, 1183 (Ala. Civ. App. 2007)).

"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. 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."

L.M. v. D.D.F., 840 So. 2d 171, 179 (Ala. Civ. App. 2002) (quoting § 6-11-20(b)(4), Ala. Code 1975).

"On appeal from ore tenus proceedings, this court presumes the correctness of the juvenile court's factual findings. See J.C. v. State Dep't of Human Res., 986 So. 2d 1172 (Ala. Civ. App. 2007)). This court is bound by those findings if the record contains substantial evidence from which the juvenile court reasonably could have been clearly convinced of the fact

sought to be proved. See Ex parte McInish, 47 So. 3d 767 (Ala. 2008).'"

S.P. v. Madison Cnty. Dep't of Hum. Res., 315 So. 3d at 1130 (quoting C.C. v. L.J., 176 So. 3d 208, 211 (Ala. Civ. App. 2015)).

The mother raises several issues on appeal. However, we find her argument that there were viable alternatives to the termination of her parental rights to be dispositive. "In the context of terminating parental rights, an alternative is 'viable' when it is available to the juvenile court as an alternative means of successfully protecting the children from parental harm while serving their best interests." D.J. v. Etowah Cnty. Dep't of Hum. Res., [Ms. 2200394, Oct. 8, 2021] ___ So. 3d ___, ___ (Ala. Civ. App. 2021).

In P.M. v. Lee County Department of Human Resources, 335 So. 3d 1163 (Ala. Civ. App. 2021), the mother in that case had substance-abuse issues, and the Lee County Department of Human Resources ("the Lee County DHR") determined that the mother was unable to care for her child. 335 So. 3d at 1167. As a result, the Lee County DHR placed the child in the custody of relative foster parents who were willing to adopt the child, and it ultimately sought to terminate the parental rights of the mother. 335 So. 3d at 1168. The evidence indicated that the mother

claimed to have maintained sobriety for approximately two years and had complied with some reunification services offered by the Lee County DHR. 335 So. 3d at 1170. The relative foster parents testified that if the mother's parental rights were not terminated, they would still "be willing to exercise custody of the child." 335 So. 3d at 1172. The juvenile court in that case entered a judgment terminating the mother's parental rights, and the mother appealed. 335 So. 3d at 1165.

On appeal, the mother argued that maintaining the child in the foster parents' custody was a viable alternative to the termination of her parental rights, and this court agreed, holding that the evidence did 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[ed] a basis for rejecting continued placement with the relative foster parents." 335 So. 3d at 1172. This court explained that the evidence "support[ed] a conclusion that continued placement with the relative foster parents would serve the child's best interest while also maintaining the mother's relationship with the child." 335 So. 3d at 1172.

The facts in this case are similar to those in P.M. Like the mother in P.M., the mother in this case also had substance-abuse issues relating

to alcohol. At the January 10, 2022, hearing, the mother testified that she had been sober for over eight months, which is the longest period she has remained sober in recovery.² In P.M., the mother "admitted that the child was bonded to the relative foster parents" and that "removing the child from [the relative foster parents'] care was not in the child's best interest." 335 So. 3d at 1172. The child in this case has a close relationship with the aunt and the uncle, and the mother has also testified that she does not want to remove the child from the aunt and the uncle's custody but wants to maintain her own relationship with the child. The relative foster parents in P.M. "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." 335 So. 3d at 1172. The uncle in this case has testified that, if the mother remains sober, he would be willing to continue maintaining custody of the child and allowing the mother to visit the child, even if her parental rights were terminated. In P.M., the mother had regularly visited with her child. 335 So. 3d at 1169, 1171. As in P.M., the mother in this case stated that she sees the child

²The mother in P.M. had remained sober for over two years as of the date of the trial. 335 So. 3d at 1170.

often, but the mother explained that she talks to the child on the phone more often than she sees him. The mother testified, that although the child is not a "big-phone talker," she speaks to the child "maybe every other day." Thus, as in P.M., the evidence supports the conclusion that allowing the mother to maintain a relationship with the child would promote the child's best interests.

"The right to maintain family integrity is a fundamental right protected by the due process requirements of the Constitution." Bowman v. State Dep't of Hum. Res., 534 So. 2d 304, 305 (Ala. Civ. App. 1988). "Natural parents have a prima facie right to the care and custody of their children, M.C. v. L.B., 607 So. 2d 1267 (Ala.Civ.App.1992), and it is presumed that parental custody will be in the best interests of the children." T.H. v. State Dep't of Hum. Res., 740 So. 2d 1089, 1090 (Ala. Civ. App. 1998). We acknowledge that, generally, maintaining the status quo by leaving a child in the custody of others is not a viable alternative to the termination of a parent's parental rights. S.P. v. Madison Cnty. Dep't of Hum. Res., 315 So. 3d at 1131; Ex parte T.V., 971 So. 2d 1, 10 (Ala. 2007). However, leaving the child in the care of relatives or relative foster parents can be a viable alternative to terminating parental rights.

See P.M., supra. We hold that here, as in P.M., a viable alternative to termination is to keep the child in the aunt and the uncle's custody while maintaining the mother's parental rights.

The juvenile court's determination that no viable alternative to the termination of the mother's parental rights existed is not supported by clear and convincing evidence. Accordingly, we reverse the judgment of the juvenile court terminating the mother's parental rights and remand the cause for entry of a judgment consistent with this opinion.

REVERSED AND REMANDED.

Hanson and Fridy, JJ., concur.

Moore and Edwards, JJ., concur in the result, without opinions.