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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2022-2023

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2210418, 2210419, and 2210420

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W.H.

v.

Madison County Department of Human Resources

Appeals from Madison Juvenile Court  
(JU-18-985.03, JU-18-986.03, and JU-19-800.02)

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2210421 and 2210422

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T.H.

v.

Madison County Department of Human Resources

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**Appeals from Madison Juvenile Court  
(JU-18-985.03 and JU-18-986.03)**

FRIDY, Judge.

In these consolidated appeals, W.H. ("the mother") appeals from judgments of the Madison Juvenile Court ("the juvenile court") terminating her parental rights to three of her five children, namely L.W.H. ("the second-born child"), who was born in March 2014; J.M.H. ("the third-born child"), who was born in March 2018; and J.N.H. ("the fourth-born child"), who was born in June 2019. In addition, T.H. ("the grandmother"), the children's maternal grandmother, attempts to challenge the juvenile court's judgments terminating the mother's parental rights to the second-born child and the third-born child. For the reasons discussed herein, we dismiss the grandmother's appeals and affirm the juvenile court's judgments.

Procedural History

In March 2021, the Madison County Department of Human Resources ("DHR") filed petitions seeking the termination of the mother's parental rights to the second-born child, the third-born child, and the fourth-born child. After the mother gave birth to J.L.H. ("the fifth-born child") in July 2021, DHR filed a petition seeking the termination of the

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mother's parental rights to the fifth-born child.<sup>1</sup> The juvenile court made the grandmother, who had previously had legal custody of the second-born child and the third-born child, a party to the actions pertaining to those two children.

The juvenile court consolidated all four actions for trial and held a bench trial on December 3, 2021, and January 18, 2022. On January 21, 2022, the juvenile court entered judgments terminating the mother's parental rights to the second-born child, the third-born child, the fourth-born child, and the fifth-born child. The mother timely filed a notice of appeal from the judgments terminating her parental rights to the second-born child, the third-born child, and the fourth-born child, and the grandmother timely filed a notice of appeal from the judgments terminating the mother's parental rights to the second-born child and the third-born child.<sup>2</sup> We consolidated the five appeals.

### Facts

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<sup>1</sup>The mother testified that her first-born child, J.B.H., is in the custody of his biological father in Tennessee. None of these appeals pertain to J.B.H.

<sup>2</sup>None of the parties filed a notice of appeal in the action pertaining to the fifth-born child.

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When the juvenile court tried these actions, the mother was twenty-seven years old and had five children. The record does not contain any indication that the mother has ever been married. Moreover, the record does not indicate that any of the children involved in these appeals have a legal father, although DHR did confirm through DNA testing that G.B. is the biological father of the fourth-born child and the fifth-born child.

The record indicates that DHR first became involved with the mother's children in 2018, before the two youngest children had been born. The record does not indicate what prompted DHR's involvement in 2018, but it does indicate that DHR's first involvement with the mother's children resulted in DHR's commencing dependency actions regarding the mother's three oldest children and that the juvenile court entered judgments vesting the grandmother and J.W.H. ("the grandfather"), the children's maternal grandfather, with temporary legal custody of those children in September 2018.

Lisa Sutter, a DHR caseworker, testified that DHR had become involved with another one of the mother's children in June 2019 when DHR received a report that the fourth-born child had been born with amphetamines in her system. When the hospital discharged the fourth-

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born child following her birth, the grandmother took that child into her home. Sutter testified that DHR could not locate the mother and that the mother did not appear at the first individualized-service-plan ("ISP") meeting regarding the fourth-born child, which was held on August 16, 2019. At that meeting, DHR asked the grandmother to continue taking care of the fourth-born child. DHR subsequently commenced a dependency action in the juvenile court regarding the fourth-born child.

Sutter testified that DHR then began performing a home study regarding the grandmother and the grandfather, who was then living with the grandmother. As part of that home study, DHR requested that the grandfather and the grandmother undergo drug tests. The grandmother's drug-test result was negative, but the grandfather's drug-test result was positive for methamphetamine, amphetamines, cocaine, and a cannabinoid. After receiving the grandfather's positive drug-test result in March 2020, DHR asked the grandfather to move out of the grandmother's house, and he did so. DHR also asked the grandfather to undergo a substance-abuse assessment and to participate in color-code drug testing; however, he did not comply with those requests at that time. DHR asked the grandmother to divorce the grandfather.

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After the grandfather moved out of the grandmother's house, the grandmother asked C.B., a friend of hers, to move into her house to help her care for the children. Sutter testified that DHR continued with a home study regarding the grandmother only. Sutter testified that, during its investigation for the home study, DHR learned that C.B. had been arrested for possession of methamphetamine in March 2020. Consequently, DHR asked C.B. to move out of the grandmother's house, and she did so.

Sutter testified that, in May 2020, the grandmother had a seizure and, as a result, could no longer drive. Sutter said that the grandmother was depending on the grandfather to drive her but that he had not complied with DHR's requests that he undergo a substance-abuse assessment and color-code drug testing. The grandmother also developed skin cancer. Sutter testified that, because of the grandmother's health problems and her lack of assistance with caring for the children, DHR removed the fourth-born child from the grandmother's care in July 2020 and placed that child in foster care. In August 2020, the juvenile court vested DHR with temporary custody of the fourth-born child. After removing the fourth-born child from the grandmother's home, DHR

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discovered that that child had not received all her necessary inoculations, so DHR arranged for her to receive those inoculations.

When DHR removed the fourth-born child from the grandmother's care, it also removed two other children from her care. Those two children, M.G.H. and B.H., are the children of A.H., one of the mother's two sisters. The grandmother had been caring for M.G.H. and B.H., although she did not have legal custody of them. Sutter testified that M.G.H. was three years old when DHR removed her from the grandmother's care. Sutter further testified that, when DHR removed M.G.H., it discovered that her front teeth had been rotting while she was in the grandmother's care. Sutter said that DHR arranged for M.G.H. to receive dental care and that the rotting teeth required the removal of the damaged portions of those teeth and the installation of five crowns. That dental work cost \$2,542.

Sutter testified that the mother appeared at an ISP meeting on May 12, 2020, and that, at that meeting, DHR asked the mother to undergo a mental-health assessment, to comply with any recommendations made in that assessment, to undergo a substance-abuse assessment, to comply with any recommendations made in that assessment, to participate in

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color-code drug testing, and to complete a course of parenting classes. Sutter said that the mother did not comply with any of those requests.

In October 2020, DHR received a report that the grandfather had sexually abused a cousin of the mother's children while the grandmother was caring for them. DHR removed the second-born child and the third-born child from the grandmother's home and placed them in foster care. The juvenile court transferred legal custody of the second-born child and the third-born child from the grandmother and the grandfather to DHR. Ultimately, DHR determined that the allegation of sexual abuse against the grandfather was unfounded. When DHR removed the second-born child from the grandmother's custody, however, it discovered that that child was suffering from post-traumatic stress disorder ("PTSD"), migraine headaches, and a sensory processing disorder and that he had not received any medical treatment for those problems. DHR also discovered that the second-born child needed three crowns and fillings for three cavities. DHR arranged for the second-born child to receive the appropriate treatment for his medical and dental problems.

Sutter testified that DHR held another ISP meeting on November 6, 2020, and that, at that meeting, DHR asked the grandmother to



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undergo a psychological evaluation and to provide proof that she had divorced the grandfather. At a December 31, 2020, ISP meeting, DHR again asked the grandmother to undergo a psychological evaluation and to provide proof that she had divorced the grandfather. The grandmother completed the psychological evaluation in January 2021 but did not provide proof that she had divorced the grandfather until February 2021. DHR asked the grandmother to undergo counseling and to comply with color-code drug testing, and she did so.

Sutter testified that, during the investigation for the home study regarding the grandmother, DHR discovered that C.S., who is one of the grandmother's daughters; A.S., who is C.S.'s husband; and C.S. and A.S.'s two children had begun living with the grandmother. DHR's investigation of C.S. revealed that, in 2019, she had been convicted in Tennessee on charges of aggravated assault and reckless endangerment with a deadly weapon. DHR's investigation also revealed that A.S. had been charged with issuing worthless checks in September 2008, November 2012, January 2020, and February 2020. In addition, DHR's investigation revealed that A.S. had been charged with probation violations on four different occasions.

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DHR's investigation also revealed that the grandmother had convictions for issuing worthless checks in March 1998, July 1998, January 2007, and July 2010. In addition, DHR's investigation revealed that the Marshall County Department of Human Resources ("the Marshall County DHR") had investigated a report in September 1994 that the grandmother's then three-year-old child C.H. (now C.S.) had been found unattended in the street while dirty and carrying a dirty bottle. The Marshall County DHR telephoned the grandmother, and the grandmother said that she would come to the Marshall County DHR's office with her children and meet with the caseworker, but she never did. The caseworker tried unsuccessfully to telephone the grandfather, but he never returned the caseworker's call. The Marshall County DHR made an administrative finding of "indicated" against both the grandmother and the grandfather for neglect.

In addition, DHR's investigation revealed that DHR had received several reports since 2003 regarding the grandmother's family but had not been able to determine whether the reports were accurate because of a lack of cooperation from the grandmother, the grandfather, or third parties.

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In June 2021, DHR's home-study unit issued a home study denying the grandmother's home as a placement for the mother's children based on the grandmother's failure to attend to the medical and dental needs of the grandchildren in her care, DHR's perception that the grandmother lacked protective capacity, and the criminal records of not only the grandmother but also C.S. and A.S., who each lived with her. Sutter testified that DHR contacted G.B., the biological father of the fourth-born child and the fifth-born child, and several of his relatives to see if they would serve as relative resources, but, she said, none of them were willing to serve in that capacity.

Sutter testified that, eventually, the grandfather underwent a substance-abuse assessment and submitted diluted urine samples at two color-code drug tests. Thereafter, he stopped appearing for color-code drug tests.

The juvenile court relieved DHR of the obligation to make reasonable efforts to rehabilitate the mother and the grandfather in November 2020; however, when the mother subsequently sent Sutter an email asking to see her children, Sutter told the mother that, if she would go to Aletheia House to get a substance-abuse assessment to demonstrate

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that she was trying to rehabilitate herself, DHR would try to get the juvenile court to vacate its order relieving DHR of the obligation to make reasonable efforts to rehabilitate her. Sutter testified that she had given the mother the telephone number for Aletheia House in four separate emails but that, when she later checked with the employees of Aletheia House, she learned that the mother had never undergone the substance-abuse assessment.

Lydia Bowman, a DHR investigator, testified that, in July 2021, DHR received a report that the mother had given birth to the fifth-born child and that the mother had tested positive for amphetamines. Bowman said that she went to the hospital and learned that the fifth-born child was in the hospital's neonatal-intensive-care unit. Bowman further testified that the tests on the fifth-born child's meconium indicated the presence of amphetamines, cocaine, methadone, opioids, benzodiazepine, phencyclidine (colloquially referred to as "angel dust"), propoxyphene, and marijuana. Bowman testified that, because of those test results, DHR made an administrative finding that the mother was "indicated" for physical abuse of the fifth-born child.

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Sutter testified that DHR held an ISP meeting regarding the fifth-born child on July 21, 2021. Sutter said that she again asked the mother to undergo a substance-abuse assessment and to participate in color-code drug testing. In addition, Sutter offered the mother visitation. Sutter testified that the mother came to two visits to see the fourth-born child and two visits to see the fifth-born child but otherwise did not comply with any of the services DHR had offered.

The mother testified that she was incarcerated in the Madison County Jail when these actions were tried, that she had been incarcerated there since October 2021, and that she would be incarcerated there for another four months after the trial.

The mother said that she had dropped out of school after the ninth grade but that she had worked on obtaining a GED. She testified that she had been addicted to drugs since she was twenty-one years old and that her drug of choice is methamphetamine. She said that she had last used methamphetamine a few weeks before she was incarcerated in October 2021. She admitted that her inability to get drugs in jail was the only reason that she had not used drugs since she had been in jail.

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The mother testified that, when she was growing up, she had seen the grandmother and the grandfather engage in physical altercations. She also said that DHR had been involved with her family when she was growing up. She declined to answer whether she had ever seen the grandfather use illicit drugs.

The mother testified that, when she dropped out of school, she was living with a man. She said she got pregnant, that, when the DNA test indicated that that man was not the father of the child, her relationship with that man ended, and that she moved back to her parents' house. The mother insisted that, despite being incarcerated, she could care for her children. She testified that, if she could not have custody of her children, she wanted the grandmother to have custody; however, she testified that she did not know whether placing her children with the grandmother would be the best solution for them.

The grandmother testified that she had lived at her present address since 2017. She testified that her daughter, C.S.; A.S., C.S.'s husband; and their two children live with her. According to the grandmother, they do not pay her rent, but they provide their own groceries and other living expenses. She said that her residence has five bedrooms, two bathrooms,

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a kitchen, and a den. She said that she has room for three of her grandchildren, although some of them would have to share a room.

She testified that she is employed at a restaurant where she works at least forty hours per week and earns \$13 per hour. She said that she could afford to financially support the mother's children if the juvenile court placed them with her.

The grandmother testified that, after DHR had removed the mother's children from her care, she attended ISP meetings regarding those children. DHR asked her to divorce the grandfather to whom she had been married for almost thirty years, and she did so. The grandmother said that divorcing the grandfather had "been a blessing," that she had wanted to divorce him, and that she did not divorce him solely because DHR had asked her to. She said that, when their children were young, the grandfather had physically abused her, although, she said, he stopped when their children grew up. She testified that she does not have regular contact with the grandfather anymore, although, she said, he did replace the porch of her house approximately eight months before the trial. She said that her old porch was rotten and that a contractor was going to charge her \$3,500 to replace it. The grandfather

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offered his labor free of charge, she said, and she accepted his offer and paid for the materials. Because the mother's children were not at her house when the grandfather did the work, she said, she did not think that it would do any harm to let the grandfather do the work. She testified that the grandfather lives approximately two miles from her house and that she does not have regular telephone contact with him. She testified that he somehow got access to her social-media account, but, she said, she blocked him after she discovered that he had gained access.

The grandmother testified that she had been convicted on a misdemeanor charge of writing bad checks approximately three or four years before the trial. She said that her daughters had written the checks without her knowledge but that she had accepted the blame for it. She said that she had pleaded guilty and had paid restitution for the bad checks. She was placed on probation but did not receive a jail sentence. She said that she has successfully completed her probation period.

The grandmother admitted that the mother's children had had some dental issues while they were in her care. She testified that she had taken the mother's children to a dentist and that they had had some cavities filled while they were in her care. She testified that, more



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recently, she had taken the children to a dentist, but the dentist's office postponed the appointment because, employees of the dentist's office informed the grandmother, there was a problem with the children's Medicaid coverage. She testified that she had taken the mother's children to a pediatrician and that all of them were current on their inoculations except the fourth-born child, who had been placed in her care shortly before the COVID-19 pandemic began.

The grandmother testified that DHR had asked her to undergo a psychological evaluation and that she had done so. The evaluation recommended that she receive counseling. DHR arranged for a counselor to counsel her. The grandmother testified that, because of the COVID-19 pandemic, her counselor had conducted the counseling sessions with her by telephone. The grandmother said that she had faithfully spoken with the counselor once a week. She testified that she had visited the mother's children for two hours every week except one week when she was in the hospital and another week when she was ill. She testified that she has a strong bond with the mother's children.

The grandmother testified that, in 2019, she was diagnosed with a melanoma, but a surgeon removed it, and she has not required any other

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treatment. In approximately 2019, she experienced a seizure but has received treatment for it and had not had another seizure in two years.

The grandmother testified that, in 1992, one of her daughters wandered off while the grandfather was watching her and the Marshall County DHR had investigated. She did not know that the Marshall County DHR had made an administrative finding that she and the grandfather had neglected that child. In 2003, she said, DHR investigated altercations that had occurred between the grandfather and one of their children. She testified that, when she had observed an altercation, she got between them and made the grandfather leave. She married the grandfather in 1990 and was separated from him from 1998 until 2014. In 2014, they resumed living together. The grandmother testified that she could take care of all the mother's children.

#### Standard of Review

Appellate courts must apply a presumption of correctness in favor of the juvenile court's findings of fact based on ore tenus evidence presented in a termination-of-parental-rights action and 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

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

When acting on a nonparent's petition to terminate a parent's parental rights, a juvenile court must determine that the petitioner has satisfied a two-pronged test before terminating those rights. See Ex parte J.R., 896 So. 2d 416, 423 (Ala. 2004). First, the juvenile court must determine that clear and convincing evidence indicates that the child is dependent. Id. Second, the juvenile court must determine that clear and

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convincing evidence indicates that there is no viable alternative to termination of parental rights. Id. The dependency prong of the test requires the petitioner to prove by clear and convincing evidence that grounds for termination exist. See J.S. v. Etowah Cnty. Dep't of Hum. Res., 72 So. 3d 1212, 1219 (Ala. Civ. App. 2011).

On appeal, the mother first argues that clear and convincing evidence did not establish that there were grounds for terminating her parental rights. Section 12-15-319(a), Ala. Code 1975, provides that grounds for terminating parental rights exist if clear and convincing evidence proves that the parents "are unable or unwilling to discharge their responsibilities to and for the child, or that the conduct or condition of the parents renders them unable to properly care for the child and that the conduct or condition is unlikely to change in the foreseeable future." To determine whether such grounds exist, § 12-15-319(a) instructs a juvenile court to consider several factors. The pertinent factors in these appeals are whether the mother engaged in the excessive use of controlled substances of such a duration or nature as to render her unable to care for the needs of her children (see § 12-15-319(a)(2)), whether reasonable efforts by DHR to rehabilitate the mother failed (see § 12-15-

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319(a)(7)) and whether the mother had demonstrated a lack of effort to adjust her circumstances to meet the needs of her children (see § 12-15-319(a)(12)).

The mother admitted that she has been addicted to controlled substances since she was twenty-one years old and that her drug of choice is methamphetamine, a particularly pernicious substance. The undisputed evidence indicated that the mother had neither submitted to the substance-abuse assessment nor participated in the color-code drug testing that DHR offered her to help her overcome her drug addiction. Moreover, except for a handful of visits with her children, she did not participate in any of the other services DHR offered her, such as the mental-health assessment and the parenting classes. We conclude that the juvenile court had before it evidence from which it reasonably could have been clearly convinced that the mother's use of controlled substances was of such a duration and nature as to render her unable to care for the needs of her children, that DHR had made reasonable efforts to rehabilitate her, that those efforts had failed, and that the mother had made virtually no effort to change her circumstances to meet the needs of her children. Therefore, we conclude that the juvenile court had before

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it evidence from which it reasonably could have been clearly convinced that there were grounds for terminating the mother's parental rights.

The mother next argues that the juvenile court erred in terminating her parental rights because, she says, placing the children with the grandmother constituted a viable option to terminating her parental rights. We disagree. The undisputed evidence indicated that the second-born child suffered from PTSD, a sensory processing disorder, and migraine headaches while he was in the care of the grandmother and that she did not seek treatment for those problems. Moreover, the undisputed evidence indicates that, while the second-born child was in her care, he developed dental problems that required three crowns and the filling of three cavities. Although the grandmother testified that she had taken the children to the dentist but could not get timely treatment for their dental problems because of a problem with the children's Medicaid coverage, 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), could have disbelieved that testimony. In addition, the undisputed evidence indicated that the front teeth of W.G.H., a cousin of the mother's children, began rotting while she was in the care of the grandmother and that the

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grandmother did not seek treatment for W.G.H.'s dental problems. Again, although the grandmother testified that she had tried to obtain dental care for the children in her care but had not been able to because of a problem with their Medicaid coverage, the juvenile court could have disbelieved that testimony. Accordingly, we conclude that, based on the evidence indicating that the grandmother had neglected the medical and dental problems of the second-born child and W.G.H. while they were in her care, the juvenile court reasonably could have been clearly convinced that placing the mother's children with the grandmother was not a viable option. Accordingly, we cannot reverse the juvenile court's judgments based on the mother's viable-alternative argument.

The grandmother argues that the juvenile court erred in terminating the mother's parental rights because, she says, the evidence indicated that placing the children with her was a viable alternative to terminating the mother's parental rights and because, she says, the evidence did not indicate that DHR had made reasonable efforts to reunify the family. Well-settled caselaw holds that the grandmother does not have standing to challenge the juvenile court's judgments terminating the mother's parental rights. See, e.g., B.H. v. Marion Cnty.

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Dep't of Hum. Res., 998 So. 2d 475, 477 (Ala. Civ. App. 2008). As this court stated in B.H.:

"The [grandmother] lacks standing to appeal from the termination judgment[s] because th[ose] judgment[s] did not result in an injury in fact to any of the [grandmother's] legally protected rights. Only the mother's rights were impacted by the termination judgment[s], and only she could make the arguments asserted by the [grandmother] regarding the termination judgment[s] -- i.e., whether the appropriate quantum of evidence established the child[ren's] dependency and whether the juvenile court erred by determining that there existed no viable alternatives to the termination of the mother's parental rights."

Id. Therefore, for the reasons discussed, we dismiss the grandmother's appeals and affirm the juvenile court's judgments.

2210418 -- AFFIRMED.

2210419 -- AFFIRMED.

2210420 -- AFFIRMED.

2210421 -- APPEAL DISMISSED.

2210422 -- APPEAL DISMISSED.

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