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ALABAMA COURT OF CIVIL APPEALS
SPECIAL TERM, 2022

2210403, 2210404, 2210405, 2210406, and 2210407

Ex parte D.M., A.M., and B.C.

PETITIONS FOR WRIT OF MANDAMUS

(In re: F.L.C.

v.

B.C.)

(Jefferson Juvenile Court, JU-18-1934.02, JU-18-1934.03, JU-18-1934.04, JU-18-1934.05, and JU-18-1934.06)

2210403, 2210404, 2210405, 2210406, 2210407, 2210424, 2210425, and 2210426

2210424, 2210425, and 2210426

D.M., A.M., and B.C.

v.

**F.L.C. and the Jefferson County Department
of Human Resources**

**Appeals from Jefferson Juvenile Court
(JU-18-1934.02, JU-18-1934.03, and JU-18-1934.04)**

EDWARDS, Judge.

In 2019, the Jefferson Juvenile Court ("the juvenile court") entered a judgment ("the 2019 dependency and custody judgment") finding C.C. ("the child"), the child of F.L.C. ("the mother"), to be dependent, awarding custody of the child to B.C. ("the legal custodian"), and awarding specific visitation to the mother. In March 2020, the mother filed a pro se complaint, seeking to modify custody and alleging that the legal custodian had placed the child in the physical custody of other persons -- namely, D.M. and A.M. -- and had failed to permit the mother to exercise the visitation awarded to her in the 2019 dependency and custody

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judgment; that action was assigned case number JU-18-1934.02 ("the custody-modification action"). The mother later filed in the custody-modification action a pro se motion seeking to hold the legal custodian in contempt. In March 2021, the juvenile-court referee entered an order in the custody-modification action denying the mother's request for a modification of custody and setting a hearing on the mother's contempt claim; the referee's order was subsequently ratified by the juvenile-court judge. Because it did not resolve all the pending claims, the March 2021 order was not a final judgment. See A.C. v. C.C., 34 So. 3d 1281, 1287 (Ala. Civ. App. 2009) (explaining that "[t]he pendency of an unadjudicated contempt motion ... renders a judgment nonfinal"). The March 2021 order in the custody-modification action provided that the mother's visitation would proceed as specified under the 2019 dependency and custody judgment, that the mother's visitation would not be supervised by D.M. or A.M., and that the mother would be notified of, and permitted to attend, the child's medical appointments.

In April 2021, the mother filed a second pro se complaint, seeking to modify visitation and custody; that action was assigned case number

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JU-18-1934.03 ("the visitation-modification action"). The mother secured counsel and later amended the complaint in the visitation-modification action to more clearly state the basis for her complaint. In August 2021, the mother filed a "Verified Petition for Rule Nisi," which was assigned case number JU-18-1934.04 ("the contempt action"), in which she sought to have the legal custodian held in contempt for failing to permit the mother to exercise visitation as provided in the 2019 dependency and custody judgment and the March 2021 order entered in the custody-modification action. In October 2021, the juvenile court set the mother's three actions for a consolidated trial to be held on January 4, 2022.

In November 2021, D.M. and A.M. moved to intervene in the custody-modification action, the visitation-modification action, and the contempt action. Also in November 2021, D.M., A.M., and the legal custodian filed in the juvenile court what they designated as a "Joint Petition for Modification of Custody," in which they averred that the child had been living with D.M. and A.M. for nearly three years with the express permission of the legal custodian and that the child was dependent "as to the natural parents"; that action was assigned case

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number JU-18-1934.05 ("the dependency action"). In December 2021, D.M., A.M., and the legal custodian filed a "Joint Petition for the Termination of Parental Rights," which was assigned case number JU-18-1934.06 ("the termination-of-parental-rights action").¹

The juvenile court set the motions to intervene for a hearing on January 4, 2022, the same date on which it had set the trial in the custody-modification action, the visitation-modification action, and the contempt action. After hearing arguments on the motions to intervene on January 4, 2022, the juvenile court orally denied those motions; the juvenile court entered a written order denying the motions to intervene in each action on January 7, 2022. In that same order, the juvenile court set the completion of the trial for February 4, 2022, and ordered that the mother's weekly visitation with the child be supervised through the CPC Family Reunification Program.

¹We do not have the clerk's record in either the dependency action or the termination-of-parental-rights action, but the complaints in each action are appended to the petitions for the writ of mandamus.

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On January 19, 2022, the mother filed in the visitation-modification action and the contempt action a "motion to show cause."² In that motion, she alleged that the legal custodian had not complied with the visitation provisions of the 2019 dependency and custody judgment, the March 2021 order in the custody-modification action, or the January 7, 2022, order. The legal custodian responded to the mother's motion to show cause, and the juvenile court set the motion for a hearing to be held on February 4, 2022, the same date on which the trial on the custody-modification action, the visitation-modification action, and the contempt action was scheduled to be completed.

Subsequently, on January 31, 2022, the legal custodian and D.M. and A.M. filed in the custody-modification action, the visitation-modification action, the contempt action, the dependency action, and the termination-of-parental-rights action a "Verified Motion for a

²The motion to show cause also bears the case number for the custody-modification action in its caption, but the motion does not appear in the record of the custody-modification action, and the case-action-summary sheet for the custody-modification action does not contain an entry indicating that the motion was filed in that particular action.

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Restraining Order." In that motion, they alleged that the child had exhibited behaviors indicating that she had been exposed to "verbal, physical, and sexual abuse" during extended holiday visitations with the mother. The juvenile court set the motion for a restraining order for a hearing to be held on February 4, 2022.

After the conclusion of the trial, the juvenile court rendered and entered, on February 7, 2022, a single order in the custody-modification action, the visitation-modification action, and the contempt action. That order granted, "in part," the mother's request that custody be modified based on a material change in circumstances; declared the child dependent because she lacked a legal custodian willing and able to provide for her care; specifically withheld disposition of the custody of the child; made the Jefferson County Department of Human Resources ("DHR") a party to the custody-modification action, the visitation-modification action, and the contempt action; placed the child in the custody of DHR, pending further hearing; ordered DHR and the child's guardian ad litem to investigate potential placements for the child and to provide a report at a March 7, 2022, hearing set specifically for that

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purpose; held the mother's visitation-modification action "in abeyance"; awarded the mother weekly supervised visitation through the CPC Family Reunification Program; and denied the mother's claims in the contempt action. On February 8, 2022, D.M., A.M., and the legal custodian filed motions in all five actions involving the parties, requesting that the juvenile court reconsider its February 7, 2022, order. Those motions contained arguments relating to the admission or exclusion of evidence at the trial, the apparent denial of a motion to try the termination-of-parental-rights action first, the failure to hear the motion for a restraining order, the denial of the motions to intervene, and the sufficiency of the evidence supporting the juvenile court's order modifying custody of the child. The juvenile court set the motions for a hearing, and, after the conclusion of that hearing, the juvenile court, in an order entered in the custody-modification action, the visitation-modification action, and the contempt action on February 18, 2022, granted that motion, in part, by striking certain testimony; however, the juvenile court denied all other requested relief.

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On February 18, 2022, D.M., A.M., and the legal custodian filed in this court petitions for the writ of mandamus regarding each of the five actions involving the parties; those petitions were assigned case numbers 2210403, 2210404, 2210405, 2210406, and 2210407, respectively. On February 23, 2022, D.M., A.M., and the legal custodian filed joint notices of appeal in only the custody-modification action, the visitation-modification action, and the contempt action; those appeals were assigned numbers 2210424, 2210425, and 2210426, respectively. At the request of D.M., A.M., and the legal custodian, we consolidated the mandamus petitions and the appeals.

The mother has filed a motion to dismiss all three appeals and a motion to dismiss the petitions for the writ of mandamus in case numbers 2210406 and 2210407, which relate to the dependency action and the termination-of-parental-rights action. In support of her motion to dismiss the petitions in case numbers 2210406 and 2210407, the mother has provided this court with an order entered by the juvenile court dismissing, on motion of D.M., A.M., and the legal custodian, the dependency action and the termination-of-parental-rights action. We

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agree with the mother that the dismissal of those actions in the juvenile court renders the mandamus petitions filed in this court with regard to those actions moot.

""The general rule is, if[,] pending an appeal, an event occurs which renders it impossible for the appellate court to grant any relief, the appeal may be dismissed. ... The condition may ... arise from the act of the court a quo, that is to say, from some order or judgment in the case pending the appeal, which is made by the court, which renders the determination of the questions presented by the appeal unnecessary.""

Ex parte Novartis Pharms. Corp., 991 So. 2d 1263, 1271 (Ala. 2008) (quoting Siegelman v. Alabama Ass'n of Sch. Bds., 819 So. 2d 568, 575 (Ala. 2001), quoting in turn Caldwell v. Loveless, 17 Ala. App. 381, 382, 85 So. 307, 307-08 (1920)). The dismissal of the dependency action and the termination-of-parental-rights action renders our consideration of the mandamus petitions relating to those actions unnecessary. Accordingly, the petitions in case numbers 2210406 and 2210407 are dismissed as moot.

The mother also contends that the appeals, insofar as they are being brought by D.M. and A.M., are due to be dismissed because, she

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says, D.M. and A.M. are not parties to the custody-modification action, the visitation-modification action, or the contempt action. We agree. See B.V. v. Macon Cnty. Dep't of Hum. Res., 14 So. 3d 171, 175 (Ala. Civ. App. 2009) (explaining that foster parents who were not permitted to intervene in a juvenile-court action "lack[ed] standing to appeal from [the] judgment" and that, "[a]s a result, the notice of appeal filed by [the foster parents] failed to invoke the appellate jurisdiction of this court," requiring dismissal of the appeal). Therefore, insofar as appeal numbers 2210424, 2210425, and 2210426 are brought by D.M. and A.M., those appeals are dismissed.

We also conclude that appeal numbers 2210424, 2210425, and 2210426 suffer from additional jurisdictional defects. The February 7, 2022, order of the juvenile court clearly withholds a decision regarding the disposition of the custody of the child in favor of the taking of additional evidence on that issue. The award of custody to DHR is therefore a pendente lite award, and the order is not a final judgment. See T.C. v. Mac.M., 96 So. 3d 115 (Ala. Civ. App. 2011), aff'd, 96 So. 3d 123 (Ala. 2012). Thus, the February 7, 2022, order will not support an

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appeal from the custody-modification action, and, therefore, appeal number 2210424 is dismissed. See T.H. v. Jefferson Cnty. Dep't of Hum. Res., 100 So. 3d 583, 585 (Ala. Civ. App. 2012) (quoting Stone v. Haley, 812 So. 2d 1245, 1246 (Ala. Civ. App. 2001)) (explaining that, "[g]enerally, 'only a final judgment will support an appeal,'" § 12-22-2, Ala. Code 1975, and that "'[a]n order that does not dispose of all claims or determine the rights and liabilities of all the parties to an action is generally not final'"). Similarly, because the February 7, 2022, order does not resolve the mother's visitation-modification action in any respect, as it expressly holds that action "in abeyance," the issues raised in that action also have not been resolved and, thus, appeal number 2210425 has been taken from a nonfinal judgment and is, therefore, dismissed. See T.H., 100 So. 3d at 585. Regarding appeal number 2210426, we conclude that the resolution of the contempt action in the legal custodian's favor prevents her from appealing the February 7, 2022, judgment entered in the contempt

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action.³ See Ramer v. Ramer, 289 So. 3d 819, 823 (Ala. Civ. App. 2019) (quoting Lewis v. Providence Hosp., 483 So. 2d 398, 398 (Ala. 1986)) ("Only adverse rulings by the trial court are reviewable on appeal."). Accordingly, the appeal number 2210426 is also dismissed.

Furthermore, insofar as the petitions for the writ of mandamus challenge the denial of the motions to intervene filed by D.M. and A.M. in the custody-modification action, the visitation-modification action, and the contempt action, those petitions are not the proper vehicle for seeking relief from such an order. See Jones v. Joines, 142 So. 3d 584, 587 (Ala. Civ. App. 2012) ("An order denying a motion to intervene is a final, appealable judgment."). Moreover, even were we to consider treating the mandamus petitions in case numbers 2210403, 2210404, and 2210405 as

³The fact that the custody-modification action, the visitation-modification action, and the contempt action were consolidated for trial does not prevent the February 7, 2022, order from being a final judgment in the contempt action, because the issues in that action were fully addressed by the juvenile court's decision to deny the mother's requests to hold the legal custodian in contempt. See Nettles v. Rumberger, Kirk & Caldwell, P.C., 276 So. 3d 663, 669 (Ala. 2018) (explaining that "[o]nce a final judgment has been entered in a case, it is immediately appealable, regardless of whether it is consolidated with another still pending case").

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appeals to reach the issue of intervention, see GEICO Ins. Co. v. Lyons, 658 So. 2d 445, 446 (Ala.1995) (indicating that our supreme court treated a petition for the writ of mandamus seeking review of the denial of a motion to intervene as an appeal), overruled on other grounds by Ex parte State Farm Fire & Cas. Co., 764 So. 2d 543, 546 (Ala. 2000), D.M. and A.M. did not file the petitions for the writ of mandamus within 14 days of the entry of the January 7, 2022, order denying their motions to intervene. See Ex parte A.J., 256 So. 3d 671, 673-74 (Ala. Civ. App. 2018) (explaining that a petition for the writ of mandamus seeking review of a juvenile-court order must typically be filed within 14 days of the entry of that order); Rule 4(a)(1)(E), Ala. R. App. P. (providing that a notice of appeal from a judgment entered by a juvenile court shall be filed within 14 days of the entry of the judgment); Rule 28(D), Ala. R. Juv. P. (same). We therefore deny the petitions in case numbers 2210403, 2210404, and 2210405 insofar as they challenge the denial of the motions to intervene.

Because D.M. and A.M. are not parties to the custody-modification action, the visitation-modification action, and the contempt action, they cannot seek review of the orders or judgments entered in those actions

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other than the order denying their motions to intervene (which, as we have explained, they improperly sought to have reviewed via petitions for the writ of mandamus that were filed too late to be considered as appeals), and we will not consider the other arguments that they raise in the petitions for the writ of mandamus in case numbers 2210403, 2210404, and 2210405. We will, however, consider those arguments that the legal custodian has advanced against the February 7, 2022, order in case numbers 2210403, 2210404, and 2210405. She contends that the juvenile court erred by failing to hold a hearing on the motion for a restraining order, that the juvenile court lacked jurisdiction to determine sua sponte that the child was dependent, that the juvenile court erred by denying the "postjudgment" motions, and that the juvenile court made errors in the admission and exclusion of evidence during the trial. We find no basis for mandamus relief in those petitions.

""Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court.""

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Ex parte A.M.P., 997 So. 2d 1008, 1014 (Ala. 2008) (quoting Ex parte Perfection Siding, Inc., 882 So. 2d 307, 309-10 (Ala. 2003), quoting in turn Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995)).

Regarding the argument that the juvenile court erred by failing to hold a hearing on the motion for a restraining order filed between the first and second day of the trial, we conclude that the request for relief is moot. See Ex parte Novartis Pharms. Corp., 991 So. 2d at 1271. The motion requested that the mother be restrained from visiting or contacting the child pending an investigation by the local police department into the allegations of possible abuse of the child during supervised holiday visitations. The juvenile court heard evidence relating to the alleged abuse and entered its February 7, 2022, order making DHR a party to the actions, ordering it to investigate all potential placements for the child, and providing that the mother would have weekly supervised visitation at a visitation center. That is, although the February 7, 2022, order did not expressly address the motion for a restraining order, it made provisions for the investigation of the child's various potential placements and restricted the mother's visitation. Any

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further hearing on the issue would likely be duplicative, and the juvenile court's restrictions on the mother's visitation should adequately protect the child. We therefore dismiss the petitions as moot insofar as they seek an order requiring a hearing on the motion for a restraining order.

Insofar as the petitions challenge, in a brief and utterly underdeveloped argument, the juvenile court's jurisdiction over the child and the issue of her dependency, we point out that the juvenile court retained jurisdiction over the child pursuant to the 2019 dependency and custody judgment, see Ala. Code 1975, § 12-15-117(a), and that the mother had properly invoked the juvenile court's jurisdiction when she sought a modification of that judgment. Although the legal custodian argues that the juvenile court could not determine that the child was dependent without a written allegation of dependency in a pleading, she presents no authority for such a proposition. Furthermore, the legal custodian was a complainant in the dependency action, in which she was apparently seeking to relinquish legal custody of the child to D.M. and A.M. based, in part, on the alleged dependency of the child arising, in part, from the conduct of the mother. The legal custodian's testimony at

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the trial indicated that, despite the fact that she had been awarded legal custody of the child in the 2019 dependency and custody judgment, the child had not spent more than five days in her custody, that she had been working with D.M. and A.M. to secure their adoption of the child and had therefore given them permission to rear the child, and that she did not wish to "maintain" custody of the child. Thus, the evidence inescapably supports a conclusion that the legal custodian of the child is unable or unwilling to provide for the child's care, which means that the child is dependent under Ala. Code 1975, § 12-15-102(8)a.2. We cannot agree that the juvenile court could not find the child dependent in such circumstances, even in the absence of a specific dependency allegation in the custody-modification action, the visitation-modification action, or the contempt action. We therefore deny the petitions insofar as they challenge the juvenile court's jurisdiction or ability to determine the dependency of the child.

The remaining arguments relating to the denial of the "postjudgment" motions and the propriety of the juvenile court's evidentiary rulings and handling of the trial are not suited to review via

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petitions for the writ of mandamus because those alleged errors are more properly addressed in an appeal from a final judgment. See Ex parte S & Davis Int'l, Inc., 798 So. 2d 677, 679 (Ala. 2001) (explaining that review of the denial of a postjudgment motion is by way of an appeal); Ex parte Weaver, 781 So. 2d 944, 949 (Ala. 2000) (quoting Echols v. Housing Auth. of Auburn, 377 So. 2d 952, 953 (Ala. 1979)) (explaining that "[m]andamus is an extraordinary legal remedy to be granted only when there is a clear, specific legal right shown for the enforcement of which there is no other adequate remedy" and that an evidentiary ruling may be challenged on an appeal from a final judgment). Accordingly, we deny the petitions insofar as they rest on those arguments.

In conclusion, we dismiss appeal numbers 2210424, 2210425, and 2210426 insofar as they were brought by D.M. and A.M. because, as we have held, D.M. and A.M. are not parties to the custody-modification action, the visitation-modification action, or the contempt action and therefore could not seek review from any judgment entered in those actions. We dismiss appeal numbers 2210424 and 2210425 insofar as they were brought by the legal custodian, because, as we have held, those

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appeals have been taken from the February 7, 2022, order, which is a nonfinal judgment in both the custody-modification action and the visitation-modification action. We dismiss appeal number 2210426 insofar as it was brought by the legal custodian, because, as we have held, the judgment in the contempt action was not adverse to the legal custodian and therefore cannot support her appeal. We dismiss case numbers 2210406 and 2210407 because, as we have held, those petitions for the writ of mandamus were mooted by the voluntary dismissal of the dependency action and the termination-of-parental-rights action. We dismiss case numbers 2210403, 2210404, and 2210405, in part, because, as we have held, those petitions for the writ of mandamus are moot insofar as the legal custodian seeks review of the alleged failure of the juvenile court to hold a hearing on the motion for a restraining order. We deny the petitions for the writ of mandamus in case numbers 2210403, 2210404, and 2210405 as to all other issues.

2210403 -- PETITION DISMISSED AS MOOT IN PART AND DENIED IN PART.

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2210404 -- PETITION DISMISSED AS MOOT IN PART AND DENIED IN PART.

2210405 -- PETITION DISMISSED AS MOOT IN PART AND DENIED IN PART.

2210406 -- PETITION DISMISSED AS MOOT.

2210407 -- PETITION DISMISSED AS MOOT.

2210424 -- APPEAL DISMISSED.

2210425 -- APPEAL DISMISSED.

2210426 -- APPEAL DISMISSED.

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