

Rel: November 10, 2022

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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2022-2023

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2210410

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C.C.

v.

L.B. and S.B.

Appeal from Madison Juvenile Court  
(JU-21-73.02)

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2210423

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E.M.C.

v.

L.B. and S.B.

2210410, 2210423, and 2210435

**Appeal from Madison Juvenile Court  
(JU-21-73.02)**

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**2210435**

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**E.M.C.**

v.

**Madison County Department of Human Resources,  
L.B., and S.B.**

**Appeal from Madison Juvenile Court  
(JU-21-73.01)**

THOMPSON, Presiding Judge.

In January 2021, the Jackson County Department of Human Resources ("the Jackson County DHR") filed in the Jackson Juvenile Court a petition seeking to have M.C. ("the child") declared dependent and seeking an award of custody of the child. In its petition, the Jackson County DHR alleged that the child's mother, E.M.C. ("the mother"), and the child's father, C.C. ("the father"), were abusing illegal substances and that the mother and the father were not able to properly care for the child. The Jackson Juvenile Court conducted a 72-hour shelter-care

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hearing pursuant to § 12-15-308, Ala. Code 1975, and entered an order placing the child in the custody of the Jackson County DHR.

On January 28, 2021, the Jackson Juvenile Court entered an order transferring the dependency action to the Madison Juvenile Court ("the juvenile court") on the basis that the juvenile court was the proper venue. The juvenile-court clerk assigned the dependency action case number JU-21-73.01. It appears that, at approximately the same time the dependency action was transferred to the juvenile court, the Jackson County DHR transferred the case that it had opened pertaining to the child's family to the Madison County Department of Human Resources ("DHR").

On April 1, 2021, the juvenile court entered an order in which it found the child to be dependent and awarded pendente lite custody to DHR. In subsequent review orders, the juvenile court continued to find that the child was dependent, and it ordered that custody of the child remain with DHR. DHR, in turn, placed the child in the physical custody of L.B. and S.B. ("the foster parents").

On October 8, 2021, the foster parents filed a motion to intervene in case number JU-21-73.01. DHR opposed the foster parents' motion to

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intervene, arguing that DHR had obtained a favorable home study that would allow it to place the child in the custody of a relative.

On October 13, 2021, the foster parents initiated a new action, which was assigned case number JU-21-73.02, in which they sought to terminate the parental rights of the mother and of the father. As a part of that action, the foster parents also sought to "modify" the pendente lite orders awarding custody of the child to DHR that had been entered in case number JU-21-73.01 and asked for an award of custody of the child.

The juvenile court conducted a hearing on the motion to intervene pending in case number JU-21-73.01. On October 25, 2021, the juvenile court entered an order in case number JU-21-73.01 in which it granted the foster parents' motion to intervene. Also in that order, the juvenile court ordered that case number JU-21-73.01, i.e., the dependency action, be consolidated with case number JU-21-73.02, i.e., the action seeking to terminate the parents' parental rights.

On January 10, 2022, the child's paternal grandmother, J.B. ("the paternal grandmother"), filed a motion to intervene in the two actions and sought an award of custody of the child. The juvenile court entered an order granting the paternal grandmother's motion to intervene. On

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January 19, 2022, DHR filed a motion seeking permission to remove the child from the foster parents' home and to place the child in the custody of the paternal grandmother.

The juvenile court conducted a hearing on the merits of the parties' claims and received ore tenus evidence. On February 17, 2022, the juvenile court entered an order, in the two actions, terminating the mother's and the father's parental rights, denying the paternal grandmother's claim seeking an award of custody of the child, and denying DHR's motion seeking to place the child in the custody of the paternal grandmother. The juvenile court specified that the part of the foster parents' petition requesting to modify custody would "remain under advisement pending review." In its February 17, 2022, order, the juvenile court did not make an award of permanent custody of the child.

The father filed a timely notice of appeal in case number JU-21-73.02, i.e., the termination action, on February 21, 2022. The mother filed timely notices of appeal in both actions on February 24, 2022.<sup>1</sup> This court

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<sup>1</sup>DHR filed in both actions a purported postjudgment motion on February 28, 2022. See Rule 59, Ala. R. Civ. P. We note, however, that a valid postjudgment motion may be made only in reference to a final judgment. Malone v. Gainey, 726 So. 2d 725, 725 n.1 (Ala. Civ. App. 1999). As is explained in this opinion, we conclude that the juvenile

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assigned appeal number 2210410 to the father's appeal, and it assigned appeal number 2210435 to the mother's appeal from case number JU-21-73.01 and appeal number 2210423 to the mother's appeal from case number JU-21-73.02. This court consolidated all the appeals ex mero motu.

Initially, we note that the mother appealed from both case number JU-21-73.01, the dependency action, and case number JU-21-73.02, the termination action. Although the juvenile court's February 17, 2022, order was entered in both actions, the parts of the order not pertinent to the issues in the dependency action were simply surplusage with respect to the entry of the order in case number JU-21-73.01. See H.F. v. Elmore Cnty. Dep't of Hum. Res., [Ms. 2210190, Aug. 19, 2022] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Civ. App. 2022) ("The provisions in those two judgments regarding the termination of parental rights to those children were surplusage with respect to the dependency actions because the termination of those rights was not at issue in the dependency actions.").

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court's February 17, 2022, order was not a final judgment capable of supporting an appeal, and, therefore, DHR's motion was not one that affected the timing of, or the pending of, these appeals. See Rule 4(a)(3) and (5), Ala. R. App. P.

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Additionally, the mother's argument on appeal is focused solely on the propriety of the juvenile court's determination to terminate her parental rights; the mother does not raise any issues with respect to the issues in the dependency action that are addressed in the February 17, 2022, order. Accordingly, we dismiss the mother's appeal from case number JU-21-73.01, i.e., appeal number 2210435. See Reeves v. Reeves, [Ms. 2200216, Oct. 1, 2021] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Civ. App. 2021) ("The former husband does not raise any issue in regard to the claims asserted in case number DR-15-900460.02 or the orders or judgments relating to those claims; therefore, we dismiss appeal number 2200217, which arises from case number DR-19-900460.02, as moot.").

None of the parties has addressed this court's jurisdiction over these appeals. However, jurisdictional issues are of such significance that this court may take notice of them ex mero motu. Wallace v. Tee Jays Mfg. Co., 689 So. 2d 210, 211 (Ala. Civ. App. 1997); Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987).

In order for a judgment that terminates parental rights to be sufficiently final to support an appeal, the juvenile court must make a permanent custodial disposition of the child. S.H. v. Macon Cnty. Dep't

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of Hum. Res., 195 So. 3d 311, 313 (Ala. Civ. App. 2015). The failure to enter a permanent award of custody of a child to whom parental rights have been terminated renders the order terminating parental rights nonfinal. Id.

The juvenile court's February 17, 2022, order does not make an award of permanent custody of the child. The record contains a March 22, 2022, order entered by the juvenile court in each of the actions below, in which the juvenile court purported to grant the foster parents' request for an award of permanent custody of the child. However, the mother and the father filed notices of appeal from the February 17, 2022, order before the juvenile court entered that March 22, 2022, order. When the mother and the father filed their notices of appeal from the February 17, 2022, order, the juvenile court was divested of jurisdiction to rule on any remaining pending issues in the matters except for any issues entirely collateral to the issues on appeal. S.H. v. Macon Cnty. Dep't of Hum. Res., 195 So. 3d at 313; Merrick v. Merrick, [Ms. 2200188, Oct. 29, 2021] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Civ. App. 2021). The issue of custody is central -- not collateral to the issues in these appeals. Accordingly, because the juvenile



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court lacked jurisdiction to enter its March 22, 2022, order, that order is a nullity. S.H. v. Macon Cnty. Dep't of Hum. Res., supra.

We dismiss the father's appeal and the mother's appeal from case number JU-21-73.02, i.e., appeal number 2210410 and appeal number 2210423, as having been taken from a nonfinal order. S.H. v. Macon Cnty. Dep't of Hum. Res., 195 So. 3d at 314; see also T.H. v. Jefferson Cnty. Dep't of Hum. Res., 100 So. 3d 583, 586 (Ala. Civ. App. 2012) ("When an appeal is taken from a nonfinal order, the appeal must be dismissed.").

2210410 -- APPEAL DISMISSED.

2210423 -- APPEAL DISMISSED.

2210435 -- APPEAL DISMISSED.

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