

Rel: June 3, 2022

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

CL-2022-0545, CL-2022-0546, CL-2022-0547, and CL-2022-0548

Ex parte A.L.

PETITIONS FOR WRIT OF MANDAMUS:

(In re: Jefferson County Department of Human Resources

v.

A.L.)

**(Jefferson Juvenile Court: JU-12-33.04, JU-19-1752.02,
JU-19-1753.02, and JU-19-1754.02))**

THOMPSON, Presiding Judge.

A.L. ("the mother") filed four petitions for a writ of mandamus requesting that this court direct the Jefferson Juvenile Court ("the

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juvenile court") to continue a hearing scheduled in the actions below. The materials submitted to this court in support of the mother's petitions reveal the following.

On April 30, 2021, the Jefferson County Department of Human Resources ("DHR") filed in the juvenile court petitions seeking to terminate the parental rights of the mother to four of her minor children. DHR alleged in its petitions that the identity of the fathers of three of those children are not known, but it sought to terminate the parental rights of K.B.B., the father of one of the children at issue in the four termination-of-parental-rights actions.

Another action pertaining to a fifth child of the mother's was also pending before the juvenile court at the time DHR filed its April 2021 petitions and that action was sometimes addressed in the same juvenile-court orders that addressed the actions pertaining to the four children at issue in these petitions. The materials submitted to this court do not indicate the nature of the action pertaining to the fifth child, i.e., whether it was a dependency action or a termination-of-parental-rights action or whether DHR or another person had initiated that action. The materials submitted to this court that pertain to the mother's fifth child indicate

only that the juvenile court had awarded custody of the fifth child to that child's paternal grandmother. The mother's rights concerning her fifth child are not at issue in the matters currently before this court, and, therefore, in discussing the arguments of the parties and the actions or orders of the juvenile court, we have omitted references to the fifth child.

On June 22, 2021, the juvenile court entered an order addressing all four of DHR's actions in which it granted an oral motion made by the mother to stay the termination-of-parental-rights hearing because of a criminal action pending against her that was "directly related" to the allegations set forth in DHR's termination-of-parental-rights petitions.¹ The mother submitted to this court an order with the header date of "9/27/2021" that appears to have been signed by the juvenile-court judge on September 27, 2021, but does not appear to have been entered into the State Judicial Information System or onto the case-action-summary sheet in any of the actions below. That order, in pertinent part, stated that the four termination-of-parental-rights actions remained pending because the criminal case against the mother had not yet been resolved.

¹For reasons not explained in the materials submitted to this court, although the juvenile court entered the order on June 22, 2021, the header for the order indicates that it is dated "12/14/2020."

On November 30, 2021, DHR filed a motion in the juvenile court seeking to lift the stay of the proceedings and to schedule the four termination-of-parental-rights actions for a final hearing. The juvenile court conducted a hearing on that motion on January 24, 2022.

On February 3, 2022, the juvenile court entered a separate order in each of the four termination-of-parental-rights actions lifting the stay and setting the four termination-of-parental-rights actions for a final hearing on April 22, 2022. In each of the four February 3, 2022, orders, the juvenile court explained that it had considered the balancing tests set forth in Ex parte Baugh, 530 So. 2d 238 (Ala. 1988), Ex parte Ebbers, 871 So. 2d 776 (Ala. 2003), and Ex parte Rawls, 953 So. 2d 374 (Ala. 2006), for determining whether to grant a stay in a civil action when a party is facing criminal charges related to the subject of the civil action. In its February 3, 2022, orders, the juvenile court found that the facts warranted proceeding with the termination-of-parental-rights actions and that, although proceeding with a hearing on the merits would impact the mother's right against self-incrimination, it was in the best interests of the children for the actions to proceed to a final hearing. The mother did not seek appellate review of those February 3, 2022, orders by filing

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petitions for a writ of mandamus in this court.

On March 23, 2022, the mother filed a motion to continue the hearing scheduled in the four termination-of-parental-rights actions. In that motion, the mother alleged only that the termination-of-parental-rights hearing was scheduled for April 22, 2022; that she was still facing criminal charges that paralleled some of the allegations in the termination-of-parental-rights petitions; that a pretrial hearing on the criminal charges was scheduled for August 1, 2022; and that a continuance of the hearing scheduled in the termination-of-parental-rights actions would not adversely affect any of the parties' interests. The juvenile court entered orders denying the mother's motion to continue on March 24, 2022. The mother filed her petitions for a writ of mandamus on April 7, 2022.

The mother did not file a motion to stay the April 22, 2022, hearing in this court, and nothing in the materials submitted to this court indicates that the mother sought to stay the hearing in the juvenile court pending this court's decision on her petitions for a writ of mandamus. However, attached to a motion to enlarge the time for filing a brief before this court, the children's guardian ad litem submitted an April 18, 2022,

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order of the juvenile court concluding that, because the mother had filed petitions for a writ of mandamus in these actions, it "must" continue the termination-of-parental-rights hearing until June 29, 2022. We do not address the correctness of the April 18, 2022, order. However, we note that because the juvenile court has not yet conducted a hearing on these matters, these petitions for a writ of mandamus are not moot.

An order denying a motion to continue, such as the mother's March 23, 2022, motion, is an interlocutory order, and review of an interlocutory order by petition for a writ of mandamus is appropriate. Norman v. Norman, 984 So. 2d 427, 429 (Ala. Civ. App. 2007).

"A writ of mandamus is an extraordinary remedy, and it will be issued only when 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.' Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993). A writ of mandamus will issue only in situations where other relief is unavailable or is inadequate, and it cannot be used as a substitute for appeal. Ex parte Drill Parts & Serv. Co., 590 So. 2d 252 (Ala. 1991)."

Ex parte Empire Fire & Marine Ins. Co., 720 So. 2d 893, 894 (Ala. 1998).

In her petitions for a writ of mandamus, the mother argues that the juvenile court erred in denying her March 23, 2022, motion to continue because, she contends, in denying that motion, the juvenile court has

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erroneously denied her the right against self-incrimination. DHR and the children's guardian ad litem have filed briefs in opposition to the mother's petitions for a writ of mandamus. In those briefs, DHR and the guardian ad litem argue that in her petitions, the mother is actually seeking review of the juvenile court's February 3, 2022, orders revoking the stay in the termination-of-parental-rights actions. We agree.

In Ex parte Jones, 147 So. 3d 415 (Ala. 2013), Chad Jones petitioned our supreme court for a writ of mandamus, asking that court to order the trial court in that case to vacate its order denying his summary-judgment motion and to direct it to enter a summary judgment in his favor based on the doctrine of State agent immunity. Our supreme court denied the petition based on Rule 21(a)(3), Ala. R. App. P., by determining that Jones's petition for a writ of mandamus had not been timely filed. Thereafter, Jones filed a renewed summary-judgment motion based on the same theories upon which the original motion had been based. 147 So. 3d at 418. The trial court entered an order denying that renewed motion, and Jones filed a petition for a writ of mandamus challenging that order. Our supreme court denied the petition, explaining:

"Jones presented no new grounds, argument, evidence, or change in the applicable law in support of his 'renewed'

motion for a summary judgment. To allow Jones to now petition this Court for a writ of mandamus following the denial of the 'renewed' motion for a summary judgment, after this Court had determined that his previously filed mandamus petition challenging the denial of his first summary judgment motion based on the same arguments and grounds as the 'renewed' motion for a summary judgment [was untimely], would undermine the spirit and purpose of Rule 21(a)(3) and render that rule meaningless. In essence, Jones seeks a 'second bite' at appellate review of the denial of his summary judgment motion based on immunity grounds, having failed to timely seek appellate review of the trial court's denial of the initial motion for a summary judgment. Accordingly, we conclude that Jones has failed to demonstrate that he has a clear legal right to the relief sought, and we deny the petition for a writ of mandamus."

Ex parte Jones, 147 So. 3d at 420 (emphasis added).

In these cases, the mother did not file petitions for a writ of mandamus from the juvenile court's February 3, 2022, orders. Instead, she attempted to revive the issues resolved by the February 3, 2022, orders by raising those issues in her March 23, 2022, motion to continue. In Ex parte T.M., [Ms. 2201010, Jan. 28, 2022] ___ So. 3d ___ (Ala. Civ. App. 2022), the juvenile court in that case denied a motion filed by the mother in that case seeking, among other things, to transfer the action pending in that court on the basis of allegedly improper venue. The juvenile court denied that motion, and the mother subsequently filed a petition for a writ of mandamus. The mother did not seek appellate

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review of the order denying her motion. Instead, a few months later, the mother filed a renewed motion to dismiss, again arguing, among other things, that venue was improper. The juvenile court denied that motion, and the mother subsequently filed a petition for a writ of mandamus. This court denied the mother's petition for a writ of mandamus with regard to the venue issue, explaining: "Based on Ex parte Jones, ... the mother cannot use the denial of her second motion as a way to 'reset the clock' so that she can now seek appellate review of the denial of her second request for a change of venue." Ex parte T.M., ___ So. 3d at ___.

Similarly, in these cases, the mother did not seek appellate review by way of petitions for a writ of mandamus of the February 3, 2022, orders that ended the stay of the termination-of-parental-rights actions based on the criminal charges that were also then pending against her. Instead, the mother attempted to relitigate the issues addressed in the February 3, 2022, orders in a motion to continue subsequently filed in the juvenile court. However, the mother may not, by filing that motion to continue, have a second bite at the apple or " 'reset the clock' " to address the juvenile court's determinations and conclusions in its February 3, 2022,

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orders. Ex parte Jones, 147 So. 3d at 420; and Ex parte T.M., ___ So. 3d at ___. Accordingly, we deny the petitions for a writ of mandamus.

CL-2022-0545 -- PETITION DENIED.

CL-2022-0546 -- PETITION DENIED.

CL-2022-0547 -- PETITION DENIED.

CL-2022-0548 -- PETITION DENIED.

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