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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2023

CL-2022-0764

E.W.

v.

Limestone County Department of Human Resources

**Appeal from Limestone Juvenile Court
(JU-21-88.01)**

HANSON, Judge.

E.W. ("the mother") appeals from a judgment of the Limestone Juvenile Court ("the juvenile court") entered following a permanency hearing in a dependency case wherein the juvenile court awarded

permanent legal and physical custody of the mother's child to D.H. ("the paternal grandfather") and his spouse, N.S.

Background

The child was born in April 2020. The mother and P.H., the child's father, were never married. The Limestone County Department of Human Resources ("DHR") became involved with the parents and this child following a report made on March 1, 2021, alleging that there had been domestic-violence episodes, that the child's medication for a current illness was not being properly administered by the parents, that the house the parents and the child were living in was inadequate and unclean, and that the parents were not properly supervising the child.

On March 12, 2021, a safety plan was implemented by DHR whereby the paternal grandfather, N.S., and the paternal grandfather's daughter, J.C., would temporarily care for the child. While the safety plan was being implemented, a social worker with DHR observed the father outside his house hitting and throwing things. The paternal grandfather had to request the assistance of law-enforcement officers to remove the father from the parental grandfather's house following an

incident where the father squeezed the child until the child cried and began yelling at the child.

Procedural History

On April 16, 2021, DHR filed a dependency petition alleging that the child was dependent pursuant to § 12-15-102(8)a.1, 6, and 8, Ala. Code 1975. On April 19, 2021, the juvenile court set the initial appearance hearing for May 14, 2021. The juvenile court appointed a guardian ad litem for the child. On May 26, 2021, following a hearing, the juvenile court entered an order awarding temporary custody of the child to the paternal grandfather and N.S. The juvenile court scheduled a dependency adjudicatory hearing for July 9, 2021, which was rescheduled. On August 2, 2021, the juvenile court appointed Austin Pike, a supervisor for the Court-Appointed Special Advocate ("CASA") program, as representative for the child.

On August 6, 2021, N.S. and the paternal grandfather filed a handwritten motion seeking to intervene in the case. The juvenile court entered an order setting the motion to intervene for a hearing. On August 20, 2021, the mother filed a response, opposing the motion to intervene.

On August 27, 2021, the juvenile court set the dependency petition for a hearing on September 29, 2021.

On September 15, 2021, N.S., now represented by counsel, filed another motion to intervene. The juvenile court set the motion to intervene for a hearing on September 29, 2021. On September 29, 2021, N.S.'s counsel filed an amended motion to intervene to include the paternal grandfather.

The juvenile court granted the paternal grandfather and N.S.'s motion to intervene. Following ore tenus proceedings, the juvenile court entered an order on October 12, 2021, finding that the child was dependent pursuant to § 12-15-102(8)a. The juvenile court awarded the mother legal and physical custody of the child. The juvenile court ordered DHR to continue protective services for the family and ordered the mother to participate in parenting classes as well as any other services set out in the individualized service plan ("ISP"). The juvenile court further ordered that the mother have no contact with the father. The juvenile also court ordered that the father have no contact with the mother; that he have supervised visitation with the child; and that he participate in domestic-violence classes, anger-management classes, and

any other services recommended by DHR. The juvenile court ordered that the paternal grandfather and N.S. be allowed meaningful visitation with the child so long as the visitation does not conflict with the father's visitation and that the father not be present for their visitation. On October 12, 2021, the juvenile court also appointed Leah Pierce as a CASA representative for the child.

On October 12, 2021, the guardian ad litem filed a motion to alter, amend, or vacate the order entered earlier that day, requesting that the juvenile court include a graduated schedule for the transition of the child to the mother's home and that the child remain with the paternal grandfather and N.S. until the transition was complete. On October 14, 2021, the juvenile court denied the guardian ad litem's motion.

On October 18, 2021, the paternal grandfather and N.S. filed an emergency motion for temporary custody. They alleged that on October 18, 2021 the mother's mother, ("the maternal grandmother") had asked the paternal grandfather and N.S. to take care of the child after the mother had given birth to another child that same day and while she was in the hospital.¹ The paternal grandfather and N.S. alleged that the child

¹The sibling's paternity is unclear from the record.

was "covered in bed bug bites," that the mother had canceled a doctor's appointment for the child, and that the mother had left the child with the maternal grandmother, who, they said, was unable to care for the child. The paternal grandfather and N.S. attached to their motion photographs showing some insect bites on the child.

That same day, October 18, 2021, the juvenile court entered an order at 11:21 a.m., granting the emergency motion for temporary custody and setting the matter for a hearing on October 19, 2021. Subsequently, on October 18, 2021, the mother filed a response to the emergency motion for temporary custody, stating that the mother had gone to the hospital that morning with excessive bleeding. The mother asserted that the maternal grandmother had contacted the paternal grandfather and N.S. to ask if they would care for the child because the child could not go into the emergency room or the labor and delivery room at the hospital. The mother admitted that she had canceled a doctor's appointment for the child because the appointment was for October 18, 2021, and the mother, due to her emergency, would not be able to take the child to the appointment. The mother denied that the insect bites on the child were due to bedbugs. The mother alleged that the insect bites

were on the child when custody had been exchanged on October 12, 2021, following the entry of the juvenile court's order awarding the mother custody. The mother also attached to her response photographs showing some insect bites on the child.

Following a hearing, the juvenile court, on October 29, 2021, returned legal and physical custody of the child to the mother. The paternal grandfather and N.S. were allowed visitation with the child pursuant to a schedule set out in the order. On November 1, 2021, the paternal grandfather and N.S. filed a motion to amend the visitation schedule to permit them to pickup the child early and possibly return the child late for a particular visit so that they could attend an out-of-town family wedding. On November 2, 2021, the juvenile court entered an order allowing the rescheduling of that visit, with the caveat that the paternal grandfather and N.S. notify the mother of any possible delay, and stating that, if they abused the juvenile court's leniency, they could be held in contempt.

On December 4, 2021, the guardian ad litem filed a motion for an emergency hearing, alleging that the child was again covered in insect bites that, according to the paternal grandfather and N.S., had been

determined to have been caused by bedbugs. The guardian ad litem stated that the CASA had observed insect bites on the child. The guardian ad litem stated that the mother had been taking the child to homes in which the child was being exposed to drug paraphernalia. In support of the motion, the guardian ad litem attached two photographs depicting insect bites on one side of the child's face and on one of the child's legs. The guardian ad litem also attached a photograph of an item purported to be drug paraphernalia that the child had been exposed to. The guardian ad litem did not attach anything to support the paternal grandfather and N.S.'s allegation that the insect bites were caused by bedbugs.

On December 5, 2021, the juvenile court entered an order setting the requested emergency hearing on December 7, 2021, and ordering that, until the hearing, the child stay with the paternal grandfather and N.S. Subsequently, on December 5, 2021, the mother filed a response to the motion. The mother alleged that the photograph purporting to show drug paraphernalia that the child had been exposed to was a photograph the mother's cousin had taken of the child at their grandfather's home, which the cousin had posted to a social-media account. The mother

alleged that the alleged item of drug paraphernalia was a lava lamp that her grandparents had received as a "Dirty Santa" gift, and the mother attached to her response a photograph that depicts a lava lamp with marijuana leaves on it. The mother admitted that the child had had insect bites that her pediatrician had told her to treat with Benadryl and cortisone. According to the mother, the pediatrician had told her that it was not possible to affirmatively diagnose the insect bites on the child as bedbug bites. The mother attached information from the Centers for Disease Control and Prevention on bedbugs. The mother alleged that, other than the child, neither she nor anyone else in their home had insect bites.

In her response, the mother stated that she had thought the child could have chicken pox and that she had been told to try and schedule an appointment with her pediatrician on a Monday that was during the paternal grandfather and N.S.'s visitation. According to the mother, N.S. would not swap visitation to allow her to schedule that appointment.

Following a hearing, the juvenile court entered an order on December 7, 2021, transferring temporary legal and physical custody of the child to the paternal grandfather and N.S., with the mother having

unsupervised visitation. The juvenile court ordered the mother to take the child to the pediatrician to determine the cause of the child's bites or rashes.

Following a custody review hearing on December 17, 2021, the juvenile court continued temporary custody of the child with the paternal grandfather and N.S. and continued unsupervised visitation with the mother. The juvenile court ordered that the father's visitation continue to be supervised, with DHR securing a different supervision provider if possible, and awarded the father an additional holiday visit that "may be supervised" by the paternal grandfather and N.S. on a day that did not conflict with the mother's visitation. The juvenile court ordered the mother to secure and maintain employment and to find stable housing with assistance from DHR. The juvenile court ordered DHR to help the mother secure and pay for child care. The juvenile court ordered the mother to enroll in and complete an eight-week parenting course provided by LifeLinks on Monday evenings, with DHR paying for the course. The mother and the father were both ordered to enroll in drug testing conducted through the Limestone County community corrections program.

On December 31, 2021, the mother filed a motion to alter, amend, or vacate the December 17, 2021, order. The mother noted that the juvenile court had not heard testimony and had based its decision on arguments from counsel for the parties and certain documents provided by counsel. In her motion, the mother noted that, since the juvenile court had held its adjudicatory hearing regarding the child's dependency on September 29, 2021, and had entered its October 12, 2021, order awarding the mother legal and physical custody of the child, three different motions had been filed in an effort to modify the October 12, 2021, order. The mother stated that both the mother's house and the paternal grandfather's house had been inspected for bedbugs and that none had been found. The mother stated that the child had seen her pediatrician, who had concluded that the child's "rash" was consistent with unidentified insect bites and had referred the child to an allergist that had previously treated the child. The mother stated that she could find no caselaw holding that the presence of insect bites on a child, alone, were sufficient to remove the child from the parent's custody. The mother also noted that there were no allegations presented at the December 17, 2021, hearing that the mother's house was unclean, that the child was

inadequately supervised or inadequately fed, or that the child had been subjected to physical abuse by the mother. In her motion, the mother argued that, although the guardian ad litem's motion had not raised the issue of the mother's housing, the guardian ad litem and DHR's attorney had argued at the December 17, 2021, hearing that the mother's housing was unstable because the mother was not related to the owners of the residence she and the child lived in and, thus she could possibly lose her housing. She notes that she had been in the same residence since July 2021 and that the juvenile court had awarded her legal and physical custody on October 12, 2021.

In her motion to alter, amend, or vacate the December 17, 2021, order, the mother asked the juvenile court to return custody of the child to her, to allow her to establish housing with a blood relative, and to amend the order to allow her relatives to help her with child care. The mother asserted that she is gainfully employed and that she expects to work 30 hours per week. The mother asked the court to amend the order requiring her to enroll in monthly drug testing conducted through the Limestone community-corrections program to allow her to have drug testing in Madison County. The mother also noted that she has had

numerous drug screens since DHR became involved in this case and that she has never tested positive for any drug.

On January 18, 2022, the juvenile court amended its December 17, 2021, order to require that the mother secure stable housing on her own or with a blood relative and that the mother secure "appropriate childcare" with assistance from DHR, if needed. Moreover, the juvenile court encouraged DHR to make different drug-testing arrangements if the mother identify a more convenient drug-testing program that DHR could pay for. The juvenile court stated that if DHR is unable to pay for drug testing at a different facility, then the mother would be responsible for paying. The juvenile court denied the mother's request to change temporary custody.

On January 20, 2022, the mother filed a motion seeking permission from the juvenile court to temporarily move to R.W.'s home in Flintville, Tennessee, which, she said, is six miles from the mother's current residence in New Market, Alabama. R.W. is the mother's father ("the maternal grandfather"). The mother asserted that she would return to Madison County, Alabama, as soon as she could obtain her own housing. The mother also asked for a clarification of the January 18, 2022,

amended order regarding whether "appropriate childcare" included in-home care by a relative. On January 27, 2022, the juvenile court granted the mother permission to relocate. The juvenile court stated that it could not "define 'appropriate childcare' for the mother, though the court has ordered [DHR] to assist the mother in securing 'appropriate childcare' if needed. An assessment of her childcare plan will be made at the permanency hearing."

On March 16, 2022, the mother filed a motion for change of temporary custody, arguing that she had complied with the juvenile court's orders, and also sought permission to permanently relocate to Flintville, Tennessee. On March 16, 2022, the paternal grandfather and N.S. filed a response. On March 21, 2022, the juvenile court entered an order providing that the relief requested by mother "is a determination that must be made by the court after a testimonial permanency hearing."

On May 31, 2022, the juvenile court held a permanency hearing on the dependency petition. On June 7, 2022, the juvenile court entered a permanency order finding that the child remained dependent under § 12-15-102(8)a. The juvenile court awarded permanent custody to the paternal grandfather and N.S. The juvenile court ordered that the

mother continue to have unsupervised visitation with the child every weekend and additional unsupervised visitation on the first, third, and fifth week of each month beginning on that Thursday. The father was allowed to continue visitation with the child, under supervision of the paternal grandfather and N.S., who the juvenile court expressly authorized to terminate and suspend any visit with the father upon suspicion that he is under the influence of alcohol.²

On June 21, 2022, the mother filed a motion to alter, amend, or vacate the permanency order. That same day, the mother also filed a notice of appeal. On June 22, 2022, the juvenile court entered an order purporting to schedule the motion for a hearing on July 22, 2022, which was outside the time limitations set forth in Rule 1(B), Ala. R. Juv. P. As a result, the motion was deemed denied by operation of law on July 5, 2022. See Rule 59.1, Ala. R. Civ. P.

Ore Tenus Permanency Hearing

Joy Rhodes Watkins, a DHR social worker, testified that the original reasons DHR became involved with the mother and the father

²At some point, the father had been charged with driving under the influence of alcohol.

concerned reports of domestic violence and neglect. Watkins testified that the mother had completed an eight-hour parenting course provided by LifeLinks in one day due to the mother's work schedule. She also testified that the mother had completed courses provided at the Women's Resource Center on domestic-violence issues, preventing abuse, budgeting, parenting, coparenting, and working with finances. According to Watkins, the mother had taken courses at the Women's Resource Center that DHR had not ordered. The mother worked with a DHR case aide on budgeting and household management for several sessions. One session was canceled when the mother had an emergency caesarian section with the birth of her second child in October 2021. The DHR case aide had to cancel a meeting in December 2021, which DHR attempted to reschedule for 5 days later, but the mother could not attend the rescheduled meeting because she had to work that day. Watkins testified that other sessions had been scheduled for January, but she did not testify why those sessions had not been completed. Watkins testified that the missed case aide's services for the mother were addressed by other providers.

Watkins testified that the mother had been working at an automobile-parts store since December 2021. The mother has never tested positive for drugs and has never missed a drug test. Watkins testified that, since the mother had moved to Tennessee, she had been limited in what she could do for the mother. The mother had continued to provide Watkins with copies of her pay stubs.

Watkins testified that the father had been directed to work on his mental health but that he had been unable to do so because he did not have insurance. She said that DHR had offered to provide monitoring of his services because he was going to address those himself. Watkins testified that she was not aware whether the father had completed the required classes, including a domestic-violence awareness class, at the Women's Resource Center through that organization's male mentoring program. She said the father is employed. Watkins testified that the father had had supervised visitation through DHR but that there had been problems with the father's attendance. The father's visitation had later been supervised by the paternal grandfather and N.S. The father's drug tests had been negative. Watkins testified that the father lives with his brother. Watkins stated that she had not visited the brother's house

because the father wanted to find other housing. She said that moving does not necessarily indicate instability.

Watkins testified that she understood that the mother and the father do not have any contact with each other and that she had been informed by the CASA that there had not been any contact between them in recent months. Watkins testified that the mother had found a child-care provider in Hazel Green, Alabama; however, Watkins said, DHR could not help her with a "CMA referral"³ because she did not have custody of the child. Watkins testified the mother and the child interact and that she had no concerns about the mother's ability to care for the child. Watkins said that her hesitation in being able to make a recommendation about returning the child to the mother was because DHR was not allowed to visit the mother's house in Tennessee. Watkins testified that it was fair to say that domestic violence was the reason the child had been removed from the parents' care. She said that since her involvement in the case began, she had not observed any signs of neglect when she had seen the mother with the child. Watkins testified that she

³A "CMA referral" is a child-care subsidy payable to certain child-care facilities approved by DHR.

did not know the maternal grandfather or the conditions of his house because DHR could not request an out-of-state visit pursuant to the Interstate Compact on the Placement of Children ("ICPC") unless the child was in foster care.

Austin Pike, a CASA supervisor, testified that the role of a CASA is to speak with all the parties, visit with the children, investigate concerns, and submit a report to the juvenile court. Pike testified that she would go on Fridays to the paternal grandfather and N.S.'s house to check the child from "head to toe." Pike testified that she had visited the maternal grandfather's house in Tennessee where the mother is living. She said that the house is a "smaller home" but that the mother and the child each had their own bedroom. According to Pike, the maternal grandfather has a pending criminal case in Limestone County arising out of an altercation he apparently had at the courthouse with another person involved in this case.⁴ N.S. had told Pike that she thought the mother was dating someone; in Pike's presence, N.S. had shown the child photographs on

⁴Pike referred to the paternal grandfather and N.W. when describing the altercation. Pike used the first name of N.S. and the last name of the mother's family. It is unclear to whom exactly she was referring.

her telephone of the father and of S.B., the person N.S. believed the mother was dating, and the child had identified both as daddy. Pike testified that the mother had told her she was not seeing anyone.

Pike testified that, during one of her visits at the paternal grandfather's house, she had observed the child with father during his supervised visitation. Pike testified that she was not opposed to reunification eventually, but she thought that it would be in the best interests of the child to remain with the paternal grandfather and N.S.; that the parents should continue to work on stability and safety concerns; that a home study should be conducted on the mother's house; that the mother should obtain permanent housing on her own; that the mother should obtain full-time employment so that she can meet the financial obligations of the child; that, if the child is returned to the mother, there should be a transition period; that in-home parenting services should be implemented in the mother's home (but she noted that DHR cannot provide those services while the mother resides in Tennessee); that the father should have supervised visitation in the paternal grandfather and N.S.'s house at their discretion; that, if the court leaves the child with the paternal grandfather and N.S., the mother should have standard

visitation; that the father should seek help for his mental-health issues; and that the mother and the father should attend counseling to work on coparenting. Pike also observed that the child has bonded with the paternal grandfather and N.S. and expressed concern that, if the mother was awarded custody, she would not allow them to visit the child.

Pike testified that, at the last hearing, the guardian ad litem had stated that it would be satisfactory for the mother to live with her family members, although Pike thought that the mother should have her own housing. Pike testified that the father had been living with his biological mother's parents and that he had recently moved in with his girlfriend. Pike could not testify as to whether she had concerns about the father's new living arrangements with the girlfriend.

Pike testified that, on one occasion, the mother had given the child some Tylenol for a stomach virus. According to Pike, N.S. had taken the child to the doctor the next day, and the doctor had told N.S. that the child did not need to have Tylenol unless there was a fever. Pike testified that the mother and N.S. each had called her when the child was constipated on one occasion. After a few hours, the child had a bowel movement, but the mother noticed blood when she wiped the child. The

mother told Pike she had not called the doctor after the child finally had the bowel movement. N.S. told Pike that the mother had told her that they were having too much fun together to call the doctor. Pike, the mother, and N.S. ultimately took the child to the doctor, who found a small tear and recommended an over-the-counter laxative for constipation. Pike said that the problem had not happened again.

Pike testified that the father had told her that he had seen the mother after the no-contact order was issued by the juvenile court. When asked whether she thought it was necessary for her to visit the mother's house to see how the child behaves when custody is exchanged, Pike stated that it was CASA policy to observe the child frequently in the place that is the child's residence. She stated that she had been to the paternal grandfather and N.S.'s house 12 times and to the mothers' house 2 times to observe custody exchanges. Pike testified that she has her own family commitments on most weekends. Pike said that she had not examined the child at the mother's house like she had at the paternal grandfather and N.S.'s house because she would see the child later in the week. She testified that she had not seen any visible signs of neglect or abuse from the mother or the paternal grandfather and N.S. She had not seen any

bruising or diaper rash or anything alarming. Following Pike's testimony, DHR called no further witnesses.

D.B., a relative of the mother, testified that she had observed the child with the mother at family functions, that she had no concerns about the mother's ability to care for the child, and that the child was attached to the mother. Barron said that the mother had been a babysitter for her children. She testified regarding an incident between the mother and the father.

The maternal grandfather testified that he has a three-bedroom, two-bathroom house and that the mother and the child's sibling live with him. He said that the child is in the house every weekend. The maternal grandfather testified that the child has a bedroom and that the mother and the child's sibling sleep in another bedroom. The maternal grandfather's girlfriend lives with him and sleeps in his bedroom. He testified that his house has been inspected for bedbugs and that there were none. He testified that the mother takes care of and provides for the needs of the child and the child's sibling. He testified that his girlfriend helps care for the child and the child's sibling when needed. The maternal grandfather said that he has no "problem with [the mother] and the

children staying at [his] house while she's getting herself on her feet." He said that he was unaware of whether the mother had sent money to the paternal grandfather and N.S. for child support.

The maternal grandmother testified that she contributes to the mother's automobile payment and that the car is in her name and the mother's name. According to the maternal grandmother, she provides child care for the mother's children when needed. The maternal grandmother testified regarding a telephone call made by a friend of hers that reported the paternal grandfather and N.S. to the sheriff's department when the child was picked up from N.S. and had a red vagina and rash. She testified regarding a photograph of a poster on her father's wall depicting singer Willie Nelson with marijuana, which was posted on a Facebook social-media page. The maternal grandmother testified that her father and mother have provided child care for the child and the child's sibling.

J.P., the maternal grandfather's girlfriend, testified that she helps provide child care for the child and the child's sibling when the mother has to work. She testified that, when the child is at the house, the mother

does not spend the night with the maternal grandmother or the maternal grandmother's parents.

The mother testified the child has a bedroom and that the mother sleeps in another bedroom with the child's sibling, who sleeps in a bassinet. She testified that she works at an automobile-parts store. She said that she worked at one location and then was transferred to another location so that she could work more hours. The mother said that now that she is 21 years old, she is able to drive a company vehicle for the parts store. She said that she had found a day-care facility in Alabama for the child if the child is returned to her custody. The mother testified that she had paid a \$4,000 down payment (from a tax refund) on the car that she had purchased with her mother and that she needed a car to have reliable transportation. The mother said that she had given the paternal grandfather and N.S. \$200 in the last six months but they had not cashed the check. She said that she treats the child's diaper rash with Desitin ointment. The mother said that she is seeking employment with higher pay to improve her situation. The mother said that, before getting the job with the automobile-parts store, she had worked at a dry cleaner, a day-care center, and a car auction. She stopped working at the day-care

center after N.S. had threatened to notify DHR because the child kept getting sick.

The mother testified that she was concerned with the paternal grandfather and N.S.'s supervising the father's visitation. The mother testified that she has not had contact with the father since the juvenile court issued a no-contact order. The mother was asked about her finances and stated that the maternal grandmother is making most of her car payment, but she pays \$150. She said that her plan is to save enough money to obtain her own housing. The mother testified that she had no knowledge of the telephone call made to the sheriff's department by the friend of the maternal grandmother until hearing the testimony regarding that incident. The mother was asked if she makes medical decisions for the child's sibling, and she said that she makes those decisions. She was asked why she felt it was necessary to rely on the paternal grandfather and N.S. to make decisions for the child, and she said that, because they had temporary custody of the child, she asked them, especially with regard to who is administering medication. The mother was asked how she could pay for child care, and she said that she would like to place the child and the child's sibling in child care when she

had custody and, thus, would be entitled to a child care subsidy through DHR and that she is also looking for a job with higher pay.

Standard of Review

This is an appeal of the permanency order awarding custody of the child to the paternal grandfather and N.S. Dependency cases are governed by the Alabama Juvenile Justice Act ("the AJJA"), § 12-15-101 et seq., Ala. Code 1975. Section 12-15-102(8), Ala. Code 1975, defines a "dependent child" under the AJJA. Generally, a juvenile court has the discretion to determine matters of dependency and custody. "For the purposes of the AJJA, a 'permanency hearing' refers to a hearing, in cases involving the Alabama Department of Human Resources ('DHR'), to determine the 'permanency' plan for a child who has been removed from his or her home and has been placed in out-of-home care. See Ala. Code 1975, § 12-15-315." M.L.W. v. J.W., [Ms. CL-2022-0640, May 12, 2023] ___ So. 3d ___, ___ (Ala. Civ. App. 2023).

A juvenile court's permanency order is final and appealable when it results in depriving a parent of the care of, custody of, or visitation with his or her child. D.P. v. Limestone Cnty. Dep't of Hum. Res., 28 So. 3d 759, 764 (Ala. Civ. App. 2009) ("[I]t is immaterial, for purposes of finality

and appealability, that a juvenile court's order emanates from the permanency-plan hearing rather than from the periodic review of a dependency determination. If the order addresses crucial issues that could result in depriving a parent of the fundamental right to the care and custody of his or her child, whether immediately or in the future, the order is an appealable order."). The juvenile court's judgment is presumed correct and will not be set aside unless it is plainly and palpably wrong. J.M. v. State Dep't of Hum. Res., 686 So. 2d 1253, 1255 (Ala. Civ. App. 1996) (citing H.A. v. Limestone Cnty. Dep't of Hum. Res., 628 So. 2d 948 (Ala. Civ. App. 1993)).

Discussion

The mother argues that the juvenile court's determination that the child remained dependent was not supported by clear and convincing evidence of the child's dependency at the time of the permanency hearing. She argues that the record reflects that she was ready, willing, and able to care for the child at the time of the permanency hearing. She further argues that she has complied with DHR's ISP and the juvenile court's previous orders.

"As a matter of constitutional law, a parent who has exercised custody over a child has a prima facie right to the

continued custody of the child. See In re Moore, 470 So. 2d 1269, 1270 (Ala. Civ. App. 1985). The presumptive right of parents to the custody of their child may be overcome by clear and convincing evidence demonstrating that the parents are currently unable to discharge their responsibilities to and for the child and that the child requires additional care and supervision through the state, i.e., that the child is "dependent." See Ala. Code 1975, § 12-15-102(8)a.6.; see also V.W. v. G.W., 990 So. 2d 414, 417 (Ala. Civ. App. 2008) (quoting K.B. v. Cleburne County Dep't of Human Res., 897 So. 2d 379, 389 (Ala. Civ. App. 2004) (Murdock, J., concurring in the result)) ("[I]n order to make a disposition of a child in the context of a dependency proceeding, the child must in fact be dependent at the time of that disposition."). "Clear and convincing evidence" is defined as

""[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 Ala. Code 1975, § 6-11-20[(b)](4))."

N.G. v. Blount Cnty. Dep't of Hum. Res., 216 So. 3d 1227, 1233 (Ala. Civ. App. 2016) (quoting R.F.W. v. Cleburne Cnty. Dep't of Hum. Res., 70 So. 3d 1270, 1272 (Ala. Civ. App. 2011)).

In this case, the judgment appealed from, the June 7, 2022, permanency order, maintained the child's status as a dependent child,

awarded legal and physical custody of the child to the paternal grandfather and N.S., and awarded the mother unsupervised visitation.

When the State deprives a parent of custody of a child on the basis of dependency, the burden is on DHR to prove by clear and convincing evidence that the child remains dependent. H.T. v. A.C., [Ms. 2210396, Feb. 3, 2023] ___ So. 3d ___ (Ala. Civ. App. 2023).

A "dependent child" is defined in Ala. Code 1975, § 12-15-102(8), to include:

"a. A child who has been adjudicated dependent by a juvenile court and is in need of care or supervision and meets any of the following circumstances:

"1. Whose parent, legal guardian, legal custodian, or other custodian subjects the child or any other child in the household to abuse, as defined in Section 12-15-301[, Ala. Code 1975,] or neglect as defined in Section 12-15-301, or allows the child to be so subjected.

"2. Who is without a parent, legal guardian, or legal custodian willing and able to provide for the care, support, or education of the child.

"3. Whose parent, legal guardian, legal custodian, or other custodian neglects or refuses, when able to do so or when the service is offered without charge, to provide or allow medical, surgical, or other care necessary for the health or well-being of the child.

"4. Whose parent, legal guardian, legal custodian, or other custodian fails, refuses, or neglects to send the child to school in accordance with the terms of the compulsory school attendance laws of this state.

"5. Whose parent, legal guardian, legal custodian, or other custodian has abandoned the child, as defined in subdivision (1) of Section 12-15-301.

"6. Whose parent, legal guardian, legal custodian, or other custodian is unable or unwilling to discharge his or her responsibilities to and for the child.

"7. Who has been placed for care or adoption in violation of the law.

"8. Who, for any other cause, is in need of the care and protection of the state."

In H.A.S. v. S.F., 298 So. 3d 1092, 1097-98 (Ala. Civ. App. 2019),

this court stated:

"[T]he test [for determining whether a petitioner has established a child's dependency] is whether [the petitioner] has presented clear and convincing evidence demonstrating that the parental conduct or condition currently persists to such a degree as to continue to prevent the parent from properly caring for the child.' M.G. v. Etowah Cty. Dep't of Human Res., 26 So. 3d 436, 442 (Ala. Civ. App. 2009) (plurality opinion). The juvenile court may consider the totality of the circumstances when making a finding in a dependency proceeding. G.C. v. G.D., 712 So. 2d 1091, 1094 (Ala. Civ. App. 1997). See also D.P. v. State Dep't of Human Res., 571 So. 2d 1140 (Ala. Civ. App. 1990). This court cannot

reweigh the evidence presented to the juvenile court, and we cannot revisit its conclusions about the credibility of the witnesses before it. See Ex parte R.E.C., 899 So. 2d 272, 279 (Ala. 2004). Although the juvenile court's factual findings in a dependency case when the evidence has been presented ore tenus are presumed correct, T.D.P. v. D.D.P., 950 So. 2d 311 (Ala. Civ. App. 2006), a finding of dependency must be supported by clear and convincing evidence. Ala. Code 1975, § 12-15-310(b). When reviewing a dependency judgment on appeal, '[t]his 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). That is, this court' "must ... look through [the prism of the substantive evidentiary burden,' Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986),] to determine whether there was substantial evidence before the trial court to support a factual finding, based upon the trial court's weighing of the evidence, that would 'produce in the mind [of the trial court] a firm conviction as to each element of the claim and a high probability as to the correctness of the conclusion.'" K.S.B., 219 So. 3d at 653 (quoting Ex parte McInish, 47 So. 3d 767, 778 (Ala. 2008), quoting in turn Ala. Code 1975, § 25-5-81(c))."

DHR became involved in this case due to domestic violence, some indications of neglect arising from the living conditions of the parents and the child, and the need for parenting skills. The mother completed classes on domestic-violence awareness. The juvenile court entered a no-contact order for the mother and the father. According to the mother, she has had no contact with the father other than seeing him at court

proceedings. According to Pike, the father told her that he had seen the mother in October 2021 for dinner and shopping. The father did not testify at the permanency hearing. In its June 7, 2022, permanency order, the juvenile court neither found that either party had violated the no-contact order nor continued the no-contact order.

The mother also completed courses on budgeting, parenting, coparenting, and working with finances through the Women's Resource Center. The mother continued to work with the Women's Resource Center after completing the courses required by DHR. The mother complied with the juvenile court's requirement that she complete a parenting course with LifeLinks. The paternal grandfather and N.S. make the argument that the mother's completion of the course in one eight-hour session, which was offered as an option and approved by LifeLinks, instead of the eight one-hour classes did not comply with the juvenile court's orders. LifeLinks offered the consolidated class to fit with its class schedule and the mother's work schedule. Additionally, Watkins, the DHR social worker, acknowledged that, even though the mother had had to cancel a session with a DHR case aide and the DHR case aide had had to cancel a session with the mother, the missed case

aide's services for the mother were addressed by other providers, i.e., LifeLinks and the Women's Resource Center. The juvenile court clearly did not have concerns about the mother's parenting skills because in the June 7, 2022, permanency order, it awarded the mother unsupervised visitation every weekend and additional visitation on the first, third, and fifth week of each month.

Watkins, the DHR social worker, testified that she had no concerns about the mother's ability to care for the child⁵ and that her hesitation in making a recommendation about returning the child to the mother was based on her belief that DHR was not allowed to visit the mother's house in Tennessee or to seek to have an agency in Tennessee visit the house pursuant to the ICPC. The mother had housing in Alabama when the guardian ad litem and DHR's counsel voiced concerns about the stability of the mother's housing in December 2021 because the mother was unrelated to the people who owned the home where she was living. The mother had been living in the same residence at the time of the adjudicatory hearing in September 2021, and the juvenile court was

⁵The mother had a second child in October 2021, which DHR was aware of; apparently, DHR had no issues with the mother's ability to care for her second child.

made aware of the mother's housing situation during that hearing. After the adjudicatory hearing, the juvenile court awarded the mother legal and physical custody of the child on October 12, 2021.

The juvenile court, following the hearing in December 2021, ordered the mother to find stable housing. The juvenile court then amended that order to allow the mother to live with a blood relative. Subsequently, the juvenile court allowed the mother to temporarily relocate to Tennessee to live with a blood relative, the maternal grandfather. Pike visited the maternal grandfather's house but spent more time observing the child with the paternal grandfather and N.S. because of CASA policy and Pike's own family commitments. The juvenile court, in its June 7, 2022, permanency order, did not require the mother to obtain new housing. In fact, the juvenile court appeared to have no reservations about the mother's housing because it allowed the mother unsupervised visitation every weekend, along with additional visitation.

At some point during the case, insect bites on the child appear to have been an issue. The paternal grandfather and N.S. raised this concern in their October 18, 2021, emergency motion for temporary custody, asserting that the insect bites were caused by bedbugs. The

guardian ad litem, in her December 4, 2021, motion asserted that the child had insect bites and that, according to the paternal grandfather and N.S., those bites had been determined to have been caused by bedbugs. The guardian ad litem stated that the CASA had observed insect bites on the child. There was never any medical evidence presented indicating that the insect bites had been caused by bedbugs. Nothing at the permanency hearing indicates that DHR had an issue with insect bites or the way the mother had treated the insect bites based on the advice of the child's pediatrician. The juvenile court did not order the mother to find new housing in its June 7, 2022, permanency order.

The guardian ad litem, in her December 4, 2021, motion, raised her concern that the mother had been taking the child to houses where the child was being exposed to drug paraphernalia. Although exposing a child to drugs, leaving drug paraphernalia,⁶ or leaving legal or illegal drugs

⁶Section 13A-12-260, Ala. Code 1975, defines drug paraphernalia as follows:

"(a) As used in this section, the term 'drug paraphernalia' means all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting,

within a child's reach may support a finding of dependency, there was no such evidence in this case. First, the mother never tested positive for any illegal drugs, and the juvenile court, in its June 7, 2022, permanency order, no longer required the mother or the father to participate in drug testing. Second, the juvenile court, in its June 7, 2022, permanency order, did not bar the mother from taking the child to the maternal grandmother's house, where an alleged item of drug paraphernalia was located.

producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the controlled substances laws of this state. ... "

The statute then sets out a list of such items, including, but not limited to, pipes, kits, scales, blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances; balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances; syringes, needles, and other objects used, intended for use, or designed for use in injecting controlled substances into the human body; and objects used, intended to be used, or designed for ingesting, inhaling, or otherwise introducing marijuana, tetrahydrocannabinols, cocaine, hashish, or hashish oil into the human body. Section 13A-12-260(b) sets out factors for the court to consider in determining whether an item is actually drug paraphernalia.

In its December 17, 2021, order, the juvenile court ordered DHR to help the mother secure and pay for child care. In her motion to alter, amend, or vacate that order, the mother asked the juvenile court to amend the order to allow family members to help her with child care. Subsequently, the juvenile court amended its order to provide that the mother secure "appropriate childcare" with assistance from DHR, if needed. When the mother asked the juvenile court to define "appropriate childcare," the court indicated that an assessment of her child care plan would be made at the permanency hearing. In its June 7, 2022, permanency order, entered after the permanency hearing, the juvenile court did not place any limitations on the mother's use of family members to provide child care. "[I]n the abstract, a parent's reliance on others, particularly family, for support is not, in and of itself, determinative of the parent's unfitness." Ex parte A.M.B., 4 So. 3d 472, 478 (Ala. 2008). Moreover, the mother testified that she wanted to enroll the child and the child's sibling in a child-care facility in Alabama that is approved by DHR for a subsidy, but a subsidy could not be provided without her having custody.

The juvenile court ordered the mother to secure employment, which the mother did. The mother testified at the permanency hearing that she is employed, and she sent copies of her check stubs to DHR. The mother testified that she provides for the child's needs. The maternal grandfather and his girlfriend testified that the mother provides, among other things, food and clothing for the child. Counsel for the paternal grandfather and N.S. made the point on cross-examination of the mother that the mother's prospects for higher paying jobs were limited due to her having only a high-school diploma. Poverty, in the absence of abuse or lack of caring, should not be the criteria for taking a child away from a parent. Bowman v. State Dep't of Hum. Res., 534 So. 2d 304 (Ala. Civ. App. 1988). The paternal grandfather and N.S. complain that the mother had provided them with only \$200 in child support. Even so, the mother essentially had physical and legal custody of the child until December 7, 2021, and, following that, the mother had unsupervised visitation every weekend during which she provided for the child's needs.

In H.A.S. v. S.F., 298 So. 3d 1092 (Ala. Civ. App. 2019), this court held that the evidence was insufficient to support finding a child's continued dependency with respect to the child's mother, H.A.S., at time

of the dispositional hearing. H.A.S. had tested positive for marijuana in 2018, when the child was first placed with her paternal grandmother. Subsequently, H.A.S. had tested negative for drugs four times, had two abnormal drug screens, had failed to appear at a drug screening, and then had two negative drug screens. H.A.S. had suffered from housing instability in the past, evidenced by her eviction from two apartments. At the time of the dispositional hearing, H.A.S. had been in the same residence for seven months. H.A.S. had been the victim of domestic abuse while the child was in her care. This court held that the record lacked clear and convincing evidence indicating that the child was dependent at the time of the dispositional hearing because the mother had produced three recent negative drug screens and there was nothing to indicate that mother's marijuana use had actually impacted her ability to rear her child, that the mother's evictions had resulted in homelessness or had put child in danger, or that the child had been impacted by past domestic violence. Specifically, the court held: "The record lacks evidence establishing that any of the conditions of the mother 'currently persist[ed] to such a degree as to continue to prevent the [mother] from

properly caring for the child.' M.G.[v. Etowah Cnty. Dep't of Hum. Res.], 26 So. 3d [436] at 442 [(Ala. Civ. App. 2009)]." H.A.S. 298 So. 3d at 1106.

In R.F.W. v. Cleburne County Department of Human Resources, 70 So. 3d 1270 (Ala. Civ. App. 2011), a juvenile court awarded custody of the child to the child's maternal great-grandmother. This court held that the custody award was improper because there was no clear and convincing evidence to support the finding that the child was dependent. In R.F.W., the juvenile court found that the father had not met his parental obligations because (1) he had not met Cleburne County DHR's goals that he take a parenting class and an anger-management counseling and (2) he relied on others for assistance with caring for the child. At the time of the trial, the father was living with his mother and his stepfather while working on a separate house for eventual habitation. The father had been employed in a construction job for approximately one year and he was earning enough money to provide day care for the child and to cover his living expenses. The father had been exercising unsupervised visitation with the child for over six months. The social worker who was assigned to the case testified that she had no concerns with regard to those visits. She testified that the child's room at the father's house was adequate and

appropriate, that the home met minimal standards, and that it was sanitary. The social worker testified that she had not observed any problems between the father and the child, and she indicated that she had not perceived any safety issues relating to the child. Cleburne County DHR had requested that the father complete a parenting class and anger-management counseling. The father had completed the parenting class, but not the anger-management counseling. However, the social worker testified that the only anger the father had exhibited related to the mother, who had intentionally interfered with his visitation rights. The mother had since lost custody and was in jail at the time of the dependency trial. The father testified that he had "let go" of his anger regarding the mother. Cleburne County DHR did not identify that former anger problem as a barrier to reuniting the father and the child. In short, the father's reliance on others for help caring for child did not render him unfit to parent because he was capable of caring for the child himself in supervised and unsupervised settings, he had a job earning enough money to cover the child's day-care costs and living expenses, and he had substantially complied with the goals set for him by Cleburne County DHR.

Conclusion

In the present case, this court has reviewed the record to determine whether the juvenile court could have been clearly convinced by the evidence presented to it that the child was dependent. Even indulging the presumption in favor of the juvenile court's factual findings, the record lacks sufficient evidence from which the juvenile court could have been clearly convinced that the child was dependent in the care of the mother as of the time of the May 31, 2022, permanency hearing. The judgment of the juvenile court is therefore reversed, and the cause is remanded for the entry of a judgment dismissing DHR's dependency petition. See § 12-15-310(b) (requiring a juvenile court to dismiss a dependency petition if the allegations in that petition are not proven by clear and convincing evidence); L.R.S. v. M.J., 229 So. 3d 772, 776 (Ala. Civ. App. 2016) ("[A] juvenile court has jurisdiction only to dismiss a dependency petition if the child at issue is not adjudicated to be dependent."). The paternal grandfather and N.S.'s petition for custody should also be dismissed. See Ex parte T.J., 289 So. 3d 1255 (Ala. Civ. App. 2019) (holding that a juvenile court has jurisdiction to make a

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custodial disposition only if the child is dependent at the time of that disposition).

REVERSED AND REMANDED.

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