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# ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2023

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CL-2022-1021, CL-2022-1022, and CL-2022-1023

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R.A.

v.

Madison County Department of Human Resources

Appeals from Madison Juvenile Court  
(JU-20-545.02, JU-20-546.02, and JU-20-547.02)

EDWARDS, Judge.

In February 2022, the Madison County Department of Human Resources ("DHR") filed petitions in the Madison Juvenile Court ("the juvenile court") to terminate the parental rights of R.A. ("the mother") to her children, L.A., O.A., and Q.A. ("the children"); those petitions were assigned case numbers JU-20-545.02, JU-20-546.02, and JU-20-547.02,

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respectively.<sup>1</sup> After a two-day adjudicatory trial held on August 2, 2022, and August 23, 2022, and a dispositional hearing held on August 24, 2022, the juvenile court entered a judgment in each case terminating the parental rights of the mother.<sup>2</sup> The mother filed a postjudgment motion in each action. After her postjudgment motions were denied, the mother filed a timely notice of appeal in each action.<sup>3</sup>

The termination of parental rights is governed by Ala. Code 1975, § 12-15-319. That statute reads, in part:

"(a) If the juvenile court finds from clear and convincing evidence, competent, material, and relevant in nature, that the parent[] of a child [is] unable or unwilling to discharge [his or her] responsibilities to and for the child, or that the conduct or condition of the parent[] renders [him or her] unable to

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<sup>1</sup>The petitions also sought to terminate the parental rights of E.H.J., who was alleged to be the putative father of L.A., O.A., and Q.A. E.H.J. did not participate in the proceedings. At trial, testimony indicated that Q.A.'s alleged father was D.G., who was deceased.

<sup>2</sup>Each judgment also terminated "the parental rights of any person claiming to be the father of the child[ren]."

<sup>3</sup>The appeal from the judgment entered in case number JU-20-545.02 was docketed as appeal number CL-2022-1021, the appeal from the judgment entered in case number JU-20-546.02 was docketed as appeal number CL-2022-1022, and the appeal from the judgment entered in case number JU-20-547.02 was assigned appeal number CL-2022-1023. E.H.J. has not appealed from any of the judgments.

properly care for the child and that the conduct or condition is unlikely to change in the foreseeable future, it may terminate the parental rights of the parent[]. In determining whether or not the parent[] [is] unable or unwilling to discharge [his or her] responsibilities to and for the child and to terminate the parental rights, the juvenile court shall consider the following factors including, but not limited to, the following:

"....

"(2) Emotional illness, mental illness, or mental deficiency of the parent, or excessive use of alcohol or controlled substances, of a duration or nature as to render the parent unable to care for the needs of the child.

"....

"(7) That reasonable efforts by the Department of Human Resources or licensed public or private child care agencies leading toward the rehabilitation of the parent[] have failed.

"....

"(12) Lack of effort by the parent to adjust his or her circumstances to meet the needs of the child in accordance with agreements reached, including agreements reached with local departments of human resources or licensed child-placing agencies, in an administrative review or a judicial review."

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The test a juvenile court must apply in a termination-of-parental-rights action is well settled:

"A juvenile court is required to apply a two-pronged test in determining whether to terminate parental rights: (1) clear and convincing evidence must support a finding that the child is dependent; and (2) the court must properly consider and reject all viable alternatives to a termination of parental rights. Ex parte Beasley, 564 So. 2d 950, 954 (Ala. 1990)."

B.M. v. State, 895 So. 2d 319, 331 (Ala. Civ. App. 2004). A juvenile court's judgment terminating parental rights must be supported by clear and convincing evidence. P.S. v. Jefferson Cnty. Dep't of Hum. Res., 143 So. 3d 792, 795 (Ala. Civ. App. 2013). "Clear and convincing evidence" is "[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.'" L.M. v. D.D.F., 840 So. 2d 171, 179 (Ala. Civ. App. 2002) (quoting Ala. Code 1975, § 6-11-20(b)(4)). Although a juvenile court's factual findings in a judgment terminating parental rights based on evidence presented ore tenus are presumed correct, K.P. v. Etowah Cnty. Dep't of Hum. Res., 43 So. 3d 602, 605 (Ala. Civ. App. 2010), "[t]his court does not reweigh the evidence but, rather, determines whether the

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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 (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)).

The record reflects that the children were initially removed from the home of their maternal grandmother, E.A. ("the maternal grandmother"), on July 16, 2020, after DHR had been made aware of abuse allegations made by A.F., who was another child living in the maternal grandmother's home. Upon completion of its investigation into those allegations, DHR found the maternal grandmother to be "indicated" for having abused A.F. See Ala. Admin. Code (Dep't of Hum. Res.), r. 660-5-34-.07(a). According to Lauren Patterson, the child-abuse-and-neglect investigator from DHR assigned to A.F.'s case, at the time

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DHR began its investigation of the maternal grandmother, the mother was not living in the maternal grandmother's home. However, Patterson said that the maternal grandmother had contacted the mother shortly after DHR had arrived at the maternal grandmother's house to take custody of the children on July 16, 2020, and, she said, the mother had arrived at the house quickly. Patterson said that the maternal grandmother and the mother had become upset and angry and that the mother had "charged" Patterson.

Shaqoya Clay testified that she was the caseworker from DHR initially assigned to A.F.'s case and that, once the children were removed from the custody of the maternal grandmother, she had also been assigned their cases. Like Patterson, Clay indicated that the maternal grandmother and the mother had been hostile toward DHR personnel on the day the children had been removed from the maternal grandmother's home. In addition, Clay said that the police had had to intervene when the mother had "charged" at Patterson. Clay explained that the mother had indicated to DHR in August 2020 that she did not have stable housing at that time.

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Clay testified that Q.A., who was approximately eight years old at the time of the trial, was in a foster home and that she was doing well in her placement. She explained that L.A. and O.A. ("the twins"), who were approximately 12 years old at the time of trial, suffer from autism, cerebral palsy, and multiple sclerosis.<sup>4</sup> She said that the twins are almost completely nonverbal but that each can say a few words; in any event, she explained, it was difficult to communicate with the twins. Clay testified that the twins could feed themselves but that they needed assistance with toileting and that they required care and supervision 24 hours a day, 7 days a week. According to Clay, the twins had been in a therapeutic foster home but, she said, that placement had been disrupted when one of the twins was injured and hospitalized. She said that the twins had then been placed in a "310 Board" placement, which, based on other information contained in the record, is a group-home setting that provides care to those with intellectual or developmental disabilities.

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<sup>4</sup>Thus, the twins qualify as children having special needs. See Ala. Admin. Code (Dep't of Hum. Res.), r. 660-5-22-.06(2)(a)2. (providing that a "child having special needs" includes a child who suffers from physical disabilities).

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The record lacks documentary evidence concerning the reason that the children had been residing in the home of the maternal grandmother and not with the mother, but what evidence is in the record tends to show that the maternal grandmother had been awarded custody of the children several years before the August 2022 termination-of-parental-rights trial, when she and the mother had resided in Tennessee. Clay testified that, based on records she had received and had reviewed from the Tennessee child-protective-service department, the twins had tested positive for cocaine at the time of their birth in August 2009, that the mother had been found "indicated" based on the positive drug-test results, and that the maternal grandmother had been awarded custody of the twins. Similarly, Clay testified that Tennessee authorities had become involved with the mother during Q.A.'s infancy and that the maternal grandmother had received custody of Q.A. at some unspecified point. However, because DHR did not present documentary evidence relating to the children's involvement with child-protective services in Tennessee, we cannot be certain whether a Tennessee court awarded the maternal grandmother custody of the children or whether the mother and



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the maternal grandmother came to an agreement relating to the children's custody.

Contrary to the testimony offered by Clay, the mother testified that, on the day DHR arrived at the mother's home to remove the children, Q.A. was living with her but had been visiting at the maternal grandmother's home at that time; that testimony conflicts with other testimony indicating that Q.A. had admitted to DHR personnel during the investigation into the abuse allegations that the maternal grandmother had been abusive toward A.F. and that the maternal grandmother had involved the children in the abuse she had perpetrated on A.F. When asked how the maternal grandmother had come to have custody of Q.A., the mother responded: "I was like, doing like traveling, and I couldn't, you know, I just couldn't take [Q.A.], you know what I am saying, travel with [Q.A.], I guess." The mother then stated:

"So, I ended up, like, you know what I'm saying, giving custody, it wasn't like custody, it was something that I signed saying that she could take her to the doctor and she could, you know, she could -- like for school and stuff, you know what I am saying?"

"I don't think it was custody, I don't remember it was custody, but it was something that I signed just to give her permission

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to, you know what I'm saying, do for [Q.A.] while I'm not around."

That is, the mother testified that she had granted to the maternal grandmother something similar to a delegation of parental authority. See Ala. Code 1975, § 26-2A-7. Regarding the twins, the mother testified that she had "signed over" their custody to the maternal grandmother because she was "struggling" and because "it was just me by myself and [the twins' father] and we was into it all the time and it was like he didn't want to help me." When asked if the twins had had drugs in their systems when they were born, the mother answered in the negative.

According to Clay, at a September 2020 individualized-service-plan ("ISP") meeting, DHR set out the plan for reunifying the mother and the children. Clay explained that the plan had included the mother's agreement to submit to random drug testing administered by Alternative Sentencing, to undergo a drug-abuse assessment and comply with the recommendations stemming from that assessment, to complete parenting classes, and to submit to a psychological evaluation. Clay said that the mother had tested positive for methadone on a drug test administered on the date of that ISP meeting and had tested positive for

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both methadone and cocaine on October 27, 2020. Although the mother failed to appear for several drug tests after October 2020, Clay testified that the mother had tested positive for cocaine again on a hair-follicle test administered in January 2021.

Clay testified that the mother had completed a drug-abuse assessment and had begun treatment provided through Aletheia House but that the mother had then revoked her release so that DHR was unable to monitor her treatment progress. Clay said that DHR had learned that the mother had discontinued treatment through Aletheia House. Although Clay admitted that the mother had submitted to a second drug-abuse assessment and had completed outpatient treatment with Jonathan Williams of ARS, Inc., in May 2021, Clay testified that DHR did not consider that program to be "intensive" and said that the mother's completion of that outpatient program was not sufficient to meet the ISP goal of completing substance-abuse treatment. Clay said that the mother had also begun treatment at Lovelady Center in August 2021 but that the mother had left that program a mere five days after she had entered it.

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When initially questioned on August 2, 2022, about why she had left the program provided through the Lovelady Center, the mother replied that she did not want to talk about it. She later testified that she had left the Lovelady Center program because she had secured an apartment. On August 23, 2022, the mother testified that she had been filling out applications for drug-treatment facilities that would provide housing for her and the children.

Clay testified that the mother had not regularly submitted to random drug testing as required by the September 2020 ISP. The records from Alternative Sentencing contained in the record on appeal reflect that the mother had failed to submit to a random test between November 2020 and January 2021 and that the mother had tested positive for cocaine on a hair-follicle test administered on January 14, 2021. The Alternative Sentencing records further indicate that the mother tested positive for either methadone or methadone and cocaine on February 4, 2021, February 9, 2021, February 17, 2021, and March 4, 2021. According to Clay, around that time, the mother's belligerent behavior

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had resulted in the personnel at Alternative Sentencing banning her from the facility.

Clay said that the mother had then begun testing at a different drug-testing facility run by an organization called Onsite. The Onsite records indicate that the mother began testing at that facility on March 23, 2021, that she tested almost weekly between that date and May 19, 2021, when she tested positive for cocaine. The records from Onsite also show that the mother did not test between May 19, 2021, and September 23, 2021; the records specifically reflect that the mother appeared at Onsite but refused to test on June 23, 2021. The mother tested only once in September 2021, only once in October 2021, and not at all in November or December 2021. The mother resumed testing at Onsite on January 14, 2022, after which she tested once more in January 2022, three times in February 2022, four times in March 2022, once in May 2022, twice in June 2022, and twice in July 2022. Each of the mother's urine tests administered at Onsite after June 2021 were negative for all substances, except for the mother's final Onsite drug test, which had been administered on July 29, 2022, and was positive for cocaine. In addition,

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the mother submitted to a hair-follicle test on May 25, 2022, which was also negative for all substances.

The mother's counsel negotiated an agreement for the mother to resume testing through Alternative Sentencing in late June 2022. The records from Alternative Sentencing indicate that the mother failed to appear for five scheduled drug screens in June 2022 and July 2022. The records also indicate that the mother failed to appear for three drug tests scheduled for dates in August 2022, after she tested positive for cocaine at Onsite and preceding the second day of trial on August 23, 2022.

According to Clay, the mother submitted to a psychological evaluation in October 2020. Clay said that the mother had been required to "follow up" on the recommended mental-health treatment after the evaluation. Clay testified that the mother had begun mental-health treatment but that she had stopped attending that treatment near the end of 2021.

The records from Wellstone, a mental-health provider, indicate that the mother had sought treatment at that facility in 2018 and 2019 and again beginning in February 2021. The Wellstone records from 2021

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reflect that the mother was first diagnosed with major depressive disorder but that, after some counseling sessions, was also diagnosed with bipolar disorder. Those records indicate that she was initially prescribed the medications Zoloft, Seroquel, and Vistaril in February 2021; that she had complained about the side effects of those medications and had been instructed by her prescriber to discontinue taking the Zoloft and to increase her dosage of Seroquel in March 2021; and that she was instructed to discontinue Seroquel and begin using the medication Latuda in April 2021. The May 2021 and August 2021 records from Wellstone indicate that the mother did not report any side effects from her new medication regimen.

The Wellstone records also contain therapy notes from the mother's counseling sessions. The mother attended sessions with Aisha Brewster in February 2021, March 2021, April 2021, and July 2021. The Wellstone records indicate that the mother failed to attend her "telemed" sessions with Brewster in September 2021 and February 2022. The records do not contain any information indicating whether therapy sessions had been scheduled or held in the months of May, June, August, October,

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November, or December 2021 or in January 2022. Brewster's notes contain nothing remarkable regarding the mother's therapy sessions.

As previously noted, the mother's belligerent behavior had resulted in her being banned from the premises of Alternative Sentencing's facility in March 2021. Clay described the mother as being combative. She also indicated that the mother's mood would vacillate between being pleasant and being hostile and that the mother would at times be forthcoming and at other times refuse to provide information to DHR personnel. Clay testified that the mother's behavior had resulted in DHR's having difficulty locating providers to offer necessary services to the mother. She specifically testified that most of the staff of the 310 Board were unwilling to transport the twins to visitations with the mother because of her behavior and attitude. Christopher Miller, the guardian ad litem for the children, also testified that personnel at the group home in which the twins reside no longer wanted to facilitate or supervise visitations with the mother because of negative interactions with her. In fact, Miller testified that only one employee of the group home remained willing to transport the twins to visitation or to supervise



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visitation with the mother and that the group home's protocols required that two persons accompany the twins to visitations because neither of the twins could be left unsupervised. Although Miller testified that he had not had any negative interactions with the mother, he said that he had been made aware at ISP meetings that the mother had had "very, very bad interaction[s] with a bunch of individuals."

During the first day of the trial, Miller remarked during his questioning of the mother that she appeared and was behaving differently than she had at other court appearances. The mother had been late for the trial and also, according to the remarks made on the record by the juvenile court, had had trouble remaining awake during the trial.<sup>5</sup> At times during the questioning of other witnesses, the mother would make comments aloud. The mother blamed her tardiness on her ride-share service failing to arrive to pick her up and explained her appearance, attitude, and drowsiness on the fact that she had worked from 7:00 p.m. to 7:00 a.m. the night before. She further remarked that

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<sup>5</sup>The juvenile court did not require the mother to submit to a drug test on either day of the trial.

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she was "real tired of that, tired of just the -- I'm not going to lie, I don't care too much for [DHR], I don't." She then continued to rail against DHR, to call Clay a liar, to complain that Q.A. wore "mix-matched shoes" to a visit, and to complain that she never saw the children in the clothing or shoes that she had purchased for them. Although the mother admitted that "[i]t probably was my attitude which has really got me where I'm at now, why the lies keep coming up on me," she accused Clay of not desiring to reunite her with the children and of having a personal animosity toward her. The mother remarked about Clay, "I ain't never seen a DHR person like her" and "[s]he don't like me and she's doing this to me."

Clay testified that the mother's interactions with the children during visitations were positive and that the mother had completed parenting classes. However, Clay indicated that the mother had not always been consistent in her visits because she had canceled some and had been tardy for others. Clay said that the mother had sometimes been significantly tardy, which, she said, had resulted in an inability to have visits on those dates. Clay did not, however, provide the dates of the

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visits that the mother had canceled or the dates of those visits to which she had been significantly tardy.

Clay testified that the children enjoyed visiting with the mother. She also reported that she had received no complaints indicating that the mother was ever belligerent with the children. Although Clay said that she had observed the twins become distraught when Q.A. did not attend a visit, she indicated that she had not observed the twins become significantly upset when the mother had failed to show for a visit or when visits with the mother were canceled in the weeks before trial based on the mother's failure to submit to drug tests as ordered by the juvenile court.

According to Clay, Q.A. had developed a strong bond with her foster family, with which she had been placed since her removal from the maternal grandmother's custody in July 2020. Clay said that Q.A.'s foster parents desired to adopt her. Clay also indicated that she was hopeful that DHR could locate a therapeutic foster family that would desire to adopt the twins; she admitted, however, that DHR had not begun searching for an appropriate adoptive resource for them. When

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questioned about the benefit that termination of parental rights would secure for the twins, Clay admitted that she could not communicate with the twins about their feelings but stated that, in her opinion, continued involvement with the mother was not in the twins' best interest.

Karen Jackson, a DHR provider who transported Q.A. for visits with the mother and who supervised those visits, testified that the mother appeared to be a good mother and that the children were bonded to her. Although Jackson indicated that the mother was attentive and focused on the children during visits, she noted that she had had some concerns, including the mother's frequent need to leave the visitation room to retrieve items, her tardiness to the visits, and the mother's inclination to terminate a visit early when O.A. would act out by throwing things or using profanity. Jackson reported that the mother would get frustrated over O.A.'s behavior and that O.A.'s transporter, and not the mother, would have to restrain O.A. and calm him down. Jackson testified that she had gotten along well with the mother and had not been subjected to any belligerent attitude from her.

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Miller testified that he had observed four or five visits between the mother and the children. He remarked that the mother worked well with the twins, that he had not observed anything inappropriate at the visits, and that the children "very much love [the] mother." He opined that Q.A. would be very sad if her mother's parental rights were terminated but that she would be able to deal with it much better than the twins because, he said, she was "in a good place with it all." Regarding the twins, however, Miller opined that cutting off all visitation with the mother would be detrimental. Unlike Clay, Miller stated his belief that it was not likely that the twins would achieve permanency through adoption. He indicated that they would most likely remain in a group home or an institutional setting for the remainder of their lives and opined that it would be best for the twins to have continued contact with the mother so that they would have someone to come to visit them, to bring them gifts, and with which to observe holidays and birthdays. Miller stated that the mother truly loved the twins but that she could not parent them.

Clay testified that the mother had provided the names of two potential relative resources to DHR: her older daughter, Le.A. ("the older

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sister"), and an unspecified relative, P.T.A., who lived in Tennessee. Clay stated that the ISP team had rejected the older sister after concluding that she would not be the best placement for the children. She explained that the ISP team had rejected the older sister as a potential placement for the children because she was young, because she had two young children of her own, and because the ISP team did not think that she would be able to rear an additional three children. Furthermore, the record does not reflect that the older sister had any relationship with the children, that she had sought to visit with them, or that she had sought custody of them at any time. Regarding P.T.A., Clay testified that, although P.T.A. had indicated that she might be interested in serving as a placement for the children, P.T.A. had not had sufficient room to house the children. Clay said that P.T.A. had indicated that she would consider adding on to her home and that she would contact DHR if that were possible, but, according to Clay, P.T.A. had not contacted DHR again to complete the process for a home study through the Interstate Compact on the Placement of Children, Ala. Code 1975, § 44-2-20 et seq.

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Clay indicated that DHR had not established the paternity of the children. She said that E.H.J., who was the alleged putative father of L.A. and O.A., had informed DHR that he was not able to care for the children because of his advanced age; Clay testified that E.H.J. was in his 70s or 80s. Clay testified that Q.A.'s alleged father, D.G., was deceased.

The mother testified that she had struggled with substance-abuse issues for "quite some time or whatever." She explained that she had "reached out for drugs" when she "got bored and stuff, you know, at a time when I didn't have nobody, you know." Although the mother testified on August 2, 2022, that her drug of choice was cocaine and that she had last used cocaine approximately one year before the trial, she testified on August 23, 2022, that her current drug of choice was opiates. She also indicated that her choice to participate in the methadone clinic to get off "it" had been her "downfall." The mother insisted that the July 29, 2022, drug test indicating that she was positive for cocaine had been wrong.

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The mother testified that she leased an apartment but admitted that she had refused to renew her lease and had instead opted to continue in a month-to-month tenancy. She admitted that her driver's license had been suspended or revoked because of thousands of dollars in unpaid traffic tickets in Tennessee, which, the mother said, she could easily resolve by going before a judge and telling him that she was having a hard time paying. The mother further admitted that she had no access to reliable transportation; instead, she said, she had relied on a former neighbor to provide transportation or had used ride-sharing services.

The mother testified on August 2, 2022, that she was employed. She explained that she had previously served for several years as a sitter for an elderly person who had passed away in January or February 2022 and that she had resumed working for a previous employer, "Regency," approximately one month before the start of the trial on August 2, 2022. She indicated that, in addition to working for Regency at its facility, which appears to have been a nursing home or assisted-living facility, her supervisor would also have her "fill in" for other employees "at different homes." However, the mother testified on August 23, 2022, that she had



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quit her job with Regency "because I was just like I'm just -- I just want to leave." She then explained that she desired to seek drug or mental-health treatment at a facility that would provide housing for her and her children and that she had filled out applications for at least one such facility.

The mother denied having any history of mental-health diagnoses, but she then admitted that she had been told that she had been diagnosed with bipolar disorder or a schizoaffective disorder. She also said that she had previously sought treatment for depression "when she was younger" and for postpartum depression after the birth of the children. Although she admitted to having more recently been prescribed certain medications for depression, she said that she had discussed her issues with the medications that made her drowsy with her physician and that he had taken her off the medications. The mother testified that she was not currently taking any prescribed mental-health medications. The mother also admitted that she had a mental-health counselor but said that she had last spoken to that counselor two months before the trial.

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The mother complained that DHR had not assisted her with appropriate services. She said that she had previously needed help with finding a place to live, paying utilities, locating employment, and "all kinds of stuff." When the juvenile court questioned her about how long she had been out of work, the mother did not answer the question; instead, she began rambling about owing money to the "drug testing lady." She also admitted that she had not directly stated to Clay that she needed assistance paying her electric bill, saying instead that "I asked her about resources." She then stated: "I asked her for help, I asked her, yeah. Because it was like some places, I can't remember what it was I was looking for. And it wasn't only that, it was something else I was looking for, I just couldn't get it." By and large, the mother's testimony on the first day of the trial on August 2, 2022, was marked by frequent rambling and was quite disjointed.

As previously noted, the ISP required the mother to undergo a psychological evaluation. The mother was evaluated by Dr. Barry Wood in October 2020. Dr. Wood testified that the mother had denied having an issue with substance abuse during her interview but that she had

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informed him that she had previously sought psychiatric treatment for postpartum depression after the birth of the twins. According to Dr. Wood, he had administered to the mother the Minnesota Multiphasic Personality Inventory 2 ("MMPI-2") and the Parenting Stress Index ("PSI") and, he said, the results of both of those tests had been invalid. He explained that the mother had reported "a more unusual experience" on the MMPI-2, which, he said, the test "flagged" for exaggeration. In significant contrast, Dr. Wood said, the mother had exhibited "excessive defensiveness" on the PSI, rendering it invalid as well. Dr. Wood described the mother as having become increasingly irritated as the interview had progressed. Although he said that the interview had become "heated," he said that it had "cooled down," that the mother had relaxed, and that the interview had "ended on a good note." He remarked that he recalled the interview had become "markedly acerbic." Dr. Wood recommended that the mother complete parenting training, that she continue to undergo random drug screenings, and that she otherwise comply with DHR's requirements. He testified that, because the mother's testing had been completely invalid, he could not draw any conclusions

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about her psychological state. He stated that he believed that the mother should see a psychiatrist for evaluation and potential treatment and that she should receive individual counseling to assist her with communicating with DHR. The record does not specifically reflect that the mother was ever referred to a psychiatrist, but the Wellstone records indicate, and the mother herself testified, that she had seen a physician of some sort in relation to her mental health and that she had been prescribed medications to treat bipolar disorder. The Wellstone records also indicate, and the mother testified, that she had been provided a mental-health counselor.

The mother argues on appeal that the juvenile court's determination that the children remained dependent was not supported by clear and convincing evidence, that DHR did not establish by clear and convincing evidence that it had made reasonable efforts to reunify the family, and that DHR did not prove that no viable alternative to the termination of the mother's parental rights existed. She specifically contends that, in the case of the twins, maintenance of the status quo is a viable alternative.

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We cannot agree with the mother that the juvenile court lacked clear and convincing evidence to support its conclusion that the children remained dependent. The mother had continued to intermittently test positive for cocaine or methadone or both. Although she disputed the positive results, the mother had tested positive for cocaine on July 29, 2022, only days before the first day of the trial and had failed to submit to the three random drug tests scheduled between the date of her positive test and the second day of trial. Despite at least two attempts, the mother had not completed intensive drug treatment, having withdrawn from the programs at both Aletheia House and Lovelady Center. Her demeanor during the first day of trial troubled Miller, and the juvenile court remarked at trial that the mother had been late to the beginning of the trial, late returning from almost every break, and was having difficulty remaining awake. The twins have special needs that require constant care and supervision, which the mother could not provide and had apparently never provided. Although she had a suitable apartment, she had refused to sign a new lease and was renting that apartment solely on

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a month-to-month basis. The mother had also chosen to quit her job between the two days of trial.

Based on the testimony and documentary evidence presented to the juvenile court, the juvenile court had sufficient evidence to find that the mother continued to struggle with substance-abuse and mental-health issues such that her ability to care for the children was impacted. See § 12-15-319(a)(2). In addition, the juvenile court had ample evidence from which to determine that, despite her agreement to do so, she had failed to complete drug treatment and had chosen not to maintain stability in her residence or in her employment. Thus, the juvenile court could have concluded that the mother had failed to adjust her circumstances to meet the needs of the children. See § 12-15-319(a)(12).

The mother next argues that the evidence does not support the juvenile court's conclusion that DHR exerted reasonable efforts to reunite her with the children. We note that the record indicates that DHR had been relieved of making further reasonable efforts to rehabilitate the mother by an order entered in each action in July 2021. The mother contends that DHR failed to properly tailor services to address her

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shortcomings, see Montgomery Cnty. Dep't of Hum. Res. v. A.S.N., 206 So. 3d 661, 672 (Ala. Civ. App. 2016) (explaining that "DHR must make an effort to tailor services to best address the shortcomings of and the issues facing the parents"), and that the evidence indicates that the mother was amenable to, and had completed, most offered services. She specifically argues that DHR did not follow the recommendations of Dr. Wood or include the mother in the treatment of the twins so that she could better learn to parent them. She also generally complains that the evidence indicated that DHR had not assisted her with employment, housing, or transportation.

The record reflects that DHR offered the mother services tailored to her shortcomings. The mother was provided drug-abuse assessments, drug-treatment programs, a psychological evaluation, and mental-health treatment and counseling. The mother did not complete inpatient drug treatment, and, although she completed outpatient drug counseling, she tested positive for cocaine shortly before the first day of the termination-of-parental-rights trial. The mother contested the validity of the positive drug-test result, but that drug-test result and her other intermittent

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positive results support the juvenile court's conclusion that the mother continued to abuse illegal substances and that she had not adjusted her circumstances to benefit the children.

The juvenile court also had sufficient evidence from which to conclude that the mother had not taken advantage of the services offered to address her mental health. The mother admitted, and the Wellstone records reflect, that she had been diagnosed at different times with bipolar disorder, depression, and schizoaffective disorder. The mother testified that she had been prescribed several mental-health medications, all of which she had since discontinued taking, albeit, she said, after discussing the side effects that she had experienced when using those medications with a physician. The Wellstone records indicate that the mother had complained about the side effects of certain medications, that those medications had been discontinued, and that the mother had not reported side effects with the replacement medications. Thus, the Wellstone records do not support the mother's testimony that her physician had taken her off her mental-health medications. The mother also testified that she had last spoken to her mental-health counselor two



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months before the trial, but the Wellstone records indicate that the last session she had had with her counselor was in July 2021. Thus, the evidence presented to the juvenile court supports the conclusion that, in fact, the mother had been treated by a physician (if not a psychiatrist) and a counselor, as Dr. Wood had recommended.

Regarding DHR's failure to include the mother in the treatment of the twins, we note that DHR's primary concern appeared to be with the mother's intermittent use of cocaine and/or methadone and not with the mother's general parenting skills. Indeed, the record reflects that the mother was apparently attentive to the needs of the twins during visitations even if she was, at times, overwhelmed by displays of difficult behavior. However, the mother's failure to address her use of controlled substances was a sufficient basis for the juvenile court to conclude that the mother could not properly parent or supervise the children, including the twins, whose special needs required constant care and supervision, which the mother had never provided for the twins. The mother's attentiveness to the twins during visitations, although laudable, was not sufficient to compel a conclusion that the mother could render care for

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the twins on a daily basis, especially in light of her continued intermittent use of cocaine and/or methadone and her bipolar disorder, which the mother had not been treating with prescribed medication.

To the extent that the mother complains that she had requested but had not yet received assistance from DHR regarding assistance with paying her electric bill and obtaining transportation, housing, or employment, we note that the mother's testimony regarding those requests was, at best, rather confusing. In addition, the dates that the mother required such assistance was also unclear from the record; if she was in need of that assistance after July 2021, DHR was no longer under an obligation to provide her services. Further, we note that the mother had housing and employment on the first day of the trial on August 2, 2022, indicating that any need for assistance had resolved. DHR did not rely on the mother's lack of transportation as a basis for terminating her parental rights, so any possible failings of DHR in regard to the mother's transportation needs was not relevant. We further note that the mother herself testified that she could remedy her transportation issues, at least in part, by settling outstanding traffic fines and seeking reinstatement of

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her driver's license, which she had not accomplished. Finally, the mother argues that DHR failed to establish that no viable alternatives to the termination of her parental rights existed. She initially complains that DHR conducted only a limited search for relatives. Secondly, she contends that, in the case of the twins, long-term foster care is a viable alternative to the termination of her parental rights.

The mother's complaint that DHR did not exhaustively search for potential relatives appears to be based, at least in part, on the mother's failure to recognize her own duty to provide information on such relatives to DHR. See B.S. v. Cullman Cnty. Dep't of Hum. Res., 865 So. 2d 1188, 1197 (Ala. Civ. App. 2003). DHR was not required to perform an exhaustive search for relatives and was permitted to rely on the mother to provide potential relative resources for investigation. J.F.S. v. Mobile Cnty. Dep't of Hum. Res., 38 So. 3d 75, 78 (Ala. Civ. App. 2009) (indicating that, when a parent fails to "provide DHR with any information concerning potential relative resources, DHR's duty to initiate an investigation was not triggered"). The mother provided DHR with information about only two potential relatives.

The mother provided the names of, and contact information for, the older sister and P.T.A. The evidence at trial did not suggest that the older sister or P.T.A. had had any contact with the children or had made any effort to care for Q.A. or to seek custody of her. Thus, the juvenile court was not required to consider the older sister or P.T.A. to be a potential candidate for custody of Q.A. See Ala. Code 1975, § 12-15-319(c).<sup>6</sup> Clay explained that the ISP team had rejected the older sister as a possible placement for the children. Clay said that P.T.A. had indicated interest in serving as a resource if she successfully enlarged her

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<sup>6</sup>Section 12-15-31(c) reads as follows:

"(c) The juvenile court is not required to consider a relative to be a candidate for legal guardian of the child in a proceeding for termination of parental rights if both of the following circumstances exist:

"(1) The relative did not attempt to care for the child or obtain custody of the child within four months of the child being removed from the custody of the parents or placed in foster care, if the removal was known to the relative.

"(2) The goal of the current permanency plan formulated by the Department of Human Resources is adoption by the current foster parents."

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house. However, despite her initial interest, P.T.A. had not subsequently contacted DHR to indicate that she had been able to make sufficient room for the children. Thus, we conclude that the juvenile court had ample evidence from which to conclude that no relative resources existed to serve as viable alternatives to the termination of the mother's parental rights to the children.

We also reject the mother's argument that the record supports the conclusion that maintenance of the status quo is a viable alternative to the termination of her parental rights to the twins. This court has recently reiterated that "before proceeding to terminate the parental rights of special-needs children, a juvenile court must consider whether the children will likely achieve permanency through adoption." T.W. v. Calhoun Cnty. Dep't of Hum. Res., [Ms. CL-2022-0694, June 2, 2023] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Civ. App. 2023) (on rehearing). We also explained that "[i]f some less drastic alternative to termination of parental rights can be used that will simultaneously protect the children from parental harm and preserve the beneficial aspects of the family relationship, then a juvenile court must explore whether that alternative can be

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successfully employed instead of terminating parental rights.'" T.W., \_\_\_ So. 3d at \_\_\_ (quoting T.D.K. v. L.A.W., 78 So. 3d 1006, 1011 (Ala. Civ. App. 2011)).

Although Clay indicated that she held out hope that a therapeutic adoptive family could be located for the twins, Miller's testimony and other evidence of record could support a conclusion that the twins are not likely to be adopted and that they are more likely to spend the remainder of their lives in a group home or institutional setting. Miller testified that the mother loves the twins and that the twins appear to love her. He opined that severing the connection between the mother and the twins would be detrimental to them and would leave them bereft of anyone that cared for them. As he put it, everyone should have someone who will visit them and bring them a gift to celebrate birthdays and holidays, which the mother has consistently done.

However, even if we view the record as reflecting that the twins have no real hope of achieving permanency through adoption and that they may adequately be protected from their mother's shortcomings through continued placement in a group home or institution, we cannot

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agree that, in this particular circumstance, maintenance of the status quo is a viable alternative to the termination of the mother's parental rights. Although we explained in T.W., that maintenance of the status quo is appropriate when the evidence fails to indicate that a special-needs child will likely achieve permanency after the termination of his or her parent's parental rights, we further observed that, in that case, "DHR presented no evidence indicating that [T.W.] has acted in any disruptive, antagonistic, or any other manner that makes the continuation of [the existing foster-care] arrangement untenable." The record in the present case differs markedly from the record in T.W. in that respect.

The record in the present case reflects that the mother had alienated the staff at the group home in which the twins resided. Her belligerent attitude had, in fact, alienated other service providers and, as the mother put it, "[i]t probably was my attitude which has really got me where I'm at now." At the close of the adjudicatory hearing on the termination-of-parental-rights petitions, the juvenile court observed that it did not "know of any alternative to termination of parental rights given" the testimony and evidence presented at trial. Although the

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juvenile court indicated that continuing to allow visitation between the mother and the twins was a desirable outcome, it stated, "we're running out of people that are willing and able" to transport and supervise visitation. The juvenile court also remarked that, "at this point, if she keeps burning these bridges, there's nothing [the juvenile court] can do to keep visitation going." The evidence presented at trial indicated that, due to the mother's belligerent behavior, all but one of the employees at the group home were no longer willing to transport the twins to visitation or to supervise the mother's visitations. Thus, unlike the situation in T.W., the situation in the present case -- specifically, the mother's conduct -- prevents the maintenance of the status quo from serving as a viable alternative to termination of the mother's parental rights.

The mother's continued use of controlled substances was sufficient evidence to support the conclusion that the children remained dependent. Moreover, the evidence presented at the trial supports the conclusion that the mother failed to complete certain of the services offered by DHR relating to her substance-abuse issues and mental-health issues and had not otherwise remedied her parental deficiencies. Although some



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evidence indicated that maintaining the status quo, at least regarding the twins, might be a viable alternative to termination of the mother's parental rights, the mother's belligerent behavior had alienated those who would be necessary to provide the twins transportation to and supervision at visitations with the mother, rendering maintenance of the status quo untenable. Having considered and rejected the mother's several arguments, we affirm the judgments of the juvenile court terminating the mother's parental rights to the children.

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CL-2022-1023 -- AFFIRMED.

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

Moore, J., concurs in the result, with opinion.

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MOORE, Judge, concurring in the result.

I concur with the main opinion that the judgment of the Madison Juvenile Court ("the juvenile court") terminating the parental rights of R.A. ("the mother") to Q.A. should be affirmed. I agree that none of the arguments raised by the mother warrant reversal of that judgment. The mother primarily argues that the judgment should be reversed because the juvenile court did not receive clear and convincing evidence that Q.A. remained "dependent." However, dependency, at least within the meaning of that term under Ala. Code 1975, § 12-15-102(8)a., is not an actual element of a termination-of-parental-rights case. Instead, the key inquiry is whether the juvenile court received sufficient evidence to establish the statutory grounds for termination set forth in Ala. Code 1975, § 12-15-319(a), which, in this case, it did. See J.G. v. Lauderdale Cnty. Dep't of Hum. Res., [Ms. 2210452, Jan. 13, 2023] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Civ. App. 2023) (Moore, J., concurring in the result). As I have long advocated, to avoid further confusion on this point, this court should abandon the standard set forth in B.M. v. State, 895 So. 2d 319, 331 (Ala. Civ. App. 2004), and a host of other cases, which provides that the state

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must prove the ongoing dependency of the child in termination-of-parental-rights cases. See J.C. v. State Dep't of Hum. Res., 986 So. 2d 1172, 1201-06 (Ala. Civ. App. 2007) (Moore, J., concurring specially).

I also concur in affirming the judgments terminating the parental rights of the mother to L.A. and O.A. ("the twins"). In addition to the arguments applicable to all three judgments, which the main opinion properly rejects, the mother argues that the two judgments terminating the parental rights of the mother to the twins should be reversed because, she says, the juvenile court erred in failing to maintain the status quo as a viable alternative to terminating her parental rights. Because of their profound special needs, the twins currently reside in a therapeutic-group home. The mother maintains that the twins will likely continue to reside in the group home in the future because no adoptive resource has been identified for them. The mother argues that it would be beneficial and appropriate for the twins for them to maintain their familial bond with the mother through visitation while they continue to receive long-term care at that facility.

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In its brief to this court, the Madison County Department of Human Resources ("DHR") responds that maintaining the status quo is not feasible. In the final judgments, the juvenile court noted that the guardian ad litem for the twins suggested that the mother be allowed to visit with the twins until they were adopted. The juvenile rejected that plan because, it said,

"the [c]ourt does not believe that [DHR] will be able to locate a service provider that will work with the mother to continue her visitations ... after viewing the mother's actions and reactions in this [c]ourtroom and her previous history of harassment and intimidation of the service providers. The [c]ourt is concerned that such continued visitation, even if requested for the good of [the twins,] is not feasible given the mother's inability to control her hostility."

The mother does not challenge those findings of the juvenile court, so we are bound to conclude that continued supervised visitation between the mother and the twins is not feasible. See Gary v. Crouch, 923 So. 2d 1130, 1136 (Ala. Civ. App. 2005) ("[T]his court is confined in its review to addressing the arguments raised by the parties in their briefs on appeal; arguments not raised by the parties are waived.").

An alternative custodial arrangement must, at a minimum, be "feasible," i.e., capable of being practicably implemented, see Merriam-

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Webster's Collegiate Dictionary 458 (11th ed.), in order to be "viable," i.e., capable of working successfully on a sustained basis, see Merriam-Webster's Collegiate Dictionary 1392 (11th ed.). The juvenile court did not err in determining that the plan proposed by the guardian ad litem and advocated by the mother on appeal was not a viable alternative to termination of the mother's parental rights. Thus, the main opinion properly rejects the argument made by the mother.

Nevertheless, I remain skeptical of the propriety of judgments terminating the parental rights of the parents of children with special needs without first identifying an adoptive resource. See T.W. v. Calhoun Cnty. Dep't of Hum. Res., [Ms. CL-2022-0694, June 2, 2023] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Civ. App. 2023) (Moore, J., concurring in the result). In this case, the evidence indicates that the twins suffer from serious and chronic physical and mental-health problems affecting their adoptability. For some unstated reason, DHR had not even attempted to locate an adoptive resource for the twins at the time of trial. See Ala. Code 1975, § 12-15-317(1) (requiring DHR to actively search for adoptive resources for children who are the subject of a pending termination-of-parental-

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rights action). In the final judgments, the juvenile court, after assessing the competing evidence on the issue, expressed concern that the twins, who are now 13 years old, likely would never be adopted. The judgments essentially leave the twins languishing in long-term foster care with only a vague chance of someday, possibly, finding an appropriate permanent, therapeutic home through adoption. It is difficult to discern how termination of the parental rights of the mother will benefit the interests of the twins in obtaining permanency or achieve any other compelling governmental interest. See Ex parte Bodie, [Ms. 1210248, Oct. 14, 2022] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. 2022) (Parker, C.J., concurring in part and concurring in the result). However, the mother did not argue these points, and the guardian ad litem for the twins did not appeal the judgments, so this is not an appropriate case to resolve those troubling issues.