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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2022-2023

CL-2022-1125

Ex parte C.R. and L.S.

PETITION FOR WRIT OF MANDAMUS

(In re: V.R. and J.R.

v.

C.R. and L.S.)

(Madison Juvenile Court, JU-22-754.01)

CL-2022-1126

Ex parte C.R.

PETITION FOR WRIT OF MANDAMUS

CL-2022-1125, CL-2022-1126, and CL-2022-1127

(In re: V.R. and J.R.

v.

C.R. and L.S.)

(Madison Juvenile Court, JU-22-755.01)

CL-2022-1127

Ex parte C.R. and L.S.

PETITION FOR WRIT OF MANDAMUS

(In re: V.R. and J.R.

v.

C.R. and L.S.)

(Madison Juvenile Court, JU-22-756.01)

PER CURIAM.

C.R. ("the mother") and L.S. filed petitions for writs of mandamus, seeking our review of orders entered by the Madison Juvenile Court ("the juvenile court") regarding L.J. (born in 2010), A.S. (born in 2020), and C.S. (born in 2021).

Factual Background and Procedural History

The materials that have been submitted to this court reveal the following facts. On September 2, 2022, V.R. and J.R. ("the maternal grandparents") filed a motion in the juvenile seeking an ex parte order granting them temporary custody of L.J., A.S., and C.S. ("the children") on an emergency basis and a verified petition seeking to have the children declared dependent. In the petition, the maternal grandparents alleged that the mother had sole physical custody of the children; that the mother was living with L.S., the legal father of A.S. and C.S.; that L.S. had been arrested for domestic violence after striking the mother; that L.S.'s domestic-violence charge was pending before the district court; that L.S. had threatened to kill the mother and her family; that the mother had filed a protection-from-abuse petition against L.S.; that the mother had withdrawn the protection-from-abuse petition and continued to live with L.S.; that L.S. has multiple felony arrests; and that L.S. had threatened to abscond with the children. Although the maternal grandparents filed a single petition, a separate action was created for each child: case no. Ju-22-754.01 for A.S., case no. JU-22-755.01 for L.J., and case no. JU-22-756.01 for C.S.

On the same day the petition was filed, the juvenile court entered an emergency pickup order for each of the children, determining that the children were in danger of bodily harm. The pickup orders placed the children with the maternal grandparents. The juvenile court set the matters for a shelter-care hearing on September 12, 2022. On September 8, 2022, the juvenile court appointed a guardian ad litem for the children. At some point, the juvenile court involved the Court Appointed Juvenile Advocate ("CAJA") program of Madison County. Following the hearing on September 12, 2022, the juvenile court entered orders on September 12, 2022, that effectively left the emergency pickup orders in place. The juvenile-court judge then recused himself and another juvenile-court judge was appointed to hear the cases. On September 14, 2022, L.S. filed a motion for emergency custody or, in the alternative, visitation. On September 16, 2022, the juvenile court entered an order setting the cases for a hearing on October 6, 2022.

On September 21, 2022, the guardian ad litem filed a motion stating that she was not opposed to supervised visitation for the mother and L.S. On September 22, 2022, L.S. filed a motion for a transcript of the September 12, 2022, hearing, which the juvenile court granted. The

juvenile court entered an order allowing the mother and L.S. supervised visitation. According to the maternal grandparents, on October 3, 2022, the transcript from the September 12, 2022, hearing was made available to the parties. On October 5, 2022, the CAJA circulated a report regarding the children. That same day, L.S. moved to strike the report. On October 6, 2022, the juvenile court held a hearing on the pending matters. On October 7, 2022, the juvenile court ordered the mother and L.S. to complete a drug screening.

On October 10, 2022, the juvenile court entered an order finding that L.J. was dependent. The order provided, in pertinent part, as follows:

"1. This child meets the definition of a Dependent Child as defined in Alabama Code [1975 §] 12-15-102.

"2. The best interests of the child require entry of this Order.

"3. The child is presently in the emergency custody of the petitioners, [the maternal grandparents,] through court order, the child has been placed in the physical custody of her father [B.J.] by agreement of the [maternal grandparents].

"4. The mother of the child has the physical custody of the child through a divorce action and when questioned by this Court, the mother's attorney would not agree to an informal placement of the child with the father pending the hearing for modification in the circuit courts.

"5. Upon testimony taken and drug testing results the court does find that a Pendente Lite Order is needed in this cause due to the mother's alcohol use, the mother's live-in boyfriend's [L.S.'s] drug usage and the violence occurring in the home.

"6. Given the conditions in the mother's home and the fact that the mother has primary physical custody of the child, the Court does find that the child is dependent and that the return of the child to the mother's home would not be in the child's best interest.

"7. Therefore, physical custody is to be vested with the father of the child pending further court order."

The juvenile court went on to grant the mother visitation with L.J., to be supervised by B.J. (the mother's ex-husband and L.J.'s father), the maternal grandparents, or another responsible adult agreed to by the parties. The juvenile court prohibited L.S. from attending any of the mother's visitations with L.J. If the parties could not agree to appropriate times and places for the mother's visitations, the juvenile court ordered that the mother would have visitation on the first, third, and fifth Saturdays of the month from 12:00 p.m. until 3:00 p.m.

On October 13, 2022, the juvenile court entered orders¹ regarding A.S. and C.S. that provide, in pertinent part:

"1. This child may meet the definition of a Dependent Child as defined in Alabama Code [1975, §] 12-15-102, due to the alcohol use of the mother, the drug use of the father and the violence in the home.

"2. The best interests of the child require entry of this temporary Order.

"3. The child is presently in the immediate care and control of [the maternal grandparents] through emergency court order.

"It is therefore ordered, adjudged, and decreed by the Court as follows:

"1. Temporary Legal and Physical Custody Pendente Lite of the minor child is hereby vested with the [maternal grandparents].

"2. [The maternal grandparents] shall have full authority to consent to any emergency medical procedure and/or treatment to be performed on the child that they and the child's physician or physicians deem necessary. The [maternal grandparents] are to notify the parents of all routine medical visits so the parents may attend those so long as all parties remain civil during the medical visit.

"3. The visitation will be supervised by the [maternal grandparents] or another adult as they appoint. If the parties cannot agree on the supervisor for visitation, the parties may access one of the local professional organizations that provide

¹The juvenile court entered identical orders in the actions pertaining to C.S. and A.S.

such a service. If a professional service must be employed it will be done at the parents' expense.

"4. The parents shall enjoy at least two hours of in person visitation each week and may schedule more so long as the parties agree. If the parties cannot agree on a time, visitation shall occur on Saturday from 1:00 [p.m.] until 3:00 p.m. at a minimum. If the parties must use a professional organization to supervise, visitation will occur at a time that such organization can schedule with the parents and the organization shall notify the grandparents of the time scheduled at least 24 hours in advance. The visitation may be stopped if the parents become combative or argumentative with the supervisors.

"5. The parents are allowed to access ZOOM, [videoconferencing service,] or some other form of electronic visitation with the child at least four days of the week in which they do not have in person visitation. The parties are to agree on a reasonable time in the early evening to make the child available for such visitation.

"6. The father is to take ... and complete domestic violence offender classes prior to the final hearing in this cause.

"7. The mother shall attend a substance abuse assessment to determine if any program is recommended to address her alcohol consumption. If one is recommended, she must complete the recommended program.

"8. Both parents are to enroll in color code [drug testing], the Madison County Department of Alternative Sentencing, with their color being Gold at this time. Color code testing will be at the parents' expense.

"9. Due to the requirements of the parents outlined in this Order and the expenses that these entail, no child support is ordered at this time.

"10. If the Department of Human Resources opens their case to services, the above services may be completed through programs recommended by the Department so long as releases are signed by the parents for the Guardian ad Litem and CAJA in this cause.

"11. The case is set for review on the 1st of February 2023, at 2:00 p.m. in the courtroom of the undersigned judge to review the parent's compliance with the above Court Order."

On October 28, 2022, the mother and L.S. filed petitions for writs of mandamus, challenging the juvenile court's orders dated September 12, 2022, October 10, 2022, and October 13, 2022.

Discussion

September 12, 2022, orders (appellate case nos. CL-2022-11215, CL-2022-1126, and CL-2022-1127)

The mother and L.S. challenge the September 12, 2022, orders, arguing that the juvenile court erred in failing to hold a hearing within 72 hours of the emergency pickup orders and that the juvenile court erred in failing to dismiss the dependency petitions after the September 12, 2022, shelter-care hearing. They also argue that the juvenile court violated their due-process rights by failing to allow them to present

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evidence at the September 12, 2022, hearing and by questioning the mother about L.S.'s criminal history.

A petition for a writ of mandamus is the proper procedure by which to challenge a juvenile court's pendente lite order. See Ex parte V.M., [Ms. CL-2022-0930, Dec. 2, 2022] ___ So. 3d ___ (Ala. Civ. App. 2022)(holding that mother had a clear legal right to a writ of mandamus directing the juvenile court to vacate pendente lite custody orders and to hold an evidentiary hearing on the issue of pendente lite custody); Ex parte J.M.S., 303 So. 3d 155, 159 (Ala. Civ. App. 2020)(construing order as an emergency order granting temporary custody of the child to the grandmother and directing the juvenile court to hold an evidentiary hearing); and Ex parte J.C., 165 So. 3d 623, 626-27 (Ala. Civ. App. 2014) (holding that the failure of a juvenile court to hold an evidentiary hearing at which the mother could participate within 72 hours of the entry of an ex parte custody order on a dependency petition violated the mother's due-process rights and granting a petition for the writ of mandamus based upon the mother's argument that the juvenile court had not given her notice or held an evidentiary hearing before or immediately after

depriving her of the custody of her child on an emergency basis in a dependency action).

Rule 21(a)(3), Ala. R. App. P., provides that the presumptively reasonable period for filing a petition for a writ of mandamus is the same period permitted for filing an appeal if the order for which review is sought was a final judgment. Rule 4(a)(1)(E), Ala. R. App. P., and Rule 28(D), Ala. R. Juv. P., provide that a party has 14 days to appeal a judgment entered in a juvenile action. The juvenile court entered its orders on September 12, 2022. The mother and L.S. filed their mandamus petitions on October 28, 2022, outside of the 14-day presumptively reasonable time for filing a mandamus petition.

If a mandamus petition is filed outside of the presumptively reasonable time, the petitioners shall include a statement of circumstances constituting good cause for this court to consider the petition. Rule 21(a)(3), Ala. R. App. P. An appellate court, when determining whether to accept a petition filed beyond the presumptively reasonable time, should consider factors such as "the prejudice to the petitioner of the court's not accepting the petition and the prejudice to the opposing party of the court's accepting it; the impact on the timely

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administration of justice in the trial court; and whether the appellate court has pending before it other proceedings relating to the same action, and as to which the jurisdiction of the appellate court is unchallenged." Committee Comments to Amendments to Rule 21(a) and 21(e)(4), Ala. R. App. P., Effective September 1, 2000. The mother and L.S. assert that their late filing regarding the September 12, 2022, orders was due to the need for a transcript of the hearing held on September 12, 2022. The transcript from the September 12, 2022, hearing, which they assert was necessary to their petitions and, indeed, was cited in their petitions, was not attached to their mandamus petitions as required by Rule 21(a)(1)(F), Ala. R. App. P. See Ex parte Kimbrell, 180 So. 3d 30 (Ala. Civ. App. 2015) (noting that burden is on petitioner to support petition for writ of mandamus with portions of the proceedings below that they contend support the petition).

Moreover, the September 12, 2022, orders have been supplanted by the October 10, 2022, and October 13, 2022, orders, which means no relief ordered by this court could modify the September 12, 2022, orders. See K.A.B. v. J.D.B., 279 So. 3d 607 (Ala. Civ. App. 2018)(holding that mother's challenges to juvenile court's shelter-care order for child and

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juvenile court's purported failure to hold a hearing within 72 hours of child's initial removal from home, which were challenges that mother made on appeal of juvenile court's award of sole physical custody of child to father, were moot; the shelter-care order had been supplanted by the final judgment awarding father sole physical custody of child, which meant that no relief ordered by the appellate court could modify the shelter-care order); Ex parte Dumas, 259 So. 3d 669 (Ala. Civ. App. 2018)(holding that juvenile court's later order awarding the grandmother pendente lite custody of the children impliedly vacated the court's previous order, rendering moot any challenge to the previous order); T.J. v. Winston Cnty. Dep't of Hum. Res., 233 So. 3d 361, 365 (Ala. Civ. App. 2017) ("On appeal, the mother and the father first argue that the juvenile court erred in failing to hold a hearing within 72 hours of the initial removal of the child from the home of the parents. We note, however, that the initial order awarding [the Department of Human Resources] custody of the child is 'no longer in effect; [that order was] supplanted by later orders in which the juvenile court expressly found the child to be dependent [and thereafter by the judgment terminating the parents' parental rights]. Thus, "no relief ordered by this court can change" the

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custody provisions of [the] initial order[], and, therefore, the argument pertaining to [that order] is moot.' M.B. v. R.P., 3 So. 3d 237, 247 (Ala. Civ. App. 2008). We therefore dismiss the parents' appeal to the extent that it challenges the initial pickup order removing the child from their custody.")

Therefore, we dismiss the mandamus petitions to the extent they challenge the September 12, 2022, orders.

October 10, 2022, order (appellate case no. CL-2022-1126)

The mother argues that this court should direct the juvenile court to rescind its October 10, 2022, order declaring L.J. to be a dependent child.

It is well settled that,

"[a] pendente lite custody order is an order that is effective only during the pendency of the litigation in an existing case and is usually replaced by the entry of a final judgment. Hodge v. Steinwinder, 919 So. 2d 1179, 1182 (Ala. Civ. App. 2005). Pendente lite custody orders allow a trial court to take into consideration developments in the lives of the child and the parties that naturally occur during the gap in time between the filing of an action and the final hearing in the matter. Id.

"However, a 'temporary custody award' or a 'temporary order' as to custody is a 'final' custody award or judgment. Despite its name, a temporary order as to custody is intended to remain effective until a party seeks to modify it. It may be

modified if the trial court reviews the case and determines that changed circumstances that warrant a modification have come into existence since the last custody award. 919 So. 2d at 1182-83. Such an award is not a pendente lite award. Id.

"The language often used by the trial courts is confusing. Custody, by its very nature, is always temporary and never permanent, and the trial court always retains jurisdiction to modify custody under the appropriate circumstances even though the temporary custody of a child may have been determined. Ex parte J.P., 641 So. 2d at [276,] 278 (Ala. 1994)."

T.J.H. v. S.N.F., 960 So. 2d 669, 672 (Ala. Civ. App. 2006).

The remedy of mandamus will not lie when an appeal is available, Ex parte A.S., 3 So. 3d 842, 845 (Ala. 2008), and a temporary custody award is treated as an appealable order, C.B.S. v. Walker Cnty. Dep't of Hum. Res., 331 So. 3d 607, 616 (Ala. Civ. App. 2020). Here, the October 10, 2022, order is an order awarding temporary custody incident to a finding of dependency. The juvenile court found L.J. to be dependent and noted the need for the order based on the mother's alcohol use, L.S.'s drug use, and the violence in the home. L.J. had a parent able to care for her, and that parent, B.J., was awarded custody. The mother was allowed supervised visitation. The intent of the October 10, 2022, order is that it remain effective until a party seeks to modify it. Therefore, an appeal --

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not a petition for a writ of mandamus -- was the proper vehicle for challenging the October 10, 2022, order relating to L.J.

This court, under certain circumstances, may exercise its discretion and treat a petition for a writ of mandamus as an appeal. Ex parte L.L.H., 294 So. 3d 795 (Ala. Civ. App. 2019). We consider the facts of the particular case in deciding whether to treat the filing as mandamus petition or an appeal and whether, under the circumstances of the case, treating a mandamus petition as an appeal would serve the policy of Rule 1, Ala. R. App. P., that the rules shall be construed so as to assure the just, speedy, and inexpensive determination of every action on its merits. Ex parte L.L.H., 294 So. 3d at 801. Here, the mother filed her petition challenging the October 10, 2022, order on October 28, 2022. The petition was filed outside the presumptively reasonable time to file a mandamus petition, which period is the same period for filing an appeal if the order for which review is sought was a final judgment. See Rule 21(a)(3), Ala. R. App. P.; Rule 4(a)(1)(E), Ala. R. App. P.; and Rule 28(D), Ala. R. Juv. P. Because the petition was untimely filed, this court lacks a reason to treat the petition for a writ of mandamus as an appeal because the appeal would also be untimely, having been filed more than 14 days after the

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entry of order. See Rule 4(a)(1)(E), Ala. R. App. P.; and Rule 28(D), Ala. R. Juv. P. The issue of timeliness is jurisdictional. Ex parte Murray, 267 So. 3d 328, 331 (Ala. Civ. App. 2018); see also J.A. v. C.G.H., [Ms. CL-2022-0927, Mar. 3, 2023] ___ So. 3d ___ (Ala. Civ. App. 2023) (dismissing appeal for being one day late). In addition to being untimely filed, the petition did not comply with Rule 21(a)(1)(F), Ala. R. App. P., as the mother failed to include the transcripts of the October 6, 2022, hearing that resulted in the October 10, 2022, order. Had the October 10, 2022, order been a pendente lite order and properly subject to review by petition for a writ of mandamus, this court would have had to deny relief because it is the burden of the petitioner to submit to this court the portions of the proceedings below that support the arguments made in the petition. See Ex parte Kimbrell, 180 So. 3d 30 (Ala. Civ. App. 2015).

October 13, 2022, orders (appellate case nos. CL-2022-1125 and CL-2022-1127)

The mother and L.S. argue that this court should direct the juvenile court to rescind its October 13, 2022, orders, because the juvenile court found that A.S. and C.S. "may" be dependent.

First, the juvenile court's October 13, 2022, orders involving A.S. and C.S. were temporary custody awards, not *pendente lite* custody awards. The juvenile court found that the orders were necessary because of the mother's alcohol use, L.S.'s drug use, and the violence in the home. The October 13, 2022, orders settle the issue of custody while the mother complies with drug-assessment tests; L.S. takes a domestic-violence course; and both the mother and L.S. enroll in color-code drug testing. The October 13, 2022, orders constituted an adjudication of the mother's and L.S.'s rights not pending the preparation of the case and the scheduling of the case for trial and not pending the unavoidable delay attendant to that process, but pending the passage of a fixed period set aside by the juvenile court specifically for the purpose of allowing different facts to have an opportunity to develop. See C.L. v. D.H., 916 So. 2d 622, 626 (Ala. Civ. App. 2005). In contrast, a *pendente lite* order is an order made pending the adjudication of the existing facts. T.C. v. Mac.M., 96 So. 3d 115 (Ala. Civ. App. 2011). The October 13, 2022, orders gave the mother and L.S. an opportunity to "change" the facts and present a new case to the juvenile court. The juvenile court set a hearing for February 2023 to give the mother and L.S. an opportunity to regain

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or modify custody of A.S. and C.S. Because the October 13, 2022, orders were orders awarding temporary custody and were, as discussed *infra*, entered with a finding that A.S. and C.S. were dependent, those orders were appealable. As discussed earlier, the remedy of mandamus will not lie when an appeal is available, Ex parte A.S., and a temporary custody award, coupled with a finding of dependency, is treated as an appealable order, C.B.S. v. Walker Cnty. Dep't of Hum. Res., 331 So. 3d 607, 616 (Ala. Civ. App. 2020). Here, the mother and L.S. filed their petitions challenging the October 13, 2022, orders, on October 28, 2022. The petitions were filed outside the presumptively reasonable time to file a mandamus petition, which is the same period permitted for filing an appeal if the order for which review is sought was a final judgment. See Rule 21(a)(3), Ala. R. App. P.; Rule 4(a)(1)(E), Ala. R. App. P.; and Rule 28(D), Ala. R. Juv. P. Because the mandamus petitions were untimely filed, this court lacks a reason to treat the petitions as appeals because the appeals would also be untimely, having been filed more than 14 days after the entry of the orders. See Rule 4(a)(1)(E), Ala. R. App. P.; and Rule 28(D), Ala. R. Juv. P. Also, the mother and L.S. failed to attach the

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transcript from the October 6, 2022, hearing that resulted in the October 13, 2022, orders for this court's review. See Ex parte Kimbrell, supra.

The mother and L.S. argue that the juvenile court's October 13, 2022, orders did not find that A.S. and C.S. were dependent because the juvenile court's orders used the word "may." The October 13, 2022, orders were based on the same witnesses and evidence presented at the October 6, 2022, hearing that also served as the basis for the October 10, 2022, order. Cf. S.D. v. Randolph Cnty. Dep't of Hum. Res., [Ms. CL-2022-0787, Mar. 17, 2023] ___ So. 3d ___ (Ala. Civ. App. 2023) (applying same analysis that had been applied to previous appeal when record on appeal involving parents' child included same transcript and evidence as previous appeal involving parents' other children). All three children, who were the subjects of the maternal grandparents' dependency petition, lived with the mother and L.S. In the October 13, 2022, orders, the juvenile court indicated that the orders were necessary because of the mother's alcohol use, L.S.'s drug use, and the violence in the home. The juvenile court ordered that the mother and L.S. have supervised visitation. The court also ordered the mother and L.S. to comply with certain conditions related to the drug use and violence in the home.

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Although the juvenile court used the word "may," the October 13, 2022, orders constituted an adjudication of the mother's and L.S.'s rights pending the possibility that the mother and L.S. could regain custody of A.S. and C.S.

In its October 10, 2022, order, the juvenile court found L.J. dependent when B.J., her father, was able to care for her. The juvenile court's October 13, 2022, orders involving A.S. and C.S. gave the mother and L.S. an opportunity to "change" the facts and present a new case to the court. The use of the word "may" with regard to dependency in the October 13, 2022, orders did not convey the meaning intended from the totality of the orders, in which the juvenile court found that court intervention was necessary to protect the welfare of A.S. and C.S., nor did that word deprive the juvenile court of jurisdiction. A finding of dependency was implicit in the October 13, 2022, orders, in which the mother was determined to have a substance-abuse problem and L.S. was determined to have a drug-abuse problem along with a domestic-violence problem, making them unable to care for A.S. and C.S. Cf. T.D. v. S.R., 293 So. 3d 434 (Ala. Civ. App. 2019) (holding that the juvenile court did not lack evidence from which it could conclude that the child was

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dependent when the juvenile court expressly found that the father had committed domestic violence against the mother on two occasions and had been incarcerated for having done so and that the mother suffered from substance-abuse issues for which she was seeking treatment).

Conclusion

We conclude that to the extent the mother's and L.S.'s mandamus petitions challenge the juvenile court's September 12, 2022, orders, those petitions are due to be dismissed as untimely filed and moreover, as having been supplanted by the relief awarded in later orders of the juvenile court, rendering that challenge moot To the extern that the mother's and L.S.'s mandamus petitions seek review of the juvenile court's October 10, 2022, and October 13, 2022, orders, those petitions are due to be denied because the mother and L.S. had an adequate remedy by appeal and untimely sought review of those orders.

CL-2022-1125 -- PETITION DISMISSED IN PART AND DENIED
IN PART.

CL-2022-1127 -- PETITION DISMISSED IN PART AND DENIED
IN PART.

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

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Moore, J., concurs in the result, without opinion.

Edwards and Fridy, JJ., concur in part and dissent in part, with opinions.

CL-2022-1126 -- PETITION DISMISSED IN PART AND DENIED
IN PART.

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

Moore, J., concurs in the result, without opinion.

Edwards, J., concurs in part and concurs in the result, with opinion.

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EDWARDS, Judge, concurring in part and concurring in the result in case number CL-2022-1126 and concurring in part and dissenting in part in case numbers CL-2022-1125 and CL-2022-1127.

I concur with the main opinion insofar as it dismisses that portion of the petitions for the writ of mandamus filed by C.R. ("the mother") and L.S. in appellate case numbers CL-2022-1125, CL-2022-1126, and CL-2022-1127 challenging the September 12, 2022, shelter-care orders entered by the Madison Juvenile Court ("the juvenile court") in case numbers JU-22-755.01, JU-22-754.01 and JU-22-756.01, because the petitions for the writ of mandamus were filed outside the presumptively reasonable time for filing a timely petition. See Rule 21(a)(3), Ala. R. App. P. (establishing the presumptively reasonable period for filing a petition for the writ of mandamus as the same period permitted for filing an appeal if the order for which review is sought was a final judgment); Rule 4(a)(1)(E), Ala. R. App. P. (prescribing a 14-day period in which to file a notice of appeal in a juvenile action); and Rule 28(D), Ala. R. Juv. P. (same). I concur in the result insofar as the main opinion concludes that the mother's petition for a writ of mandamus at issue in appellate case number CL-2022-1126, relating to the order entered by the juvenile court on October 10, 2022, in case number JU-22-755.01, which finds that

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L.J. "meets the definition of a dependent child" and awards custody of L.J. to her father, B.J., must be denied because the October 10, 2022, order is a final judgment capable of supporting an appeal and because this court cannot consider exercising our discretion to treat the petition for the writ of mandamus as an appeal because the petition was filed more than 14 days after the entry of the October 10, 2022, judgment. I respectfully dissent, however, from the decision to deny the mandamus petitions filed by the mother and L.S. ("the father") -- appellate case numbers CL-2022-1125 and CL-2022-1127 -- regarding separate orders entered by the juvenile court on October 13, 2022 ("the October 13, 2022, orders"), in case numbers JU-22-754.01 and JU-22-756.01, which awarded custody of A.S. and C.S. ("the children") to their maternal grandparents, V.R. and J.R. ("the maternal grandparents").

In the October 13, 2022, orders, the juvenile court stated that "[t]his child may meet the definition of a Dependent Child as defined in Alabama Code [1975, §] 12-15-102, due to the alcohol use of the mother, the drug use of the father[,] and violence in the home," and it awarded custody of the children to the maternal grandparents and ordered that the mother and the father participate in certain assessments, classes,

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and random drug testing. The juvenile court set the actions relating to the children -- case numbers JU-22-754.01 and JU-22-756.01 -- for "review" in six months, or in February 2023.

The mother and the father filed their petitions for the writ of mandamus relating to all three dependency actions on October 28, 2022, at 12:02 a.m. In the mandamus petitions docketed as appellate case numbers CL-2022-1125 and CL-2022-1127, the mother and the father argue that the October 13, 2022, orders failed to find the children to be dependent and yet failed to dismiss the dependency petitions regarding the children.

The main opinion concludes that the mandamus petitions in appellate case numbers CL-2022-1125 and CL-2022-1127 should be denied in part because the October 13, 2022, orders were final judgments finding the children to be dependent that could support an appeal; moreover, the opinion concludes that the mandamus petitions should not be treated as appeals because they were filed more than 14 days after the entry of the October 13, 2022, orders. See Rule 21(a)(3); Rule 4(a)(1)(E); Rule 28(D); and Marshall Cnty. Dep't of Hum. Res. v. J.V., 203 So. 3d 1243, 1247 (Ala. Civ. App. 2016) (explaining that, "in the context of

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juvenile dependency orders, an order determining that a child is (or that a child remains) dependent coupled with a disposition of that child's custody is a final judgment capable of supporting an appeal"); see also C.L. v. D.H., 916 So. 2d 622, 626 (Ala. Civ. App. 2005). I do not agree that the petitions in appellate case numbers CL-2022-1125 and CL-2022-1127 should be denied.

Although the petitions were technically filed 15 days after the entry of the October 13, 2022, orders, I do not see a need to determine whether the petitions are or are not untimely in this particular circumstance. Even assuming that the petitions were untimely filed, I note that the argument presented is one related to the subject-matter jurisdiction of the juvenile court to enter an order related to the custody of the children without a finding of dependency. Thus, the mother and the father are challenging the October 13, 2022, orders as being void for lack of subject-matter jurisdiction, and this court may consider those portions of the petitions in appellate case numbers CL-2022-1125 and CL-2022-1127 relating to the October 13, 2022, orders awarding custody of the children to the maternal grandparents despite the untimeliness of the petitions. See Ex parte J.L.P., 230 So. 3d 396, 401 (Ala. Civ. App. 2017).

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Moreover, in my opinion, the October 13, 2022, orders do not find the children to be dependent. The juvenile court entered an order on October 10, 2022, in case number JU-22-755.01, declaring that L.J. met the definition of a "dependent child." Instead of utilizing the same, unequivocal language to declare the children dependent, the juvenile court stated in the October 13, 2022, orders entered in case numbers JU-22-754.01 and JU-22-756.01 that the children "may meet the definition of a dependent child." Words have meaning. Therefore, I cannot conclude that the October 13, 2022, orders are a determination of dependency coupled with a custodial disposition that would support an appeal. I am therefore not inclined to treat the petitions in appellate case numbers CL-2022-1125 and CL-2022-1127 as notices of appeal and would instead address them through mandamus review because "'[m]andamus is the proper remedy to vacate an order the trial court had no power to enter.'" Ex parte Lyon Fin. Servs., Inc., 775 So. 2d 181, 183, (Ala. 2000) (quoting Ex parte Dowling, 477 So. 2d 400, 402 (Ala. 1985)).

Because I would address the petitions in appellate case numbers CL-2022-1125 and CL-2022-1127 insofar as they challenge the October 13, 2022, orders awarding custody of the children to the maternal

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grandparents as being void, I must respectfully dissent from the decision to deny those mandamus petitions in part. Moreover, because the juvenile court failed to determine that the children were dependent at the time of the disposition of their custody, I agree with the mother and the father that the juvenile court was required by Ala. Code 1975, § 12-15-310(b), to dismiss the dependency petitions. Therefore, I would grant the mandamus petitions in appellate case numbers CL-2022-1125 and CL-2022-1127 and direct the juvenile court to dismiss the dependency petitions in case numbers JU-22-754.01 and JU-22-756.01.²

I would also caution the juvenile courts of this state that they are empowered to enter a pendente lite custody order in a dependency action when an evidentiary hearing has not yet been completed only in rare situations. A juvenile court, after entering a pickup order authorizing the removal of a child from the custody of his or her parents, must hold a hearing "within 72 hours ...to determine whether continued shelter care

²Because I would grant in part the mandamus petitions in appellate case numbers CL-2022-1125 and CL-2022-1127 and direct the juvenile court to dismiss the dependency petitions in case numbers JU-22-754.01 and JU-22-756.01, I have no reason to address the other arguments raised by the mother and the father in those mandamus petitions.

is required."³ Ala. Code 1975, § 12-15-308(a). The juvenile court is then to conduct an adjudicatory hearing on the issue of the child's dependency pursuant to Ala. Code 1975, § 12-15-310(a). If a juvenile court does not, based on clear and convincing evidence presented at the adjudicatory hearing, find that the child is dependent, the juvenile court is required to dismiss the dependency petition. § 12-15-310(b). A juvenile court is not authorized to maintain the placement of a child outside of the custody of his or her parent for an extended period between "review" hearings; the only period during which the juvenile court is permitted to maintain placement of a child outside of the custody of his or her parent without a finding of dependency to support such action is the period between the 72-hour hearing and the adjudicatory hearing on the child's dependency, which period should not be extended more than absolutely necessary for the parties to gather evidence and prepare for said adjudicatory hearing.

³I note that the juvenile court did not, as required by Ala. Code 1975, § 12-15-308, set a hearing within 72 hours of the removal of the children from the custody of the mother and the father. Instead, the juvenile court set a hearing for 10 days after removal.

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FRIDY, Judge, concurring in part and dissenting in part in case nos. CL-2022-1125 and CL-2022-1127.

I concur with the main opinion's conclusion that the petitioners' challenges to the juvenile court's September 12, 2022, orders are moot. I respectfully dissent, however, as to the main opinion's denial of the petitions for writs of mandamus to the extent those petitions challenge the juvenile court's October 13, 2022, orders.

The main opinion concludes that the October 13, 2022, orders disposed of the custody of A.S. and C.S. by awarding custody of those children to their maternal grandparents. The main opinion acknowledges that in those orders the juvenile court found that each child "may meet the definition a Dependent Child," but it concludes, by considering the findings and conclusions of the rest of those orders, that the juvenile court implicitly found the children to be dependent. In her dissent, Judge Edwards takes issue with that conclusion and determines that, by stating that the children "may" be dependent, the juvenile court failed to make a determination that the children are, in fact, dependent.

I believe that both the main opinion and Judge Edwards's dissent have read the juvenile court's October 13, 2022, orders in a plausible, albeit conflicting, manner. As a result, and particularly because

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resolution of this conflict in interpretation strikes directly at the heart of whether the juvenile court had jurisdiction to dispose of the children's custody in those orders, it is my view that the best way to resolve the conflict is for this court to enter orders directing the juvenile court to clarify its October 13, 2022, orders and to state, explicitly, whether it found that A.S. and C.S. are dependent children. After providing this court with that clarification, we could then consider the propriety of the custodial dispositions set forth in those orders.