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# ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2023

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CL-2022-1070

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D.M. and A.M.

v.

F.L.C.

Appeal from Jefferson Juvenile Court  
(JU-18-1934.03)

EDWARDS, Judge.

In October 2022, D.M. and A.M. filed petitions for the writ of mandamus seeking review of an order entered on October 5, 2022, by the Jefferson Juvenile Court ("the juvenile court") refusing to dissolve an injunction prohibiting contact between them and C.C. ("the child"), who had been placed in their home by the Jefferson County Department of

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Human Resources ("DHR"). This is the second time that D.M. and A.M. have been before this court challenging orders pertaining to the dependency or the custody of the child. See Ex parte D.M., [Ms. 2210403, Aug. 12, 2022] \_\_\_ So. 3d \_\_\_ (Ala. Civ. App. 2022).

As we explained in Ex parte D.M., the juvenile court entered a judgment in 2019 placing the child in the custody of B.C. ("the former legal custodian"). However, almost immediately thereafter, the former legal custodian relinquished custody of the child to D.M. and A.M., who, at that time, were the former legal custodian's neighbors. The child's mother, F.L.C. ("the mother"), commenced an action in March 2020 seeking to modify custody and alleging, in part, that the former legal custodian had relinquished custody of the child to D.M. and A.M.; that action was assigned case number JU-18-1934.02 ("the custody-modification action"). The mother commenced a separate action in April 2021 in which she sought a modification of visitation; that action was assigned case number JU-18-1934.03 ("the visitation-modification action"). In August 2021, the mother commenced yet another action

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seeking to hold the former legal custodian in contempt; that action was assigned case number JU-18-1934.04 ("the contempt action").

In November 2021, D.M. and A.M. moved to intervene in the custody-modification action, in the visitation-modification action, and in the contempt action. Also in November 2021, D.M. and A.M., jointly with the former legal custodian, commenced an action seeking a dependency finding relating to the child and an award of custody of the child; that action was assigned case number JU-18-1934.05 ("the dependency action"). In December 2021, D.M., A.M., and the former legal custodian commenced an action seeking the termination of the mother's parental rights, which was assigned case number JU-18-1934.06 ("the termination-of-parental-rights action"). Also in December 2021, D.M. and A.M. filed in the Jefferson Probate Court a petition seeking to adopt the child; that action was transferred to the juvenile court, pursuant to Ala. Code 1975, § 26-10A-21, and it was assigned case number JU-18-1934.07 ("the adoption action"). The juvenile court stayed the adoption action pending resolution of the various other actions relating to the

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child.<sup>1</sup> The dependency action and the termination-of-parental-rights action were both dismissed on motion of the prospective adoptive parents. See Ex parte D.M., \_\_\_ So. 3d at \_\_\_ .

In January 2022, the juvenile court denied the motions to intervene filed by D.M. and A.M. in the custody-modification action, in the visitation-modification action, and in the contempt action. The juvenile court also took evidence on those actions in January and February 2022, after which it entered, on February 7, 2022, a single order in the custody-modification action, in the visitation-modification action, and in the contempt action. That order concluded the mother's contempt action and held the mother's visitation-modification action "in abeyance"; regarding the custody-modification action, the juvenile court "granted in part" the mother's request that custody be modified. The juvenile court declared the child dependent based on the former legal custodian's action of relinquishing physical custody of the child to D.M. and A.M. and her

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<sup>1</sup>The record reflects that no further orders were entered in the adoption action by the juvenile court, other than an order denying the motion to dissolve the "no-contact order" that gave rise to the appellate proceedings before this court.

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testimony indicating that she did not desire custody of the child. Thus, the juvenile court made DHR a party and awarded that entity custody of the child. After motions seeking reconsideration of the juvenile court's February 7, 2022, order were, in large part, denied, the former legal custodian, D.M., and A.M. filed petitions for the writ of mandamus and also notices of appeal. Those appellate proceedings culminated in our opinion in Ex parte D.M.

Once our certificate of judgment was issued in Ex parte D.M. on September 1, 2022, the mother filed in the custody-modification action and in the visitation-modification action a motion entitled "Motion for Immediate Hearing." In that motion, the mother alleged that the child had been living with D.M. and A.M. during the pendency of the mandamus petitions and appeals that had resulted in our opinion in Ex parte D.M., that D.M. and A.M. had acted in a manner intended to thwart her efforts to maintain a bond with the child, and that D.M. and A.M. had also thwarted her attempts to exercise visitation with the child. The mother requested that the juvenile court "modify" its February 7, 2022, order to require DHR to change the child's placement and that the

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juvenile court issue a "no-contact order" prohibiting contact between D.M. and A.M. and the child. On September 21, 2022, the juvenile court held a hearing, in which the juvenile court refused to permit D.M. and A.M. or their attorney to participate. After the hearing, the juvenile court, on September 21, 2022, entered the requested "no-contact order" in the custody-modification action and in the visitation-modification action.

D.M. and A.M. filed a motion in the visitation-modification action on September 27, 2022, seeking to have the "no-contact order" dissolved; they requested a hearing. On October 5, 2022, the juvenile court entered in then visitation-modification action an order denying that motion, without holding a hearing. On October 13, 2022, D.M. and A.M. filed two petitions for the writ of mandamus, indicating in the caption of their petitions that they were seeking review of orders entered in the visitation-modification action (case number JU-18-1934.03) and in the adoption action (case number JU-18-1934.07), which had been previously stayed by the juvenile court; those petitions were assigned appellate numbers CL-2022-1070 and CL-2022-1071, respectively.

"A nonparty whose conduct has been enjoined by an order of the trial court may appeal the order ...." D.F.H. v. J.D.G., 125 So. 3d 146, 149 (Ala. Civ. App. 2013); see also T.C.M. v. W.L.K., 208 So. 3d 39, 43 (Ala. Civ. App. 2016). The "no-contact order" at issue in this case is an injunction enjoining D.M. and A.M., who are nonparties to the visitation-modification action; therefore, the proper vehicle for review of the order is by way of an appeal. See T.C.M., 208 So. 3d at 43 (explaining that, "when '[a] nonparty ... has been enjoined by an order of the trial court,' he or she may appeal from that order" (quoting D.F.H., 125 So. 3d at 149)). Accordingly, this court exercised our discretion to treat the mandamus petitions seeking review of the "no-contact orders" that were allegedly entered in both case number JU-18-1934.03 and case number JU-18-1934.07 as appeals. See T.C.M., 208 So. 3d at 43 (treating petition for the writ of mandamus seeking review of a pickup order as an appeal from that order).

Once the records in the underlying actions were compiled, after a significant delay caused by the refusal of the court reporter to transcribe the September 2021 hearing because, she contended, D.M. and A.M. were

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not parties to the visitation-modification action and therefore could not be permitted to receive a transcription of that hearing, the mother filed a motion to dismiss the appeals. The mother argued first that, because D.M. and A.M. were not parties to the visitation-modification action (case number JU-18-1934.03), they could not appeal the "no-contact order" entered in that action. As we have indicated, however, although D.M. and A.M. are not parties to case number JU-18-1934.03, the "no-contact order" entered in that action prohibits them from engaging in any contact with the child, and they may appeal it. D.F.H., 125 So. 3d at 149. The mother also argued in her motion to dismiss that the juvenile court had not entered a "no-contact order" in the adoption action (case number JU-18-1934.07) and that, therefore, that particular action contained no judgment capable of supporting an appeal. Rule 58(c), Ala. R. Civ. P. (requiring the entry of a judgment or order in the State Judicial Information System to make the judgment or order effective). We confirmed that the record in the adoption action (case number JU-18-1934.07) contained no indication that the juvenile court had entered the "no-contact order" in that action, and, on March 31, 2023, we granted the



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mother's motion to dismiss in part and dismissed appeal number CL-2022-1071. Appeal number CL-2022-1070 is now ripe for decision.

On appeal, D.M. and A.M. argue that the juvenile court violated their rights to due process by entering the "no-contact order" without providing them notice and an opportunity to be heard. Although they do not necessarily concede that the juvenile court had the authority to enter an ex parte "no-contact order" pursuant to Ala. Code 1975, § 12-15-139 and § 12-15-140(b)(9), they contend that, even if we were to conclude that the "no-contact order" was properly entered ex parte based on the mother's allegations in her "Motion for Immediate Hearing," they were entitled to a hearing before the juvenile court on their motion to dissolve the "no-contact order" and that the failure to provide them a hearing renders the "no-contact order" void. We agree.

We considered the validity of an order entered pursuant to § 12-15-139 by a juvenile court in M.G.D. v. L.B., 164 So. 3d 606, 611 (Ala. Civ. App. 2014). In that case, we explained the statutory provisions governing "protection or restraint" orders set out in the Alabama Juvenile Justice Act, Ala. Code 1975, § 12-15-101 et seq., as follows:

"Section 12-15-138, Ala. Code 1975, provides that '[t]he juvenile court, at any time after a dependency petition has been filed, or on an emergency basis, may enter an order of protection or restraint to protect the health or safety of a child subject to the proceeding'; however, § 12-15-139, Ala. Code 1975, provides that such '[a] protection or restraint order' is to be entered 'after notice and a hearing.' ...

"Section 12-15-141, Ala. Code 1975, provides:

"The juvenile court may enter an ex parte order of protection or restraint on an emergency basis, without prior notice and a hearing, upon a showing of verified written or verbal evidence of abuse or neglect injurious to the health or safety of a child subject to a juvenile court proceeding and the likelihood that the abuse or neglect will continue unless the order is issued. If an emergency order is issued, a hearing, after notice, shall be held within 72 hours of the written evidence or the next judicial business day thereafter, to either dissolve, continue, or modify the order."

M.G.D., 164 So. 3d at 611. We further note that Ala. Code 1975, § 12-15-142, permits a juvenile court to modify or extend an order of protection or restraint "[a]fter notice and opportunity for a hearing afforded to a person subject to a protection or restraint order," which further underscores the requirement that due process be afforded to a person who is the subject of a protection or restraint order.

In M.G.D., the injunction entered by the juvenile court prohibited the parties to a dependency action from taking the child at issue in those proceedings outside the state. The paternal grandparents, who were the petitioners in the dependency action, jointly with the guardian ad litem, had sought the order via a May 16, 2014, motion for immediate custody, in which they alleged that the mother in that case had threatened to remove the child from the state. The paternal grandparents and the guardian ad litem had not provided notice to the mother or to her attorney. On the same day the motion was filed, May 16, 2014, the juvenile court held a hearing, which neither the mother nor her attorney attended, and entered the requested custody and restraint order. This court concluded that the restraint order was void, explaining:

"The May 16 order did not comply with § 12-15-141[, Ala. Code 1975,] because the mother was not given actual notice and an opportunity to be heard within 72 hours of the filing of the paternal grandparents' written evidence in support of the May 16 motion or the next judicial business day thereafter. Because the mother was not given actual notice and an opportunity to be heard before the entry of the May 16 order or within 72 hours after the filing of the paternal grandparents' written evidence in support of the May 16 motion or the next judicial business day thereafter, the May 16 order violated the mother's procedural-due-process rights. See Alabama Republican Party v. McGinley, 893 So. 2d 337,

344 (Ala. 2004) ('The hallmarks of procedural due process are notice and "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" (quoting Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), quoting in turn Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965))).

"In Ex parte Third Generation, Inc., 855 So. 2d 489, 492-93 (Ala. 2003), our supreme court stated:

"'As stated above, Satterfield [v. Winston Industries, Inc.], 553 So. 2d 61 (Ala. 1989),] includes in the definition of a "void" judgment for purposes of Rule 60(b)(4)[, Ala. R. Civ. P.,] those judgments in which the trial court has "acted in a manner inconsistent with due process." 553 So. 2d at 64. However, as we recently discussed in Neal v. Neal, 856 So. 2d 766 (Ala. 2002), the term "due process," in the context of providing a foundation for declaring a judgment void, refers to procedural, rather than substantive, due process:

"' "[I]t is established by the decisions in this and in Federal jurisdictions that due process of law means notice, a hearing according to that notice, and a judgment entered in accordance with such notice and hearing.'

"' "Frahn v. Greyling Realization Corp., 239 Ala. 580, 583, 195 So. 758, 761 (1940) (emphasis added [in Neal]). The rule that a want of due process, so

defined, voids a judgment is not redundant with the rule that a want of personal jurisdiction likewise voids a judgment, for a person already effectively made a party to litigation could, on some critical motion or for some critical proceeding within that litigation, be deprived of the 'notice, a hearing according to that notice, and a judgment entered in accordance with such notice and hearing,' required by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, Frahn, supra. See Winhoven v. United States, 201 F.2d 174 (9th Cir. 1952), Bass v. Hoagland, 172 F.2d 205 (5th Cir. 1949), Cassioppi [v. Damico], 536 So. 2d 938 (Ala. 1988)], and Seventh Wonder [v. Southbound Records, Inc.], 364 So. 2d 1173 (Ala. 1978)]."

"'Neal, 856 So. 2d at 781-82.'

"In the present case, because the May 16 order violated the mother's procedural-due-process rights, the May 16 order is void. See Ex parte Third Generation."

M.G.D., 164 So. 3d at 611-12.

Those same principles compel the conclusion that the "no-contact order" in the present case is void. Assuming, without deciding, that the mother's allegations in her "Motion for Immediate Hearing" and the

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testimony at the September 21, 2022, hearing were sufficient to support a conclusion that an ex parte order of restraint, i.e., the "no-contact order," was necessary, the juvenile court erred by entering that order without setting a hearing within 72 hours at which D.M. and A.M. could be heard regarding that order. In addition, the juvenile court, having already failed to set a hearing within 72 hours of the entry of the ex parte "no-contact order," compounded its error by failing to hold the requested hearing on D.M. and A.M.'s motion to dissolve the "no-contact order." D.M. and A.M. were entitled to be heard on the "no-contact order," and the juvenile court's failure to comply with § 12-15-141 and § 12-15-142 renders the "no-contact order" void for a lack of due process. Accordingly, the appeal is dismissed, albeit with instructions to the juvenile court to set aside the "no-contact order."

APPEAL DISMISSED WITH INSTRUCTIONS.

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