

Rel: November 3, 2023

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2023-2024

CL-2023-0232

J.E.

v.

Lawrence County Department of Human Resources

**Appeal from Lawrence Juvenile Court
(JU-20-158.01)**

THOMPSON, Presiding Judge.

On November 5, 2020, the Lawrence County Department of Human Resources ("DHR") filed in the Lawrence Juvenile Court ("the juvenile court") a petition asserting that A.E. ("the child"), the child of C.J.B. ("the mother") and J.E. ("the father") was dependent and seeking an award of

custody of the child. On that same date, the juvenile court entered a pick-up order authorizing DHR to take the child into protective custody. The record indicates that the mother and the child were located on November 6, 2020, and that the child was taken into protective custody.

The juvenile court conducted a shelter-care hearing and, on November 10, 2020, entered a shelter-care order placing the child in the pendente lite custody of DHR. The juvenile court conducted a hearing on January 27, 2021. On February 9, 2021, the juvenile court entered an order in which it, among other things, found the child dependent because of the mother's and father's use of illegal drugs and alleged manufacturing of methamphetamine. The February 9, 2023, order also awarded custody of the child to DHR.

Lauren Stewart, a DHR social worker, testified that, initially, the father refused to have contact with DHR and did not cooperate with DHR reunification services. Soon thereafter, she said, the father became angry with DHR social workers and that he yelled, cursed, and threatened a DHR social worker. On February 26, 2021, DHR filed a motion requesting that the juvenile court grant injunctive relief to protect its social worker, Pamela Millwood, who, DHR alleged, had been threatened on two

occasions by the father. On March 1, 2021, the juvenile court entered an order granting that motion. The juvenile court ordered that the father maintain a distance of 500 feet from Millwood and DHR's offices, and it instructed the father to have no further contact with DHR social workers pending a hearing on March 23, 2021.

After that March 23, 2021, hearing, the juvenile court entered an order in which it sentenced the father to five days in jail for his contemptuous conduct toward the juvenile court during the hearing. In a later order, the juvenile court explained that it had not entered a new order concerning the injunctive relief imposed by the March 1, 2021, order because, during the March 23, 2023, hearing, the father had "said he did not want to work with DHR, and his conduct was such he was incarcerated for contempt of Court."

On April 14, 2021, DHR filed a motion asking the juvenile court to amend the March 1, 2021, order to allow the father contact with DHR under certain limited conditions. DHR explained in that motion that the father had expressed his willingness to cooperate with DHR's reunification services and that the March 1, 2021, order prohibiting the father from contact with DHR was hampering DHR's ability to provide

reunification services to him. The juvenile court granted DHR's motion and ordered that the father was allowed contact with DHR social workers at a location other than DHR offices on the condition that his behavior was "appropriate."

However, the father's conduct toward DHR social workers deteriorated again, and, on October 13, 2021, DHR filed a motion asking that the injunctive relief awarded in the March 1, 2021, order be reinstated. In its motion, DHR alleged that the father had committed domestic violence against the mother and that he had again threatened a DHR social worker. The juvenile court entered an order on October 14, 2021, in which it restricted the father's contact with all DHR social workers and suspended DHR reunification services for the father, including the father's visitation with the child, pending a hearing. After that hearing, the juvenile court entered an order on October 27, 2021, in which it left in place the earlier injunctive relief that prohibited the father from contacting DHR and from taking part in reunification services, including visitation with the child.

In March 2022, the father filed several motions in which he sought the lifting of the injunctive orders and requested different forms of

reunification services, including a mental-health evaluation and substance-abuse treatment. DHR filed a motion on May 5, 2022, in which it sought to be relieved of the requirement that it provide reunification services to the father. The father then filed a motion seeking an award of supervised visitation with the child. The juvenile court scheduled a hearing on those motions and that hearing was continued several times. The hearing was conducted over the course of three days on September 9, 2022, November 9, 2022, and February 28, 2023.

On March 7, 2023, the juvenile court entered an order in which it set forth a detailed statement of the evidence presented to it but in which it made no factual findings. In its March 7, 2023, order, the juvenile court denied the father's request for visitation with the child, granted DHR's motion to be relieved of the requirement that it provide reunification services to the father, and scheduled the matter for a permanency hearing. The father appealed.¹

¹We note that because the March 7, 2023, order addressed a crucial issue that could impact the father's fundamental rights to the child, i.e., because "it removed his entitlement to rehabilitation or reunification services provided by DHR," that order is sufficiently final to support this appeal. D.P. v. Limestone Cnty. Dep't of Hum. Res., 28 So. 3d 759, 764 (Ala. Civ. App. 2009).

In the first argument set forth in his appellate brief, the father challenges aspects of the juvenile court's November 10, 2020, shelter-care order and the manner in which the shelter-care hearing was conducted. Among other things, the father contends that he had not received notice of the shelter-care hearing and had not been allowed to be present at the shelter-care hearing. However, the November 10, 2020, shelter-care order has been supplanted by later orders, including the February 9, 2021, dependency order and the March 7, 2023, order from which this appeal is taken. Ex parte C.R., [Ms. CL-2022-1125, June 23, 2023] ___ So. 3d ___, ___ (Ala. Civ. App. 2023). Accordingly, "no relief ordered by this court could modify the [shelter-care] order[]," and the father's arguments with regard to that order are moot. Id. at ___. This court has explained:

"In T.J. v. Winston County Department of Human Resources, 233 So. 3d 361, 365 (Ala. Civ. App. 2017), this court addressed a similar argument in a termination-of-parental-rights case and explained, in pertinent part:

"'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 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.'"

K.A.B. v. J.D.B., 279 So. 3d 607, 614 (Ala. Civ. App. 2018).

Similarly, in his second argument set forth in his appellate brief, the father argues that he was not allowed to be present at "the adjudicatory hearing," i.e., the January 27, 2021, hearing upon which the February 9, 2021, dependency order is based. See § 12-15-310(a), Ala. Code 1975 (providing that an adjudicatory hearing is one "at which evidence is presented for a juvenile court to determine if a child is dependent."). The substance of the father's argument is that he was not afforded due process at the time the child was first removed from his custody, i.e., at the time of the shelter-care hearing. However, the February 9, 2021, order was an order capable of supporting an appeal because it determined that the child was dependent and awarded custody of the child to DHR. See Ex parte T.T., 332 So. 3d 441, 444-45 (Ala. Civ.

App. 2021) (explaining that a dependency determination together with a custodial disposition of a child is an appealable order, even if future proceedings are anticipated); see also B.J. v. Calhoun Cnty. Dep't of Hum. Res., [Ms. CL-2022-0514, Sept. 16, 2022] ___ So. 3d ___, ___ (Ala. Civ. App. 2022) (same). The father did not file a timely appeal of the February 9, 2021, order. Moreover, the February 9, 2021, order has now been supplanted by the March 7, 2023, order at issue in this appeal. See K.A.B. v. J.D.B., supra; T.J. v. Winston County Department of Human Resources, supra. Accordingly, the father's arguments pertaining to the February 9, 2021, order are not timely and are now moot, and we dismiss those parts of the father's appeal that challenge that order. See Rule 2(a)(1), Ala. R. App. P. ("An appeal shall be dismissed if the notice of appeal was not timely filed to invoke the jurisdiction of the appellate court.").

In his third argument on appeal, the father contends that the juvenile court erred in "granting the 'verified petition for relief'" that resulted in the injunctive order prohibiting him from having contact with DHR and from visiting the child. In making that argument, the father does not identify the date of the injunctive order he challenges. However,

because the October 27, 2021, order, in addition to other restrictions, imposed the prohibition against the father visiting the child, we interpret his argument as challenging that order.

We note that Rule 4(a)(1)(A), Ala. R. App. P., provides that a party may appeal "any interlocutory order granting, continuing, modifying, refusing, or dissolving an injunction, or refusing to dissolve or to modify an injunction," within 14 days of the entry of that order. Thus, the juvenile court's October 27, 2021, order granting injunctive relief was an appealable order. Rule 4(a)(1)(A), Ala. R. App. P.; Ex parte Montgomery Cnty. Dep't of Hum. Res., 982 So. 2d 527, 542 (Ala. Civ. App. 2007) ("An order granting a permanent injunction is appealable by an appeal of right, pursuant to Rule 4, Ala. R. App. P."). However, Rule 4(a)(1) does not mandate that a party file a notice of appeal from an injunctive order such as the October 27, 2021, order, and later appellate review of an injunctive order is not precluded by a party's failure to appeal that order pursuant to Rule 4(a)(1). Lem Harris Rainwater Fam. Tr. v. Rainwater, [Ms. 1210106, Sept. 30, 2022] ___ So. 3d ___, ___ (Ala. 2022). "[T]he fact that Rule 4(a)(1)(A)[, Ala. R. App. P.,] provides an opportunity for interlocutory appeal of certain injunction-related orders does not prevent

a party that does not file such an appeal from later challenging the trial court's rulings in those orders." Id. at _____. Accordingly, this court may address the father's arguments pertaining to the October 27, 2021, injunctive order as a part of this appeal.

The father argues on appeal that DHR's motions seeking injunctive relief were not properly verified, and therefore, he contends, the juvenile court could not rely on those motions as evidence to grant DHR's request for relief. We note that the juvenile court's October 27, 2021, order states that the matter came before it for a "status hearing" at which, among others, the father and his attorney were present. The record does not indicate whether the juvenile court received evidence at that status hearing. Regardless, even assuming that this court agreed with the father concerning his argument on this issue, no relief is available to the father. The October 27, 2021, order that, among other things, suspended the father's right to visit the child, has now been supplanted by the March 7, 2023, order denying his request to visit the child. Ex parte C.R., supra; K.A.B. v. J.D.B., supra. Accordingly, the father's argument as to this issue is moot, and we dismiss that part of the appeal addressing the October 27, 2021, order.

The father last argues that the evidence does not support the juvenile court's March 7, 2023, order. The record on appeal reveals the following pertinent facts. The child was taken into protective custody in November 2020 because of illegal drug use by the mother and father. The record also indicates that domestic violence might have been an issue between the mother and father during their relationship.

Initially, the father refused contact with DHR social workers. Lauren Stewart, a DHR social worker assigned to the child's case in July 2021 through approximately early September 2022, testified that the father made threats against DHR social workers. For that reason, DHR sought the March 1, 2021, order prohibiting the father from threatening its social workers and coming to its offices. During the March 23, 2021, hearing on DHR's motion for injunctive relief, the father's behavior toward the juvenile court judge resulted in his being incarcerated for contempt. The father did not dispute that he was using methamphetamine at that time.

DHR filed a motion requesting that the juvenile court allow it to attempt to provide services for the father, and, in April 2021, the juvenile court altered its injunctive order to allow the father contact, away from

DHR offices, with DHR social workers. The father claimed that, because a DHR social worker had afforded him supervised visitation with the child, he did not use methamphetamine between April 2021 and August 2021.

However, in July or August 2021, Stewart was assigned to the child's case, and she conducted an individualized-service-plan ("ISP") meeting on August 8, 2021. At that meeting, Stewart said, she learned that the juvenile court's April 2021 order had not provided that the father could visit the child, and, therefore, DHR ended the father's visitation with the child. The father admitted that he had walked out of that ISP meeting because he was angry and that he had resumed using methamphetamine that same day, i.e., August 8, 2021.

The father tested positive for methamphetamine in October 2021; Stewart testified that, at that time, the father threatened her and the employee of the drug-testing facility. Also in October 2021, the father allegedly committed domestic violence against the mother, and the mother elected to have the father prosecuted on criminal charges with regard to that incident; she also sought a protection-from-abuse ("PFA") order prohibiting the father from contacting her.

The father was arrested in November 2021 on the domestic-violence charges related to the October 2021 incident, and he remained incarcerated on those charges until February 2022. At approximately the same time that he was released from incarceration in February 2022, the father pleaded guilty to a charge of possession of methamphetamine, and he received a total of 48 months of probation on that conviction. At the time of the hearing in this matter, the father was still facing four charges related to the alleged domestic-violence incident from November 2021; he stated that those charges were "on appeal" to the Lawrence Circuit Court ("the circuit court").

In his testimony, the father admitted that he had used methamphetamine between August 2021 and November 2021. However, he testified that he achieved sobriety while he was incarcerated from November 2021 through February 2022. The father said that he last used illegal drugs on November 4, 2021, and that, soon after he was released from jail in February 2022, he entered a substance-abuse program called "The Reprieve" without DHR's assistance. He completed that substance-abuse program in July 2022. The father stated that, at the time of the September 9, 2022, portion of the hearing in this matter, he was

attending Alcoholics Anonymous ("AA") meetings once every two weeks. The father also claimed that a man who he hoped would become his sponsor had told him that if he had not relapsed as of the time of the hearing in this matter, he would not relapse.

The father testified that he had passed all of the urine drug screens requested by his probation officer. The father passed a urine drug screen requested by DHR in August 2022, but a hair-follicle drug screen conducted at that same time was positive for the use of illegal drugs. DHR presented evidence that the use of methamphetamine will be present in urine for 3 days, but that a hair-follicle test shows drug use for the 90 days preceding that test. The father also submitted to a urine and a hair-follicle drug screen on September 1, 2022, at the request of DHR. The urine drug screen was negative for the use of illegal substances, but the hair-follicle drug screen was positive for the use of methamphetamine. The father had insufficient hair for a hair-follicle test at the end of October 2022; a DHR services provider explained to the juvenile court that the father had no leg hair or other body hair from which to conduct that hair-follicle test. A urine drug screen for the father conducted on December 30, 2022, was negative for illegal substances, but the hair-

follicle drug screen conducted the same day was positive for methamphetamine. The father testified that he had passed a urine drug screen for a new employer at the end of January 2023.

On questioning from the juvenile court, the father admitted that he had not participated in random drug screening during the pendency of this matter. The father stated that he knew when his appointments with his probation officer would be and that he would be asked to take a drug screen. The father was also aware that he would be asked to take a drug screen at or soon after a scheduled court hearing.

The father insisted that he had not used methamphetamine in 2022. He implied that the positive hair-follicle drug-screen results were the result of environmental exposure. Kim Thurston, the director of the Morgan County Community Corrections program, testified that because the father's December 30, 2022, hair-follicle test had been positive for methamphetamine but not for amphetamine, it was possible that the father had had an environmental exposure to methamphetamine. Thurston stated that for an environmental exposure to methamphetamine to cause a positive result for that substance on a hair-follicle drug screen, the environmental exposure could not be a causal or

passing contact with someone who had used methamphetamine. Instead, she explained, such an exposure would have to be the result of being present while someone else smoked methamphetamine. Another possibility, Thurston said, was that the environmental exposure could be caused by living in a place in which methamphetamine was or had been manufactured. On questioning from the juvenile court, Thurston testified that if the father's home was the cause of the environmental exposure that purportedly caused the positive drug screen, i.e., that methamphetamine had been manufactured in the home, that home would not be an appropriate place for the child to live unless it had been professionally decontaminated. Thurston stated that if the father had been a participant in her community-corrections program, based on the number of positive drug screens the father had had, she would have required that he frequently submit to random urine drug screens and, possibly, that he obtain additional substance abuse treatment.

The father repeatedly denied that he had ever manufactured methamphetamine. He also testified that a condition of his probation is that he could not be in the presence of anyone who uses illegal drugs. The father stated that in the summer of 2022, he stayed for a few weeks in

the home of a friend who could drive him to a workplace at which he was employed. However, the father said, he left and returned home because he suspected some other people staying at that home were using illegal drugs.

The father presented evidence that he had maintained the same rental home for several years. At the September 9, 2022, portion of the hearing, the father testified that he shared his home with two other men. One of those men was the former operator of The Reprieve, the substance-abuse program that the father had attended, which had closed. The other man was an addict seeking assistance with his substance-abuse issues from the former operator of The Reprieve. The father testified that he was unaware whether either of those two men had a criminal record or whether anyone had used illegal drugs in his home. Both men had moved out of the father's home by the time of the February 28, 2023, portion of the hearing in this matter.

The father testified that the mother failed to appear at the hearing on her request for a PFA order, and the PFA action was dismissed. The criminal domestic-violence charges remained pending in the circuit court on the last day of the hearing in this matter.

The father presented evidence that, on his own, he had completed a parenting class and an anger-management class. The father contacted a DHR services provider about the possibility of receiving reunification services, but that provider refused to work with the father because of his past threats to one of its workers. The father stated that he no longer used illegal drugs and that his threatening behavior was in the past and represented "the old me." We note that during the February 28, 2023, portion of the hearing in this matter, while the child's guardian ad litem was questioning the father, the juvenile court commented that, based on the nature of the father's replies to the guardian ad litem's questions, the father clearly did not have a good relationship with the guardian ad litem. Later in that same portion of the hearing, also during questioning from the guardian ad litem, the juvenile court warned the father that it was "about ready to cut off your testimony because, you know, you are aggravated or whatever."

At the time the juvenile court entered its March 7, 2023, order, the child, who was four years old, had been in foster care for more than two years. The child has been in the same foster home since she was placed in protective custody in November 2020. Stewart, the DHR social worker

formerly assigned to the child's case, and Savannah Shotts, the child's current DHR social worker, each testified that the child was doing well in the foster home and was bonded with the foster parents, who want to adopt the child. The goal of DHR's permanency plan for the child is adoption by the foster parents. Shotts did not believe that visiting the father would be in the child's best interests because of the length of time that the child had not seen the father and because DHR planned to seek to terminate the father's parental rights to achieve permanency for the child.

When a juvenile court makes no findings of fact, this court must presume that the juvenile court made those findings necessary to support its judgment, "provided that those findings are supported by the evidence." M.J.C. v. G.R.W., 69 So. 3d 197, 200 (Ala. Civ. App. 2011). See also A.E.T., Jr. v. Limestone Cnty. Dep't of Hum. Res., 49 So. 3d 1212, 1216 (Ala. Civ. App. 2010); D.M. v. Walker Cnty. Dep't of Hum. Res., 919 So. 2d 1197, 1210 (Ala. Civ. App. 2005). In this case, it is clear that the juvenile court implicitly found that DHR should be relieved of the requirement that it attempt to reunite the father with the child. See, e.g., R.D. v. Coffee Cnty. Dep't of Hum. Res., 204 So. 3d 425, 427-28 (Ala. Civ.

App. 2016) ("When reviewing the record to determine if a finding that DHR made reasonable efforts is supported by sufficient evidence, this court presumes the correctness of the judgment and will affirm the judgment if the juvenile court could reasonably have been clearly convinced that DHR made reasonable efforts.").

The father argues on appeal that the evidence does not support the juvenile court's March 7, 2023, order relieving DHR of the requirement that it make efforts to reunite him with the child. He also contends that the juvenile court erred in reaching that part of its March 7, 2023, order in which it denied his request for visitation with the child.

With regard to the issue of the father's visitation with the child, this court has explained:

"Alabama law authorizes a juvenile court to suspend a parent's visitation with a dependent child under appropriate circumstances. Section 12-15-314(a)(4), Ala. Code 1975, allows a juvenile court, in determining the disposition of a dependent child, to '[m]ake any other order as the juvenile court in its discretion shall deem to be for the welfare and best interests of the [dependent] child.' It is well settled that a trier of fact has broad discretion to determine a parent's right to visitation with a dependent child and that the best interests and welfare of the child is the primary consideration in determining whether to award visitation and, if so, the extent of that visitation. Minchew v. Mobile County Dep't of Human Res., 504 So. 2d 310, 311 (Ala. Civ. App. 1987); K.B. v.

Cleburne County Dep't of Human Res., 897 So. 2d [379,] 387-88 [(Ala. Civ. App. 2004)]; J.P. v. S.S., 989 So. 2d 591, 601-02 (Ala. Civ. App. 2008); P.Y. v. State Dep't of Human Res., 634 So. 2d 1021, 1022-23 (Ala. Civ. App. 1994); and Heup v. State Dep't of Human Res., 522 So. 2d 295 (Ala. Civ. App. 1988)."

Y.N. v. Jefferson Cnty. Dep't of Hum. Res., 67 So. 3d 76, 82 (Ala. Civ. App. 2011).

On appeal, the father contends that he is sober, is employed, has stable and suitable housing, and is willing and able to properly care for the child. In his appellate brief, the father attributes the length of time he has not been in contact with DHR social workers and has not visited the child to failings by DHR and the juvenile court. In doing so, the father fails to acknowledge that his own conduct in repeatedly threatening DHR social workers and in threatening a DHR service provider was the basis of the injunctive-relief orders. In addition, the father's conduct during a 2021 hearing toward the juvenile court resulted in the father's being incarcerated on contempt charges. Comments made by the juvenile court during the hearing in this matter also indicate that the father demonstrated at least some form of anger when the child's guardian ad litem challenged the father's answers to questions. Those comments support a conclusion that, although the father had attended an anger-

management class, he was again showing signs of the type of behavior that eventually resulted in the injunctive orders.

Given that evidence, as well as the father's demeanor during his testimony, which this court cannot review from a cold record, the juvenile court could reasonably have determined that the father's claims that such conduct was the result of his drug use, i.e., was "the old me," were not credible. This court does not have the same advantage as the juvenile court, which was in the best position to observe the witnesses and assess their demeanor and credibility as they testified. Ex parte Fann, 810 So. 2d 631, 633 (Ala. 2001); J.S.M. v. P.J., 902 So.2d 89, 96 (Ala. Civ. App. 2004). The juvenile court's resolution of factual issues based on its observations of the witnesses as they testified is entitled to a presumption of correctness. J.C. v. State Dep't of Hum. Res., 986 So. 2d 1172, 1196 (Ala. Civ. App. 2007).

Moreover, the evidence concerning the hair-follicle drug screens supports a conclusion that at the time of the three days of testimony during the hearing, the father was either still using methamphetamine or that he had been exposed to methamphetamine. The record indicates that that exposure was either attributable to the father's being in the

presence of those using methamphetamine or from environmental exposure from methamphetamine having been manufactured in the father's home. The father denied, however, that he associated with those who use illegal drugs or that he had ever manufactured methamphetamine.

The child has been in foster care for more than two years. Our court has explained that "parents generally shall have 12 months from the date the child enters foster care to prove that their conduct, condition, or circumstances have improved so that reunification may be promptly achieved." M.A.J. v. S.F., 994 So. 2d 280, 291 (Ala. Civ. App. 2008). See also T.B. v. Cullman Cnty. Dep't of Hum. Res., 6 So. 3d 1195, 1202 (Ala. Civ. App. 2008) ("In the absence of exceptional circumstances, a parent's efforts at rehabilitation should not extend beyond 12 months from the date the child enters foster care because our legislature has established that period as the presumptively reasonable time for conducting reunification efforts."). In this case, when the child had been in foster care for one year, the father was still using illegal drugs and was arrested and incarcerated for four months. The father filed his petition seeking visitation with the child in March 2022, 17 months after the child had

been in foster care. At approximately that same time, the father began substance-abuse treatment. However, even during the time of the hearing, the father was using or exposing himself to those using methamphetamine.²

We commend the father on his efforts to achieve and maintain sobriety. However, with regard to the father's substance-abuse issues, the juvenile court could have determined that the father had failed to rehabilitate himself. If the juvenile court were to grant the father's request for visitation and deny DHR's motion to be relieved of reunification efforts, the father would have to begin reunification efforts more than two years after the child had been placed in protective custody. In essence, the father was seeking to further delay permanency for the child in order to begin cooperating with the DHR reunification efforts that were initially offered to him in late 2020. Given the facts of this case and the length of time the child had been in foster care, we cannot say that the father has demonstrated that the juvenile court erred in reaching its March 7, 2023, order. In reaching our holding in this matter,

²The record established that a hair-follicle test shows drug use or exposure during the previous 90 days. The hearing was conducted over a five-month period between September 9, 2022, and February 28, 2023.

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we do not mean to be interpreted as commenting on the merits of any future termination-of-parental-rights action that DHR might commence.

AFFIRMED IN PART; DISMISSED IN PART.

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