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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2023-2024

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CL-2023-0256

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D.S.

v.

L.T.

**Appeal from Tuscaloosa Juvenile Court  
(JU-22-882.01)**

PER CURIAM.

In December 2022, L.T. ("the mother") filed a petition in the Tuscaloosa Juvenile Court ("the juvenile court") seeking to terminate the parental rights of D.S. ("the father") to their child, A.N.S. ("the child"). After a trial held on April 4, 2023, the juvenile court entered a judgment on April 7, 2023, terminating the parental rights of the father. The father

filed both a postjudgment motion and a notice of appeal on April 18, 2023. The juvenile court denied the father's postjudgment motion on May 1, 2023, and the father's notice of appeal became effective on that date. See Rule 4(a)(5), Ala. R. App. P. (providing that a notice of appeal that is filed before a trial court rules on all pending postjudgment motions "shall be held in abeyance until all post-judgment motions ... are ruled upon" and that "such a notice of appeal shall become effective upon the date of disposition of the last of all such motions").

At the trial, the mother presented her own testimony, the testimony of her husband, M.T. ("the stepfather"), and several items of documentary evidence. The father, who is incarcerated, did not attend the trial; although he was granted leave to provide testimony via deposition, the father did not present his own testimony, the testimony of any witnesses, or any documentary evidence. The testimony and documentary evidence presented at trial established the following facts.

The mother and the father were married in 2015. According to the mother, the father began acting strangely in late 2016. She said that he began instigating arguments with neighbors, that he began carrying a concealed weapon, and that he was generally "getting into trouble." She

described his behavior as irrational and his mood as irritated. She said that he went to see a psychiatrist in January 2017; according to the mother, she learned at that time that the father had been diagnosed as suffering from bipolar disorder when he was in college.

The mother testified that, after he began taking medication to treat his bipolar disorder in early 2017, the father's strange behavior was no longer an issue. However, the mother said that she had noticed the recurrence of the father's odd behaviors as the birth of the child approached. She testified that, when it came time to go to the hospital for the birth of the child in February 2018, the father had been more concerned about taking the dog with them than about getting to the hospital for the child's birth.

The mother testified that the father's behavior had worsened after the child had been born and that, approximately one month after the child's birth, the father left the parties' residence and began staying in a vacant building, which he had access to because of his status as a real-estate agent. As a result of the father's behavior, law enforcement became involved, and the father was taken for psychiatric treatment.

The mother also testified that the father had made untoward comments about her daughter from a previous relationship, L.L. ("the daughter"). She presented a text message that the father had sent her on March 13, 2018, in which he described having given the daughter a "magic pill" so that she would sleep. In that same message exchange, the mother asked the father whether he had given the daughter his prescription drugs. In response, the father reported to the mother that the daughter, who was eight years old at the time, had "kissed me on the lips/mouth and shoved her little tongue in my mouth." The father also stated that the daughter's actions had "shocked" him and that he had told the daughter that her behavior was "weird and a big no no." He then sent the following message: "IM GOING TO DOCORXE YOU A D MARRY [THE DAUGHTER] OBE DAY HA," which, the mother explained, she took to mean that he intended to divorce her and to marry the daughter one day.

The mother testified that, on March 16, 2018, the father entered the marital residence and ransacked it. She presented photographs of the state of the residence after the father's actions. The photographs depict furniture upended, items strewn throughout the house, broken

windows and various other items, as well as a pile of the father's clothing and baby items, including packages of diapers and what appear to possibly be toys, that had been thrown into the yard and covered with a tarp. The mother said that the father had admitted to having caused all the damage, which, she said, totaled \$40,000, and that he had blamed it on "the involvement of both of our parents."

The record contains a judgment entered by the Tuscaloosa Circuit Court ("the circuit court") in November 2018 divorcing the mother and the father and incorporating their agreement regarding custody of the child. By virtue of that judgment, the mother was vested with sole physical custody of the child and the father was awarded visitation at specified times to be supervised by the mother or any other person upon which the parties could mutually agree. In addition, the judgment conditioned the father's visitation upon his providing proof of "continued compliance with his mental health providers."

According to the mother, she had allowed the father to visit with the child between the entry of the divorce judgment in November 2018 and March 2019 because the father was compliant with his mental-health treatment. However, the mother said that she had refused to

allow the father to visit in March 2019 because she noticed that his unusual and irrational behavior had resumed. She presented text messages from the father dated March 18, 2019, March 21, 2019, and March 25, 2019. In the March 18, 2019, text messages, the father admitted that he took his medication only sporadically and that, in the past, he had probably lied about having taken it. In the March 21, 2019, text messages, the mother questioned the father regarding whether he had seen his physician, and the father responded with odd messages, including a text message stating that he had "found drinking vodka," a text message containing a hyperlink to an Elvis Presley song, a text message stating, "Your husband is in charge of you ... Get to know it!", and a text message stating, "Let me remind you who your husband is going to be again" and referencing himself. The March 25, 2019, text message includes a photograph of the father's hand making an obscene gesture in front of a handwritten card signed by a physician that states that "[w]e have instructed [the father] to present for admission for treatment of his bipolar disorder."

The mother testified that, shortly after March 25, 2019, the father began coming to her apartment over and over. She said that she had

changed the locks on the doors of her apartment and had ultimately had her apartment-complex-management company "trespass" him. Although she testified that she had witnessed law-enforcement officers instruct the father that he was "trespassed," the father had subsequently returned to her apartment on two or three occasions.

She further testified that the father had sent an e-mail to her on April 23, 2019, in which he complained about the mother's requiring him to provide proof that he was compliant with his mental-health treatment. The first of those e-mails, which is an exhibit in the record, contains in the subject line, "the psychiatrist crap," and indicates that it was sent at 4:15 a.m. In that e-mail, the father stated: "I quit and give up." He stated further that "there is nothing wrong with me ... and I do not need any medication." The e-mail continues:

"[M]y whatever you want to call it tearing up the house had nothing to do with mania, and I am not going to see any psychiatrist or take any medication. Unless I feel it necessary and and [sic] experiencing any symptoms of hypomania or mania. ... So there you have it I give up. If that means I will never see you are [sic] [the child] again I guess I just have to deal with it."

The mother indicated that the father had produced proof to her that he was seeking mental-health treatment in the fall of 2019. However,

she said that she had not permitted him to visit with the child at that time. She explained that, at that time, the father was out on bond after having been arrested on a charge of discharging a firearm into an occupied vehicle. She also said that she had not felt comfortable serving as visitation supervisor, so she had reached out to Joanne Terrell to mediate between the parties and to assist with locating another supervisor upon which the parties could agree. Although the mother testified that she had met with Terrell, she said that the father had not done so. She presented a series of e-mails from the father to her in which he stated that he would not attend counseling with the mother, said that the mother was driving him crazy, and indicated that the mother should spend some time in jail.

The mother testified that the father had spent considerable time in jail. She said that he had been arrested in April 2019 but was released shortly after only to be arrested again in June 2019. She said that he was not released from the incarceration resulting from the June 2019 arrest until September 12, 2019, after which he was again arrested on December 3, 2019. According to the mother, the father was released from the incarceration resulting from the December 2019 arrest on July 30,



2021. However, she explained that his bond was later revoked and that he was again incarcerated on September 9, 2021; according to the mother, the father has remained incarcerated since that time. She also presented documentary evidence of his October 2022 conviction for discharging a firearm into an occupied vehicle, for which he was sentenced to serve 20 years in a state penitentiary.

The mother testified that she had sought a modification of the divorce judgment in October 2020 and that she had been awarded sole custody of the child in a judgment entered by the circuit court in March 2021. That modification judgment, which is contained in the record, also suspends the father's visitation indefinitely. The mother said that the father had last visited the child in March 2019 and that the child had been 13 months old at that time; thus, the mother testified that, as of the date of the April 2023 trial, the father had not seen the child in over 4 years.

The mother and the stepfather testified that the stepfather had been the only "father" that the child had known. The mother said that the child did not know the father and would be confused if he were to meet the father because the child believed that the stepfather was his

father. The stepfather testified that he desired to adopt the child. He explained that the child could be placed on his insurance plan through his employer after an adoption, but he also indicated that the child was currently on the mother's insurance plan and that that plan might be cheaper. He said that he had not compared the cost of the coverage provided under the two insurance plans. In addition, the stepfather testified that he already provided dental and vision insurance for the child.

On appeal, the father argues solely that the evidence did not establish that no viable alternative to the termination of his parental rights existed. He specifically contends that maintenance of the status quo was an appropriate alternative in this case because the child was safe in the custody of the mother. He relies on this court's recent opinion in J.G. v. Lauderdale County Department of Human Resources, [Ms. 2210452, Jan. 13, 2023] \_\_\_ So. 3d \_\_\_ (Ala. Civ. App. 2023).

In J.G., this court reversed judgments entered by the Lauderdale Juvenile Court terminating the parental rights of J.G., the father of four children. J.G. had been found to be "indicated" for abuse of his stepchild and for neglect and abuse of his children by the Lauderdale County

Department of Human Resources, had committed several acts of domestic violence, had not overcome his substance-abuse issues, and had not participated in services offered by the Lauderdale County Department of Human Resources for his rehabilitation. \_\_\_ So. 3d at \_\_\_. The mother of the children, M.G., had divorced J.G., had completed reunification efforts, and had secured the return of the children to her custody. \_\_\_ So. 3d at \_\_\_. Relying on J.C.D. v. Lauderdale County Department of Human Resources, 180 So. 3d 900, 901 (Ala. Civ. App. 2015), this court determined that maintaining the status quo was a viable alternative to the termination of J.G.'s parental rights. J.G., \_\_\_ So. 3d at \_\_\_.

In J.C.D., this court stated:

"This court has consistently held that termination of the parental rights of a noncustodial parent is not appropriate in cases in which the children can safely reside with the custodial parent and the continuation of the noncustodial parent's relationship does not present any harm to the children. See S.M.W. v. J.M.C., 679 So. 2d 256 (Ala. Civ. App. 1996); Talley v. Oliver, 628 So. 2d 690 (Ala. Civ. App. 1993); In re Beasley, 564 So. 2d 959 (Ala. Civ. App. 1990); and Miller v. Knight, 562 So. 2d 274 (Ala. Civ. App. 1990). See also A.J.H.T. v. K.O.H., 983 So. 2d 394, 406-07 (Ala. Civ. App. 2007) (Moore, J., concurring in part and dissenting in part)."

180 So. 3d at 901.

We explained in J.G. that the evidence before the Lauderdale Juvenile Court established that the mother had taken steps that would prevent any harm that J.G. might pose to the children by completing domestic-violence counseling and therapy, by securing a permanent protection-from-abuse order restraining J.G. from contacting her or the children, and by securing a divorce from J.G. with no provision entitling J.G. to visitation with the children. \_\_\_ So. 3d at \_\_\_. Thus, we concluded that the children were "protected from having any adverse contact with [J.G.]." \_\_\_ So. 3d at \_\_\_.

We also explained that the record lacked evidence indicating that the children would benefit from the termination of J.G.'s parental rights. J.G., \_\_\_ So. 3d at \_\_\_. In our discussion, we distinguished the facts in J.G. from those in S.N.W. v. M.D.F.H., 127 So. 3d 1225 (Ala. Civ. App. 2013), a case in which we affirmed a judgment terminating the parental rights of a noncustodial parent at the request of the custodial parent. We noted that the record in J.G. did not contain any evidence indicating that any person had come forward to seek adoption of the children so the juvenile court in J.G. had not been tasked with "balanc[ing] the benefits

to the children of adoption ... against the alternative of maintaining the status quo." \_\_\_ So. 3d at \_\_\_.

In contrast to the lack of facts indicating that the juvenile court should balance the benefits of adoption against maintenance of the status quo in J.G., the present case clearly contains facts indicating that the juvenile court should have, and, in fact, did engage in such a balancing. Indeed, this case is much more like S.N.W., in which M.D.F.H., the mother of D.W., sought to terminate the parental rights of S.N.W. so that D.W.'s stepfather, V.W.H., could adopt her. 127 So. 3d at 1227. S.N.W. had been convicted of a felony offense and had been sentenced to serve 20 years in prison in 2002. Id. S.N.W. had no relationship with D.W.; he had not seen her for 10 years. Id. D.W. had been reared by the mother and V.W.H., who had provided for her since 2004. Id. In its judgment terminating S.N.W.'s parental rights, the Marshall Juvenile Court stated that maintaining the status quo was "'viable, but is not an alternative to terminating his parental rights, in that it is practically and functionally no different than termination.'" Id. at 1229.

We explained in S.N.W. that "maintaining the status quo is a viable option to terminating parental rights when the parent and the child enjoy

a relationship with some beneficial aspects that should be preserved such that it would be in the child's best interests to continue that relationship." 127 So. 3d at 1230 (emphasis added). Because S.N.W. had remained dependent on drugs, had committed a violent act against the mother resulting in his long-term incarceration, and had not had a relationship with the child since the child's infancy, we agreed with the juvenile court that "maintaining the status quo will not harm [D.W.], but it certainly will do nothing to preserve any beneficial aspect of her relationship with [S.N.W.], which is nonexistent." Id. We further observed that "preserving the status quo will prevent [D.W.] from accessing the benefits available to her if she allowed to be adopted by [V.W.H.], and, consequently, would not be in her best interest." Id.

The principle that maintaining the status quo should be considered "when the parent and the child enjoy a relationship with some beneficial aspects that should be preserved such that it would be in the child's best interests to continue that relationship," S.N.W., 127 So. 3d at 1230 (emphasis added), is a well-settled one. See T.D.K. v. L.A.W., 78 So. 3d 1006, 1011 (Ala. Civ. App. 2011) (citing Roe v. Conn., 417 F. Supp. 769, 779 (M.D. Ala. 1976)) (stating that, "if 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 successfully employed instead of terminating parental rights"). The facts of the present case establish that the father has not visited with the child since the child was 13 months old; the child was 5 years old at the time of the trial. The child does not know who the father is or that the stepfather is not his biological father. Thus, the father has no relationship with the child to preserve, much less a beneficial one.

Although the father makes much in his brief about the fact that the child will not gain any financial benefit from an adoption by the stepfather, we are not confined to consideration of only financial benefits to the child. Permitting the stepfather to make official and permanent the de facto parent-child bond that he has with the child and that the child has with him will certainly benefit the child, who would likely be emotionally harmed by learning about the father, who he does not know and who is incarcerated in a state penitentiary for a violent offense. The father presented no evidence at trial, much less any evidence indicating

that he will be released from incarceration before the child reaches the age of majority, and it is not remotely likely that the father will be able to develop any relationship with the child while he remains confined in a state penitentiary, especially now that his visitation rights have been suspended indefinitely by the circuit court. That the child's best interests would be better served by termination of the father's parental rights and adoption by the stepfather cannot be seriously questioned.

This case is much more aligned with the facts of S.N.W. than the facts of J.G. We therefore reject the father's argument that J.G. compels reversal of the judgment terminating his parental rights. Because the father and the child have no relationship, much less a beneficial one worthy of preserving, and because the child's best interest would be far better served by his adoption by the stepfather, we affirm the judgment of the juvenile court terminating the father's parental rights to the child.

AFFIRMED.

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

Thompson, P.J., concurs in the result, without opinion.