REL: 03/03/2017

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2016-2017

2150931

D.M.

v.

Jefferson County Department of Human Resources

Appeal from Jefferson Juvenile Court
(JU-09-92919.03, JU-09-92920.03, JU-09-92921.03, and JU-14-607.03)

MOORE, Judge.

D.M. appeals from judgments entered by the Jefferson Juvenile Court ("the juvenile court") in four separate juvenile-court cases -- case numbers JU-09-92919.03,

JU-09-92920.03, JU-09-92921.03, and JU-14-607.03. We affirm the judgments entered in case numbers JU-09-92919.03, JU-09-92920.03, and JU-09-92921.03; however, because we determine that D.M. lacked standing to appeal from the judgment entered in case number JU-14-607.03, we dismiss the appeal insofar as it arises from the judgment entered in that case.

Case Number JU-14-607.03

In case number JU-14-607.03 ("the B.M. case"), the Jefferson County Department of Human Resources ("DHR") filed a petition regarding B.M. seeking to terminate the parental rights of A.M. ("the mother"); D.M., who DHR identified as B.M.'s "alleged father"; and any unknown father. At the termination hearing in that case, which was consolidated with the other three cases addressed in this appeal, the testimony revealed that the mother and D.M. had divorced in August 2010 and that B.M. was born on July 23, 2011. The mother and D.M.'s judgment of divorce lists them as having only three children, and D.M. was not listed as B.M.'s father on B.M.'s birth certificate. DHR filed a motion for service by publication asserting that B.M.'s father was unknown and that

service by publication on the unknown father was necessary; the juvenile court granted that motion. Tiarra Thomas, a social-service caseworker for DHR, also testified at the termination hearing that B.M.'s father was unknown. On July 16, 2016, the juvenile court entered a judgment in the B.M. case terminating the parental rights of the mother and any unknown father to B.M.; D.M. was not mentioned in that judgment. Nevertheless, D.M. filed a postjudgment motion in the B.M. case, and has appealed from the judgment entered in that case.

Before we proceed to address the merits of D.M.'s appeal as it pertains to the B.M. case, we must first determine whether this court has jurisdiction over that aspect of the appeal. Although neither party has raised the issue of subject-matter jurisdiction,

> "[i]t is well settled that 'subject-matter jurisdiction may not be waived; a court's lack of subject-matter jurisdiction may be raised at any time by any party and may even be raised by a court ex mero motu.' C.J.L. v. M.W.B., 868 So. 2d 451, 453 (Ala. Civ. App. 2003); see, e.g., Ex parte Norfolk S. Ry. Co., 816 So. 2d 469, 472 (Ala. 2001) ('We are obliged to recognize an absence of subject-matter jurisdiction obvious from a record, petition, or exhibits to a petition before us.'). A judgment entered by a court that lacks subject-matter jurisdiction is void. See C.J.L.,

> 868 So. 2d at 454; see also J.B. v. A.B., 888 So. 2d 528 (Ala. Civ. App. 2004)."

S.B.U. v. D.G.B., 913 So. 2d 452, 455 (Ala. Civ. App. 2005).

"Standing ... turns on 'whether the party has been injured in fact and whether the injury is to a legally protected right.'" State v. Property at 2018 Rainbow Dr., 740 So. 2d 1025, 1027 (Ala. 1999) (quoting Romer v. Board of Cty. Comm'rs of the Cty. of Pueblo, 956 P.2d 566, 581 (Colo. 1998) (Kourlis, J., dissenting)).

> "'Unless a person is a party to a judgment, he can not appeal from that judgment. That fundamental principle is one of the oldest in Alabama jurisprudence.' Daughtry v. Mobile County Sheriff's Dep't, 536 So. 2d 953, 954 (Ala. 1988). 'One must have been a party to the judgment below in order to have standing to appeal any issue arising out of that judgment.' Mars Hill Baptist Church of Anniston v. Mars Hill Missionary Baptist Church, 761 So. 2d 975, 980 (Ala. 1999) (emphasis added). See also Triple J Cattle, Inc. v. Chambers, 621 So. 2d 1221 (Ala. 1993)."

Boschert Merrifield Consultants, Inc. v. Masonite Corp., 897 So. 2d 1048, 1051-52 (Ala. 2004). D.M. was not a party to the judgment in the B.M. case. Moreover, there is no indication that D.M. is the presumed father of B.M., see § 26-17-204, Ala. Code 1975, or that he established or sought to establish his paternity of B.M. at any time. Accordingly, the notice of

appeal filed by D.M., insofar as it pertained to the B.M. case, failed to invoke this court's appellate jurisdiction, and the appeal, insofar as it pertains to the judgment entered in the B.M. case, is due to be dismissed. See Boschert, 897 So. 2d at 1052. Compare W.T.M. v. S.P., 802 So. 2d 1091, 1093-94 (Ala. Civ. App. 2001) (concluding that, although biological father was not a party to a custody action before the juvenile court, he had an interest in the litigation and, therefore, had standing to appeal where paternity had been judicially established).

Case Numbers JU-09-92919.03, JU-09-92920.03, and JU-09-92921.03

On December 10, 2015, DHR filed separate petitions seeking to terminate the parental rights of D.M. and the mother to N.M., M.M., and S.M. ("the children"); those petitions were assigned case numbers JU-09-92919.03, JU-09-92920.03, and JU-09-92921.03, respectively. Following a hearing on June 14, 2016, the juvenile court entered separate judgments on July 16, 2016, terminating the parental rights of the mother and D.M. to the children. D.M. filed a postjudgment motion that referenced all three case numbers;

that motion was denied. D.M. timely filed a notice of appeal from the judgments.

D.M. argues on appeal that the juvenile court erred in terminating his parental rights to the children because, he says, there were viable alternatives to termination.

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

B.M. v. State, 895 So. 2d 319, 331 (Ala. Civ. App. 2004). A judgment terminating parental rights must be supported by clear and convincing evidence, which is "'"[e]vidence that, when weighed against evidence in opposition, will produce in the mind of the trier of fact a firm conviction as to each essential element of the claim and a high probability as to the correctness of the conclusion."'" C.O. v. Jefferson Cty. Dep't of Human Res., 206 So. 3d 621, 627 (Ala. Civ. App. 2016) (quoting L.M. v. D.D.F., 840 So. 2d 171, 179 (Ala. Civ. App. 2002), quoting in turn Ala. Code 1975, § 6-11-20(b)(4)).

> "'[T]he evidence necessary for appellate affirmance of a judgment based on a factual finding in the context of a case in which

> the ultimate standard for a factual decision by the trial court is clear and convincing evidence is evidence that a fact-finder reasonably could find to clearly and convincingly ... establish the fact sought to be proved.'
>
> "KGS Steel[, Inc. v. McInish,] 47 So. 3d [749] at 761 [(Ala. Civ. App. 2006)].
>
> "To analogize the test set out ... by Judge Prettyman [in Curley v. United States, 160 F.2d 229, 232–33 (D.C. Cir. 1947),] for trial courts ruling on motions for a summary judgment in civil cases to which a clear-and-convincing-evidence standard of proof applies, 'the judge must view the evidence presented through the prism of the substantive evidentiary burden'; thus, the appellate court must also look through a prism to determine whether there was substantial evidence before the trial court to support a factual finding, based upon the trial court's weighing of the evidence, that would 'produce in the mind [of the trial court] a firm conviction as to each element of the claim and a high probability as to the correctness of the conclusion.'"

Ex parte McInish, 47 So. 3d 767, 778 (Ala. 2008). This court does not reweigh the evidence but, rather, determines whether the findings of fact made by the juvenile court are supported by evidence that the juvenile court could have found to be clear and convincing. See Ex parte T.V., 971 So. 2d 1, 9 (Ala. 2007). When those findings rest on ore tenus evidence, this court presumes their correctness. Id. We review the legal conclusions to be drawn from the evidence without a

presumption of correctness. J.W. v. C.B., 68 So. 3d 878, 879 (Ala. Civ. App. 2011).

The juvenile court determined in its judgments, among other things, that D.M. had abandoned the children, that there were no suitable relative resources willing and able to receive custody of the children, and that there were no viable alternatives to termination of D.M.'s parental rights. D.M. first argues on appeal that the juvenile court erred in terminating his parental rights despite the willingness of his sister, J.W. ("the paternal aunt"), to accept custody of the children. D.M. also argues that the juvenile court erred in terminating his parental rights because it failed to consider maintaining the status quo as a viable alternative to termination. Both issues raised by D.M. speak to the existence of viable alternatives to termination of parental rights. We note, however, that when, as here, a juvenile court has determined that a parent abandoned his or her children, this court has concluded that consideration of viable alternatives to termination is not required. Thus, "by abandoning [his children], [D.M.] 'lost any due-process rights that would have required the juvenile court to explore other

alternatives before terminating [his] parental rights.'" L.L. v. J.W., 195 So. 3d 269, 274 (Ala. Civ. App. 2015) (quoting C.C. v. L.J., 176 So. 3d 208, 217 (Ala. Civ. App. 2015)).

Although D.M. did not couch either of his issues raised on appeal as addressing a lack of clear and convincing evidence to support the juvenile court's termination judgments other than in relation to the availability of viable alternatives, D.M. does assert in his appellate brief that he had made regular and consistent efforts to maintain a relationship with the children. D.M. does not, however, challenge the juvenile court's finding of abandonment or cite any authority in support of any such argument. See Rule 28(a)(10), Ala. R. App. P.

> "Inapplicable general propositions are not supporting authority, and an appellate court has no duty to perform a litigant's legal research. Legal Systems, Inc. v. Hoover, 619 So. 2d 930 (Ala. Civ. App. 1993); Lockett v. A.L. Sandlin Lumber Co., 588 So. 2d 889 (Ala. Civ. App. 1991); and Moats v. Moats, 585 So. 2d 1386 (Ala. Civ. App. 1991). Similarly, appellate courts do not, 'based on undelineated propositions, create legal arguments for the appellant.' McLemore v. Fleming, 604 So. 2d 353, 353 (Ala. 1992). This court will address only those issues properly presented and for which supporting authority has been cited. Simonton v. Carroll, 512 So. 2d 1384 (Ala. Civ. App. 1987)."

Asam v. Devereaux, 686 So. 2d 1222, 1224 (Ala. Civ. App. 1996). Accordingly, the juvenile court's determination that D.M. abandoned the children is affirmed. Because the juvenile court was not required to consider viable alternatives to termination of D.M.'s parental rights in light of that finding, we decline to address D.M.'s arguments on appeal that the juvenile court failed to properly consider whether placing the children with the paternal aunt or maintaining the status quo were viable alternatives to terminating his parental rights to the children.

D.M. cursorily asserts on appeal that the juvenile court's judgments violated his constitutional rights because he was not appointed an attorney until December 2015, after DHR had filed its termination petitions. Specifically, D.M. asserts that he "was not appointed a lawyer to represent his interests in the underlying dependency matter" and that "the order of the [juvenile] court violates [his] constitutional right to have an attorney present at all material stages of the proceeding." We note, however, that the underlying dependency judgment or judgments are not before this court, and there is no indication that D.M. appealed from the

judgment or judgments finding the children dependent before the juvenile court entered its judgments terminating his parental rights to the children. Accordingly, D.M. may not raise that issue on appeal in the present cases because it constitutes an unauthorized collateral attack upon the previous dependency judgment or judgments. See Morgan v. Lauderdale Cty. Dep't of Human Res., 494 So. 2d 649, 651 (Ala. Civ. App. 1986). D.M. was appointed an attorney to represent him shortly after the filing of DHR's petitions to terminate his parental rights to the children, and D.M. was represented by counsel at the termination hearing. Accordingly, D.M. was not denied his right to representation by counsel in the underlying proceedings from which this appeal arises. The juvenile court's judgments terminating the parental rights of D.M. to the children are affirmed.

Conclusion

For the reasons discussed above, we dismiss D.M.'s appeal with regard to case number JU-14-607.03. In case numbers JU-09-92919.03, JU-09-92920.03, and JU-09-92921.03, we affirm the juvenile court's judgments terminating D.M.'s parental rights.

JUDGMENTS IN CASE NUMBERS JU-09-92919.03, JU-09-92920.03, AND JU-09-92921.03 AFFIRMED; APPEAL DISMISSED AS TO CASE NUMBER JU-14-607.03.

Thompson, P.J., and Pittman, Thomas, and Donaldson, JJ., concur.