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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2020

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C.B.S.

v.

Walker County Department of Human Resources

Appeal from Walker Juvenile Court
(JU-19-177.01)

PER CURIAM.

C.B.S. ("the mother") appeals from a judgment of the Walker Juvenile Court ("the juvenile court") finding that her daughter R.M. ("the child") is dependent and vesting K.A.S.H.

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("the maternal aunt"), the child's maternal aunt, with custody of the child. We affirm.

Facts and Procedural History

On June 17, 2019, the Walker County Department of Human Resources ("DHR") filed a dependency petition regarding the child. DHR's petition alleged that it had received a report that the mother and the alleged father, who lived together but had never been married, were abusing illegal drugs while the child was in their care; that, when DHR investigated the report, the mother and the alleged father had admitted that they were abusing illegal drugs; and that drug testing of the mother and the alleged father had indicated that they had opiates in their systems. DHR's petition further alleged that it had implemented a safety plan pursuant to which the child was being cared for by K.W., the alleged father's great-aunt, who lived in a separate apartment in the same apartment complex ("the apartment complex") as the mother and the alleged father. DHR sought service of process not only on the mother and the alleged father but also on K.W.

On June 19, 2019, DHR filed a motion alleging that the safety plan had been violated, which, according to DHR, placed

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the child in danger, and seeking (1) an immediate pickup order vesting DHR with custody of the child pending a shelter-care hearing, (2) an order setting a shelter-care hearing, and (3) an order appointing a guardian ad litem for the child. That same day, the juvenile court entered a pickup order placing the child in the custody of DHR pending a shelter-care hearing and setting a shelter-care hearing for June 21, 2019.

On June 20, 2019, D.S. ("the maternal grandmother"), the child's maternal grandmother, through her retained counsel, filed a motion for leave to intervene in the dependency action for the purpose of seeking custody of the child. Before the June 21, 2019, shelter-care hearing, the juvenile court appointed separate counsel to represent the mother and the alleged father and appointed a guardian ad litem to protect the interests of the child.

The record does not contain a transcript of the shelter-care hearing. Following the shelter-care hearing, the juvenile court entered an order finding that allowing the child to remain in the care of either (1) the mother and the alleged father or (2) K.W., pursuant to the safety plan, would be contrary to the child's best interests; maintaining DHR's

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custody of the child; and ordering the mother and the alleged father to cooperate with DHR in any plan it proposed for their rehabilitation. By separate written order, the juvenile court scheduled an adjudicatory hearing for July 9, 2019.

The counsel retained by K.W. filed a notice that he was appearing as additional counsel for the mother and filed a motion on behalf of K.W. seeking leave to intervene in the dependency action for the purpose of seeking custody of the child. At the July 9, 2019, hearing ("the July 9 hearing"), before receiving evidence, the juvenile court stated on the record that it had determined that K.W. was "not a parent nor a legal guardian nor a legal custodian," that it was dismissing K.W. as a party insofar as she had been made a party to the action by service of process, and that it was deferring a ruling on K.W.'s motion to intervene until a determination had been made regarding whether the child was dependent. The alleged father, whose name was not on the child's birth certificate, indicated that he was not claiming paternity of the child. The juvenile court dismissed him as a party and informed him that he could later seek a determination of paternity if he changed his mind. The

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juvenile court then relieved the father's appointed counsel of any further responsibility in the action. The juvenile court also confirmed that K.W.'s retained counsel was going to represent the mother as well as K.W. and relieved the mother's appointed counsel of any further responsibility in the action. The juvenile then received evidence ore tenus from the mother and K.W.

The mother testified that she had been born in May 1985, that the child was 19 months old when the July 9 hearing was held, and that the mother was living in the apartment complex with the alleged father, whom she described as her fiancé. The mother testified that B.S., the alleged father's great-grandmother, and K.W., the alleged father's great-aunt, also live in separate apartments in the apartment complex. The mother testified that she had suffered head trauma in an automobile accident, which had resulted in complete deafness in one ear and a substantial loss of hearing in the other ear.

The mother testified that she had used opiates for which she did not have a prescription the night before the July 9 hearing and that she had smoked methamphetamine three days before that hearing. She admitted that she has a substance-

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abuse problem, that DHR had offered her an opportunity to enter a drug-detoxification program, and that she had not entered that program. The mother admitted that her appearance was disheveled at the July 9 hearing.

The mother testified that M.M. and L.M., the alleged father's parents, and K.M., the alleged father's sister, have been evicted from the apartment complex and have been banned from coming there. The mother and the alleged father are both unemployed and depend on K.W. to provide them with food and transportation. The mother testified that she and the alleged father had gotten money with which to buy drugs by telling K.W. that they needed money to pay a bill and then using the money she gave them to buy the drugs. The mother denied that her substance-abuse problem interfered with her taking care of the child. The mother testified that she has had a hard time getting along with the maternal grandmother since the child's maternal great-grandmother died. Neither the maternal grandmother nor the maternal aunt have given the mother money for drugs. The mother testified that, on one occasion when the mother was in school, the maternal grandmother had punched her in the jaw because the mother had made a bad grade. The mother

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further testified that, when she was 13 or 14 years old, the maternal grandmother had disagreed with the mother's choice of clothes for school, had gotten angry at the mother, and had pushed the mother up against a wall and hit her.

The mother testified that she told K.W. that the mother has a substance-abuse problem. The mother testified that K.W. had "fussed about it," had encouraged the mother to get help, and had stopped giving the mother and the alleged father cash but had continued to feed the mother, to pay the mother's bills, and to let the mother visit the child while the child was in K.W.'s care pursuant to the safety plan.

The mother testified that K.W. has a close relationship with the child and that K.W. does an "outstanding" job of caring for the child when she is in K.W.'s care. The mother testified that the child had been in K.W.'s care for a month before DHR came and got the child, that the child was never in danger when she was in K.W.'s care, and that the child had never missed any meals when she was in K.W.'s care. The mother testified that she feels like she had the right to decide to place the child in the care of K.W., that the child had been

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properly cared for by K.W., and that the family had not needed help from the State in caring for the child.

K.W. testified that she was 60 years old, that she lived with her three dogs in an apartment in the apartment complex, that her income consists of \$771 per month in Supplemental Security Income benefits, and that she receives food stamps. She has a husband, who is 76 years old, but he does not live with her, although he helps her out financially when she needs it. Her husband works as a security guard and receives Social Security benefits. K.W. further testified that she is the alleged father's great-aunt; that her sister, B.S., lives in another apartment in the apartment complex; and that M.M. and L.M., the alleged father's parents, and K.M., the alleged father's sister, had been banned from the apartment complex. She testified that, within the 30 days preceding the July 9 hearing, she had left M.M., who was not then banned from the apartment complex, in her apartment watching television and had gone to the store; that, when she returned from the store, the police were at the apartment complex investigating a burglary and searching M.M.'s automobile; and that she initially could not find M.M. Eventually, the police found

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M.M., L.M., K.M., and K.M.'s boyfriend hiding in K.W.'s closet. L.M. and K.M. were charged with trespassing because they had previously been banned from the apartment complex, and M.M. was banned from the apartment complex for being at the apartment complex with L.M. and K.M. L.M. and K.M. were scheduled to appear in court on the trespass charges on July 9, 2019. K.W. testified that her sister, B.S., frequently lets L.M. stay at B.S.'s apartment, even though L.M. is banned from the apartment complex, and occasionally lets K.M. stay there as well. K.M. has been charged with trespass on previous occasions when she was found in B.S.'s apartment. K.M. has a child who is not in her custody, and DHR has an open case on that child. K.W. testified that she occasionally lets K.M. come to her apartment.

K.W. testified that M.M., L.M., and K.M. all have substance-abuse problems but that she had not known that the mother and the alleged father had substance-abuse problems until DHR intervened and placed the child with K.W. K.W. learned that the drug tests administered by DHR to the mother and the alleged father were positive for the presence of drugs. K.W. testified that, before she had learned that the

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mother and the father had substance-abuse problems, she had given them cash so that they could pay their bills but that, after learning that they had substance-abuse problems, she stopped giving them cash and began paying their creditors directly. K.W. testified that, before DHR intervened, she had picked up the child from the mother and the alleged father's apartment almost every morning and had taken care of the child in her apartment, even though both the mother and the alleged father were unemployed. K.W. testified that she would not allow the mother and the alleged father to be around the child if they were intoxicated. K.W. testified that she let the mother and the alleged father spend the night in her apartment on Father's Day but did not let the child sleep with them. K.W. testified that, when the child was in her care, the child was always properly cared for and was never in danger. K.W. testified that she would never allow someone who was intoxicated to be around the child. In response to questions asked by the juvenile court, however, she admitted that someone might be on drugs without her knowing it.

After the juvenile court had received the testimony of the mother and K.W., the following colloquy occurred:

"THE COURT: At this point I'll say to the parties I have no -- I don't have to hear from any other witnesses in the case unless, [the mother's counsel], you have anybody else.

"[The mother's counsel]: No, Your Honor.

"THE COURT: The Court finds from clear and convincing evidence that the child is dependent upon the Court, [the child] is dependent upon the Court.

"[The mother] is unwilling to discharge her responsibilities to and for the child.

"[K.W.] is a loving person with probably too big of a heart. The Court finds -- the Court sees her as more of an enabler to the issues that the parents are dealing with than anything else.

"The Court now has to hear as it pertains to any home studies [that] have been done on [the maternal grandmother] and [the maternal aunt].

"[DHR's counsel]: We prepared home studies so they can be submitted to you in paper form or I can put [the DHR caseworker] on the stand.

"THE COURT: It's a bifurcated matter. It's interesting, I don't think that -- I'm sure [the mother's counsel] will tell me if I'm wrong, I don't think -- when it comes to the point of where to place the child, it's no longer -- it's all done by reports and statements from the individuals, because we have found dependency.

"I will also at this point entertain your first -- I've got jurisdiction [over the] motion to intervene, and you filed it on behalf of whom?

{The maternal grandmother's counsel}: [The maternal grandmother].

"THE COURT: Does [the maternal grandmother] understand if she is allowed to intervene that she'll become under the jurisdiction of this Court?

"[The maternal grandmother's counsel]: She is, Your Honor. She wishes that her daughter would be able to be unified with [the child], and she is willing to serve as a custodian. She's done that in the past when the child was -- from January until about June or July of 2018, the child was --

"THE COURT: You're proffering this.

"[The maternal grandmother's counsel]: I'm proffering, Your Honor.

"THE COURT: Okay. I'm going to allow [the maternal grandmother] to intervene as a party.

"[K.W.'s counsel], Y'all have filed on behalf of {K.W.} to intervene?

"[K.W.'s counsel]: That is correct.

"THE COURT: Okay. That was the lady --

"[K.W.'s counsel]: Yes.

"THE COURT: Okay. I will allow [K.W.] -- now, she understands that if she's allowed to intervene, she'll be a party to the matter?

[K.W.'s counsel]: That is correct.

"THE COURT: Okay. Y'all are going to see some funny orders come through. There's going to be an order that dismisses [K.W.] from the original petition as a party, and then you're going to see an order that allows her to intervene as a party.

". . . .

"[The Court]: If I could see the copies of the home studies.

"[The maternal grandmother's counsel]: Judge, I'm going to object to the home study, if I may, I'd rather hear it from testimony. There's some material in there, and I asked the case worker if she had a report that indicates there was an indicated abuse report, and she said, no, she didn't. I haven't seen it.

"THE COURT: Well, I think that's -- I've got the law here. I tell you what we'll do, let's just put this on hold.

"(Recording paused.)

"THE COURT: We're back on the record. The Court has had the opportunity to review the confidential home study reports, also with the attorneys.

"It's my understanding that [the mother's counsel] -- don't let me put words in your mouth. Your client, [the mother], would prefer that pendente lite, [K.W.] take care of the child while she tries to get back on her feet; is that correct?

"[The mother's counsel]: Yes, Your Honor, that -- in light of the finding of dependency, that is our request, without waiving any right, obviously, to a statute [sic] finding of dependency, that is our preference.

"THE COURT: All right. Taking that into account, I will remind everyone that [the mother] on the stand said if [K.W.] couldn't do it that her sister, [the maternal aunt], would be a good relative placement, and the law is very clear to place children with relatives over non-relatives. That's the priority first, if they're good relatives.

"From reading the confidential reports, it appears to me that [the maternal aunt] would make a suitable resource for the Court to use to place the child ... at this time."

On July 16, 2019, the juvenile court entered an order titled "Dependency Order" ("the July 16 order") in which the juvenile court stated, in pertinent part:

"On July 9, 2019, this case came before the Court for an adjudicatory hearing. ...

"Having heard and taken clear and convincing evidence, competent, material, and relevant in nature, the Court finds that [the child] is dependent and is in need [of the] care [and] supervision of the Court. [The mother] is unable to care for her child at this time due to substance abuse. [The mother] tested positive for controlled substances at court and admitted it was due to abusing these substances. Further, [the mother] has failed to avail herself of services offered by [DHR] to assist her in addressing her substance abuse heretofore. Accordingly, the Court finds that [the child] is dependent and is in need of the care and supervision of the Court. The child's mother is unable or unwilling to discharge her responsibilities as parent to and for the minor child and it is contrary to the child's welfare to reside with the mother. [DHR] made reasonable efforts to prevent the removal of the child from the home but to no avail.

"Having determined the child is dependent and that continued residence with the mother would be contrary to the child's welfare, the matter of pendent lite custody is now before the court. The court having considered the testimony and the home studies prepared by [DHR] determines that the custody of the minor child shall be placed with the

[child's] maternal aunt [K.A.S.H.]. [The maternal aunt] is hereby made a party to this matter and is to be served with a copy of the petition and summons.

"THEREFORE, the Court ORDERS the following:

"1. [The child] is removed from the custody and the care of the mother ... and is placed in the custody pendente lite of [the maternal aunt]. The maternal aunt will personally have the duty to protect, train and discipline the minor child and to provide the minor child with food, shelter, clothing, education and medical care, and to exercise the powers, rights, duties and responsibilities of the legal guardian of the person of the child all subject to any residual parental rights and responsibilities. Further, [the maternal aunt] shall have the authority to consent to medical, surgical, dental and psychological care of the minor child.

".

"3. [The mother] is specifically Ordered to do the following:

"• to follow the recommendations of her substance abuse evaluation and admit herself to a detox facility as soon as a bed becomes available. [DHR] is working to coordinate this step.

"• Enroll with the Jasper Family Service Center ... and complete the motherhood initiative, or other program which ... the director recommends. The Court order to enter a detox facility is to take priority over this goal, and in the event she is admitted she is to leave even if in the middle of a program with Jasper Family Service Center.

"• Continue with color code drug screens, these screens are to be suspended upon [the mother's] admission to detox, but to resume again as soon as she completes the program or otherwise leaves.

"• Continue counseling.

"• [The mother] is to communicate and work with the DHR social worker and complete requirements of any plan advanced by the social worker unless the Court orders otherwise. Further she is to inform the DHR caseworker of any change in address, phone number or other contact information. ...

"4. Parent time between the mother and the minor child is to be coordinated through [an Individualized Service Plan] with DHR.

"5. The [mother] of the minor child will not have any contact with illegal drugs, alcohol or associate with any persons who sell, furnish, possess or use illegal drugs, or frequent any business or establishment that serves alcohol as its principal source of income.

"....

"FURTHERMORE, the Court ORDERS

"On September 13, 2019, ... the Court will conduct a dispositional hearing. The Court will receive all relevant and material evidence helpful in determining the best interests of the child, including verbal and written reports. The parties or their counsel will be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making reports, Upon completion of the hearing, the Court will either issue a final dispositional order or continue

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the case for further review and possible disposition at a later date."

On July 26, 2019, the juvenile court entered written orders granting the maternal grandmother and K.W. leave to intervene in the action. On July 30, 2019, the mother filed a motion and supporting brief titled "Motion and Brief to Set Aside Judgment" in which the mother asserted that the child was not dependent because, the mother said, the child was not in need of the care and supervision of the State because, the mother said, despite the fact that she had admitted that she was addicted to opiates, she had voluntarily delegated her parental authority to K.W. The juvenile court did not rule on that motion.

On August 27, 2019, K.W. filed a notice of appeal to this court; however, this court subsequently granted K.W.'s motion for leave to substitute the mother's name for K.W.'s name as the appellant on the notice of appeal. DHR filed a motion to dismiss the appeal as being from a nonfinal judgment. This court initially granted that motion and dismissed the appeal as being from a nonfinal judgment; however, the mother subsequently filed an application for rehearing, which this court granted, and reinstated the appeal.

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The July 9 hearing was electronically recorded, and a licensed court reporter subsequently transcribed it. The juvenile court reviewed the record on appeal, which includes the court reporter's transcript, and certified that the record was adequate for appellate review. Therefore, this court has jurisdiction over this appeal pursuant to Rule 28(A)(1)(c)(i), Ala. R. Juv. P.

I. Finality

Because an appeal will not lie from an interlocutory order, see A.A. v. Jefferson Cty. Dep't of Human Res., 293 So. 3d 955, 960 (Ala. Civ. App. 2019) ("A nonfinal order cannot support an appeal."), we must, as a threshold matter, determine whether the July 16 order appealed from is an interlocutory order or a final judgment. In J.J. v. J.H.W., 27 So. 3d 519, 522 (Ala. Civ. App. 2008), this court stated:

"Under our caselaw, a formal determination by a juvenile court of a child's dependency coupled with an award of custody incident to that determination will give rise to an appealable final judgment even if the custody award is denominated as a 'temporary' award and further review of the case is envisioned."

In the present case, the juvenile court's July 16 order was "a formal determination by a juvenile court of a child's dependency." Id. We find that the determination of dependency

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was "coupled with an award of custody incident to that determination." Id. Even though the juvenile court characterized that custody award as a pendente lite one, we consider the order as a temporary order.

"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."

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

We conclude from our review of the record that the July 16 order made a temporary custody award incident to the finding of dependency in that order; that, as a temporary custody award, it was, in effect, a final custody award subject to change; and that the September 13, 2019, hearing

was merely intended to be a review hearing. Accordingly, we conclude that the July 16 order was a final, appealable judgment. See J.J. v. J.H.W. and T.J.H. v. S.N.F.

II. Dependency

"As a matter of constitutional law, a parent who has exercised custody over a child has a prima facie right to the continued custody of the child. See In re Moore, 470 So. 2d 1269, 1270 (Ala. Civ. App. 1985). The presumptive right of parents to the custody of their child may be overcome by clear and convincing evidence demonstrating that the parents are currently unable to discharge their responsibilities to and for the child and that the child requires additional care and supervision through the state, i.e., that the child is "dependent." See Ala. Code 1975, § 12-15-102(8)a.6; see also V.W. v. G.W., 990 So. 2d 414, 417 (Ala. Civ. App. 2008) (quoting K.B. v. Cleburne County Dep't of Human Res., 897 So. 2d 379, 389 (Ala. Civ. App. 2004) (Murdock, J., concurring in the result)) ("'[I]n order to make a disposition of a child in the context of a dependency proceeding, the child must in fact be dependent at the time of that disposition.'"). "Clear and convincing evidence" is defined as

""[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. Proof by clear and

convincing evidence requires a level of proof greater than a preponderance of the evidence or the substantial weight of the evidence, but less than beyond a reasonable doubt.'" "

"L.M. v. D.D.F., 840 So. 2d 171, 179 (Ala. Civ. App. 2002) (quoting Ala. Code 1975, § 6-11-20[(b)](4)).

"'On appeal from a judgment finding a child dependent following an ore tenus proceeding, we presume the juvenile court's factual findings are correct. J.W. v. C.H., 963 So. 2d 114, 119 (Ala. Civ. App. 2007). Those findings will not be disturbed if they are supported by sufficient evidence. Ex parte Floyd, 550 So. 2d 982, 984 (Ala. 1989). In passing on the question of the sufficiency of the evidence as to a finding of dependency, this court does not reweigh the evidence; instead, this court determines whether the juvenile court, acting in its fact-finding role, reasonably could have determined from its own weighing of the evidence that the dependency of the child was proven by clear and convincing evidence as that standard is defined above. J.B. v. DeKalb County Dep't of Human Res., 12 So. 3d 100, 112 (Ala. Civ. App. 2008).'

"R.F.W. v. Cleburne Cty. Dep't of Human Res., 70 So. 3d 1270, 1272 (Ala. Civ. App. 2011). See also Ala. Code 1975, § 12-15-311(a) ('If the juvenile court finds from clear and convincing evidence, competent, material, and relevant in nature, that a child is dependent, the juvenile court may proceed immediately, in the absence of objection showing good cause or at a postponed hearing, to make proper disposition of the case.').

"We are not allowed to substitute our judgment for that of the trial court, even when this court might have reached a different result, unless the trial court's resolution of the facts is plainly and palpably wrong. L.R.M. v. D.M., 962 So. 2d 864, 873-74 (Ala. Civ. App. 2007) (citing Griggs v. Griggs, 638 So. 2d 916, 918-19 (Ala. Civ. App. 1994), quoting in turn Young v. Young, 376 So. 2d 737, 739 (Ala. Civ. App. 1979)). "[A]n appellate court may not substitute its judgment for that of the trial court. To do so would be to reweigh the evidence, which Alabama law does not allow." Ex parte R.E.C., 899 So. 2d 272, 279 (Ala. 2004) (quoting Ex parte Foley, 864 So. 2d 1094, 1099 (Ala. 2003)). When addressing the inability of an appellate court to reweigh the evidence and substitute its judgment for that of the trial court, our supreme court recognized:

"The trial court must be allowed to be the trial court; otherwise, we (appellate court judges and justices) risk going beyond the familiar surroundings of our appellate jurisdiction and into an area with which we are unfamiliar and for which we are ill-suited -- factfinding."

"Ex parte R.T.S., 771 So. 2d 475, 477 (Ala. 2000)."

"J.B. v. Cleburne Cty. Dep't of Human Res., 992 So. 2d 34, 39-40 (Ala. Civ. App. 2008).

"Section 12-15-102(8), Ala. Code 1975, defines a 'dependent child' as one

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"'who has been adjudicated dependent by a juvenile court and is in need of care or supervision and meets any of the following circumstances:

"'....

"'2. Who is without a parent, legal guardian, or legal custodian willing and able to provide for the care, support, or education of the child.

"'....

"'8. Who, for any other cause, is in need of the care and protection of the state.'"

N.G. v. Blount Cty. Dep't of Human Res., 216 So. 3d 1227, 1233-34 (Ala. Civ. App. 2016).

The mother first argues that the juvenile court's judgment is due to be reversed because, the mother says, the juvenile court did not have before it evidence clearly and convincingly establishing that the child was in need of the care and supervision of the State because, the mother says, she had placed the child in the care of K.W. and K.W. was adequately caring for the child.

"[W]hen a child meets one of the criteria under the definition of a 'dependent child,' ... the juvenile court must also determine whether the child is 'in need of care or supervision.' Ex parte L.E.O., 61 So. 3d [1042] at 1047 [(Ala. 2010)]; see also § 12-15-102(8)(a), Ala. Code 1975 (A 'dependent child'

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is one 'who has been adjudicated dependent by a juvenile court and is in need of care or supervision and meets any of the following circumstances:' (emphasis added)). The supreme court declared that '[i]t is a reasonable interpretation of [the predecessor to § 12-15-102(8)] to require that, in determining whether a child is "in need of care or supervision," the juvenile court must consider whether the child is receiving adequate care and supervision from those persons legally obligated to care for and/or to supervise the child.' Ex parte L.E.O., 61 So. 3d at 1047."

A.E. v. M.C., 100 So. 3d 587, 596-97 (Ala. Civ. App. 2012).

In the present case, when the juvenile court determined whether the child was in need of care or supervision, the only person who was "legally obligated to care for and/or to supervise the child" was the mother. The juvenile court had before it evidence from which it reasonably could have been clearly convinced that the mother had a substance-abuse problem that rendered her incapable of providing the child with adequate care and supervision. Although the mother claimed that her substance-abuse problem did not interfere with her caring for the child, the juvenile court, as the sole judge of the facts and of the credibility of the witnesses, was authorized to disregard that testimony on the ground that it was not credible. See Woods v. Woods, 653 So. 2d 312, 314 (Ala. Civ. App. 1994) ("In ore tenus proceedings, the trial

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court is the sole judge of the facts and of the credibility of witnesses, and the trial court should accept only that testimony it considers to be worthy of belief."). Consequently, the juvenile court did not err in determining that the child was in need of care or supervision.

The mother next argues that the juvenile court's judgment impermissibly infringed on her constitutional right to direct and control the upbringing of the child. This argument, however, ignores the legal principle that a parent's constitutional rights with respect to his or her child "'may be overcome by clear and convincing evidence demonstrating that the parent[] [is] currently unable to discharge [his or her] responsibilities to and for the child and that the child requires additional care and supervision through the state, i.e., that the child is "dependent.'" N.G. v. Blount Cty. Dep't of Human Res., 216 So. 3d 1233 (quoting R.F.W. v. Cleburne Cty. Dep't of Human Res., 70 So. 3d 1270, 1272 (Ala. Civ. App. 2011)). As noted previously, the juvenile court had before it evidence from which it reasonably could have been clearly convinced that the mother had a substance-abuse problem that rendered her incapable of discharging her

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responsibilities to and for the child and that the child required additional care and supervision. Accordingly, the juvenile court properly found that the child was dependent. Therefore, we affirm the judgment of the juvenile court.

AFFIRMED.

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

Donaldson, J., dissents, with writing, which Thompson, P.J., joins.

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DONALDSON, Judge, dissenting.

I respectfully dissent. An order of a juvenile court finding a child dependent but making only a pendente lite custody award is not a final, appealable judgment. See A.A. v. Jefferson Cty. Dep't of Human Res., 293 So. 3d 955, 961 (Ala. Civ. App. 2019), and T.C. v. Mac.M., 96 So. 3d 115, 119-22 (Ala. Civ. App. 2011), aff'd, Ex parte T.C., 96 So. 3d 123 (Ala. 2012). Although this court has stated that an order making a finding of dependency coupled with a "temporary" custody award is a final, appealable judgment, see J.J. v. J.H.W., 27 So. 3d 519, 522 (Ala. Civ. App. 2008), the class of "temporary" custody awards we were referring to does not include pendente lite custody awards. See T.C. and A.A. As our supreme court has explained:

"In dealing with custody cases, it is of paramount importance for a court to determine the kind of order it is entering or the kind of proceeding it is conducting; for example, it matters whether the court is entering a temporary order in contrast to a pendente lite order and whether it is conducting an initial/original proceeding as opposed to a modification proceeding. We recognize that the language used by the courts can be confusing, especially the language speaking of a temporary award of custody as a final order, as opposed to a pendente lite order, which is not a final order. However, we must keep in mind that, by its very nature, custody is always temporary and never

permanent. Although the temporary custody of a child may have been placed with someone, the court always retains jurisdiction to modify custody under the appropriate circumstances. This is to say that temporary custody is actually permanent custody subject to change. There must be a sense of finality to child placement, but that placement is always subject to change by the court when the facts and law before the court indicate that a change is required.

"Semantically, this entire matter would be simpler if all courts declined to use the phrase 'temporary custody' and simply used 'pendente lite' or 'custody' as the circumstances require.

"Pendente lite orders are generally entered only during the pendency of the litigation and are usually replaced by a final order or judgment that is entered at the end of the litigation. Sims v. Sims, 515 So. 2d 1 (Ala. Civ. App. 1987). In custody situations, a pendente lite order clearly envisions continuing custody pending a later final determination of that custody dispute, whereas 'custody awards' are final and are generally intended to remain in effect until one of the parties succeeds in a petition requesting the court to modify its custody award. Sims, supra."

Ex parte J.P., 641 So. 2d 276, 278 (Ala. 1994) (emphasis added).

In the present case, the juvenile court's July 16, 2019, order expressly referred to the custody award to K.A.S.H. as a "pendente lite" award, scheduled a dispositional hearing for September 13, 2019, and provided that, "[u]pon completion of the [dispositional] hearing, the Court will either issue a

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final dispositional order or continue the case for further review and possible disposition at a later date." In my view, the July 16, 2019, order is merely an interlocutory order making a pendente lite award of custody, and, accordingly, I would dismiss the appeal as being from a nonfinal judgment.

C.B.S. asked this court, in the event that it determined that the July 16, 2019, order is interlocutory rather than final, to treat her appeal as a petition for a writ of mandamus. We could not do so, however, because the appeal was not filed within the period for filing a timely mandamus petition. A mandamus petition in a juvenile case must be filed within 14 days. See Rule 21(a)(3), Ala. R. App. P. (providing that the presumptively reasonable period for filing a mandamus petition is the same as the time for taking an appeal); and Rule 28(D), Ala. R. Juv. P. (providing that the time for taking an appeal in a juvenile case is 14 days). If the July 16, 2019, order is interlocutory, the posttrial motion challenging that order that C.B.S. filed in the juvenile court is a motion to reconsider rather than a Rule 59, Ala. R. Civ. P., postjudgment motion. See Ex parte Troutman Sanders, LLP, 866 So. 2d 547, 550 (Ala. 2003) (holding that a Rule 59 motion

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may be made only in reference to a final judgment). A motion to reconsider an interlocutory order does not have the tolling effect of a Rule 59 motion. Id. Therefore, if the July 16, 2019, order is interlocutory, the 14-day period for C.B.S. to file a mandamus petition expired on July 30, 2019, well before she filed her notice of appeal on August 27, 2019.

Thompson, P.J., concurs.