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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2190186

Jefferson County Department of Human Resources

v.

S.W., T.B., and E.S.

Appeal from Jefferson Juvenile Court
(JU-14-1207.01)

2190187 and 2190188

Jefferson County Department of Human Resources

v.

S.W. and T.B.

**Appeals from Jefferson Juvenile Court
(JU-18-1602.01 and JU-17-56.01)**

2190322

Jefferson County Department of Human Resources

v.

S.W. and E.S.

**Appeal from Jefferson Juvenile Court
(JU-14-1207.02)**

2190323

Jefferson County Department of Human Resources

v.

S.W. and T.B.

**Appeal from Jefferson Juvenile Court
(JU-17-56.02)**

PER CURIAM.

The Jefferson County Department of Human Resources ("DHR"), in appeal nos. 2190186, 2190187, and 2190888, appeals from the orders of the Jefferson Juvenile Court ("the juvenile

2190186, 2190187, 2190188, 2190322, and 2190323 court") granting custody of J.L.S., A.M.W.,¹ and N.M.B. to S.W. ("the mother") and T.B., the father of A.M.W. and N.M.B., and, in appeal nos. 2190322 and 2190323, appeals from the judgments of the juvenile court denying DHR's petitions seeking to terminate the parental rights of the mother and E.S., J.L.S.'s father, to J.L.S. and seeking to terminate the parental rights of the mother and T.B. to A.M.W. We dismiss the appeals from the orders granting the mother and T.B. custody of J.L.S., A.M.W., and N.M.B. because those orders are not final and, thus, we have no jurisdiction over those appeals. We affirm the judgments denying DHR's termination-of-parental-rights petitions.

Procedural History

On June 30, 2014, DHR filed a complaint in the juvenile court alleging that J.L.S. was dependent. In the complaint, DHR alleged that the mother was a minor in a program for teenaged mothers with infants and that the mother was not employed. On the same day, the juvenile court entered a pickup order for J.L.S. On July 11, 2014, the juvenile court entered

¹In the proceedings below, this child is sometimes referred to as A.M.W., reflecting the mother's surname, and is sometimes referred to as A.M.B., reflecting the father's surname.

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an order granting DHR pendente lite custody of J.L.S. and granting visitation to the mother. On May 20, 2016, the juvenile court entered an order adjudicating J.L.S. to be dependent, stating that the mother had been in DHR's custody at the time the dependency complaint regarding J.L.S. was filed. On December 5, 2016, the juvenile court entered an order prohibiting contact between J.L.S. and T.B.

On December 16, 2016, the Cullman County Department of Human Resources ("the Cullman County DHR") filed a complaint in the Cullman Juvenile Court alleging that A.M.W. was dependent. In that complaint, the Cullman County DHR alleged that the mother had been emancipated from foster care in May 2016, that the mother had not complied with or completed in-home services offered in conjunction with the case involving J.L.S., and that the mother was in a relationship with T.B. despite the juvenile court's no-contact order concerning T.B. and J.L.S. Also on December 16, 2016, the Cullman County DHR filed a motion for an emergency pickup order for A.M.W., and the Cullman Juvenile Court entered an order granting the motion on the same day. On December 19, 2016, the Cullman Juvenile Court entered a shelter-care order granting the

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Cullman County DHR pendente lite custody of A.M.W. On December 27, 2016, upon the motion of the Cullman County DHR, the Cullman Juvenile Court entered an order transferring the dependency case concerning A.M.W. to the juvenile court.

On June 30, 2017, DHR filed petitions seeking to terminate the parental rights of the mother to J.L.S. and to A.M.W. In those petitions, DHR stated that the fathers of the children were unknown.

On July 12, 2017, the juvenile court entered an order in A.M.W.'s dependency case, granting custody of A.M.W. to DHR. The order also states that a previous order containing an adjudication of dependency was entered on May 20, 2016. The reference to the May 20, 2016, order, however, appears to be a reference to the May 20, 2016, order adjudicating J.L.S. to be dependent in J.L.S.'s dependency case.

On August 28, 2018, the Cullman County DHR filed a complaint in the Cullman Juvenile Court alleging that N.M.B. was dependent. On August 29, 2018, the Cullman Juvenile Court entered a pickup order for N.M.B. upon the motion of the Cullman County DHR. On August 30, 2018, the Cullman Juvenile Court entered an order granting the Cullman County DHR

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pendente lite custody of N.M.B. On September 10, 2018, upon the Cullman County DHR's motion, the Cullman Juvenile Court entered an order transferring the dependency case concerning N.M.B. to the juvenile court. The juvenile court later entered an order granting DHR pendente lite custody of N.M.B. and granting visitation to the mother and T.B.

On October 11, 2018, the juvenile court entered an order adjudicating T.B. to be the legal father of A.M.W. and adjudicating E.S. to be the legal father of J.L.S. On April 30, 2019, the juvenile court entered an order removing the prohibition of contact between T.B. and J.L.S. and granting T.B. visitation with all the children.

On August 14, 2019, DHR filed a motion seeking an order requiring the mother and T.B. to complete certain services. Regarding the mother, DHR requested that the juvenile court order her to undergo a bonding assessment regarding her and the children, to undergo a substance-abuse assessment, to complete an updated psychological evaluation, and to be fingerprinted. Regarding T.B., DHR requested that the juvenile court order him to be fingerprinted and to complete a psychological evaluation. The mother filed an objection to

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DHR's motion. On September 5, 2019, the juvenile court entered an order denying DHR's motion.

On September 10, 2019, DHR amended its termination-of-parental-rights petitions; DHR named E.S. as the father in the case involving J.L.S., and it named T.B. as the father in the case involving A.M.W.

On September 11, 2019, the juvenile court entered an order setting November 14, 2019, as the date for a trial in the termination-of-parental-rights cases involving J.L.S. and A.M.W. and for a review hearing as to the dependency case involving N.M.B. In that order, the juvenile court noted that J.L.S. had been adjudicated dependent in a May 20, 2016, order. The juvenile court also indicated that a previous order had adjudicated A.M.W. to be dependent on December 16, 2016, but we note that that is the date on which the complaint alleging that A.M.W. was dependent was filed. The September 11, 2019, order further stated that all prior orders were to remain in effect.

The juvenile court conducted a trial on November 14-15, 2019, and November 25-26, 2019. The mother and T.B. were present at the trial and were represented by counsel. The

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guardian ad litem for J.L.S. and A.M.W., DHR representative Courtney Clark, and DHR's counsel were also present. E.S., representing himself, appeared for the first time in the proceedings at the trial and participated in the examination of witnesses.

On November 26, 2019, the juvenile court entered orders in all three dependency cases. In those orders, the juvenile court granted custody of J.L.S., A.M.W., and N.M.B. to the mother and T.B. and granted E.S. supervised visitation with J.L.S. The juvenile court again noted that a previous order had been entered adjudicating J.L.S. to be dependent on May 20, 2016. The juvenile court ordered the mother and T.B. to continue participating in in-home services, to continue submitting to random drug screens, and to continue maintaining stable housing and employment. The juvenile court also ordered the mother and T.B. to cooperate with DHR in conducting a background check on them through the Alabama Bureau of Investigation or the Federal Bureau of Investigation. A review hearing was scheduled to address the disposition of J.L.S. and A.M.W. and their permanency plans, and a trial was scheduled for the adjudication of N.M.B.'s dependency case.

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On November 26, 2019, DHR filed notices of appeal of the November 26, 2019, orders in the dependency cases.

On January 15, 2020, the juvenile court entered judgments denying DHR's termination-of-parental-rights petitions. The juvenile court noted the following evidence that had been presented during the November 2019 trial in support of its conclusions:

"[E.S.] testified that he has a total of three children, two of which are in the custody of the DHR. His third child, a six-year old male, is in the legal custody of [that child's mother], but is currently residing with [E.S.] as he and the mother are co-parenting. [E.S.] acknowledged that in the past five years, he has moved two or three times, and he is currently residing with his aunt, grandmother, uncle, and cousin in Birmingham Alabama. [E.S.] testified that though he would like to get custody of [J.L.S.], he has no concerns regarding [the mother] and her husband, [T.B.,] gaining custody of him. [E.S.] acknowledged that though he was consistently employed for the past four or five years, he has not provided any financial support for [J.L.S.]. [E.S.] also acknowledged that he missed several court hearings as he was unaware of them. He did not know [J.L.S.] was in the custody of DHR until 2016 and he only visited with [J.L.S.] in person one time when [J.L.S.] was two years of age. He testified that he did not visit with [J.L.S.] due to transportation issues but he has utilized [telephone videoconferencing] to speak with him.

"The Court also heard ore tenus testimony from [T.B.], the father of A.M.[W.] and N.M.B., that he and the mother have been married since September

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2018 and have lived together for a year and seven months. Their home is appropriate and received a satisfactory evaluation from DHR. He is employed with no significant period of unemployment in several years. He does acknowledge a federal gun charge in Indiana for which he was sentenced to two years of probation. However, due to his compliance with probation, he is now on unsupervised probation. [T.B.] has never had a drug or alcohol problem and has tested as required without any positive drug screens either in this case or the aforementioned gun case.

"[T.B.] reported having a good relationship with A.M.[W.] and her siblings, including [J.L.S.]. [T.B.] first visited with [A.M.W.] in March of 2017, and continues to visit with her as ... allowed, which is currently on Tuesday evenings and weekends. He has completed anger management classes, parenting classes, and participates in in-home counseling. [T.B.] admits that he has not paid child support for [A.M.W.] but he does provide her with clothing, and food, as well as birthday and Christmas gifts.

"The mother ... testified that she has three children: [J.L.S., A.M.W., and N.M.B.]. She currently does not have custody of any of her children. The oldest child, [J.L.S.], was born while the mother was still a minor and living in foster care. Initially, they were able to reside together at Child Haven where the mother received counseling, mentoring, parenting, and independent living services. The mother currently resides with [T.B.]. Though they have only been married for approximately one year, they have resided in the same home for three years. She has been employed at her current job for a year and a half and prior thereto, worked another job for one year. The mother also acknowledged a criminal history to include a reckless endangerment charge in which she entered a best interest plea in 2017 and a current pending charge relating to food stamp fraud.

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"It has been alleged that the mother used methamphetamine[;] however, she vehemently denies this allegation and all of her random drug tests including a hair follicle supports this claim as they were negative for all [test] substances. The mother has submitted to random drug screens at least four times a month since August 2018 until such time as she was stepped down to three times a month for continued compliance with drug testing requirements. The mother did have a presumptive positive test for methamphetamine on August 27, 2018, at or around the time of the birth of her youngest child, [N.M.B.]. However, the mother submitted to a hair follicle test two days later and those results were negative as well.

"The mother testified that she has done everything required to regain custody of her children. She has attended all court hearings, completed parenting classes twice, completed anger management [classes] twice, maintained stable housing, maintained stable employment, complied with DHR, visits her children faithfully, and consistently engages in appropriate activities and supervision of her children.

"Attorney Jennifer Bailey was also called as a witness in this case. Since January 2019, Bailey has served as the Guardian ad Litem of [N.M.B.] Ms. Bailey testified that ... she has had several different opportunities to assess and/or observe the parents in this case. She has attended Individualized Service Plan meetings, interviewed service providers, and conducted four home visits, three of which were unannounced. Ms. Bailey testified that [the mother and T.B.'s] home was safe, and contained adequate provisions for the children. ... [A]t no time has Ms. Bailey had any concern for the safety and well-being of any of the children with their mother. The children always appeared happy and comfortable with both their mother and [T.B.].

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"The DHR social worker, Alisha Shields, testified that she has been assigned to this case [since] June 2018. In August 2018, Ms. Shields noted that the mother was compliant with all services. She was compliant with drug testing, had completed parenting classes, domestic violence classes, and participated in in-home services with [Youth Advocate Programs]. The mother then completed a psychological evaluation in October 2018. Around that time, Ms. Shields told the mother she needed to maintain stable housing and employment, drug test on color peach, and participate with in-home services to regain custody of her children.

". . . .

"Furthermore, Ms. Shields testified to the following:

"1. The [mother and T.B.] have shown no lack or inability to care for [the] children, and in fact, over the past twelve months, have adjusted their circumstances to meet the needs of [the] children.

"2. The [mother and T.B.] have not abandoned the children, and in fact, over the last twelve months have visited regularly and consistently with [the] children.

"3. Based on her observations, the [mother and T.B.] were bonding with the children, the mother was doing well, and everyone appeared to be comfortable with one another.

"4. She has visited the home of the [mother and T.B.] on multiple occasions, and has deemed that the home meets the basic needs

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of the children including safety, bedding, food, and other provisions.

"5. There has been no determination that the [mother and T.B.] are suffering from any emotional or mental illness, neither has there been any indication over the last twelve months that the [mother and T.B.] have an alcohol or drug addiction.

"6. Reasonable efforts to rehabilitate the [mother and T.B.] have been successful.

"Also of import is the testimony provided by Melissa Hardin of Anchor Counseling and Consulting regarding the services provided by her agency and their interaction with the [mother and T.B.] and [the] children in this cause. ... All such interactions [have] been loving and appropriate. The mother plays well with the children, provides discipline [when] needed, appropriate food in light of [A.M.W.'s] allergies, and a clean home."

The juvenile court found that DHR had not met its burden of proof, that J.L.S. and A.M.W. were not dependent, that the mother was willing and able to discharge her responsibilities to J.L.S. and A.M.W., that there were no mental-health or drug issues that were barriers to reunification, and that viable alternatives to the termination of parental rights existed, including placing J.L.S. and A.M.W. with the mother and T.B.

On January 17, 2020, DHR filed notices of appeal to this court challenging the judgments in the termination-of-

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parental-rights cases. Those appeals have been consolidated with the appeals in the dependency cases.

Facts

The mother and E.S. are the unmarried parents of J.L.S. The mother and T.B. are the parents of A.M.W. and N.M.B. Each child was born a few days before entering DHR's or the Cullman County DHR's custody. The mother and T.B. married on July 27, 2018. At the time of the trial, all the children were in foster care. Since 2016, DHR has referred the mother to various organizations and individuals that have provided counseling, in-home services, a psychological evaluation, and supervision of visitations. The following is a summary of the evidence presented at the trial pertinent to the issues properly raised on appeal.

Kristina Piggot, an employee of Seraaj Family Homes, testified that she had provided counseling services to the mother to address anger management, coping, and parenting skills from June 22, 2016, to September 27, 2016. Piggot described a session with the mother held on August 3, 2016, as follows:

"We talked about her new job, how to handle customers when they get mad. I had received a report

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about a boyfriend with a charge. I had asked her about that. She had got upset over that. I tried talking to her about why I was going to talk about it. She had made a comment about slapping someone. I asked her if she was threatening. She said no. I had heard the allegations. I don't know anything about the guy that was being discussed.

"She got escalated. So, I was going to end the session. She did de-escalate. I asked her to sign my log. She said no. She did de-escalate. She was not happy about the hour session and then she was saying I was not helping her."

According to Piggot, she later learned that the boyfriend referred to in that testimony was T.B. Piggot testified that the mother exhibited signs of being angry and unhappy during the next few sessions. According to Piggot, on September 12, 2016, the mother was unhappy because Piggot had not been able to attend an individualized-service-plan ("ISP") meeting. Piggot testified that she felt that there had been a lack of progress and that the mother had become less receptive to services. According to Piggot, on September 26, 2016, the mother expressed frustration over a report involving T.B. Piggot described the mother as being angry, not wanting to talk, and preoccupying herself with other things on that day. Piggot testified that, afterwards, her organization closed

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services to the mother because of concerns that the mother was not happy and did not feel like the services were helping.

Summer Gibson is a child-abuse and neglect investigation supervisor for the Cullman County DHR. Gibson testified that, in December 2016, the Cullman County DHR received a report that the mother and A.M.W. both had tested positive for methamphetamine when A.M.W. was born. T.B. testified that, in the period after A.M.W.'s birth, the mother sent him a text message informing him that A.M.W. had tested positive for methamphetamine. According to T.B., the mother stated that she did not know how she could test negative while A.M.W. had tested positive for the drug. The medical records submitted at trial indicated that A.M.W.'s test result was "presumptive positive" for methamphetamine. T.B. testified that A.M.W.'s test result was not confirmed and that he did not believe that A.M.W. or the mother actually had tested positive for methamphetamine.

The mother testified that, in 2017, DHR and law-enforcement officers came to her home to question her about the circumstances of A.M.W.'s birth. Gibson testified that she visited the mother at her home in February or March 2017.

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According to Gibson, the mother adamantly denied that she had used drugs and stated that she did not know how A.M.W. could have tested positive for drugs. Gibson testified that the mother, who was belligerent and irate during that visit, threw a telephone on the floor in her direction. According to Gibson, after completing its investigation, the Cullman County DHR entered a finding of "indicated" for child abuse and neglect as to the mother as a result of A.M.W.'s positive drug-test result at birth. The mother testified that, in 2017, she was charged with chemical endangerment, and she entered what she described as a "best interest" plea² to a misdemeanor charge of reckless endangerment, for which she was placed on 12 months of unsupervised probation.

Shannon Abdullah, an employee of Youth Advocate Programs, testified that, from June 2017 to November 2017, she provided in-home services to the mother and worked with her on anger

²The mother was apparently referring to a guilty plea to a criminal charge "without admitting the acts of the crime if [the accused] intelligently concludes that [the accused's] interest so requires and the record strongly evidences guilt. North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)." Young v. State, 408 So. 2d 199, 201 (Ala. Crim. App. 1981).

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management, communication, healthy relationships, and parenting skills. Abdullah testified that sometimes the sessions with the mother went well and the mother was prepared and ready to listen and learn but that sometimes the mother had an outburst or was frustrated or angry and she had to calm the mother down. According to Abdullah, on one occasion, the mother began yelling and pounding her fist into her other hand, and Abdullah left the mother's residence before the situation escalated. Abdullah testified that the mother had made progress and was compliant with the services. Abdullah testified that her organization stopped providing services to the mother in March 2018 because the time limit for providing services to the mother expired and DHR did not renew their services.

Dan Lowery, a psychologist, testified that, on October 31, 2017, he performed a psychological evaluation on the mother. Lowery testified that the mother provided the majority, if not all, of the background information for his evaluation. According to Lowery, the mother had difficulty explaining the circumstances regarding DHR's involvement with her family. Lowery testified that he administered a test

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measuring parenting "domains," such as potential child abuse, but that he was unable to make assessments based on the test results because the mother's responses had produced "an elevated lie scale." Lowery explained that the elevated lie scale did not necessarily mean that the mother had lied to him. According to Lowery, "[p]otential reasons in general for an elevated lie score include that [the mother] responded in an overly naive and insightful manner, did not adequately comprehend the items, or attempted to malingering or fake good which is a sign of guardedness and defensiveness." Lowery could not recall that the mother was unable to comprehend the items on the test. Lowery testified that he also administered to the mother a projected personality test that was valid and worthy of interpretation.

Lowery testified that he had ruled out methamphetamine abuse in his diagnosis of the mother. According to Lowery, the mother had stated that she did not have a drug problem. Lowery testified that, if he had known of the reckless-endangerment charge stemming from allegations of methamphetamine use, he would not have ruled out methamphetamine abuse and would have questioned the mother more in order to assess her answers.

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Lowery further testified that, if he had known that more than one of the mother's children had tested positive for illegal drugs at birth, he would have recommended that the mother undergo a substance-abuse assessment. According to Lowery, he would have felt encouraged if he had known that the mother had participated in drug screens and had not tested positive for illegal substances, but, he said, the mother's having missed drug screens would have been concerning.

T.B. testified that he had previously lived in East Chicago, Indiana, where he had been convicted of purchasing a handgun for "the wrong reason" on August 24, 2018. Documentation regarding T.B.'s criminal case indicates that T.B. pleaded guilty to making a material false statement in the acquisition of a firearm and received probation for two years. According to T.B., his probation is unsupervised. T.B. testified that he had not been arrested or convicted of any other charge. According to T.B., he had to undergo drug screens whenever a probation officer visited unannounced as part of his probation, and, he said, he had not failed any of the drug screens.

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According to medical records submitted at trial, urine tests conducted on August 27, 2018, when N.M.B. was born, indicated presumptive positive results for methamphetamine for N.M.B. and the mother. Gibson testified that, after a Cullman County DHR investigation following N.M.B.'s birth, the mother was found to be "indicated" for child abuse and neglect in August 2018. T.B. testified that he was aware that both the mother and N.M.B. had tested positive for methamphetamine at the time of N.M.B.'s birth. Regarding a conversation with the mother, T.B. testified that "[m]y exact words was to her how is it all your drug test pop up negative, but two times you go to Cullman Hospital they popped up positive for meth[amphetamine]." According to T.B., he had never seen the mother take drugs. The mother did not agree with N.M.B.'s positive test for methamphetamine. T.B. testified that, two days after N.M.B.'s birth, both he and the mother submitted to hair-follicle tests. Both T.B. and the mother testified that the results of the hair-follicle tests were negative for all substances. Documentation regarding the mother's hair-follicle test showed negative results for illegal substances.

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The mother testified that she started submitting to drug screens after A.M.W. was born in 2016. According to the mother, she did not submit to drug screens consistently when she was pregnant with A.M.W. because of her job. The mother testified that she has not missed any drug screens since August 2018. According to the mother, the frequency of her drug testing has been reduced because she had been compliant with drug testing for so long. The mother testified that no one has asked her to undergo drug rehabilitation.

T.B. testified that he did not submit to drug screens from December 2018 to May 2019. According to T.B., at some point he stopped attending drug screens because he could not reach the testing center in time. T.B. testified that he informed DHR that he was working 12-14 hour shifts at the time and that his workplace did not allow him to leave work for a drug test. According to T.B., DHR requested that he submit to drug screening again in the summer of 2019, and, he said, he had not missed a drug screening since then. T.B. testified that he did not have any issues with drug or alcohol abuse.

T.B. testified that he had been working at a restaurant for four months at the time of the trial. According to T.B.,

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he had worked 50 to 65 hours a week at his previous job in an industrial plant where he had been employed for 10 months. T.B. testified that he had had to leave that job after injuring his back. T.B. testified further regarding his employment history since 2015. According to T.B., he had stable housing, had not tested positive for drugs, had cooperated with counseling provided by DHR, and had completed classes for anger management and parenting.

The mother testified that she had lived in the same residence for three years and that T.B. had moved in with her in 2018. According to the mother, she had been working full-time at a hotel for a year and a half before the trial and had worked at a restaurant before that. The mother testified that the in-home services that Piggot provided were terminated because Piggot had not helped her but that, in the year preceding the trial, she had been helped by the in-home services provided by Melissa Hardin, who was associated with Anchor Counseling and Consulting. According to the mother, a counselor referred by DHR, Sarah Elizabeth Ball, had been helping her with parenting techniques. The mother testified that she has a motor vehicle, that she had not missed a single

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drug screen in the 14 months preceding the trial, that she had completed classes for parenting and anger management twice, that she had learned from the services being provided by DHR, and that she would continue to work with any service provider ordered by the juvenile court.

Melissa Hardin testified that, since January 2019, she had been providing in-home services to the mother addressing issues concerning her past, her anger, and, specifically, drug and alcohol use. According to Hardin, the mother denied any drug use. Hardin testified that the mother had taken a drug and alcohol assessment that did not indicate a reason to provide services related to drugs and alcohol but that her organization continued to provide such services to assess the mother's parenting level and protective capacity. Hardin further testified that she did not have any concerns regarding the mother and T.B. as parents based on the visitations that she had observed.

Ball testified that she works as a therapist for an organization that had been providing "play therapy" to J.L.S. since June 2019. According to Ball, DHR referred J.L.S. for individual counseling to address J.L.S.'s separation from his

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birth family and concerns about his behavior. Ball testified that she had provided the mother with advice on dealing with situations involving J.L.S.

The mother testified that she had attended all of her visitations since 2017. Jamie Gandy testified that she had supervised visitations between the mother and the children from June 2017 to May 2019. Gandy testified that the mother had exercised all of her visitations and that, once T.B. began visitations, he appeared for all of his visitations also. T.B. testified that he has not missed any of his court-ordered visitations.

Courtney Clark, the foster-care manager for DHR, testified that she had supervised the social worker assigned to J.L.S.'s and A.M.W.'s cases and that she had reviewed those cases. Clark acknowledged that the mother and T.B. had been submitting to drug screens, were participating with in-home services, had completed classes on parenting and domestic violence, had been maintaining stable employment, and had been exercising their visitations, which were goals in their June 2019 ISP. Clark testified that the mother and T.B. were somewhat compliant with the goals of maintaining stable

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housing and employment. According to Clark, the mother and T.B. have taken advantage of some services offered by DHR but had not undergone an updated psychological assessment, a bonding assessment, and a substance-abuse assessment as requested by DHR in July 2019. Clark admitted that DHR had filed a motion requesting that the mother and T.B. comply with those requests but that the juvenile court had denied the motion.

Aleisha Shields, an employee of DHR, testified that she had been the caseworker for J.L.S. and A.M.W. since June 2018. Shields testified that she had submitted a report with an addendum to the juvenile court recommending the termination of the mother's and E.S.'s parental rights to J.L.S. and the mother's and T.B.'s parental rights to A.M.W. Shields's concerns included the amount of time those children had been in DHR's custody, the mother's having stated that she needed a little help with certain things relating to those children, the mother's "not owning up to certain things," and the mother's noncompliance at times with provided or recommended services. According to Shields, the mother had been noncompliant with in-home services in 2016, but, she admitted,

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the mother and T.B. had been compliant with DHR's services during the time that she had worked with the family. Shields testified that, in July 2018, DHR had referred the mother to one service provider for counseling but that the service provider had stated that it did not travel to the mother's location and that the mother did not need any services because it could not identify any issues with the mother. According to Shields, a worker for another service provider that provided counseling visited the mother, T.B., and the children unannounced and had found no sign of the mother's or T.B.'s lacking protective capability for the children. Shields testified that the mother and T.B. were compliant with all court-ordered services and with all the services recommended by DHR in their June 2019 ISP.

Shields testified that the mother denied having used any illegal drugs. Shields initially testified that the mother did not participate in drug screens from January 2018 to June 2018. Shields later admitted that the mother had undergone drug screens from January 2018 to June 2018 but that the mother had not met the required frequency of testing. According to Shields, the mother submitted to a drug screen a

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couple of days after N.M.B. was born, submitted to a hair-follicle test a couple of days later on August 30, 2018, and did not test positive for methamphetamine on either test. Shields testified that the mother has been fully compliant with drug screens since August 2018.

Shields testified that, at an ISP meeting in August 2018, T.B. agreed to undergo drug screening but that he did not start the drug screens until June 2019. Shields testified that, in November or December 2018, T.B. had stated that he could not participate in drug screens because he was working 12-hour shifts. According to Shields, DHR was aware in March 2019 that T.B. was not submitting to drug screens, but, to her knowledge, DHR was not concerned. Shields testified that in June 2019 she requested that T.B. resubmit to drug screens, that T.B. did not miss any drug screens after her request, and that T.B. had never tested positive for illegal substances. Shields further testified that she had no concerns with T.B.'s residence and that T.B. was compliant with the terms of his probation.

Shields testified that the mother and T.B. accepted and understood why the children were in DHR's custody. According

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to Shields, in the year preceding the trial, the mother and T.B. had not shown any indication of drug addiction, an inability to care for J.L.S. and A.M.W., or an unwillingness to discharge their duties to the children. Shields testified that the mother and T.B. have adjusted their circumstances to meet the needs of J.L.S. and A.M.W. and that DHR's efforts to rehabilitate the mother and T.B. have been successful.

Shields testified that she had investigated all the relative resources identified by the parties but that none were available or appropriate for placement of J.L.S. and A.M.W. Shields testified that she had contacted E.S. in July 2018 and had asked him to provide relative resources, but he had not do so. Shields testified that E.S. had not been involved in J.L.S.'s case, had not appeared at court hearings before the trial, had not attended any ISP meetings, and had not visited J.L.S. Shields testified that she had talked to E.S. on the telephone in July 2018 and that she had sent a letter to him in August 2018. Shields testified that, in August 2018, E.S. stated that he wanted to visit J.L.S., but, she said, he never followed up with his request. Shields

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testified that she had provided E.S. with her contact information.

The mother testified that she had informed E.S. when J.L.S. was born and that he was J.L.S.'s father. According to the mother, E.S. did not provide any support for J.L.S. before being ordered to do so in March 2019. The mother testified that she had informed E.S. of the petition to terminate his parental rights to J.L.S. two weeks before trial and that E.S. had responded by saying that he would attend the trial. The mother did not know when she had previously had contact with E.S. before then.

E.S. testified that he knew of J.L.S. when the mother was pregnant with him and that he was not at the hospital when the mother gave birth to J.L.S. According to E.S., after J.L.S. was born, his communication with the mother "started to drop. Like it would go from almost every day -- I would say every week to two, three days not talking, months -- and then it went to months, you know, just evaporated." E.S. testified that, when he had been talking to the mother, he would talk to J.L.S. through telephone videoconferencing "every now and then." E.S. testified that he had physically visited J.L.S.

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only once when J.L.S. was two years old and that he was unable to see J.L.S. in person because of a lack of transportation. E.S. testified that he and the mother stopped communicating when J.L.S. was about four years old.

E.S. testified that he wanted custody of J.L.S., but he did not have concerns if the mother and T.B. obtained custody of J.L.S. E.S. testified that he realized that J.L.S. was in foster care around the time that the Cullman County DHR obtained custody of A.M.W. E.S. testified that he had not been involved with J.L.S.'s case with DHR because, he said, the mother had told him that she did not want him involved. E.S. testified that "[the mother] said she was going to do everything. I tried to help. It just was frustrating." E.S. testified that he was not involved because he also did not know how to "approach" the matter until earlier in 2019, and E.S. denied that he had received any letters or telephone calls from DHR in 2018. E.S. testified that he had resided at more than three or four addresses since June 2014 but that he could not have missed letters or mail from DHR or the juvenile court because he had continually used the same addresses for mailing purposes.

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E.S. testified about how he would care for J.L.S. if he was granted custody, about where J.L.S. would go to school, and that he cared for another child. E.S. admitted that he had not provided any financial support for J.L.S. most of the time J.L.S. had been in DHR's custody. E.S. testified that he had attended a court proceeding in which he became obligated to pay child support. E.S. testified that he had thought that he would receive visitation once he had made a couple of child-support payments but that, by the time of trial, he understood that that had been an incorrect assumption. According to E.S., he worked full-time for a restaurant and was paid \$1,300 every two weeks. E.S. testified that, before his current employment, he had worked for other restaurants and that he had not been unemployed for more than a month.

Gabriel Elder testified that he works in the child-support division of the Alabama Department of Human Resources. According to Elder, an order requiring E.S. to pay \$246 a month in child support plus \$14 a month toward a child-support arrearage for J.L.S. was entered on March 1, 2019. Elder testified that, since March 1, 2019, E.S. had made one child-

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support payment. Records submitted at trial indicate that a payment of \$60 was made on June 12, 2019.

Discussion

I.

DHR contends that the juvenile court entered the November 26, 2019, orders granting the mother and T.B. custody of the children without notice or a trial on the dispositional issue in the dependency cases. Before we can reach the merits of DHR's arguments, however, we must first determine whether we have jurisdiction over the appeals of the November 26, 2019, orders. Bryant v. Flagstar Enters., Inc., 717 So. 2d 400, 402 (Ala. Civ. App. 1998). Although the parties have not raised the jurisdiction of this court as an issue on appeal, "'jurisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu.'" Wallace v. Tee Jays Mfg. Co., 689 So. 2d 210, 211 (Ala. Civ. App. 1997) (quoting Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987)). "'Unless otherwise provided by law, appeals lie only from final orders or judgments.'" C.E.C. v. C.W.C., 202 So. 3d 338, 340 (Ala. Civ. App. 2016) (quoting Wolf v. Smith, 414 So. 2d 129, 130 (Ala. Civ. App. 1982)).

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"Although a juvenile court's orders in a dependency case are, in one sense, never 'final' because the court retains jurisdiction to modify its orders upon a showing of changed circumstances, see C.L. v. D.H., 916 So. 2d 622 (Ala. Civ. App. 2005); Committee Comments, Rule 4, Ala. R. App. P., this court has always treated formal dependency adjudications as final and appealable judgments despite the fact that they are scheduled for further review by the juvenile court."

D.P. v. Limestone Cty. Dep't of Human Res., 28 So. 3d 759, 762 (Ala. Civ. App. 2009). Accordingly, "an order determining that a child is (or that a child remains) dependent coupled with a disposition of that child's custody is a final judgment capable of supporting an appeal." Marshall Cty. Dep't of Human Res. v. J.V., 203 So. 3d 1243, 1247 (Ala. Civ. App. 2016). "However, a juvenile-court judgment that does not resolve the issue of permanent custody is not considered a final judgment for purposes of appeal." Id. A judgment that resolves permanent custody provides "a sense of finality to child placement" even though "that placement is always subject to change by the court when the facts and law before the court indicate that a change is required." Ex parte J.P., 641 So. 2d 276, 278 (Ala. 1994).

On the other hand, a pendente lite order is a nonfinal order that is made pending the adjudication of the case. G.B.

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v. State Dep't of Human Res., 959 So. 2d 1116, 1119-20 (Ala. Civ. App. 2006). An order entered in a dependency case while a dependency determination remains pending is a pendente lite order and is not appealable. Id. The record does not reflect any adjudication of whether A.M.W. and N.M.B. were dependent before the entry of the November 26, 2019, orders. Although an order in the record states that A.M.W. had been previously adjudicated dependent, there is no such order in the record actually declaring A.M.W. to be dependent. Therefore, at the time the November 26, 2019, orders were entered, dependency determinations remained pending in the cases pertaining to A.M.W. and N.M.B. Furthermore, we note that none of the parents had ever had custody of any of the children for any significant amount of time before the entry of the November 26, 2019, orders. The November 26, 2019, orders in J.L.S.'s and A.M.W.'s dependency cases require the mother and T.B. to continue participating in in-home services, to continue submitting to random drug screens, to continue maintaining stable housing and employment, and to submit to a background check. We conclude that the November 26, 2019, orders did not resolve the issue of permanent custody for any of the

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children. Because the November 26, 2019, orders granted only pendente lite custody of the children, DHR has appealed from nonfinal orders. Accordingly, we dismiss the appeals from the November 26, 2019, orders entered in the children's dependency cases for lack of appellate jurisdiction.

II.

DHR contends that the judgments denying its petitions seeking to terminate the parental rights of the mother and E.S. to J.L.S. and the parental rights of the mother and T.B. to A.M.W. should be reversed, because, it asserts, it presented clear and convincing evidence that grounds for termination of the parents' rights to those children existed and that there were no viable alternatives to the termination of their parental rights. Section 12-15-319(a), Ala. Code 1975, provides:

"If the juvenile court finds from clear and convincing evidence, competent, material, and relevant in nature, that the parents of a child are unable or unwilling to discharge their responsibilities to and for the child, or that the conduct or condition of the parents renders them unable to properly care for the child and that the conduct or condition is unlikely to change in the foreseeable future, it may terminate the parental rights of the parents."

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"Section 12-15-319 provides that if the required findings are made, the juvenile court 'may' terminate parental rights. The term 'may' leaves the decision to the discretion of the juvenile court." Talladega Cty. Dep't of Human Res. v. J.J., 187 So. 3d 705, 714 (Ala. Civ. App. 2015). "'If the trial court determines, based on all relevant factors, that grounds exist for terminating parental rights, then the court must proceed to the second part of its analysis, which is to consider whether all viable alternatives to terminating parental rights have been exhausted.'" S.S. v. Calhoun Cty. Dep't of Human Res., 212 So. 3d 940, 952 (Ala. Civ. App. 2016) (quoting Ex parte J.E., 1 So. 3d 1002, 1008 (Ala. 2008)).

As stated in § 12-15-319(a), DHR had the burden of proof at trial to establish by clear and convincing evidence that the termination of the mother's, E.S.'s, and T.B.'s parental rights was warranted.

"'[E]very parent has a prima facie right to the custody of his or her child. L.G. v. State Department of Human Resources, 603 So. 2d 1100 (Ala. Civ. App. 1992). This prima facie right can be overcome only by clear and convincing evidence that the child's best interests would be served by removing the child from the parent's custody. Id. It is the consideration for the best interests of the child that lies at the heart of every proceeding to terminate parental rights. L.G., supra.'"

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R.L.B. v. Morgan Cty. Dep't of Human Res., 805 So. 2d 721, 723 (Ala. Civ. App. 2001) (quoting H.M.W. v. Mobile Cty. Dep't of Human Res., 631 So. 2d 1049, 1050 (Ala. Civ. App. 1993)). "'Clear and convincing evidence' 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.C. v. L.J., 176 So. 3d 208, 211 (Ala. Civ. App. 2015) (quoting L.M. v. D.D.F., 840 So. 2d 171, 179 (Ala. Civ. App. 2002), quoting in turn § 6-11-20(b)(4), Ala. Code 1975).

In reviewing a judgment on the matter of terminating parental rights, this court presumes that a juvenile court's factual findings based on ore tenus evidence are "correct and will not be disturbed unless they are plainly and palpably wrong." J.C. v. State Dep't of Human Res., 986 So. 2d 1172, 1183 (Ala. Civ. App. 2007). "Furthermore, '[w]hen evidence is presented ore tenus, it is the duty of the trial court, which had the opportunity to observe the witnesses and their demeanors, and not the appellate court, to make credibility determinations and to weigh the evidence presented.'"

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Talladega Cty. Dep't of Human Res. v. J.J., 187 So. 3d 705, 714 (Ala. Civ. App. 2015) (quoting Ex parte Hayes, 70 So. 3d 1211, 1215 (Ala. 2011), citing in turn Blackman v. Gray Rider Truck Lines, Inc., 716 So. 2d 698, 700 (Ala. Civ. App. 1998)). Instead of reweighing the evidence, our role is to determine whether the record contains evidence that a fact-finder reasonably could find clearly and convincingly established the fact sought to be proved. See Ex parte McInish, 47 So. 3d 767, 778 (Ala. 2008). In this case, DHR challenges the factual basis of the judgments denying the petitions seeking the termination of parental rights. Therefore, we will affirm the judgments unless DHR demonstrates that the juvenile court was compelled to find that the evidence clearly and convincingly supported each essential element of DHR's claims and that the juvenile court exceeded its discretion by not terminating the mother's, E.S.'s, and T.B.'s parental rights.

A.

We first consider DHR's argument that E.S.'s parental rights to J.L.S. should have been terminated because, it asserts, he had abandoned J.L.S. Section 12-15-319(a)(1) provides the following as a factor to be considered in

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determining whether to terminate parental rights: "That the parents have abandoned the child, provided that in these cases, proof shall not be required of reasonable efforts to prevent removal or reunite the child with the parents." In addition, § 12-15-319(c) provides that

"[a] rebuttable presumption that the parents are unable or unwilling to act as parents exists in any case where the parents have abandoned a child and this abandonment continues for a period of four months next preceding the filing of the petition. Nothing in this subsection is intended to prevent the filing of a petition in an abandonment case prior to the end of the four-month period."

According to the record, DHR filed the petition to terminate the mother's parental rights to J.L.S. on June 30, 2017. DHR amended that petition to name E.S. as the father of J.L.S., and to seek the termination of his parental rights to J.L.S., on September 10, 2019. Although DHR asserts that a rebuttable presumption pursuant to § 12-15-319(c) applies against E.S., DHR has not argued that the amended petition relates back to the original petition. "When an appellant fails to argue an issue in its brief, that issue is waived." Boshell v. Keith, 418 So. 2d 89, 92 (Ala. 1982). Because DHR has waived the issue whether the amended petition relates back

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to the original petition, we consider September 10, 2019, to be the date that the petition for termination of parental rights was filed against E.S. for the purpose of discussing this issue.

Section 12-15-301(1), Ala. Code 1975, defines "abandonment" as

"[a] voluntary and intentional relinquishment of the custody of a child by a parent, or a withholding from the child, without good cause or excuse, by the parent, of his or her presence, care, love, protection, maintenance, or the opportunity for the display of filial affection, or the failure to claim the rights of a parent, or failure to perform the duties of a parent."

The juvenile court did not make an express determination on the issue of abandonment. "We must therefore assume that the juvenile court made those findings necessary to support a determination that [E.S.] did not abandon the child, unless that finding is unsupported by the evidence." Montgomery Cty. Dep't of Human Res. v. T.S., 218 So. 3d 1252, 1262 (Ala. Civ. App. 2016).

The evidence indicates that E.S. had not been involved with the dependency and termination-of-parental-rights cases involving J.L.S. until his appearance at trial, that E.S. realized that J.L.S. was in DHR custody around the time that

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A.M.W. entered the Cullman County DHR's custody in December 2016, and that E.S. had visited J.L.S. in person only once when J.L.S. was two years old. E.S., however, testified that he was unable to visit J.L.S. in person more because of a lack of transportation, that he had not received notifications of court proceedings, and that he did not know how to become involved in the proceedings. A finding of abandonment requires evidence of intention, and "'excuse [is] a basis on which to avoid abandonment.'" C.C. v. L.J., 176 So. 3d 208, 211 (Ala. Civ. App. 2015) (quoting Ex parte F.P., 857 So. 2d 125, 138 (Ala. 2003)). It is within the province of the juvenile court to determine the credibility of witnesses and to weigh the evidence. Montgomery Cty. Dep't of Human Res. v. T.S., 218 So. 3d at 1263. We conclude that DHR has not demonstrated that the juvenile court was compelled to find that E.S.'s lack of in-person visitations with J.L.S. and lack of participation in court proceedings was entirely voluntary.

DHR asserts that E.S. admitted to not having communicated with J.L.S. The juvenile court found otherwise, and there was evidence the juvenile court could have determined to be credible indicating that E.S. had communicated with J.L.S.

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through telephone videoconferencing even up to the time that J.L.S. was four years old. DHR further asserts that E.S. had not paid any financial support for J.L.S. E.S., however, testified, and other evidence indicates, that he paid a portion of a child-support payment for J.L.S. in June 2019. Therefore, the evidence supports a finding that E.S. had provided some financial support for J.L.S., albeit not sufficient support. As noted earlier, it is not the role of this court to make credibility determinations regarding witnesses or to reweigh the evidence. See Ex parte McInish, 47 So. 3d at 778. "[W]hen evidence is presented ore tenus, it is the duty of the trial court, which had the opportunity to observe the witnesses and their demeanors, and not the appellate court, to make credibility determinations and to weigh the evidence presented." Herring v. Madison Cty. Dep't of Human Res., 279 So. 3d 1151, 1164 (Ala. Civ. App. 2018) (quoting Montgomery Cty. Dep't of Human Res. v. N.B., 196 So. 3d 1205, 1212 (Ala. Civ. App. 2015), quoting in turn Ex parte Hayes, 70 So. 3d 1211, 1215 (Ala. 2011)). We conclude that DHR has not established that the juvenile court was required to

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apply a rebuttable presumption that E.S. was unable or unwilling to act as a parent pursuant to § 12-15-319(c).

DHR asserts that E.S. ceded his responsibility as a parent, has not claimed his right as a parent, and deprived J.L.S. of his "presence, care, love, protection, maintenance or the opportunity for the display of filial affection."§ 12-15-301(1). At trial, E.S. testified that he was seeking custody of J.L.S., that he had the means to care for J.L.S., and that he was caring for another child. Although we might have decided this issue differently than the juvenile court based upon the facts in the record, our role is not to reweigh the evidence. See Ex parte McInish, supra. Based on the argument before us, we conclude that DHR has not established that the juvenile court could not have determined that E.S. was able and willing to care for J.L.S. at the time of the trial or that the juvenile court exceeded its discretion by not terminating his parental rights.

B.

DHR contends that the parental rights of the mother to J.L.S. and A.M.W. and the parental rights of T.B. to A.M.W.

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should have been terminated. In support of its arguments, DHR cites to the following factors listed in § 12-15-319(a):

"(3) That the parent has tortured, abused, cruelly beaten, or otherwise maltreated the child, or attempted to torture, abuse, cruelly beat, or otherwise maltreat the child, or the child is in clear and present danger of being thus tortured, abused, cruelly beaten, or otherwise maltreated as evidenced by the treatment of a sibling.

".....

"(7) That reasonable efforts by the Department of Human Resources or licensed public or private child care agencies leading toward the rehabilitation of the parents have failed."

DHR argues that the mother subjected A.M.W. and N.M.B. to maltreatment, that the mother and T.B. failed to accept responsibility for their actions, and that their lack of responsibility constitutes an ongoing threat to the safety of J.L.S. and A.M.W. We note that the mother testified that she had entered a "best interest" plea to reckless endangerment in her criminal case. DHR also refers to the evidence indicating that A.M.W. and N.M.B. had tested positive for methamphetamine when they were born and that both the mother and T.B. have denied that the mother has used drugs.

"'Although "[a] court may consider the past history of the family, as well as evidence of its present conditions," Ex parte State Dep't

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of Human Res., 624 So. 2d 589, 593 (Ala. 1993), based on the plain language of [§ 12-15-319(a)], and as clarified by our caselaw, the mere fact that, at one time, the parent may have committed conduct or suffered from a condition that rendered the parent unable to properly care for the child does not authorize a juvenile court to terminate parental rights. See V.M. v. State Dep't of Human Res., 710 So. 2d 915, 921 (Ala. Civ. App. 1998). Rather, the test is whether there is clear and convincing evidence demonstrating that the parental conduct or condition currently persists to such a degree as to continue to prevent the parent from properly caring for the child.'"

B.L. v. Elmore Cty. Dep't of Human Res., [Ms. 2190066, June 12, 2020] ___ So. 3d ___, ___ (Ala. Civ. App. 2020) (quoting M.G. v. Etowah Cty. Dep't of Human Res., 26 So. 3d 436, 442 (Ala. Civ. App. 2009) (construing the predecessor to § 12-15-319(a))).

Aside from testing positive at the hospital when A.M.W. and N.M.B. were born, the mother has not tested positive for drugs at any other time. The mother's test results include the results of a hair-follicle test conducted two days after N.M.B.'s birth that did not indicate the use of illegal substances. The mother had not missed any drug screens for a period of 14 months before the trial. Moreover, the juvenile court received evidence indicating that services specifically

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related to drugs and alcohol were considered unnecessary based on the results of an assessment taken by the mother and that another service provider, which declined to provide the mother with services, had determined that it could not identify any issues with the mother.

DHR did not present any evidence indicating that the denial by the mother and T.B. of drug use by the mother, in itself, threatened the children's safety. In contrast, the juvenile court received testimony indicating that the mother and T.B. had understood and accepted the reasons why the children were in DHR's care and that they were fully complying with all court-ordered services. Hardin testified that she saw no concerns with the mother and T.B. based on her observations of them with the children, and other testimony indicates that the mother and T.B. did not exhibit any behavior in the year before the trial that would interfere with their ability to care for the children. In light of all the evidence at trial, we cannot conclude that the juvenile court was compelled to determine that the actions of the mother and T.B. posed a threat to the safety of J.L.S. and A.M.W.

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DHR also argues that it proved that reasonable efforts aimed at reuniting the mother with J.L.S. and A.M.W. and at reuniting T.B. with A.M.W. have failed.

"Once DHR places a child in foster care, it has an immediate duty to use reasonable efforts to reunite the family, absent aggravating circumstances. See Ala. Code 1975, § 12-15-312. That duty requires DHR to identify the circumstances that led to removal of the child, to develop a plan to ameliorate those circumstances, and to use reasonable efforts to achieve that plan. See Montgomery Cty. Dep't of Human Res. v. A.S.N., 206 So. 3d 661, 672 (Ala. Civ. App. 2016) (citing H.H. v. Baldwin Cty. Dep't of Human Res., 989 So. 2d 1094, 1105 (Ala. Civ. App. 2007) (opinion on return to remand) (authored by Moore, J., with two judges concurring in the result)).

"....

"... Rehabilitation efforts succeed when those circumstances that led to the removal of the child have been resolved, [T.B. v. Cullman Cty. Dep't of Human Res., 6 So. 3d 1195, 1199 (Ala. Civ. App. 2008)], so that the child can safely be returned to his or her parent's custody. See Ala. Code 1975, § 12-15-301(12) (defining 'reasonable efforts' as including '[e]fforts made ... to make it possible for a child to return safely to his or her home'). Conversely, if DHR has proven by clear and convincing evidence that the parent remains unable to adequately care for the child after reasonable efforts have been expended to rehabilitate the parent, the juvenile court may find that those reasonable efforts have failed. T.B., supra."

H.B. v. Cullman Cty. Dep't of Human Res., 236 So. 3d 875, 882-83 (Ala. Civ. App. 2017). "Whether efforts at

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reunification have been reasonable and whether those efforts have failed or succeeded are questions of fact for the juvenile court to determine." R.T.B. v. Calhoun Cty. Dep't of Human Res., 19 So. 3d 198, 204 (Ala. Civ. App. 2009).

Regarding T.B., the only service DHR mentions is his drug screening. The evidence indicates that T.B. had agreed to undergo drug screening in August 2018 but that he did not begin testing consistently until June 2019. T.B. testified that he had informed DHR of his inability to submit to drug screens because of his employment. A DHR employee testified that DHR did not appear concerned that T.B. had not submitted to drug screens during that period and that, after he was asked to resume, T.B. submitted to all drug screens from June 2019 to the time of the trial. None of T.B.'s drug screens indicated a positive result for illegal substances. DHR does not assert and the evidence would not have supported a finding that T.B. has an issue with illegal substances.

Regarding the mother, DHR refers to the services provided to her by Piggot, Lowery, and Abdullah and how, in its view, she did not cooperate with those service providers or complete the services. DHR also refers to the mother's inconsistency in submitting to drug screens from January 2018 to July 2018. The

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evidence, however, also indicates that the mother submitted to all her drug screens from August 2018 to the time of the trial and that none of the drug screens indicated the use of illegal substances. Piggot provided counseling services to the mother from June 2016 to September 2016. Lowery conducted a psychological evaluation in October 2017, and Abdullah provided in-home services from June 2017 to November 2017. The mother also received other services from DHR, including the in-home services provided by Hardin that began in January 2019. The mother testified that she had completed classes on parenting and domestic violence twice. Moreover, DHR does not dispute the evidence indicating that DHR's ongoing services were helping the mother and that the mother was compliant with all court-ordered services at the time of the trial.

Although some evidence indicates that the mother did not initially cooperate and complete services to DHR's satisfaction, the mother was complying with the services subsequently provided and deemed necessary by the juvenile court. Furthermore, the juvenile court received testimony indicating that DHR's efforts to rehabilitate the mother and T.B. had succeeded and that the mother and T.B. have adjusted their circumstances to meet the needs of J.L.S. and A.M.W. On

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the basis of the evidence presented, we cannot agree that DHR proved that reasonable efforts to reunify the family had failed. Because DHR has not established any ground supporting the termination of the mother's and T.B.'s parental rights, we pretermite discussion of whether there were viable alternatives to the termination of their parental rights.

Conclusion

For the forgoing reasons, we dismiss the appeals in the dependency cases concerning J.L.S., A.M.W., and N.M.B., and we affirm the judgments denying DHR's petitions to terminate the parental rights of the mother and E.S. to J.L.S. and the parental rights of the mother and T.B. to A.M.W..

2190186, 2190187, and 2190188 -- APPEAL DISMISSED.

2190322 and 2190323 -- AFFIRMED.

Thompson, P.J., and Donaldson, Edwards, and Hanson, JJ.,
concur.

Moore, J., concurs specially.

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MOORE, Judge, concurring specially.

The voluminous record in these appeals indicates that the Jefferson Juvenile Court ("the juvenile court") obtained jurisdiction over J.L.S., A.M.W., and N.M.B. ("the children") in 2014, 2016, and 2018, respectively. The juvenile court opened a separate dependency case for each child. In case number JU-14-1207.01, the juvenile court expressly adjudicated J.L.S. dependent on May 20, 2016, and awarded custody of J.L.S. to the Jefferson County Department of Human Resources ("DHR"), who placed J.L.S. into foster care. The juvenile court never entered an order expressly adjudicating A.M.W. or N.M.B. to be dependent, but the juvenile court did enter orders in case numbers JU-17-56.01 and JU-18-1602.01, respectively, awarding temporary custody of A.M.W. and N.M.B. to DHR, who placed A.M.W. and N.M.B. into foster care. The juvenile court conducted a series of review and permanency hearings regarding the children during the course of the dependency proceedings, which resulted in, among other things, the juvenile court determining that E.S. is the legal father of J.L.S. and that T.B. is the legal father of A.M.W. and N.M.B.

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In November 2019, the juvenile court presided over a trial to determine whether the parental rights of S.W. ("the mother") and E.S. to J.L.S. and whether the parental rights of the mother and T.B. to A.M.W. should be terminated. On November 26, 2019, at the conclusion of that trial, the juvenile court declared in open court that it was going to deny DHR's petitions to terminate parental rights because, it said, DHR had failed to present clear and convincing evidence of grounds for termination. The juvenile court then stated:

"Now, with that being said, we still have to deal with the issue of what's going to happen with the children at this time. ... I'm going to issue an order today where the children will be placed into the custody of [the mother and T.B.] and there will be certain services that will be -- that [the mother and T.B.] parents need to take advantage of. ... In addition to that, the permanency plan for the children will be return to parent. And that will be the order of the Court on this case."

On that same date, the juvenile court entered an order in case numbers JU-14-1207.01 and JU-17-56.01 and a separate order in case number JU-18-1602.01 awarding custody of the children to the mother and T.B., and, in case number JU-14-1207.01, awarding E.S. supervised visitation with J.L.S., subject to certain conditions and to further proceedings. DHR immediately appealed those orders. On January 15, 2020, the

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juvenile court entered judgments formally denying DHR's petitions to terminate the parental rights of the mother and E.S. to J.L.S. and of the mother and T.B. to A.M.W. DHR has also appealed from those judgments.

I concur with the main opinion that the judgments denying DHR's petitions to terminate the parental rights of the mother, T.B., and E.S. should be affirmed. On appeal, DHR basically argues that the juvenile court erred in determining that DHR had failed to sustain its burden of proof.

"I have not located any Alabama caselaw specifically addressing the standard of review this court should employ to determine whether a juvenile court erred in concluding that DHR did not prove grounds for termination by sufficient evidence. As a general rule, this court may not reweigh the evidence in a termination-of-parental-rights proceeding. See Ex parte T.V., 971 So. 2d 1 (Ala. 2007). Thus, it would seem that this court can determine only that the juvenile court erred in its weighing of the evidence if DHR is entitled to a judgment as a matter of law, i.e., that no evidence supports the factual determinations necessary to the judgment and that the evidence supports only a determination that grounds for termination exist. See In re A.L.D.H., 373 S.W.3d 187, 192-93 (Tex. App. 2012). By that standard, this court can reverse a juvenile court's judgment and order a juvenile court to terminate the parental rights of a parent only if the undisputed evidence requires that legal conclusion. I apply that standard when considering DHR's appeal in this case."

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Montgomery Cty. Dep't of Human Res. v. A.S.N., 206 So. 3d 661, 676 (Ala. Civ. App. 2016) (Moore, J., concurring in the rationale in part and concurring in the result). The record in these appeals shows that the evidence regarding grounds for termination was disputed and that DHR did not prove that it was entitled to a judgment as a matter of law. The judgments denying the petitions to terminate parental rights cannot be reversed merely because some of the evidence supports DHR's position.

I also concur that appeal numbers 2190186, 2190187, and 2190188, which arise from the November 26, 2019, orders relating to J.L.S., N.M.B., and A.M.W., respectively, should be dismissed. In my opinion, the juvenile court intended in all three cases to place the children with the mother and T.B. pending further review and before determining their final custodial dispositions. I base this conclusion on the conditional nature of the orders, which require the custody of the children to be subject to at least limited DHR oversight until the juvenile court can conduct further proceedings. Accordingly, I believe none of the orders can be construed as a permanent custody determination. Each order is, in fact, in

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the nature of a pendente lite order, which, as the main opinion correctly notes, is not reviewable by appeal.