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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2200156

P.J. and J.J.

v.

Shelby County Department of Human Resources et al.

**Appeal from Shelby Juvenile Court
(JU-19-676.03)**

PER CURIAM.

This appeal has its genesis in a dependency action initially brought in the Shelby Juvenile Court by the Shelby County Department of Human

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Resources ("DHR") on October 15, 2019, regarding a then-four-year-old minor child, H.G.J. ("the child"); DHR simultaneously petitioned for a dependency determination as to the child's older half brother, B.D. ("the half brother"), who is not the subject of this appeal. On the same day that DHR filed its dependency petition seeking an award of legal and physical custody of the child in its favor, the child's maternal grandmother, C.F. ("the maternal grandmother"), filed a dependency petition seeking, among other things, custody of the child; four days later, the child's paternal grandparents, P.J. and J.J. ("the paternal grandparents"), filed a dependency petition also seeking an award of custody of the child. The three petitions were assigned case numbers containing different "point numbers" by the clerk of the juvenile court (i.e., JU-19-676.01, JU-19-676.02, and JU-19-676.03); however, the three petitions were considered together, along with three cases pertaining to the half brother, by a district judge serving as the presiding juvenile-court judge of Shelby County. See Rule 2(A), Ala. R. Juv. P.

After a January 28, 2020, hearing at which counsel for the child's parents appeared and stipulated to the dependency of the child and the

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half brother, the juvenile court entered an order on February 3, 2020, in all three actions involving the child; that court determined that the child was dependent and awarded pendente lite custody of the child to the maternal grandmother subject to the supervision of DHR and subject to visitation rights vested in the mother, the father, and the paternal grandparents. A dispositional-review hearing was set for May 15, 2020; however, that hearing, because of the prevailing COVID-19 pandemic, was held virtually. In pertinent part, an order rendered immediately after that hearing, but not entered until June 29, 2020, determined that the child remained dependent; maintained the maternal grandmother's custodial placement; specified terms under which the paternal grandparents might resume in-person visitation with the child, notwithstanding the COVID-19 pandemic, for three days every other week and for two weeks in the summer; noted that DHR had expressed its "intent to ask that this matter be closed to further Court Review at the next hearing"; and set a subsequent dispositional-review hearing for September 1, 2020.

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A virtual dispositional-review hearing regarding the child was held on September 1, 2020, as scheduled; however, no transcript of that hearing appears in the record on appeal. After that hearing, the juvenile court, also on September 1, entered a judgment in all three dependency actions involving the child. That judgment, in pertinent part, noted the parties' stipulation to the admission into evidence of reports submitted by DHR and the court-appointed special advocate for the child; determined that the child remained dependent; observed that, as to disposition, the court had "duly considered all relevant and material evidence presented without agreement of the parties present" (emphasis added); directed that custody of the child would remain with the maternal grandmother; found that DHR's permanency plan of placement with an approved relative had been "fully implemented and finalized"; awarded the paternal grandparents visitation consisting of, at a minimum, one weekend per month and one week in each of June and July; relieved DHR and the court-appointed special advocate of future supervision; and closed the cases to further review.

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A postjudgment motion to alter, amend, or vacate the judgment was filed on September 4, 2020, in the paternal grandparents' dependency action (case number JU-19-676.03) by the paternal grandmother only, who averred that the visitation aspect of the judgment had reduced her visitation rights regarding the child without her agreement to those provisions and in the absence of testimony or other evidence. No hearing on the postjudgment motion was requested, and the juvenile court did not expressly act on the motion; it was therefore denied by operation of law on September 18, 2020, pursuant to Rule 1(B), Ala. R. Juv. P.

On September 23, 2020, the paternal grandparents, acting through new counsel, filed a preprinted Unified Judicial System Form C-35 bearing the printed notation "Notice of Appeal from District Court to Circuit Court – Civil" in which they indicated an intent to appeal to the Shelby Circuit Court from the judgment of the juvenile court entered in all three dependency actions involving the child.¹ Those three appeals were assigned case numbers containing three new "point numbers" by the

¹We note that the Alabama Rules of Juvenile Procedure do not specify form notices of appeal for use in the juvenile courts.

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clerk of the circuit court (i.e., JU-19-676.04, JU-19-676.05, and JU-19-676.06) and were placed on the docket of a circuit judge. On October 7, 2020, the maternal grandmother moved for the dismissal of the appeals, asserting that no appeal had been timely taken within 14 days of the entry of the judgment of the juvenile court in the dependency actions that had been initiated by DHR and the maternal grandmother and that allowing the paternal grandparents' appeal to proceed as to their dependency action created the prospect of a "direct conflict" with the custodial dispositions in the dependency actions brought by DHR and the maternal grandmother. DHR filed its own motion to dismiss the paternal grandparents' appeals on October 16, 2020, and the circuit court set the motions to dismiss for a subsequent hearing.

At 6:55 p.m. on November 5, 2020, after the circuit court's hearing on the motions to dismiss the three appeals taken by the paternal grandparents, the juvenile-court judge who had entered the September 1, 2020, judgment in the three dependency cases involving the child rendered an "Order on Certification of Record for Appeal"; that order was entered in all six "cases" associated with the juvenile-court and circuit-

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court proceedings involving the child. In the November 5, 2020, order, the juvenile-court judge opined, in pertinent part, that, "although oral testimony was not taken and there exists no recorded testimony" in the three dependency actions, "the records entered by agreement on September 1, 2020[,] and the Notice of Intent to Close Case provided in the Court's Prior Order dated May 15, 2020," and "the documents duly reviewed and admitted by agreement of the parties" amounted to an "adequate record for appeal to the Alabama Court of Civil Appeals." At 9:00 p.m. on November 5, 2020, the circuit-court judge to whom the paternal grandparents' appeals had been assigned entered orders in the paternal grandparents' three appeals transferring the appeals to this court. After letter briefing by the parties, the paternal grandparents' appeals from the judgment entered in the dependency actions brought by DHR and by the maternal grandparents were dismissed by this court as untimely filed, and only the appeal from the judgment entered in the dependency action brought by the paternal grandparents remains pending.

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In this court, the paternal grandparents, in addition to challenging the correctness of the juvenile court's September 1, 2020, judgment and the propriety of the juvenile court's denial of the paternal grandmother's postjudgment motion without conducting a hearing, assert that the circuit court should not have transferred this appeal to this court. After a review of the pertinent authorities, we agree with the paternal grandparents.

Under the Alabama Juvenile Justice Act, § 12-15-101 et seq., Ala. Code 1975, as it has been in effect since 2009, an aggrieved party may appeal from any final judgment or order in "any juvenile court proceeding." Ala. Code 1975, § 12-15-601; see also Ex parte F.V.O., 145 So. 3d 27, 30-31 (Ala. 2013) (holding that the lack of a final judgment mandated dismissal of an appeal from a juvenile court's nonfinal order). The proper forum to hear such appeals, however, is addressed by Rule 28, Ala. R. Juv. P. As this court observed in Ex parte A.A., 263 So. 3d 1063, 1065 (Ala. Civ. App. 2018): "Rule 28, Ala. R. Juv. P., sets out the circumstances in which appeals from judgments entered in the juvenile courts may be taken to the circuit court or to this court." Rule 28, Ala. R. Juv. P., provides, in pertinent part:

"(A) Direct Appeals to Appellate Courts.

"(1) Appeals from final orders or judgments of the juvenile court shall be to the appropriate appellate court, subject to the Alabama Rules of Appellate Procedure, after the right to a jury trial, if applicable, has been exercised or waived by all parties entitled thereto and one of the following conditions has been met:

"(a) The parties have stipulated to an agreed statement of the record on appeal in accordance with the provisions of Rule 10(e) of the Alabama Rules of Appellate Procedure; or

"(b) The parties stipulate that only questions of law are involved and the juvenile court certifies those questions; or

"(c) An adequate record of the proceeding is available pursuant to one of the following circumstances:

"(i) Proceeding Recorded by Electronic Means. Other than as addressed by (ii) below, if the proceeding has been recorded by electronic means, the juvenile court judge designates a person to transcribe the record of the proceeding and to prepare a reporter's transcript in accordance with the provisions of Rule 10(b)(2) of the Alabama Rules of Appellate Procedure, and the juvenile court judge certifies that the record of the proceeding is adequate.

"(ii) Proceeding Recorded by a Court Reporter Present at the Proceeding. If a licensed court reporter or reporters are present at the proceeding to record the proceeding, the reporter or reporters, upon being designated by the juvenile court judge to do so, shall transcribe the record of the proceeding and prepare a reporter's transcript in accordance with the provisions of Rule 10(b)(2) of the Alabama Rules of Appellate Procedure.

"....

"(B) Appeals to Circuit Court. Appeals from final orders or judgments in all other cases, including those cases in which there is not an adequate record as provided in subsection (A) of this rule, shall be to the circuit court for trial de novo, and the case shall be heard by a different circuit court judge if heard by a circuit court judge in the first instance in the juvenile court. ...

"....

"(E) Transfer of Appeal. An appellate court or circuit court may transfer an appeal to another court if it determines that the appeal should be transferred to or should have been brought in that court.' "

(Emphasis added.) We further observed in Ex parte A.A. that, "[i]n the absence of any stipulations by the parties under Rule 28(A)(1)(a) or (b), whether an appeal belongs in the appropriate appellate court or in a

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circuit court depends on the availability of an adequate record of the juvenile court's proceedings" pursuant to the provisions of Rule 28(A)(1)(c). 263 So. 3d at 1066.

As a matter of historical background, we note that Rule 28(A)(1)(a) formerly provided that a direct appeal would lie from a juvenile court's judgment to an appellate court if "[a] record ha[d] been certified as adequate by the juvenile court judge." However, that provision was rescinded by our supreme court in 2014 when it amended Rule 28(A). Under Rule 28(A)(1)(c) as currently in effect, an "adequate record" that will support direct appellate review in the absence of pertinent stipulations may properly be said to exist in two and only two instances: (i) when no licensed court reporter was present at a proceeding, but the proceeding has been recorded by electronic means, a person may be designated by the juvenile-court judge to prepare from that recording a transcript of "the record of the proceeding" and the juvenile-court judge may subsequently make a certification of the adequacy of "the record of the proceeding" or (ii) when a licensed court reporter was present at, and can make a record of, a proceeding, that court reporter may thereafter be

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designated by the juvenile-court judge to prepare a transcript of "the record of the proceeding," in which case no subsequent express judicial certification of adequacy is required. In either instance, however, it is the role of the juvenile-court judge to designate an appropriate person to "prepare a reporter's transcript" that will constitute "the record of the proceeding," which record will permit the appropriate appellate court, whether this court or the Court of Criminal Appeals, to review the merits of any arguments directed to the correctness of the judgment of the juvenile court or its associated intermediate rulings (see Rule 4(a), Ala. R. App. P).

In this appeal, the juvenile court did not designate an appropriate person to prepare a reporter's transcript of the September 1, 2020, hearing giving rise to its judgment reducing the paternal grandparents' visitation periods with the child, and no transcript of that hearing appears in the record transmitted to this court by the clerk of the circuit court. Rather, the juvenile court purported to certify its own orders and particular documents submitted by DHR and the court-appointed special advocate as themselves constituting an adequate record for appellate review.

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Even when the former version of Rule 28(A)(1)(a) was in effect, however, a juvenile-court certification of the adequacy of a record was not conclusive as to the fundamental question of appellate jurisdiction. See W.E.C. v. Madison Cnty. Dep't of Hum. Res., 909 So. 2d 849, 850 (Ala. Civ. App. 2005) (concluding that, under former Rule 28(A)(1)(a), absence from record of transcript of hearing resulting in transfer of custody of dependent child and closure of case to further review rendered record inadequate for direct appeal to this court and noting that "[t]he certification by the juvenile court that the record on appeal is adequate for review by this court does not alter that conclusion"). That principle remains applicable under the 2014 revisions to Rule 28(A). See S.J. v. K.J., 206 So. 3d 641, 644 (Ala. Civ. App. 2016) ("Although the juvenile court certified the record as adequate for appellate review, that certification is not binding on this court."); accord Ex parte A.L.F., 239 So. 3d 599, 602 (Ala. Civ. App. 2017). Rule 28(A)(1)(c) now specifically delineates the "circumstances" in which the juvenile court has a role to play following the filing of a notice of appeal: (1) designation of persons to transcribe its proceedings and (2) if no court reporter was present at a

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particular recorded proceeding, certification of the adequacy of the transcript made by that court's designee. For all that appears in the record before this court, the juvenile court has done neither.

In this case, the paternal grandparents timely appealed to the circuit court from the judgment entered by the juvenile court on September 1, 2020, in the dependency action that they themselves had brought, *i.e.*, case number JU-19-676.03. Thus, in the first instance, "[b]ecause [that appeal was] to the circuit court, that court had to determine whether [an] adequate record[] in [that] juvenile case[] [was] available for appellate review by this court." Ex parte A.A., 263 So. 3d at 1067 (emphasis added). However, "'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)), and our review of the record indicates that the circuit court erroneously determined that an adequate record for direct appellate review currently exists.

Pursuant to Rule 28(E), Ala. R. Juv. P., under which "[a]n appellate court ... may transfer an appeal ... if it determines that the appeal should

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be transferred to ... [another] court," the paternal grandparents' appeal from the juvenile court's September 1, 2020, judgment entered in the dependency case brought by the paternal grandparents is transferred to the Shelby Circuit Court. Our transfer of the appeal is, however, "without prejudice" and is based solely upon the current state of the record; it is further subject to the principles noted in Ex parte A.A., supra, that "the circuit court has general superintendence over the juvenile court" and that the circuit court retains the power to "ensur[e] any necessary preparation of the records, such as the transcription of the [September 1, 2020], hearing in the juvenile court," in lieu of conducting a trial de novo. 263 So. 3d at 1067. If, however, the circuit court conducts a trial de novo, any claimed errors committed by the juvenile court will be rendered moot. See S.J., 206 So. 3d at 645.

APPEAL TRANSFERRED.

Thompson, P.J., and Moore, Hanson, and Fridy, JJ., concur.

Edwards, J., concurs in the result, without writing.