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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2200168

Ex parte T.T.

PETITION FOR WRIT OF MANDAMUS

(In re: The matter of T.T.W., a minor)

(Calhoun Juvenile Court, JU-20-517.01)

HANSON, Judge.

In a petition filed in this court on November 26, 2020, T.T. ("the mother") seeks the issuance of a writ of mandamus directing the Calhoun

2200168

Juvenile Court to vacate its orders of September 28, 2020, and November 12, 2020, in a child-dependency action involving the mother's minor child, T.T.W. ("the child"); under the orders, the mother is to "fully and completely cooperate with and comply with" a plan developed as to the child by the Calhoun County Children's Services Facilitation Team, also known as the Calhoun County Multi-Needs Team ("the county team"). We deny the petition.

We glean the following pertinent facts from the materials appended to the mother's mandamus petition and to the responses filed thereto by the juvenile-court judge, the child's guardian ad litem, and the Calhoun County Department of Human Resources ("Calhoun County DHR"). See Rule 21(a)(1)(F), Ala. R. App. P. In June 2020, the child's grandfather filed a petition in the juvenile court seeking a finding of dependency as to the child, who was then 12 years old; that petition averred that the mother, who purportedly suffered from mental illness, had abused alcohol and controlled substances and had made suicidal gestures in the child's presence. In August 2020, the Calhoun County DHR filed a petition seeking similar relief as to the child in which similar conduct on the

2200168

mother's part was alleged. On September 18, 2020, the juvenile court entered, pursuant to an agreement among the child's grandfather, the child's mother, and the Calhoun County DHR, an order determining the child to be dependent and directing that the child would remain in the custody of the mother "pending a hearing on disposition." Later that day, the juvenile court, in response to a motion from the Calhoun County DHR, entered a second order that referred the child to the county team "for evaluation and assessment" and directed that a copy of the second order be sent to, among other persons, the chair of the county team.

The county team has its legal basis in Article 5 of the Alabama Juvenile Justice Act, Ala. Code 1975, § 12-15-101 et seq. ("the AJJA"), which article is captioned "Multiple-Needs Child Provisions." The AJJA defines a "multiple needs child," in pertinent part, as one "coming to the attention of the juvenile court ... who is at imminent risk of out-of-home placement or a placement in a more restrictive environment" and "whose needs require the services of two or more of the following" providers of services regarding children: the Department of Human Resources, the Department of Youth Services ("DYS"), the Department of Public Health,

2200168

the Department of Mental Health ("DMH"), juvenile-probation officers, and public-school employees providing services to exceptional-needs children. Ala. Code 1975, § 12-15-501(2). The term "county team" is defined in the AJJA as a "county children's services facilitation team," id. at § 12-15-501(1), and the AJJA mandates the establishment of such teams in each of Alabama's counties, to consist of representatives appointed by local education agencies, by county departments of human resources, by DYS, and by DMH, as well as juvenile-probation officers appointed by presiding juvenile-court judges. Ala. Code 1975, § 12-15-506(a). The AJJA further provides that, after the filing of a petition alleging that a child is, among other things, dependent, the juvenile court in which that petition is pending "may refer the ... child to the [pertinent] county team" for its recommendations if the petition alleges that, or if evidence reveals that, the child who has been made the subject of the petition "may be a multiple needs child." Ala. Code 1975, § 12-15-502. Each county team is to, "[b]y consensus, develop an individualized service plan to meet the needs of each child who is accepted" by that county team. Id. at § 12-15-506(e)(4).

2200168

In this case, on September 28, 2020, the county team transmitted a letter to the juvenile-court judge hearing the child's dependency case that was signed by a therapist who was the chairperson of the county team. The letter noted that the county team had met regarding the child's case and that it had formulated a number of recommendations. The letter recommended, among other things, that a court-appointed special advocate be placed in the home of the mother and the child; that the child be assigned a case aide "to check medication compliance at home"; that the mother be subjected to drug testing through the local drug court; that mental-health professionals be directed to "provide [h]igh [l]evel [c]ase [m]anagement services"; that the child undergo individual therapy; that the mother's counselor provide family-therapy services; and that the Calhoun County school system provide regular-education and special-education services to the child, as well as the assistance of a specifically named person "during a crisis at the school." The letter also contained the observation that, if the mother did not accede to the recommendations of the county team, she would be "jeopardizing the plan," and the county

2200168

team requested that the juvenile court issue an order "to ensure that [the mother] complies with this plan."

The juvenile court, on the same day that the letter was filed (September 28, 2020), entered an order directing the mother to "fully and completely cooperate with and comply with" the county team's plan. For all that appears in the appendices to the petition and responses filed in this court, the mother filed nothing in the juvenile court in immediate response to the September 28, 2020, order, and it is undisputed that she did not file a petition for an extraordinary writ directed to that order within the presumptively reasonable time following its entry, i.e., within 14 days. See generally Ex parte A.J., 256 So. 3d 671, 673-74 (Ala. Civ. App. 2018).

On November 11, 2020, 44 days after the juvenile court entered its September 28, 2020, order, the mother filed in the juvenile court a motion requesting that the juvenile court vacate that order.¹ In that motion, the

¹Of course, that motion did not have any effect upon the lapse of the presumptively reasonable time for seeking mandamus relief as to the September 28, 2020, order: "[U]nlike a postjudgment motion following a final judgment, a motion to reconsider an interlocutory order does not toll

2200168

mother asserted, among other things, that the county team was not a party to the dependency action, that the county team lacked standing to seek relief in the juvenile court, that the mother had not been notified that relief had been sought against her, and that the mother had rights under Medicaid regulations to select her own health-care providers. The juvenile court entered an order on November 12, 2020, denying the mother's motion, although the juvenile court did specify that the mother would have the right to select any counselor approved by the Calhoun County DHR.

The mother claims that the juvenile court had no authority to enter its September 28, 2020, order. However, the guardian ad litem correctly notes that, because the mother has neither filed her petition within the presumptively reasonable time for challenging that order nor provided a statement of good cause for her delay, we have jurisdiction to consider only arguments genuinely impugning the subject-matter jurisdiction of

the presumptively reasonable time period that a party has to petition an appellate court for a writ of mandamus." Ex parte C.J.A., 12 So. 3d 1214, 1216 (Ala. Civ. App. 2009) (quoting Ex parte Onyx Waste Servs. of Florida, 979 So. 2d 833, 834 (Ala. Civ. App. 2007)).

2200168

the juvenile court to enter that order. See Ex parte M.F.B., 228 So. 3d 460, 461-62 (Ala. Civ. App. 2017). Further, even if this court were to indulge in this case a presumption that the mother's petition raised (and properly argued) such a jurisdictional issue, the mother would retain the burden of demonstrating the existence of the four elements warranting mandamus relief, i.e., "'(1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the court.'" Ex parte State Farm Fire & Cas. Co., [Ms. 1180451, April 24, 2020] ___ So. 3d ___, ___ (Ala. 2020) (quoting Ex parte BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001)) (emphasis added).

In this case, the juvenile-court judge correctly points out, in her response to the mother's mandamus petition, that, when the mother filed her mandamus petition, the mother had another adequate remedy. On November 12, 2020, the juvenile court conducted a hearing as to the child's circumstances in response to a motion filed by the child's guardian ad litem seeking an immediate award of the child's legal and physical

2200168

custody to the Calhoun County DHR. After considering the evidence, the juvenile court entered a judgment on that same day determining that the child remained dependent and awarding custody of the child to DHR. The judgment further notified the parties of "their right to file a written notice of appeal" within 14 days of the entry of the judgment. See J.J. v. J.H.W., 27 So. 3d 519, 522 (Ala. Civ. App. 2008) (holding that "a formal determination by a juvenile court of a child's [continued] dependency coupled with an award of custody incident to that determination will give rise to an appealable final judgment"). In this case, at the time that the mother filed her petition in this court seeking mandamus relief as to the September 28, 2020, order directing her to comply with the county team's plan as to the child, the mother not only had a right to appeal from the November 12, 2020, final judgment awarding the Calhoun County DHR custody of the child, but also had a right to seek review in such an appeal "of any judgment, order, or ruling of the trial court," i.e., the juvenile court in this case. Rule 4(a)(1), Ala. R. App. P. (emphasis added). Thus, assuming, without deciding, that the mother's mandamus petition challenging the September 28, 2020, order is cognizable by this court

2200168

notwithstanding its tardiness under Rule 21(a)(3), Ala. R. App. P., it necessarily fails as a substantive matter because of the availability of a right of appeal from the November 12, 2020, dependency and custody judgment.

For the reasons stated herein, the mother's petition for a writ of mandamus directed to the Calhoun Juvenile Court is denied.

PETITION DENIED.

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