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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2021

2200276 and 2200277

Karen H. Jackson, as guardian ad litem for S.S.

v.

Montgomery County Department of Human Resources

**Appeals from Montgomery Juvenile Court
(JU-19-383.01 and JU-19-383.02)**

2200278 and 2200279

Karen H. Jackson, as guardian ad litem for H.S.

v.

Montgomery County Department of Human Resources

**Appeals from Montgomery Juvenile Court
(JU-19-384.01 and JU-19-384.02)**

2200280 and 2200281

Karen H. Jackson, as guardian ad litem for M.S.

v.

Montgomery County Department of Human Resources

**Appeals from Montgomery Juvenile Court
(JU-19-385.01 and JU-19-385.02)**

EDWARDS, Judge.

2200276 and 2200277 -- AFFIRMED. NO OPINION.

2200278 and 2200279 -- AFFIRMED. NO OPINION.

2200280 and 2200281 -- AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(F), Ala. R. App. P.; Ala. Code 1975, § 12-15-301(14); Ala. Code 1975, § 38-12-32(8); Washington v. Glucksberg, 521 U.S. 702, 721 (1997); Bowen v. Gilliard, 483 U.S. 587, 598 (1987); Dandridge v. Williams, 397 U.S. 471 (1970); Clark v. Prichard, 812 F.2d 991, 995 (5th Cir. 1987); Northington v. Alabama Dep't of Conservation & Natural Res., 33 So. 3d 560, 564 (Ala. 2009); Reed v. Brunson, 527 So. 2d 102, 119 (Ala. 1988); State v. Spann, 270 Ala. 396, 400, 118 So. 2d 740,

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743 (1959); Board of Trs. of Policemen's & Firemen's Ret. Fund v.
Cardwell, 400 So. 2d 402, 405 (Ala. 1981); and State v. B.T.D., 296 So. 3d
343, 352-53 (Ala. Crim. App. 2019).

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

Moore, J., concurs specially.

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MOORE, Judge, concurring specially.

I concur that the judgment of the Montgomery Juvenile Court should be affirmed. I write specially to point out that the Alabama Legislature should consider broadening the definition of "relative" contained in Ala. Code 1975, § 12-15-301(14) and § 38-12-32(8), to better serve the purposes of the Alabama Kinship Guardianship Subsidy Act ("the AKGSA"), Ala. Code 1975, § 38-12-30 et seq.

In 2008, Congress passed the Fostering Connections to Success and Increasing Adoptions Act ("the Act"), Pub. L. No. 110-351, 122 Stat. 3949, which, among other things, authorizes states to establish kinship-guardianship subsidy programs. Pursuant to the Act, if a relative of a dependent child who is qualified under the state's kinship-guardianship program assumes permanent custody of that child, the relative becomes eligible to receive subsidies from both the state and the federal government to assist with the costs of child care. Notably, the Act leaves it to the discretion of each state that adopts a kinship-guardianship program to determine who may qualify as a "relative" in order to become eligible for the subsidies. See William Vesneski, Lydia Killos, Peter J.

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Pecora, and Erin McIntire, An Analysis of State Law and Policy Regarding Subsidized Guardianship for Children: Innovations in Permanency, 21 U.C. Davis J. Juv. L. & Pol'y 27 (2017).

Alabama has established a kinship-guardianship program through the adoption of the AKGSA. The AKGSA defines a "relative" as

"[a]n individual who is legally related to the child by blood, marriage, or adoption within the fourth degree of kinship, including only a brother, sister, uncle, aunt, first cousin, grandparent, great grandparent, great aunt, great uncle, great great grandparent, niece, nephew, grand niece, grand nephew, or a stepparent."

§ 38-12-32(8); see also § 12-15-301(14). By naming only relatives by blood, marriage, or adoption within the fourth degree of kinship, Alabama's definition limits the pool of potential kinship guardians considerably in comparison to other states. See William Vesneski et al., supra. For example, in defining who may provide a "kinship foster home," Montana includes all members of a child's extended family, along with "a member of the child's or family's tribe"; "the child's godparents"; "the child's stepparents"; or "a person to whom the child, child's parents, or family ascribe a family relationship and with whom the child has had a

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significant emotional tie that existed prior to the [department of public health and human services'] involvement with the child or family." Mont. Code Ann. § 52-2-602(4). California includes within its kinship-guardianship program any "adult caregiver who has an established familial relationship with a relative of the [dependent] child ... or a familial or mentoring relationship with the child." Cal. Welf. & Inst. Code § 362.7.

I concur that Alabama has not violated the constitutional rights of S.S., H.S., and M.S., the dependent children in these cases, by defining "relative" more narrowly than other states, but I agree with Karen H. Jackson, their guardian ad litem, that this narrow definition might impede the overarching goal behind the AKGSA of promoting guardianships for dependent children. See Ala. Code 1975, § 38-12-31. The Alabama Legislature should consider broadening the definition of "relative" to encourage more distant family members and others to protect dependent children through guardianships.