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# ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2021

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2200337, 2200338, and 2200339

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D.S.R.

v.

Lee County Department of Human Resources

Appeals from Lee Juvenile Court  
(JU-15-175.04, JU-15-176.04, and JU-15-177.04)

MOORE, Judge.

In appeal number 2200337, D.S.R. ("the mother") appeals from a judgment entered by the Lee Juvenile Court ("the juvenile court"), in case

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number JU-15-175.04, terminating her parental rights to J.R., a daughter whose date of birth is November 23, 2005. In appeal number 2200338, the mother appeals from a judgment entered by the juvenile court, in case number JU-15-176.04, terminating her parental rights to M.J., a daughter whose date of birth is October 16, 2006. In appeal number 2200339, the mother appeals from a judgment entered by the juvenile court, in case number JU-15-177.04, terminating her parental rights to J.J., a son whose date of birth is February 25, 2009. With regard to appeal numbers 2200338 and 2200339, we affirm the judgments; with regard to appeal number 2200337, we reverse the judgment.

### Procedural History

On November 4, 2020, the Lee County Department of Human Resources ("DHR") filed petitions to terminate the parental rights of the mother to J.R., M.J., and J.J. ("the children"). After a trial, the juvenile court entered separate judgments on January 19, 2021, terminating the parental rights of the mother to the children. The mother appealed on

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February 1, 2021.<sup>1</sup> The mother filed a postjudgment motion directed to all three judgments that same day; therefore, the notices of appeal were held in abeyance pending the denial of that motion by operation of law on February 16, 2021.<sup>2</sup> See Rule 4(a)(5), Ala. R. App. P. This court consolidated the appeals ex mero motu.

### Standard of Review

A judgment terminating parental rights must be supported by clear and convincing evidence, which is "[e]vidence that, when weighed

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<sup>1</sup>The parental rights of C.W., the father of J.R., and of R.J., the father of M.J. and J.J., had already been terminated; therefore, the parental rights of C.W. and R.J. are not at issue in these appeals.

<sup>2</sup>The mother filed her postjudgment motion on February 1, 2021. Rule 1(B), Ala. R. Juv. P., provides that no postjudgment motion shall "remain pending for more than 14 days, unless, within that time, the period during which a postjudgment motion may remain pending is extended ...." The juvenile court did not extend the time for ruling on the mother's postjudgment motion. The 14th day following the mother's filing of her postjudgment motion was Monday, February 15, 2021, which was a "legal holiday." See Rule 6(a), Ala. R. Civ. P. Because February 15, 2021, fell on a legal holiday, the 14-day period for the juvenile court to rule on the mother's postjudgment motion was extended to February 16, 2021. See Williamson v. Fourth Ave. Supermarket, Inc., 12 So. 3d 1200, 1203-04 (Ala. 2009) (construing analogous language in Rule 59.1, Ala. R. Civ. P.); see also, Rule 6, Ala. R. Civ. P. Because the juvenile court did not rule on the mother's motion, it was deemed denied by operation of law on February 16, 2021.

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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.O. v. Jefferson Cnty. Dep't of Hum. Res., 206 So. 3d 621, 627 (Ala. Civ. App. 2016) (quoting L.M. v. D.D.F., 840 So. 2d 171, 179 (Ala. Civ. App. 2002), quoting in turn Ala. Code 1975, § 6-11-20(b)(4)).

" '[T]he evidence necessary for appellate affirmance of a judgment based on a factual finding in the context of a case in which the ultimate standard for a factual decision by the trial court is clear and convincing evidence is evidence that a fact-finder reasonably could find to clearly and convincingly ... establish the fact sought to be proved.'

"KGS Steel[, Inc. v. McInish], 47 So. 3d [749] at 761 [(Ala. Civ. App. 2006)].

"... [F]or trial courts ruling on motions for a summary judgment in civil cases to which a clear-and-convincing-evidence standard of proof applies, 'the judge must view the evidence presented through the prism of the substantive evidentiary burden[,] [Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254 (1986)]; thus, the appellate court must also look through a prism to determine whether there was substantial evidence before the trial court to support a factual finding, based upon the trial court's weighing of the evidence, that would 'produce in the mind [of the trial court] a firm conviction as to each element of the claim and a high probability as to the correctness of the conclusion.' "

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Ex parte McInish, 47 So. 3d 767, 778 (Ala. 2008). This court does not reweigh the evidence but, rather, determines whether the findings of fact made by the juvenile court are supported by evidence that the juvenile court could have found to be clear and convincing. See Ex parte T.V., 971 So. 2d 1, 9 (Ala. 2007). When those findings rest on ore tenus evidence, this court presumes their correctness. Id. We review the legal conclusions to be drawn from the evidence without a presumption of correctness. J.W. v. C.B., 68 So. 3d 878, 879 (Ala. Civ. App. 2011).

### Facts

Samantha Collier, a DHR foster-care worker who had been assigned the family's case in January 2020, testified that the children had been found dependent in 2015 and had been placed with W.R., a maternal aunt. In 2018, W.R. could no longer care for the children, and the children were placed in foster care.

Kelly Rudd, a child-welfare supervisor for the Russell County Department of Human Resources ("the Russell County DHR"), testified that the mother's parental rights to two other children had been terminated by the Russell Juvenile Court in 2019. She testified that the

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mother had admitted at the trial in those termination-of-parental-rights proceedings that she could not care for those children. According to Rudd, in 2014, one of those children had had a shunt that had malfunctioned; the mother had called the hospital and was told to bring the child to the hospital, but she had failed to do so until months later, at which point, Rudd said, that child was permanently blind. Rudd testified that allegations of medical neglect against the mother were found to be "indicated" after the Russell County DHR investigated that incident.

At the time the children in the present cases entered foster care in 2018, the mother was living with her brother. DHR foster-care worker Sno Todd, who was assigned the case from December 2018 until January 2020, testified that, when she first visited the mother's home in December 2018, there were a lot of trash bags in the kitchen area, the front-porch stairs were "kind of rocky," and she could smell urine in the house. She testified that the mother had stated on that occasion that she had a plan for getting better housing. Todd testified, however, that the mother did not qualify for public housing because she had been evicted from public housing in the past and had not paid the fine that had resulted from that

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eviction. Todd also testified that the mother's employment was unstable. She testified that the mother receives approximately \$800 a month in disability benefits as a result of her mental health and that she is, therefore, limited in how many hours she can work. At the trial, the mother stated that she had obtained a GED, that she did not believe that she was disabled, and that she thought that she could work full-time; she had not, however, obtained full-time employment at the time of the trial. The mother testified that, when she eventually moved out of her brother's house, she moved in with relatives, who, she said, would not allow the children to live in their house. She subsequently moved into another house, but, she said, her grandmother and grandfather had moved in with her. According to the mother, at the time of the trial, she was living with her mother in a two-bedroom house.

Todd stated that the mother never achieved stable housing. She testified that she had sent the mother leads for housing and employment prospects and had referred her for parenting classes. According to Todd, the mother had also been referred for a mental-health assessment, the results of which had recommended that she attend therapy. Collier

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testified that the mother had not been to therapy since July 2020; however, the mother testified that she had sought therapy with different providers.

When the children were first placed in foster care in 2018, they were initially placed in the same foster home; however, the foster parent ultimately asked for the children to be moved because she could not handle their behaviors. The foster parent reported to DHR that J.J. had reported that J.R. had inappropriately touched him. J.R. continued to have issues with sexual behaviors in subsequent placements. Todd testified that, when J.R. was subsequently placed in a different foster home, J.R. visited a "sex website" and communicated with an adult man who had later visited J.R. at her foster home and had sex with her. J.R. had also made suicidal comments. J.R. was placed in treatment at the Laurel Oaks Behavioral Health Center for a period; at the time of the trial, she was living in a group home called "Haddie's Home," where she continued to visit with the mother, as well as her maternal grandmother.

At the time of the trial, J.J. was in a foster home. J.J.'s foster mother, K.K., testified that she hoped to adopt him. E.A., J.J.'s former



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foster mother, testified that he had had problems at school after attending visitations with the mother. She testified that the mother had been consistent with visitations at times but inconsistent at other times. K.K. testified that, on J.J.'s most recent birthday, she and the mother had been unable to coordinate a time for the mother to visit and that the mother had not called J.J. on his birthday; she testified that J.J. had had a panic attack on the night of his birthday. K.K. testified that, in September 2020, a judgment terminating the mother's parental rights to J.J. had been entered but that that judgment had subsequently been vacated. She testified that J.J. had seemed relieved when the mother's parental rights had been terminated, but, she said, his behavior issues had started again. Specifically, she testified that he began having trouble with authority at school. Despite those issues, K.K. testified she would allow J.J. to visit with the mother even if the mother's parental rights were terminated.

Collier testified that M.J. has intermittent explosive disorder and an IQ of 43. Todd testified that M.J. had attacked custodians and had destroyed property. Her current foster parent testified that M.J. requires constant supervision. Todd testified that M.J.'s therapist had

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recommended that M.J. have no contact with the mother. A no-contact order was entered by the juvenile court in July 2019. Subsequently, in November 2019, the juvenile court allowed visitation at the discretion of M.J.'s therapist and DHR. Collier testified, however, that because, at the time of the trial, M.J. was doing well with her foster parent, who was willing to adopt her, DHR did not recommend allowing visitations between the mother and M.J. unless the mother's situation changed.

### Discussion

On appeal, the mother argues that DHR failed to prove grounds for terminating her parental rights. She also argues that her housing issues were a result of her poverty and points out that "poverty alone is not enough to warrant the termination of parental rights." C.B. v. State Dep't of Hum. Res., 782 So. 2d 781, 785 (Ala. Civ. App. 1998). Section 12-15-319(a), Ala. Code 1975, provides, in pertinent part:

"If the juvenile court finds from clear and convincing evidence, competent, material, and relevant in nature, that the parent[] of a child [is] unable or unwilling to discharge [his or her] responsibilities to and for the child, or that the conduct or condition of the parent[] renders [him or her] unable to properly care for the child and that the conduct or condition is unlikely to change in the foreseeable future, it may terminate

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the parental rights of the parent[]. In a hearing on a petition for termination of parental rights, the court shall consider the best interests of the child."

In the present cases, the children were found to be dependent in 2015, and the mother had not had custody of them since that time. During the time the children had been in foster care, the mother had failed to meet the goals established by DHR of obtaining stable housing and employment. There was also evidence indicating that her visitation with J.J. had been inconsistent at times. Additionally, the evidence showed that the mother had admitted that she could not care for two of her other children and that the mother had been "indicated" for medical neglect of one of those children. Considering factors other than simply the mother's poverty, including the mother's history of instability, which had not been remedied at the time of the trial, her past "indication" for medical neglect, and her long history of being unable to care for her children, we conclude that the juvenile court had before it evidence from which it could have been clearly convinced that the mother is "unable or unwilling to discharge [her] responsibilities to and for the child[ren], or that the conduct or condition of the [mother] renders [her] unable to properly care for the child[ren] and

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that the conduct or condition is unlikely to change in the foreseeable future." § 12-15-319(a).

The mother also argues that DHR failed to make reasonable efforts to rehabilitate her.

"That DHR is generally required to make reasonable efforts to rehabilitate parents of dependent children cannot be questioned. See T.B. v. Cullman Cty. Dep't of Human Res., 6 So. 3d 1195, 1198 (Ala. Civ. App. 2008). That is, DHR must make an effort to tailor services to best address the shortcomings of and the issues facing the parents. See H.H. v. Baldwin Cty. Dep't of Human Res., 989 So. 2d 1094, 1105 (Ala. Civ. App. 2007) (opinion on return to remand)(per Moore, J., with two Judges concurring in the result). However, we have clearly stated that the law requires reasonable efforts, not maximal ones. M.A.J. v. S.F., 994 So. 2d 280, 291 (Ala. Civ. App. 2008)."

Montgomery Cnty. Dep't of Hum. Res. v. A.S.N., 206 So. 3d 661, 672 (Ala. Civ. App. 2016).

In the present cases, Todd testified that she had sent the mother information on employment and housing prospects. She also testified that she had referred the mother to parenting classes and mental-health counseling. Collier testified that the mother had not been attending her

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counseling sessions since July 2020. Based on that evidence, we cannot conclude that DHR's efforts were unreasonable in this case.

Finally, the mother argues that maintaining the status quo is a viable alternative to terminating her parental rights because, she says, it would allow the children to continue their beneficial relationships with the mother. This court has explained:

"In D.M.P. v. State Department of Human Resources, 871 So. 2d 77 (Ala. Civ. App. 2003), a plurality of this court explained that, in certain circumstances, termination of parental rights might not be warranted if a child's bond with a parent were significant. The plurality opinion explained that

"if, notwithstanding the unfitness of a parent, there remains a significant emotional bond between a child and an unfit parent, and it has been demonstrated that some alternative-placement resource would allow the child to visit periodically with the unfit parent so as to reap the benefit of partially preserving that relationship without incurring the harm of the child being raised on a day-to-day basis by an unfit parent, the court would be required to weigh the advantage of that arrangement against the advantage of termination and placement for adoption with permanent fit parents, and to decide which of these alternatives would be in the child's best interest.'

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"D.M.P., 871 So. 2d at 95 n.17; see also Dallas Cty. Dep't of Human Res. v. A.S., 212 So. 3d 959, 962 (Ala. Civ. App. 2016) (relying, in part, on D.M.P. to affirm a juvenile court's judgment declining to terminate the parental rights of a mother and a father based on the positive benefits of maintaining visitation between the parents and the child). We have applied this principle to reverse judgments terminating parental rights in two case since D.M.P. was decided.

"In C.M. v. Tuscaloosa County Department of Human Resources, 81 So. 3d 391, 395 (Ala. Civ. App. 2011), this court reversed a judgment terminating a mother's parental rights when the evidence demonstrated that the children's best interests would be served by their continued contact with the mother. The children in C.M., like the older children in the present case, had 'disorders that ... require [the Department of Human Resources] to find adoptive parents who can maintain the children in a structured environment.' C.M., 81 So. 3d at 398. Based on the fact that visitation with the mother was in the children's best interest and the fact that the Department of Human Resources had not provided evidence indicating that the children would likely attain permanency if the mother's parental rights were terminated, we reversed the judgment in C.M. terminating the mother's parental rights. Id.

"Similarly in B.A.M. v. Cullman County Department of Human Resources, 150 So. 3d 782 (Ala. Civ. App. 2014), this court reversed a judgment terminating a mother's parental rights because the evidence indicated that the best interests of the child in that case would best be served by continued contact with the mother, did not indicate that continued visitation would be harmful to the child, indicated that the child would need continued care of the state to address his low intellectual functioning and his behaviors, and indicated that the child's likelihood for permanency was very low. As we

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explained, termination of parental rights is not required 'when some less drastic measure might be employed to preserve the parental relationship without harming the interests of the child.' B.A.M., 150 So. 3d at 785. We opined:

"Given the almost total uncertainty as to whether the child will ever receive any stability or permanency if the judgment stands, and the almost total certainty that he will suffer serious emotional turmoil if it does, we can perceive no advantage to the child in disturbing the status quo. Our supreme court has held that a juvenile court should maintain foster care or another third-party custodial arrangement without terminating parental rights when a child shares a beneficial emotional bond with a parent and the custodial arrangement ameliorates any threat of harm presented by the parent.'

"Id. at 786."

T.N. v. Covington Cnty. Dep't of Hum. Res., 297 So. 3d 1200, 1219-21 (Ala. Civ. App. 2019). In T.N., this court reasoned that, although there was evidence indicating that the children in that case "would suffer emotionally if the mother's rights were terminated," "[o]ther evidence, adduced after [the Department of Human Resources' worker] testified, indicated that R.A. was more attached to her foster parents and was perhaps more emotionally detached from the mother." 297 So. 3d at 1221.

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There was also testimony indicating "that the foster parents of the younger children desired to adopt them and that R.A.'s foster parents had begun discussing the possibility of pursuing adoption of her if the mother's rights were terminated." Id. Therefore, this court found that "the juvenile court's decision to terminate the mother's parental rights [was] in [the] best interests [of R.A. and the younger children]." Id. With regard to another child, C.A., this court noted:

"She has not been able to maintain a foster placement and was placed in two residential mental-health treatment facilities during the pendency of the extended trial. Counseling and medication have not solved her continued erratic, sometimes violent, and off-putting behavior. The testimony of several witnesses noted that C.A.'s bond with the mother was the most significant bond the mother had with any of the children. Although [the Department of Human Resources' worker] indicated that the older children would be most impacted by termination of the mother's parental rights, she clearly testified that the impact on C.A. would be the most potentially damaging. Thus, we must conclude, based on C.M.[ v. Tuscaloosa County Department of Human Resources, 81 So. 3d 391 (Ala. Civ. App. 2011),] and B.A.M.[ v. Cullman County Department of Human Resources, 150 So. 3d 782 (Ala. Civ. App. 2014)], that the juvenile court erred by terminating the parental rights of the mother respecting C.A., who, based on the testimony at trial and current circumstances, suffers from mental illnesses and behavioral issues that will likely serve as a significant impediment to permanency and would suffer significant emotional turmoil upon the permanent destruction



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of her bond with the mother. We therefore reverse the judgment terminating the mother's rights to C.A. ..., and we remand that cause for the entry of a judgment consistent with this opinion."

297 So. 3d at 1221 (footnote and emphasis omitted).

Similarly, in the present cases, there was evidence indicating that the children love the mother and that the mother loves them. However, with regard to J.J. and M.J., the evidence indicated that visitations with the mother had had a negative impact on their behaviors. Both J.J. and M.J. have foster parents who desire to adopt them. Therefore, we conclude that the juvenile court had before it evidence from which it could conclude that termination of the mother's rights was in the best interests of J.J. and M.J.

On the other hand, J.R. has had problems in her foster placements; she also had to be placed at Laurel Oaks Behavioral Health Center for a period and was, at the time of trial, residing in a group home, where she was allowed to visit with her mother and maternal grandmother. Although there was testimony indicating that all the children need permanency, without any prospects for the adoption of J.R. and

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considering the absence of clear and convincing evidence of how termination of the mother's parental rights would promote J.R.'s best interest, we cannot conclude that termination of the mother's parental rights was warranted as to J.R.<sup>3</sup>

Based on the foregoing, in appeal number 2200037, we reverse the judgment terminating the mother's parental rights to J.R. In appeal numbers 2200038 and 2200039, we affirm the judgments terminating the mother's parental rights to M.J. and J.J.

2200337 -- REVERSED AND REMANDED.

2200338 -- AFFIRMED.

2200339 -- AFFIRMED.

Edwards, Hanson, and Fridy, JJ., concur.

Thompson, P.J., concurs in the result, without writing.

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<sup>3</sup>Just like we noted in T.N., if the mother's or J.R.'s circumstances change and if other evidence arises regarding J.R.'s best interests, DHR may petition for, and the juvenile court may consider, termination of the mother's parental rights as to J.R. based upon that new evidence. 297 So. 3d at 1221 n.10.