

Rel: June 3, 2022

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2210208, 2210209, and 2210210

S.B.T.

v.

P.B.

**Appeals from Limestone Juvenile Court
(JU-20-38.01, JU-20-39.01, and JU-20-40.01)**

THOMPSON, Presiding Judge.

On February 5, 2020, M.B. and P.B. ("the maternal grandparents") filed in the Limestone Juvenile Court ("the juvenile court") petitions seeking to have the three children of their daughter, S.B.T. ("the mother"), and her husband, A.G.T. ("the father"), found dependent and

2210208, 2210209, and 2210210

seeking an award of custody of the children. The next day, February 6, 2020, the mother's paternal aunt, A.P., moved to intervene in the actions, seeking an award of custody of the children. D.T. and T.T., the children's paternal grandparents, also moved to intervene in the actions, seeking an award of custody of the children. V.L., a family friend, also moved to intervene in the actions and sought an award of custody of the children; in her motion to intervene, V.L. alleged, among other things, that the children had been living with her since late January 2020. Attached to V.L.'s motion to intervene is a notarized document executed by the mother and the father stating that the parents "hereby nominate, delegate and appoint [T.L., who is V.L.'s husband,] and [V.L.] as Conservators, Guardians, and Custodial Guardians for our minor children named above and any others who may be born to or adopted by us in the event we should die, become incompetent, or otherwise [become] unable to care for said minor children."

The juvenile court conducted a hearing on all pending motions, and on April 20, 2020, it entered orders awarding V.L. pendente lite custody of the children, adding the Limestone County Department of Human

2210208, 2210209, and 2210210

Resources ("DHR") as a party to the actions, granting all pending motions to intervene, and scheduling a dependency hearing for the actions. Documents filed by DHR indicate that, before the current actions were initiated, DHR had been involved with the family because of an allegation of abuse of one of or all the children.

On June 19, 2020, after conducting a hearing, the juvenile court awarded pendente lite custody of the children to the maternal grandparents. On August 24, 2020, the juvenile court entered orders continuing the pendente lite custody of the children with the maternal grandparents and ordering that DHR was no longer a party to the actions and could "close its file" on each of the children. Later, the juvenile court granted a motion filed by the children's guardian ad litem to add CASA of North Alabama as a party to the actions.¹

On July 1, 2021, the juvenile court entered judgments in which it, among other things, found the children dependent and awarded pendente lite custody of the children to the maternal grandmother, P.B. ("the

¹No party has challenged that order, and, therefore, this court does not address it.

2210208, 2210209, and 2210210

maternal grandmother"). The judgments also awarded visitation with the children to the mother.

On September 20, 2021, the children's guardian ad litem filed in each action a motion seeking to suspend the mother's visitation with the children. The guardian ad litem cited several reasons for suspending the mother's visitation, but the most serious reason was that the mother had given A.T., the youngest child, food containing peanuts while being aware that A.T. had an allergy to peanuts. On that same day, the juvenile court ordered that all visitations between the mother and the children be supervised by the maternal grandparents, and the juvenile court scheduled a dispositional hearing for the actions.

Following a hearing at which it received ore tenus evidence, the juvenile court entered judgments on November 30, 2021, awarding sole custody of the children to the maternal grandmother, awarding the mother unsupervised visitation with the children, and ordering that the father's visitation with the children be supervised.² Among other things,

²M.B., the children's maternal grandfather, did not appear at the hearing; the maternal grandmother testified that he was caring for the

2210208, 2210209, and 2210210

the November 30, 2021, judgments ordered the mother to give the children their medications as prescribed by a doctor, to transport the children to their extracurricular activities, and not to have any food containing peanuts in her home during visitations with the children. The mother filed timely notices of appeal on December 3, 2021.³

The mother contends that the juvenile court erred in entering its November 30, 2021, dispositional judgments because the juvenile court failed to make findings that the children were dependent at that time.

" "[I]n order to make a disposition of a child in the context of a dependency proceeding, the child must in fact be dependent at the time of that disposition." ' V.W. v. G.W., 990 So. 2d 414,

children while she was in court. The November 30, 2021, judgments awarded custody of the children only to the maternal grandmother. The maternal grandfather has not appealed those judgments.

³After the mother filed her notices of appeal, the juvenile court entered an amended judgment in each action on December 7, 2021. In one action, no change was made from the original version of the judgment entered on November 30, 2021. However, with regard to the other two judgments, the juvenile court had incorrectly identified or swapped the birth dates of the children at issue in those two actions. Accordingly, as to those two actions, the only alteration made to the judgments was to correct the birth dates of the child involved in each of those two actions. Therefore, those purported amendments to the original judgments constituted only clerical corrections made pursuant to Rule 60(a), Ala. R. Civ. P.

2210208, 2210209, and 2210210

417 (Ala. Civ. App. 2008) (quoting K.B. v. Cleburne Cty. Dep't of Human Res., 897 So. 2d 379, 389 (Ala. Civ. App. 2004) (Murdock, J., concurring in the result)). See also D.D.P. v. D.M.B., 173 So. 3d 1, 3 (Ala. Civ. App. 2015) (same). If the child is not dependent at the time of the dispositional judgment, the juvenile court lacks jurisdiction to make a custody determination. M.D. v. S.C., 150 So. 3d 210, 212 (Ala. Civ. App. 2014); L.R.J. v. C.F., 75 So. 3d 685, 687 (Ala. Civ. App. 2011); see also C.C. v. B.L., 142 So. 3d 1126, 1129 (Ala. Civ. App. 2013) ('In light of the juvenile court's finding that the child was not dependent, the juvenile court lacked jurisdiction to enter a judgment affecting the custody of the child, including visitation.')."

H.C. v. S.L., 251 So. 3d 793, 794 (Ala. Civ. App. 2017). See also H.A.S. v. S.F., 298 So. 3d 1092, 1102 (Ala. Civ. App. 2019) ("[W]hen [a dependency hearing and a dispositional hearing] are held on separate dates, the child must still be dependent on the date of disposition.").

In J.P. v. S.S., 989 So. 2d 591 (Ala. Civ. App. 2008), a juvenile court found a child dependent in late October 2006, and, after a dispositional hearing, it entered a judgment in June 2007 awarding custody of the child to an aunt and uncle. The father in that case appealed, arguing that the child had not been dependent at the time of the entry of the June 2007 dispositional judgment. This court noted that the juvenile court had not made a specific finding of dependency in its June 2007 judgment, and

2210208, 2210209, and 2210210

we then explained that in the absence of a finding of dependency, if the evidence supports such a finding and the juvenile court's judgment is consistent with such a finding, "in the interest of judicial economy this court may hold that a finding of dependency is implicit in the trial court's judgment." 989 So. 2d at 598 (citing L.L.M. v. S.F., 919 So. 2d 307, 311 (Ala. Civ. App. 2005), O.L.D. v. J.C., 769 So. 2d 299, 302 (Ala. Civ. App. 1999), and A.J.J. v. J.L., 752 So. 2d 499, 503 (Ala. Civ. App. 1999)). In that case, this court concluded:

"DHR and the aunt and uncle alleged that the child remained dependent, and in its judgment the trial court ultimately awarded custody of the child to the aunt and uncle, a disposition that is consistent with a finding that the child remained dependent at the time of the final judgment. Given the facts of this case, we conclude that a finding of continued dependency was implicit in the trial court's June 19, 2007, judgment."

989 So. 2d at 598.

In H.C. v. S.L., supra, this court discussed J.P. v. S.S., supra, and stated that, "in a situation in which the evidence clearly supports a dependency determination but in which the juvenile court has omitted an explicit dependency finding, this court has held that a dependency determination may be implicit in the judgment." H.C. v. S.L., 251 So. 3d

2210208, 2210209, and 2210210

at 794. In H.C. v. S.L., supra, unlike in J.P. v. S.S., supra, upon reviewing the evidence, we could not determine whether the juvenile court in that case had based its custody determination upon a finding of dependency and whether the evidence supported that custody award; accordingly, this court remanded the matter for further consideration by the juvenile court in that case. 251 So. 3d at 795.

Similarly, in these cases, we have reviewed the evidence in the record. Five months elapsed between the entry of the dependency judgments and the entry of the dispositional judgments, and the evidence presented at the dispositional hearing shows that there had been changes, both positive or negative, in the mother's circumstances during that period. Accordingly, given the extended period between the entry of the dependency judgments and the dispositional judgments and the evidence in the record, we are unable to determine if the juvenile court found the children to be dependent at the time it entered its November 30, 2021, dispositional judgments. We therefore reverse the November 30, 2021, judgments and remand the causes to the juvenile court to make, as expeditiously as possible, a determination as to whether the child at

2210208, 2210209, and 2210210

issue in each action was dependent at the time the juvenile court entered its November 30, 2021, judgments.

2210208 -- REVERSED AND REMANDED WITH INSTRUCTIONS.

2210209 -- REVERSED AND REMANDED WITH INSTRUCTIONS.

2210210 -- REVERSED AND REMANDED WITH INSTRUCTIONS.

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