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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2022-2023

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A.R.

v.

T.R.

**Appeal from Limestone Juvenile Court
(JU-19-275.01)**

MOORE, Judge.

A.R. ("the mother") appeals from an April 28, 2022, judgment entered by the Limestone Juvenile Court ("the juvenile court") finding B.H. ("the child") dependent and awarding custody of the child to the

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child's maternal grandfather, T.R. ("the maternal grandfather"). We dismiss the appeal in part and affirm the juvenile court's judgment.

Procedural History

These parties have previously been before this court. See A.R. v. J.C.R., [Ms. 2200903, Jan. 14, 2022] ___ So. 3d ___ (Ala. Civ. App. 2022). In A.R., this court set forth the procedural history in this matter as follows:

"On November 22, 2019, the child's maternal great-grandmother, J.C.R. ('the maternal great-grandmother'), filed a petition alleging that the child was dependent. At the 72-hour hearing, see Ala. Code 1975, § 12-15-308, the mother failed to appear, and the juvenile court awarded the maternal great-grandmother temporary custody of the child. After a trial on the dependency petition, the juvenile court entered a judgment on October 20, 2020, stating that the mother had stipulated that the child was dependent, adjudicating the child dependent, and awarding temporary legal and physical custody of the child to the maternal great-grandmother and the maternal grandfather.

"On August 6, 2021, the juvenile court held a 'permanency' hearing, at which only the child's guardian ad litem testified. The mother appeared after the presentation of the evidence was completed. During the hearing, the juvenile court made it clear that, because there had been an earlier stipulation of dependency, the only issue to be considered at the hearing was 'the appropriate permanent location or custody arrangement for [the] child.' The juvenile

court subsequently entered a judgment on August 9, 2021, stating, in pertinent part:

"The Court having previously found the child to be a dependent child set a Permanency hearing for this date. ...

"'....

"The Guardian ad Litem waived the child's presence in the courtroom, but informed the court that the child was nearby if needed for [the] hearing. The mother was not present. The court found that she waived her presence. The mother appeared for court after the close of testimony and evidence.

"After having carefully considered the sworn testimony and evidence submitted, it is ORDERED that the permanent legal and physical custody of the ... child be awarded to the maternal grandfather. ... Visitation with the mother shall be at times and places within the discretion of the [maternal grandfather] taking into consideration the wishes of the ... child.'

"(Capitalization in original.) On August 10, 2021, the mother filed her notice of appeal.¹

"

¹Although permanent custody of the child was awarded to the maternal grandfather, the mother identified the maternal great-grandmother as the appellee in the notice of appeal. This court subsequently entered an order directing the mother to immediately file an amended notice of appeal

naming the maternal grandfather as an appellee and to serve on the maternal grandfather a copy of the amended notice of appeal, the appellant's brief filed by the mother, and the appellee's brief filed by the maternal great-grandmother. This court's order also gave the maternal grandfather 21 days from the date the amended notice of appeal was filed to file any objection he might have to the amendment. The order also gave the maternal grandfather 42 days from the date included on the mother's amended certificate of service to file an appellee's brief. The maternal grandfather did not file an objection to the amended notice of appeal or an appellee's brief."

___ So. 3d at ___.

On appeal, this court addressed whether sufficient evidence had been produced from which the juvenile court could have been clearly convinced that the child was dependent. We noted that, in finding the child dependent, the juvenile court had relied on a stipulation of dependency that had occurred almost one year before the August 6, 2021, dispositional hearing. We also noted that a written finding of dependency is not required when the dependency finding can be inferred from the judgment at issue, but we concluded that

"the juvenile court's statements at the August 6, 2021, hearing indicating that it was considering the disposition of the child only because of the previous stipulation of dependency, coupled with the language of the judgment indicating that it was relying on that previous finding of

dependency, ma[de] it impossible to infer that the juvenile court found the child dependent at the time of the custodial disposition."

___ So. 3d at ___. Thus, we held that, "[b]ecause the juvenile court [had] failed to find that the child was dependent at the time of the custodial disposition, it [had] lacked jurisdiction to determine the disposition of the child," and we reversed the juvenile court's August 9, 2021, judgment and remanded the case with instructions that the juvenile court vacate that judgment. ___ So. 3d at ___. We instructed the juvenile court that, on remand, it could, if needed, take additional evidence to determine if the child is dependent before making a custodial disposition. ___ So. 3d at ___.

On remand, the juvenile court entered a final judgment on April 28, 2022, in which it determined that the child "remains a dependent child pursuant to Section 12-15-102(8)(a), Code of Alabama (1975), and is within the jurisdiction of the [juvenile] court," awarded custody of the child to the maternal grandfather, and ordered that visitation between the mother and the child "shall be at times and places within the discretion of [the maternal grandfather], taking into consideration the

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wishes of the ... child." The juvenile court, however, made no specific findings of fact in its judgment. The mother did not file a postjudgment motion. On May 3, 2022, the mother filed a timely notice of appeal to this court. On May 5, 2022, the juvenile court entered an amended judgment purporting to provide a more definitive visitation schedule between the mother and the child.

Analysis

The mother raises two issues on appeal -- whether the determination in the final judgment that the child remained dependent is supported by clear and convincing evidence and whether the juvenile erred in giving the maternal grandfather discretion over her visitation with the child.

The mother did not preserve the first issue for appellate review. New Properties, L.L.C. v. Stewart, 905 So. 2d 797, 801-02 (Ala. 2004), holds that, based on Rule 52(b), Ala. R. Civ. P., "in a nonjury case in which the trial court makes no specific findings of fact, a party must move for a new trial or otherwise properly raise before the trial court the question relating to the sufficiency or weight of the evidence in order to preserve

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that question for appellate review." Rule 52(b) applies in juvenile-court cases. See Rule 1(A), Ala. R. Juv. P. ("If no procedure is specifically provided in these Rules or by statute, the Alabama Rules of Civil Procedure shall be applicable to those matters that are considered civil in nature"). In K.M. v. S.R., 326 So. 3d 1062, 1063 (Ala. Civ. App. 2020), this court, relying on Stewart, held that, when a juvenile court makes the legal determination in a final judgment that a child is dependent, without further specifying the factual grounds for that determination, a party claiming that the dependency determination is not supported by sufficient evidence must file a postjudgment motion raising that issue to the juvenile court in order to preserve the issue for appellate review.

In this case, the juvenile court determined only that the child was "dependent" as that term is defined in Ala. Code 1975, § 12-15-102(8)a., which contains eight alternative grounds for finding a child dependent, without specifying the factual basis for its determination. The record contains no explanation from the juvenile court as to how it reached its determination. Cf. Weeks v. Herlong, 951 So. 2d 670, 678 (Ala. 2006)

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(holding that dialogue between counsel and trial judge that revealed reasoning behind factual determination sufficed as specific finding of fact preserving issue of sufficiency of evidence for appellate review). Because the mother did not challenge in a postjudgment motion the sufficiency of the evidence with respect to the determination of dependency, we cannot consider the mother's argument on this issue.

Before proceeding to the second issue raised by the mother, we note that, on May 5, 2022, after the mother filed her notice of appeal, the juvenile court, on its own motion, entered an order purporting to amend the final judgment to delete the provision giving the maternal grandfather discretion over the mother's visitation with the child and to substitute a visitation schedule for the mother. As a general rule, the filing of a notice of appeal divests the juvenile court of jurisdiction over the case, except as to collateral matters. See S.H. v. Macon Cnty. Dep't of Hum. Res., 195 So. 3d 311, 313 (Ala. Civ. App. 2015). As a narrow exception to that rule, however, a juvenile court retains jurisdiction to receive and rule on a timely postjudgment motion to amend a judgment that is filed by a party after the filing of a notice of appeal. See Ex parte

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Andrews, 520 So. 2d 507, 510 (Ala. 1987); Herring v. Madison Cnty. Dep't of Hum. Res., 279 So. 3d 1151, 1160 (Ala. Civ. App. 2018). A juvenile court also retains jurisdiction to correct any clerical, as opposed to substantive, error in the judgment while an appeal is pending. See Rule 60(a), Ala. R. Civ. P.

In this case, no party filed a postjudgment motion to amend the final judgment. Instead, the juvenile court, on its own initiative, entered the May 5, 2022, order in an effort to change the visitation provision. The amendment did not involve a "collateral matter." Collateral matters are those that "d[o] not raise any question going behind the [judgment] appealed from, nor [do they] raise any question decided by the judgment." Vesta Fire Ins. Corp. v. Liberty Nat'l Life Ins. Co., 893 So. 2d 395, 412 (Ala. Civ. App. 2003) (quoting Osborn v. Riley, 331 So. 2d 268, 272 (Ala. 1976)). The May 5, 2022, order purports to go behind the April 28, 2022, final judgment to alter the decision as to visitation, which is an issue central, not collateral, to the mother's appeal. Furthermore, the record indicates that the juvenile court did not correct a clerical error by altering the visitation provision but, instead, modified the visitation

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provision to make the final judgment say something other than what was originally pronounced, which is not allowed under Rule 60(a). McGiboney v. McGiboney, 679 So. 2d 1066, 1068 (Ala. Civ. App. 1995). Thus, the juvenile court lacked jurisdiction to enter the May 5, 2022, order.

We conclude that the May 5, 2022, order is void and without effect. See Cosper v. Holloway, 571 So. 2d 302, 303 (Ala. Civ. App. 1990) (holding that order purporting to amend judgment after notice of appeal had been filed was a nullity); B.B. v. M.N., 90 So. 3d 194, 196 (Ala. Civ. App. 2012) (quoting Loyd v. Director, Dep't of Pub. Safety, 480 So. 2d 577, 579 (Ala. Civ. App. 1985)) (stating that a "'void judgment is one which, from its inception, is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind the parties or to support a right, of no legal force and effect whatsoever, and incapable of enforcement in any matter or to any degree"). Because the May 5, 2022, order is void, the juvenile court did not actually amend the April 28, 2022, final judgment. Thus, the visitation provision giving the maternal grandfather discretion over the mother's visitation with the child remains in effect. To the extent

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that the mother's appeal could be interpreted as involving a challenge to the May 5, 2022, order, see Rule 3(c), Ala. R. App. P. (authorizing appellate court to extend its review to orders and judgments not designated in the notice of appeal), we dismiss that part of the appeal, albeit with instructions to the juvenile court to vacate the May 5, 2022, order. D.E.C.C. v. K.N.R., 51 So. 3d 1068, 1071 (Ala. Civ. App. 2010).

As to the mother's argument relating to the visitation provision in the April 28, 2022, final judgment, we agree with the mother that the juvenile court erred in leaving visitation between the mother and the child solely to the discretion of the maternal grandfather. See A.B. v. A.A., 334 So. 3d 223, 228 (Ala. Civ. App. 2021) ("[A] visitation award is improper and subject to reversal when that provision allows the custodian to determine the noncustodial parent's visitation schedule."). However, we cannot address this issue because, again, the mother failed to preserve the issue for appellate review. In Dubose v. Dubose, [Ms. 2200737, May 6, 2022] ___ So. 3d ___ (Ala. Civ. App. 2022), this court held that it could not correct a judgment awarding visitation "as agreed upon by the parties" because the noncustodial parent had failed to point

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out to the trial court that the judgment erroneously gave the custodial parent discretion over the visitation schedule and to seek correction of that error in the proceedings below. ___ So. 3d at ___ n.2 and accompanying text. Similarly, in this case, the mother did not file a postjudgment motion or otherwise alert the juvenile court to its error; thus, we cannot consider that error as a basis for reversing the judgment on appeal.

For the foregoing reasons, we dismiss the appeal to the extent that it arises from the May 5, 2022, order, and we affirm the April 28, 2022, final judgment.

APPEAL DISMISSED IN PART; AFFIRMED.

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