

Rel: March 1, 2024

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2023-2024

CL-2023-0198

D.L.

v.

E.L. and N.L.

Appeal from Escambia Juvenile Court
(JU-20-114.04)

PER CURIAM.

In the fall of 2020, E.L. and N.L. ("the paternal grandparents") filed in the Escambia Juvenile Court ("the juvenile court") a petition seeking to have their grandchild, B.E.L. ("the child"), found dependent and seeking an award of custody of the child. In their petition, the paternal

grandparents alleged that the child's parents, D.L. ("the mother"), and R.L. ("the father"), were abusing illegal drugs and, as a result, were unable to properly care for the child. The juvenile-court clerk assigned juvenile-court case number JU-20-114.01 ("the .01 action") to the paternal grandparents' dependency action. Approximately one month later, the Escambia County Department of Human Resources ("DHR") also filed a petition in the juvenile court seeking to have the child declared dependent and seeking an award of custody of the child; that action is hereinafter referred to as "the .02 action." DHR also intervened in the .01 action.

The juvenile court entered in the .01 action and in the .02 action a judgment on December 21, 2020, in which it found the child dependent and awarded pendente lite custody of the child to the paternal grandparents. On March 30, 2021, the juvenile court entered in each action an order, based on the agreement of the parties, in which it, among other things, awarded the mother pendente lite custody of the child and scheduled a dispositional hearing for June 2021.

In early May 2021, the paternal grandparents initiated another dependency action regarding the child; that action was designated by the

juvenile-court clerk as juvenile-court case number JU-20-114.03 ("the .03 action").¹ In their petition in the .03 action, the paternal grandparents alleged that the mother and father had resumed using illegal drugs, and, therefore, that the child was dependent; they again sought an award of custody of the child. DHR was allowed to intervene in the .03 action, and it filed a dependency petition that was also designated as part of the .03 action. On June 21, 2021, the juvenile court entered an order in the .03 action awarding the paternal grandparents pendente lite custody of the child.

On July 28, 2021, the juvenile court entered in the .03 action a judgment in which it found the child dependent, awarded custody of the child to the paternal grandparents and weekly supervised visitation and video-conference visits to the mother, and ordering that the case be "closed." Neither the mother nor the father appealed the judgment entered in the .03 action.

¹The State Judicial Information Sheets in the .01 action and in the .02 action each contain an entry, dated July 29, 2021, stating "see JU-2020-114.03 for final order." (71, 97) Thus, it appears that the juvenile court elected to treat all of the parties' claims as being presented and addressed within the .03 action.

On November 4, 2022, the paternal grandparents initiated this action ("the .04 action") by filing in the juvenile court a petition seeking to terminate the parental rights of the mother and the father to the child. The juvenile court conducted a March 22, 2023, hearing at which it received ore tenus evidence. On March 28, 2023, the juvenile court entered a judgment in the .04 action in which it ordered that the mother's and the father's parental rights to the child be terminated. The mother filed a timely notice of appeal on March 30, 2023. The father did not appeal the March 28, 2023, judgment entered in the .04 action.

As an initial matter, we address a jurisdictional issue. In the first paragraph of its March 28, 2023, judgment, the juvenile court listed the parties and their respective attorneys who attended the March 22, 2023, final hearing, and it specified in that judgment that, although they were represented at counsel at that hearing, neither the mother nor the father was present at that hearing. The remainder of the March 28, 2023, judgment states:

"The Court finds from clear and convincing evidence presented that [the father] and [the mother] are unable or unwilling to discharge their responsibilities to and for the child and that their conduct and condition render them unable to properly care for the child and that their conduct and condition is unlikely to change in the foreseeable future.

"Accordingly, it is ordered, adjudged, and decreed that judgment is entered in favor of [the paternal grandparents] against [the father] and [the mother] on the petition, and the parental rights of [the father] and [the mother] as to the child, [B.E.L.], are hereby terminated."²

After the mother filed her notice of appeal from the March 28, 2023, judgment, this court, on July 6, 2023, issued an order asking the parties to letter brief the issue of whether the March 28, 2023, judgment was a final judgment that would support the mother's appeal, and we asked that the parties specifically discuss the holding in S.H. v. Macon County Department of Human Resources, 195 So. 3d 311 (Ala. Civ. App. 2015). The parties filed letter briefs in this court, and this court issued an order on July 21, 2023, allowing the appeal to proceed. The July 21, 2023, order

²In its March 28, 2023, judgment, the juvenile court did not address whether there were viable alternatives to the termination of the mother's parental rights. See Ex parte T.V., 971 So. 2d 1, 4-5 (Ala. 2007) (explaining that in determining whether to terminate a parent's parental rights, the juvenile court must consider whether the petitioner met the statutory grounds for termination and whether there exists a viable alternative to the termination of parental rights). However, the juvenile court was not required to make a specific finding with regard to whether it had considered and rejected viable alternatives to termination. J.B. v. Cleburne Cnty. Dep't of Hum. Res., 991 So. 2d 273, 282 (Ala. Civ. App. 2008). Such a finding is implicit in the juvenile court's judgment granting the petition to terminate parental rights. J.B. v. Cleburne Cnty. Dep't of Hum. Res., 991 So. 2d 273, 282 (Ala. Civ. App. 2008).

did not prevent this court from reexamining the issue of jurisdiction upon submission of the appeal to this court. R.P.M. v. P.D.A., 112 So. 3d 49, 50 (Ala. Civ. App. 2012); L.M. v. Shelby Cnty. Dep't of Hum. Res., 999 So. 2d 505, 506 (Ala. Civ. App. 2008).

"It is a well established rule that, with limited exceptions, an appeal will lie only from a final judgment which determines the issues before the court and ascertains and declares the rights of the parties involved." Taylor v. Taylor, 398 So. 2d 267, 269 (Ala. 1981)... A "final judgment is a 'terminal decision which demonstrates there has been a complete adjudication of all matters in controversy between the litigants.'" Dees v. State, 563 So. 2d 1059, 1061 (Ala. Civ. App. 1990) (citing Tidwell v. Tidwell, 496 So. 2d 91, 92 (Ala. Civ. App. 1986)). The question whether a judgment is final is a jurisdictional question, and the reviewing court, on a determination that the judgment is not final, has a duty to dismiss the case.... See Jim Walter Homes, Inc. v. Holman, 373 So. 2d 869, 871 (Ala. Civ. App. 1979).'

"Horton v. Horton, 822 So. 2d 431, 433-34 (Ala. Civ. App. 2001). "Once an appeal is taken, the trial court loses jurisdiction to act except in matters entirely collateral to the appeal." Horton, 822 So. 2d at 434 (quoting Ward v. Ullery, 412 So. 2d 796, 797 (Ala. Civ. App. 1982))."

S.H. v. Macon Cnty. Dep't of Hum. Res., 195 So. 3d at 312.

In a case decided before S.H., supra, this court addressed the issue whether a juvenile court's termination-of-parental-rights judgment was

rendered nonfinal because of that juvenile court's failure to make a final custodial disposition of the child in compliance with § 12-15-320(b), Ala. Code 1975, a part of the Alabama Juvenile Justice Act ("the AJJA"), § 12-15-101 et seq., Ala. Code 1975. Ex parte Alabama Dep't of Hum. Res., 154 So. 3d 1060, 1062 (Ala. Civ. App. 2014), abrogated on other grounds by S.H. supra). Section 12-15-320 provides:

"(a) Termination of parental rights cases shall be given priority over other cases. The trial on the petition for termination of parental rights shall be completed within 90 days after service of process has been perfected. The trial court judge shall enter a final order within 30 days of the completion of the trial.

"(b) If the juvenile court determines that the parents of a child are unwilling or unable to act as parents and terminates their parental rights, it may do the following:

"(1) Transfer or continue the permanent legal custody of the child to the Department of Human Resources or to any public or private licensed child-placing agency able and willing to assume the care and maintenance of the child. An order of the juvenile court which terminates parental rights and awards permanent legal custody to the Department of Human Resources or to a licensed child-placing agency shall mean that the Department of Human Resources or the licensed child-placing agency shall have authority to make permanent plans for the child, including the authority to place for adoption and consent to adoption.

"(2) Transfer or continue the permanent legal custody of the child to the petitioner who, after study by the Department of Human Resources, is found to be able to properly receive and care for the child."

In Ex parte Alabama Department of Human Resources, supra, the Madison Juvenile Court ordered that the parental rights of a child's parents be terminated, awarded permanent custody of the child to the Alabama Department of Human Resources ("the State DHR"), and scheduled another hearing. The Madison Juvenile Court later amended that judgment to terminate the parent's parental rights to the child but awarding the State DHR only temporary custody of the child. 154 So. 3d at 1062. The State DHR filed a petition for the writ of mandamus, which this court elected to treat as an appeal. This court reversed the judgment, as amended, holding that under § 12-15-320(b), Ala. Code 1975, the Madison Juvenile Court could not award the State DHR temporary custody of the child; instead, § 12-15-320(b) required that the Madison Juvenile Court enter a permanent custodial disposition of the child. Ex parte Alabama Dep't of Hum. Res., 154 So. 3d at 1064. This court explained:

"Based on that statutory language [in § 12-15-320(b), Ala. Code 1975], once the parental rights of a child's parents are

terminated, a juvenile court may either place the child in the permanent legal custody of 'the Department of Human Resources,' another 'public or private licensed child-placing agency,' or the person who petitioned for the termination of parental rights and who is approved by 'the Department of Human Resources.'"

Id. (emphasis added).

In S.H., supra, the Macon County Department of Human Resources ("the Macon County DHR") filed petitions seeking to terminate the parental rights of S.H. to her three children. The Macon Juvenile Court entered judgments on March 20, 2015, terminating the mother's parental rights and awarding temporary custody of the child to the Macon County DHR. The Macon County DHR filed purported postjudgment motions asking the Macon Juvenile Court to amend its judgments to make a permanent custodial disposition of the children, and that court granted those motions on April 10, 2015. This court, however, held that the purported amendments to the termination judgments were a nullity because S.H.'s April 1, 2015, notices of appeal had divested the Macon Juvenile Court of jurisdiction to enter further rulings on the merits of the action. S.H., 195 So. 3d at 315. Therefore, this court determined that S.H.'s appeals were taken from the March 20, 2015, judgments, which contained only an award of temporary custody of the child. Id. This court,

relying on both § 12-15-320b) and Ex parte Alabama Department of Human Resources, supra, held that because the March 20, 2015, judgments did not set forth an award of permanent custody of the children, those orders were not sufficiently final to support S.H.'s appeal. Id. This court further held that earlier cases such as Ex parte Alabama Department of Human Resources, supra, and Marshall County Department of Human Resources v. M.B., 176 So. 3d 217 (Ala. Civ. App. 2015), had erred to the extent that those cases had reversed similar judgments instead of dismissing those appeals as taken from nonfinal judgments. This court stated:

"We therefore take this opportunity to inform the bench and bar that, in cases in which there has been a termination of parental rights and there has been no disposition of the permanent legal custody of the child or children at issue in accordance with § 12-15-320(b), this court will dismiss any appeal from that judgment as having been taken from a nonfinal judgment."

S.H. v. Macon Cnty. Dep't of Hum. Res., 195 So. 3d at 314.

Thus, in both Ex parte Alabama Department of Human Resources, supra, and S.H. v. Macon County Department of Human Resources, supra, this court interpreted § 12-15-320(b) as providing two alternatives by which a juvenile court may make a custodial disposition of a child of a

parent whose parental rights have been terminated. Both of those alternatives under § 12-15-320(b) require that in a termination-of-parental-rights judgment, the juvenile court specify that an award of permanent custody of the child has been made or that a previous award of permanent custody of the child is to be continued.

Recently, in C.C. v. L.B., [Ms. 2210410, Nov. 10, 2022] ___ So. 3d ___ (Ala. Civ. App. 2022), among other claims asserted by various parties, L.B. and S.B. ("the foster parents"), the foster parents of a child in foster care, filed a petition in the Madison Juvenile Court seeking to terminate the parental rights of the child's father, C.C., and the child's mother, E.M.C. The Madison Juvenile Court entered an order on February 17, 2022, in which it, among other things, ordered that the parental rights of C.C. and E.M.C. be terminated. However, in that February 17, 2022, order, the Madison Juvenile Court did not make an award of permanent custody of the child. The Madison Juvenile Court purported to enter an amendment to its February 17, 2022, order to award permanent custody of the child to the foster parents, but this court held that that amendment was void because it occurred after C.C. and E.M.C. had filed notices of appeal. The filing of the notices of appeal in that case had divested the

Madison Juvenile Court of jurisdiction to act on any matters other than those collateral to the merits of the action. C.C. v. L.B., ___ So. 3d at ___. Therefore, relying on S.H., supra, this court dismissed the appeals taken by C.C. and E.M.C. from the February 17, 2022, termination-of-parental-rights judgment as taken from a nonfinal order. C.C. v. L.B., supra. See also M.L.R. v. M.C.M., 373 So. 3d 821, 823 (Ala. Civ. App. 2022) (noting that this court had dismissed an earlier appeal in the matter because the original judgment of the juvenile court in that case "had not included a disposition regarding the permanent legal custody of the child.").

In her letter brief submitted to this court, the mother argues that this case is distinguishable from S.H., supra, and Ex parte Alabama Department of Human Resources, supra, because in both of those cases the party seeking to terminate parental rights also requested relief in the form of an award of permanent custody of the child. The mother contends that because in this case D.L. and E.L. did not request an award of permanent custody of the child in their termination-of-parental-rights petition, there are no unresolved claims that would render the March 28, 2023, judgment nonfinal. However, § 12-15-320 provides for only two possible dispositions of a child when the juvenile court terminates the

parental rights of the child's parent or parents. One of those options is an award or continuation of permanent custody of the child with the Department of Human Resources, and the other is an award or continuation of permanent custody of the child with a petitioner who is not the Department of Human Resources. § 12-15-320(b). Thus, the AJJA requires that a permanent custodial disposition be made in any judgment granting a petition to terminate parental rights. See C.C. v. L.B., supra. Therefore, a request for an award of permanent custody of a child at issue in a termination-of-parental-rights action is implicit in a claim seeking the termination of parental rights.

The March 28, 2023, judgment in this case terminated the mother's and the father's parental rights to the child, but it contained no provision continuing permanent custody of the child with the paternal grandparents or issuing a new award of permanent custody to them. See § 12-15-320(b). Accordingly, we conclude that the March 28, 2023, judgment was nonfinal and will not support this appeal. C.C. v. L.B., supra; S.H. v. Macon Cnty. Dep't of Hum. Res., supra; and Ex parte Alabama Dep't of Hum. Res., supra. We dismiss the appeal.

CL-2023-0198

APPEAL DISMISSED.

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