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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2023-2024

CL-2023-0393, CL-2023-0394, and CL-2023-0395

K.F., Sr.

v.

Shirley Ann Millwood, as guardian ad litem for A.F., T.F., and K.F., Jr., and Calhoun County Department of Human Resources

CL-2023-0397, CL-2023-0399, and CL-2023-0400

M.W.

v.

Shirley Ann Millwood, as guardian ad litem for A.F., T.F., and K.F., Jr., and Calhoun County Department of Human Resources

Appeals from Calhoun Juvenile Court
(JU-20-513.03, JU-20-514.03, and JU-20-515.03)

CL-2023-0393; CL-2023-0394, CL-2023-0395, CL-2023-0397, CL-2023-0399, and CL-2023-0400

EDWARDS, Judge.

In October 2022, Shirley Ann Millwood ("the guardian ad litem"), the guardian ad litem for A.F., T.F., and K.F., Jr. ("the children"), filed in the Calhoun Juvenile Court ("the juvenile court") petitions seeking to terminate the parental rights of K.F., Sr. ("the father"), and of M.W. ("the mother") to the children; those actions were assigned case numbers JU-20-513.03, JU-20-514.03, and JU-515.03, respectively. In March 2023, the Calhoun County Department of Human Resources ("DHR") was permitted to join the actions as a joint petitioner and the actions were tried. In April 2023, the juvenile court rendered a single judgment that was entered in all three actions terminating the parental rights of the mother and of the father. After the postjudgment motions filed by the mother and the father were denied by operation of law, see Rule 1(B), Ala. R. Juv. P., the mother and the father filed notices of appeal to this court.

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The record reflects that the mother's parental rights to the children had been terminated in October 2021.¹ See M.W. v. Calhoun Cnty. Dep't of Hum. Res., 369 So. 3d 164 (Ala. Civ. App. 2022). However, the mother appealed those judgments to this court, and we dismissed those appeals, concluding that the mother had not been properly served with process notifying her of the termination-of-parental-rights petitions instituting those actions. M.W., 369 So. 3d at 168. After our dismissal of the mother's appeals, DHR resumed offering services to the mother but, as previously noted, the guardian ad litem filed, and DHR joined, a second set of petitions to terminate the mother's parental rights in October 2022.

The termination of parental rights is governed by Ala. Code 1975, § 12-15-319. That statute reads, in part:

"(a) If the juvenile court finds from clear and convincing evidence, competent, material, and relevant in nature, that the parents of a child are unable or unwilling to discharge their responsibilities to and for the child, or that the conduct or condition of the parents renders them unable to properly care for the child and that the conduct or condition is unlikely to change in the foreseeable future, it may terminate the parental rights of the parents. In determining whether or not

¹The previous petitions did not name the father as the father of any of the children and, therefore, did not terminate his parental rights.

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the parents are unable or unwilling to discharge their responsibilities to and for the child and to terminate the parental rights, the juvenile court shall consider the following factors including, but not limited to, the following:

"(1) That the parents have abandoned the child, provided that in these cases, proof shall not be required of reasonable efforts to prevent removal or reunite the child with the parents.

"(2) Emotional illness, mental illness, or mental deficiency of the parent, or excessive use of alcohol or controlled substances, of a duration or nature as to render the parent unable to care for the needs of the child.

"....

"(4) Conviction of and imprisonment for a felony.

"....

"(7) That reasonable efforts by the Department of Human Resources or licensed public or private child care agencies leading toward the rehabilitation of the parents have failed.

"....

"(9) Failure by the parents to provide for the material needs of the child or to pay a reasonable portion of support of the child where the parent is able to do so.

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"(10) Failure by the parents to maintain regular visits with the child in accordance with a plan devised by the Department of Human Resources, or any public or licensed private child care agency, and agreed to by the parent.

"(11) Failure by the parents to maintain consistent contact or communication with the child.

"(12) Lack of effort by the parent to adjust his or her circumstances to meet the needs of the child in accordance with agreements reached, including agreements reached with local departments of human resources or licensed child-placing agencies, in an administrative review or a judicial review."

"(13) The existence of any significant emotional ties that have developed between the child and his or her current foster parent or parents, with additional consideration given to the following factors:

"a. The length of time that the child has lived in a stable and satisfactory environment.

"b. Whether severing the ties between the child and his or her current foster parent or parents is contrary to the best interest of the child.

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"c. Whether the juvenile court has found at least one other ground for termination of parental rights.

"....

"(c) The juvenile court is not required to consider a relative to be a candidate for legal guardian of the child in a proceeding for termination of parental rights if both of the following circumstances exist:

"(1) The relative did not attempt to care for the child or obtain custody of the child within four months of the child being removed from the custody of the parents or placed in foster care, if the removal was known to the relative.

"(2) The goal of the current permanency plan formulated by the Department of Human Resources is adoption by the current foster parents."

"Abandonment" is defined in Ala. Code 1975, § 12-15-301(1), as:

"A voluntary and intentional relinquishment of the custody of a child by a parent, or a withholding from the child, without good cause or excuse, by the parent, of his or her presence, care, love, protection, maintenance, or the opportunity for the display of filial affection, or the failure to claim the rights of a parent, or failure to perform the duties of a parent."

The test a juvenile court must apply in a termination-of-parental-rights action is well settled:

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"A juvenile court is required to apply a two-pronged test in determining whether to terminate parental rights: (1) clear and convincing evidence must support a finding that the child is dependent; and (2) the court must properly consider and reject all viable alternatives to a termination of parental rights. Ex parte Beasley, 564 So. 2d 950, 954 (Ala. 1990)."

B.M. v. State, 895 So. 2d 319, 331 (Ala. Civ. App. 2004). A juvenile court's judgment terminating parental rights must be supported by clear and convincing evidence. P.S. v. Jefferson Cnty. Dep't of Hum. Res., 143 So. 3d 792, 795 (Ala. Civ. App. 2013). "Clear and convincing evidence" is "[e]vidence that, when weighed 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.'" L.M. v. D.D.F., 840 So. 2d 171, 179 (Ala. Civ. App. 2002) (quoting Ala. Code 1975, § 6-11-20(b)(4)). Although a juvenile court's factual findings in a judgment terminating parental rights based on evidence presented ore tenus are presumed correct, K.P. v. Etowah Cnty. Dep't of Hum. Res., 43 So. 3d 602, 605 (Ala. Civ. App. 2010), "[t]his court does not reweigh the evidence but, rather, determines whether the findings of fact made by the juvenile court are supported by evidence that

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the juvenile court could have found to be clear and convincing." K.S.B. v.

M.C.B., 219 So. 3d 650, 653 (Ala. Civ. App. 2016). That is, this court

"must ... look through ["the prism of the substantive evidentiary burden," Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254 (1986),] 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.""

K.S.B., 219 So. 3d at 653 (quoting Ex parte McInish, 47 So. 3d 767, 778

(Ala. 2008), quoting in turn Ala. Code 1975, § 25-5-81(c)).

The juvenile court conducted the trial on the petitions to terminate parental rights over three days in late March 2023. The guardian ad litem presented the testimony of Hope Brown, the current DHR caseworker; Edith Couch, a therapist and certified addiction counselor; Terri Whetstone, a representative from the Sylacauga Housing Authority; David House, the licensed professional counselor who administered a psychological evaluation to the mother; Vicky Miller, the in-home services provider from East Central Alabama Intensive In-Home Services; K.L., the foster mother of K.F., Jr.; J.L., the foster mother of

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T.F.; Edward Akers, the director of the Calhoun County Drug Testing Lab; the mother; and the father. The guardian ad litem also admitted documentary evidence, including the individualized service plans for the family, drug-test results, the report from a psychological evaluation conducted on the mother, a report from Miller, and a report from Couch.

Brown testified that she had only recently become the caseworker for the family and that she had not had the opportunity to become familiar with the entirety of the DHR case file. She explained that, from what she had learned from the case file, DHR had become involved with the mother, the father, and the children in June 2020 because of a report that the children were living in unsanitary conditions. She said that the children had been placed in foster care in July 2020 after a safety plan had failed.

Brown testified about the various individualized-service-plan ("ISP") goals that had been established throughout the case. The various services that had been recommended for the mother included: a substance-abuse assessment; random drug testing; a parenting assessment; a psychological evaluation; mental-health counseling; and

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anger-management classes. In addition, the mother's goals included securing and maintaining suitable and stable housing; securing and maintaining employment; and securing a driver's license and a tag and insurance for a vehicle that she owned. DHR also provided the mother supervised visitation with the children, first once a week but then twice per month, until the mother moved from Anniston to Sylacauga in March 2021.

Brown stated that services for the father had been instituted in a July 2022 ISP meeting, which was held after the dismissal of the mother's appeals from the October 2021 termination-of-parental-rights judgments. She said that those services had included a psychological evaluation, substance-abuse counseling, random drug testing, and counseling. Brown indicated that she was not aware whether a previous caseworker had made an appointment for the father to have a psychological evaluation, but the record contains no evidence indicating that he ever had such an evaluation.

Brown testified that DHR's concerns at the time of trial included the mother's likely inability to retain her residence in light of the

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testimony, discussed infra, indicating that the mother owed \$1,405 in back rent and was unemployed. She said that DHR's concerns about the father included his not having his own residence and his living with his mother, A.F. ("the paternal grandmother"), and his sister in a small two-bedroom, one-bath house. Brown testified that, based on her observations of the children, they were each doing well in their respective, separate foster homes. She said that they did not speak about each other or about the mother or the father, indicating to Brown that the children had no bond with the parents.

According to Brown, the parents had not adjusted their circumstances during the nearly three years that the children had been in the care of DHR. She noted that neither the mother nor the father had informed DHR that they were employed, that neither the mother nor the father had a driver's license, and that neither the mother nor the father had reliable transportation. Brown also specifically noted that the mother had not completed the recommended services and goals outlined in a 2020 parenting assessment, which included anger-management classes and securing and maintaining gainful employment.

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Brown testified, and the ISPs contained in the record indicate, that, after the dismissal of the mother's appeals by this court in June 2022, DHR had not allowed the mother or the father to visit with the children. The July 2022 ISP indicates that visitation was to be "determined after consultation with counselor," and the September 2022 ISP states that

"[t]he ISP team with the exception of the mother and her attorney were all in agreement for no visitation. Parent requested visitation with the children. Based on the judge's ruling from the bench at the August 24, 2022, review hearing and the objection of the [guardian ad litem], visits were not implemented for the parents."

The March 2023 ISP states that "visitation is not established at this time per court order." The record does not contain a copy of any order prohibiting visitation.

Regarding potential viable alternatives to terminating parental rights, Brown testified that the mother had completed two relative-resource forms. She explained that the mother had provided the names of her mother, J.W. ("the maternal grandmother"); the paternal grandmother; one of her sisters, M.W. ("the maternal aunt"); and her brother, K.W. ("the maternal uncle"). Brown said that DHR had excluded

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the maternal grandmother from consideration because of her own history with DHR and that the paternal grandmother had indicated to a previous worker in March 2021 that she was unable to serve as a resource. According to Brown, the maternal uncle was excluded from consideration because he had an "indicated" child-abuse-and-neglect report for sexual abuse. Although Brown initially testified that the maternal aunt, who lives in another state, had indicated that she could not serve as a resource, she later admitted that DHR's file did not reveal any such information. She then explained that she had learned that the maternal aunt apparently could not serve as a relative resource from the guardian ad litem.

Miller testified that she had provided in-home services to the mother from August 2020 to March 2021.² She explained that her services had included a focus on home management, parenting skills, job skills, communication, and stress management. According to Miller, the

²Miller testified that she had provided services to the mother until May 2021, but her report, which was admitted into evidence, indicates that her services were concluded on March 17, 2021.

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mother was able to secure employment at a fast-food restaurant but had held that job for only a few weeks because she had had issues with transportation. Miller's report indicates that the mother had reported to her that her reason for leaving the job was that she was not able to get along with her coworkers and that "transportation was also a challenge." Miller said that she believed that employment was a significant issue for the mother because she needed to be able to provide for the children financially.

In addition, Miller testified that she had assisted the mother in applying for subsidized housing in Sylacauga. When asked about the mother's decision to seek housing in Sylacauga, Miller said that the mother had indicated that she wanted to relocate from Anniston to Sylacauga to be closer to the children.³ Miller testified that, at the time her services were discontinued because of the mother's lack of progress

³The record reflects that only one of the children has been in a foster home located in Sylacauga.

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and her relocation, the mother had not secured, much less retained, employment and was not yet residing on her own.⁴

Miller remarked that she had never observed any safety concerns that she had felt would have prevented reunification of the mother and the children. She said that she had observed a few of the mother's visits with the children, which she characterized as having been good interactions. However, she also testified that the mother had telephoned her at times in a depressed or agitated mood. Miller's report indicated that she had communicated her concern about the mother's mental health to DHR and that DHR had arranged mental-health counseling for the mother; in her report, Miller recommended that the mother continue to attend mental-health counseling.

⁴We recognize the inconsistency between the evidence indicating that the mother relocated to Sylacauga in March 2021 and Miller's testimony indicating that the mother was not yet residing on her own at the conclusion of her tenure as provider in March 2021. However, it is possible that Miller was unaware of the mother's having moved into the apartment in Sylacauga because the mother was no longer in Anniston and Miller was not providing further services to the mother after she relocated.

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House testified that he was a licensed-professional counselor and that he regularly administers psychological evaluations. He explained that he had conducted a psychological evaluation on the mother in 2020. In his report from that evaluation, which was received into evidence, he described the mother as having persistent depressive disorder with schizoid personality pattern/disorder and self-defeating personality-pattern features. He explained that the mother had scored in the low average range on her IQ test but indicated that her IQ would not have posed a barrier to her understanding or learning from the services provided to her. Overall, House's evaluation indicated that the mother had "significant personality and behavioral obstacles" that should be addressed to assist her in being a successful parent; he indicated that such a goal could be achieved through counseling, parenting classes, and in-home training. He also opined that the mother needed a stable and secure living arrangement and income to be able to provide for the children.

Couch testified that she was a licensed-professional counselor, that she operated Couch Counseling, and that Couch Counseling had been a

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service provider for the mother on two occasions. She said that she had performed a parenting assessment on the mother in 2020. Couch said that the mother had denied the use of illegal substances at that time but had admitted to having had a mental-health diagnosis as early as age 13. According to Couch, the mother also admitted that she had been prescribed an antidepressant that she had declined to take. According to Couch, the mother told her during the assessment that "when she gets frustrated, and she has difficulty expressing her feelings, then her manifestation of feelings comes out more verbally and physically [as anger]." Couch testified that her recommendations in 2020 included that the mother participate in anger-management classes and parenting classes, that the mother be provided in-home services during which the mother and the children could be observed, and that the mother continue to seek gainful employment. Couch said that another counselor had also counseled the mother in 2020; she said that the mother had attended three sessions in August 2020, one session in September 2020, and one session in November 2020.

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According to Couch, the mother resumed services through Couch Counseling in July 2022. Couch said that she had performed a substance-abuse assessment and a parenting assessment on the mother in July 2022. She said that she had recommended that the mother participate in group drug therapy through her program, "ASSP," for 12 weeks, that the mother attend individual counseling, and that the mother submit to random drug testing twice per month.⁵ Couch testified that the mother had completed the ASSP program, had counseled with her in one session in July 2022 and two sessions in each month between September 2022 and January 2023, and had submitted to regular drug screens between October 1, 2022, and December 30, 2022.

Couch testified that the mother had admitted that she continued to use marijuana during her participation in the ASSP program. The drug-test results indicate that the mother tested positive for cannabinoid on three separate occasions during the period between October 1, 2022, and December 30, 2022; the record does not contain a record of any drug tests

⁵Couch testified that the acronym of her substance-abuse program was ASSP; she did not state what the acronym stood for.

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on which the mother tested negative for illegal substances. According to Couch, in her individual counseling sessions, she had addressed with the mother how to cope with not seeing the children and her anger-management and depression issues. Couch said that she had been asked specifically to address anger management with the mother after the mother posted to social media a video of her destroying a television with a baseball bat followed by a nearly six-minute, profanity-laced tirade. Couch testified that the mother had told her that she "was expressing her frustration over wanting her children back," but the video, which was played for the juvenile court, contained no reference to the children or to DHR and instead focused on the mother's shouting profanities at and about a female friend whose television she had destroyed with the bat.

Couch testified that the mother had made progress but, she said, "[t]his is not a quick and easy fix." Couch also stated that, "[a]s far as handling her anger the way I would want her to get her children back, no." Finally, when asked if the mother could effectively parent as of the date of the trial, Couch stated, "[n]ot at this time. Not without further services."

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Whetstone testified that the mother had applied to the Sylacauga Housing Authority in September 2020 but had not been able to move in until a unit was available for her in March 2021. According to Whetstone, because the mother was actively participating in a reunification plan with DHR in 2021, the Housing Authority had rented her a four-bedroom unit. She said that the mother's rent had been set at \$50 but that, because the mother had failed to apprise the Housing Authority that she had been gainfully employed for a 9-month period in 2022, the mother owed \$1,405 in back rent that she was required to pay by April 2023. Whetstone said that, if the mother did not pay the back rent, the Housing Authority would institute eviction proceedings against the mother.

The father testified that, at the time of the trial, he was living with the paternal grandmother and his sister in a two-bedroom, one-bath home. He explained that, at the time the children were placed in DHR's custody, the mother and the children had been living with the maternal grandmother, the maternal uncle, and another of the mother's sisters, K.W., in a three-bedroom house. He said that he, the mother, and the children had all lived together in one room before he ended his

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relationship with the mother in September 2019. Although he stated that he and the mother had kept their room in the house clean, he admitted that the remainder of the house was cluttered and not clean.

He said that he was currently employed at a Circle K convenience store and that he worked between 24 and 36 hours per week. When asked what he did when he was not working, the father explained that he wrote music and "chilled" with his girlfriend. He admitted to smoking marijuana four times per week.

The father testified that he had been previously employed at a Zaxby's restaurant and at a Family Dollar store. He admitted that he had been ordered to pay child support of \$444 per month based on his earlier income and that he had last paid child support in September 2022; the child-support-payment history in the record indicates that he last paid a full payment of child support in August 2022 and that he had last made a partial payment of child support in December 2022. According to the father, he had been unemployed for a few months before he began working at Circle K. He explained that he was not able to pay child support on his Circle K income because his expenses exceeded the income

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that he earned from that employment. He testified that his monthly expenses included \$190 to \$220 for electricity, \$120 for his cellular telephone, and over \$200 per month in cigarettes, cigars, and marijuana. The father testified that he owned no automobile and that he did not have a driver's license. He said that he walked everywhere.

According to the father, the mother was entitled to have custody of the children because she had given birth to them. Even after viewing the video of the mother destroying the television, the father still indicated that he desired that the children be returned to the mother. When asked directly if he could take custody of the children, he indicated that the children could come live with him; he said that he would allow his sons to share his room, that he would have his daughter share a room with the paternal grandmother and his sister, and that he would sleep in the living room. The father testified that the paternal grandmother had offered to take custody of the children but then said that she had never gone to DHR's offices to take any action to seek custody.

The father testified that he had last seen the children at a visit in February 2021. He said that he had attended only three or four visits

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with the mother before that time. He admitted that he had not made any effort to contact the children or to provide them with gifts, clothing, or other support.

The mother testified that, at the time of trial, she was living alone in the apartment in Sylacauga. She said that she was not currently employed and that she had last been employed in October 2022. She testified that she had left her employment because her boss, who had provided her transportation to and from work, had also left that employment.

When asked how she managed to pay rent, the mother testified that she had friends who assisted her by paying her rent and other bills. She said that she receives over \$200 per month in food stamps. She testified that she owns a vehicle but that it needs repairs. She admitted that she did not have a driver's license and that, although she had a book to study for the driver's exam, she had not taken it.

The mother testified that her cellular-telephone bill was \$130 to \$160 per month. She also testified that she smoked four to five cigarettes per day; however, she testified that friends provided her with cigarettes

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and that she did not purchase them for herself. When asked when she had last smoked marijuana, she indicated that she did not remember; she later said that she had last smoked marijuana three or four months before trial. She explained that she did not purchase marijuana and smoked only when a friend had some available.

According to the mother, she had been ordered to pay \$350 per month in child support. She testified that she had not paid child support since October 2022. However, the child-support-payment history in the record reflects that her last payment was made in November 2022.

The mother testified that she had regularly visited the children until April 2021. She said that she had not been told at that time why she could no longer visit with the children. The March 2021 ISP contains a provision providing for visitation between the mother and the children twice per month. The August 2021 ISP and the February 2022 ISP contained in the record do not mention the children's visitation with the mother. As previously mentioned, the July 2022, September 2022, and March 2023 ISPs specifically mention and did not authorize visitation between the mother and the children.

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K.L. testified that she was the foster mother of K.F., Jr., and that he had been in her home since April 22, 2021. She testified that neither the mother nor the father had visited during her tenure as foster parent and that they had also failed to send cards or gifts for holidays or his birthday. She indicated that she and her husband would adopt K.F., Jr., if the parental rights of the mother and the father were terminated. She admitted that she had contacted a therapist in Birmingham, Leah Waller, so that she could have K.F., Jr., evaluated and that she had desired that Waller recommend that the child not be permitted to visit with the mother and the father.

J.L. testified that she was the foster mother of T.F. and had been so since July 2020. She expressed concern about T.F.'s being removed from her home because, she said, T.F. was deeply attached to her. She said that, other than one gift in the first month that the child had been placed in her home, T.F. had received no gifts or cards from either the mother or the father. J.L. said that she had expressed concerns about T.F.'s being reunited with the mother after the dismissal of the mother's first appeals and that she had been against the mother's visiting "at one

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point." She did not explain when she had become in favor of visitation between T.F. and the mother.

J.L. also testified that she had recorded several videos that the mother had posted on social media. She described the videos briefly, and each was played for the juvenile court. One of the videos, as previously discussed, involved the mother's destroying a television. A few of the other videos showed the mother smoking what appears to be marijuana, using profanity, and being with a man who was brandishing a gun. In one video, the mother stated that that might be the last time anyone would see her; the mother did not state specifically in that video that she intended to commit suicide, but it could be inferred.

Akers testified that he was the director of the Calhoun County drug-testing laboratory. He said that he would regularly confirm the positive drug-test results from rapid tests that had been performed by Couch Counseling. The confirmation test results are contained in the record on appeal. The mother tested positive for cannabinoid on July 20, 2022, October 14, 2022, and December 14, 2022. The father tested positive for cannabinoid on July 8, 2022, July 20, 2022, September 19,

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The Father's Appeals

Among other arguments, the father contends that the juvenile court lacked evidence to support its determination that he had abandoned the children. The father argues that he had visited with the children at DHR's offices until visitations were no longer arranged for the family. However, the record reflects that the father had visited the children only three or four times since their removal in 2020 and that he had last visited the children in February 2021. The record reflects that the March 2021 ISP continued in effect a provision authorizing visitation twice per month, and the first ISP failing to provide for visitation with the children was dated August 2021.

Of course, a failure to visit is not the sole basis upon which a juvenile court may rest a finding of abandonment. Abandonment may also be demonstrated by "[a] voluntary and intentional relinquishment of the custody of a child by a parent," and "the failure to claim the rights of a parent, or failure to perform the duties of a parent." § 12-15-301(1). A

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consideration of all the facts and circumstances in the present cases support the juvenile court's conclusion that the father had abandoned the children. The father did not ever request custody of the children and appeared, even from a cold record, to be all but completely unconcerned about them and their welfare while in the custody of the mother, despite indicating that he was aware of the state of the home in which they had lived in 2020. See F.I. v. State Dep't of Hum. Res., 975 So. 2d 969, 974 (Ala. Civ. App. 2007) (affirming the determination that a father had abandoned his child because he had "shown a grave lack of concern for the child," "[d]espite his concern and discomfort about the mother's living conditions"). He took absolutely no initiative to adjust his circumstances and continued to work part-time and to smoke marijuana four times per week, which prevented him from providing regular financial support for the children. He had clearly not attempted to perform the duties of a parent at any point during the three years that the children had been in the custody of DHR and appeared content to allow others to see to their needs while he pursued his own desires. See R.S. v. R.G., 995 So. 2d 893, 903 (Ala. Civ. App. 2008) (affirming the determination that a father had

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abandoned his child because he had only intermittently visited the child, had not paid child support, and "was content to maintain the status quo and leave the child with the maternal grandparents for the foreseeable future"). Accordingly, we reject the father's argument that the juvenile court's abandonment finding is not supported by clear and convincing evidence.

Because we have determined that the juvenile court's abandonment finding is supported by the evidence, we need not consider the father's other arguments, including that DHR failed to make reasonable efforts to rehabilitate him and that DHR did not establish that no viable alternative to the termination of his parental rights existed. Once a parent has abandoned a child, DHR is not required to make reasonable efforts to rehabilitate that parent. See § 12-15-319(a)(1); L.L. v. J.W., 195 So. 3d 269, 273 (Ala. Civ. App. 2015) ("[I]n cases of abandonment, a juvenile court can terminate parental rights even in the absence of proof that the state has used reasonable effort to rehabilitate the parent and reunite the family"). Furthermore, once a parent has been found to have abandoned a child, the juvenile court is not required to consider

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whether a viable alternative to the termination of his or her parental rights exists. See C.F. v. State Dep't of Hum. Res., 218 So. 3d 1246, 1251 (Ala. Civ. App. 2016) (stating that, "[w]hen a [parent] abandons [his or her] child and no longer maintains a significant parental relationship with [his or] her child, [he or] she loses [the] right to compel the state to exhaust viable alternatives before terminating [his or] her parental rights"); see G.S. v. Cullman Cnty. Dep't of Hum. Res., 253 So. 3d 383, 398 (Ala. Civ. App. 2017). Accordingly, we affirm the judgments terminating the parental rights of the father.

The Mother's Appeals

In her brief on appeal, the mother first argues that the record does not contain clear and convincing evidence supporting the juvenile court's determination that the children remain dependent. The mother also argues that DHR did not establish that no viable alternatives to the termination of her parental rights exist. We find the mother's second argument dispositive of her appeals.

The mother contends that the juvenile court lacked evidence from which it could have determined that no viable alternatives to the

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termination of the mother's parental rights existed. She points out that DHR did not present clear and convincing evidence that it had investigated and evaluated the maternal aunt, despite having been provided her name and her contact information by the mother in July 2020. In its brief on appeal, DHR relies on § 12-15-319(c)(1) to argue that the fact that the record contains no information indicating that the maternal aunt had ever contacted DHR permitted the juvenile court to exclude the maternal aunt as a potential relative resource. However, § 12-15-319(c)(1) specifically requires that the relative have knowledge that the children are in DHR's custody before his or her inaction can be considered to exclude his or her consideration.

As we explained in A.R.H.B. v. Madison County Department of Human Resources, [Ms. CL-2022-0541, Dec. 16, 2022] ___ So. 3d ___, ___ (Ala. Civ. App. 2022):

"Nothing in § 12-15-319(c) alters or alleviates [the Department of Human Resources's] burden of locating and investigating possible relative resources for a child. Instead, that subsection limits, in certain circumstances, the juvenile court's consideration of certain relatives as possible placements for a child when those relatives have not come forward after being notified by [the Department of Human

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Resources] of a child's being in [the Department of Human Resources's] custody and, presumably, asked whether they could accept a child into their homes. In this case, [the Department of Human Resources] did not present evidence regarding any relatives that might have been contacted by [the Department of Human Resources's] social workers concerning their willingness to serve as a placement for the child. The record contains no evidence regarding whether, or when, any relatives of the parents became aware of the child's having been placed in foster care such that § 12-15-319(c) might be implicated."

Brown testified that the guardian ad litem had told her that the maternal aunt had declined to be a resource; however, she admitted that nothing in DHR's records reflected that any caseworker had contacted the maternal aunt. Brown further testified that DHR's records did not reflect that the maternal aunt had contacted DHR to inquire about being a resource for the children. However, nothing in the record indicates that the maternal aunt, who lives outside the State of Alabama, knew that the children had been removed from the mother's custody either from contact with DHR or otherwise.

Like we did in A.R.H.B.,

"[w]e recognize that it is probable that the [Department of Human Resources's] social workers properly located and investigated relative resources in this matter. This court's

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holding in this matter is based on the failure to present evidence concerning those efforts. "[T]he party petitioning for termination of parental rights bears the burden of proving the lack of a viable alternative by clear and convincing evidence." D.J. [v. Etowah Cnty. Dep't of Hum. Res., 315] So. 3d [1067, 1074 (Ala. Civ. App. 2021)] (quoting K.R.S. v. DeKalb Cnty. Dep't of Hum. Res., 236 So. 3d 910, 912 (Ala. Civ. App. 2017)). In this case, [the petitioners] failed to meet [their] evidentiary burden. This court is unable to determine from the record whether the [Department of Human Resources's] social workers properly investigated viable alternatives to the termination of the mother's parental rights because [the petitioners] failed to present sufficient evidence on that issue."

___ So. 3d at ___.

Because the record fails to contain clear and convincing evidence supporting the conclusion that no viable alternative to the termination of the mother's parental rights exists, we reverse the judgments terminating the mother's parental rights, and we remand the cases to the juvenile court for further proceedings consistent with this opinion.

CL-2023-0393 -- AFFIRMED.

CL-2023-0394 -- AFFIRMED.

CL-2023-0395 -- AFFIRMED.

CL-2023-0397 -- REVERSED AND REMANDED.

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CL-2023-0399 -- REVERSED AND REMANDED.

CL-2023-0400 -- REVERSED AND REMANDED.

Hanson and Fridy, JJ., concur.

Moore, J., concurs in the result, without opinion.