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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2023-2024

CL-2023-0903

Ex parte Kaitlyn Allinder

PETITION FOR WRIT OF MANDAMUS

(In re: Kaitlyn Allinder

v.

River Allinder)

(Autauga Circuit Court, DR-21-900223.01)

EDWARDS, Judge.

Kaitlyn Allinder ("the mother") petitions this court for a writ of mandamus directing the Autauga Circuit Court ("the circuit court") to order a forensic examination of A.A. ("the child"), who was born in

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October 2017, and to require the disclosure of the child's mental-health records to the mother's expert in a custody-modification proceeding between her and her former husband, River Allinder ("the father"). We deny the mother's petition.

The parties were previously married. In January 2022, the parties were divorced by a judgment entered by the circuit court; that judgment incorporated a settlement agreement entered between the parties that addressed, among other things, custody of the child. Pursuant to the divorce judgment, the parties were awarded joint custody of the child. The parties were to alternate custodial periods on a weekly basis.

On October 3, 2022, the mother filed in the circuit court a petition for a modification of custody. According to the mother, the child had indicated during a forensic interview at the Butterfly Bridge Children's Advocacy Center in September 2022 that she had been molested by a friend of the father's while she was in the father's care and that the father had refused to listen to the child about that alleged incident. The mother further alleged that, after he had been informed of the child's disclosure, the father had refused to return the child following his most recent

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custodial period. The mother requested that the circuit court modify custody by awarding her sole physical custody of the child, by preventing the father from having visitation with the child pending the outcome of an investigation regarding whether any visitation with him should be supervised, and by prohibiting the father from allowing the child to be in the presence of the father's friend.

On November 7, 2022, the father filed a counterpetition for a modification of custody. The father alleged that the mother was mentally unstable, that her conduct was consistent with "Munchausen Syndrome," and that she had become a danger to herself and the child. He requested, in part, that the circuit court award him sole legal and sole physical custody of the child; that the mother be awarded supervised visitation, if any, and that her visitation be suspended pending a mental evaluation; that she be held in contempt for denying him custodial time with the child based on false accusations of child molestation; and that he be awarded child support and attorney fees.

On February 9, 2023, the father filed an emergency motion to suspend the mother's exercise of custody. He alleged, among other

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things, that the mother's "mental health evaluation from Dr. Kale Kirkland had stated that the mother suffered from Factitious Disorder Imposed on Another (one form of Munchausen Syndrome) and Somatic Symptom Disorder." According to the father, Dr. Kirkland had indicated that the former diagnosis was based on the mother's projection of her own mental-health deficiencies onto the child, and, thus, the father said, there was cause for concern about the mother's parental fitness. The father requested that he be awarded sole legal and sole physical custody of the child pendente lite and that the mother not be permitted visitation.

On February 24, 2023, the circuit court entered a pendente lite order directing that the child attend weekly counseling sessions with Thea Langley regarding the matters at issue in the modification proceedings. The February 2023 order also required the mother to continue sessions with her counselor, reports from which were to be provided to counsel and the child's guardian ad litem; prohibited the father from having other males present during his custodial periods "pending reports from Butterfly Bridge"; and addressed the parties' alternating custody periods and other matters. At some point, the child's

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records from Butterfly Bridge were submitted to the circuit court for in camera review.

On April 7, 2023, the mother filed a motion requesting a forensic examination of the child pursuant to Rule 35(a), Ala. R. Civ. P., based on her concerns about the child's mental health. The mother requested that the circuit court order the child to submit to a forensic examination by Dr. Alan Blotcky. On April 11, 2023, the mother filed a motion requesting that the circuit court order the release of the child's records from Butterfly Bridge so that Dr. Blotcky could review them for purposes of his forensic examination of the child.

The child's guardian ad litem filed a response in opposition to the mother's respective motions for a forensic examination and for the release of the child's Butterfly Bridge records. Likewise, the father filed a response opposing the mother's respective motions. The mother filed a reply to the responses of the guardian ad litem and the father, arguing that the forensic examination of the child by Dr. Blotcky and his access to the Butterfly Bridge records for that examination were necessary for her to prepare her case for trial, particularly as to the issue of the child's

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mental-health status and needs. On April 19, 2023, the circuit court entered an order in which it stated that it would not "order any further evaluations on the child unless recommended by Thea Langley."

On October 31, 2023, the mother filed a "Motion for Release of Records of Forensic Interview," requesting that the circuit court enter an order authorizing the release of the child's Butterfly Bridge records and "all mental health records and forensic interview recordings of the child" to Dr. Blotcky for purposes of trial preparation. Unlike in her April 2023 motion, she made no request that the circuit court order the child to be examined by Dr. Blotcky or that the child's records be provided to him in connection with any forensic examination to be conducted by him. The guardian ad litem filed a response opposing the mother's motion, arguing that he was

"not aware of any mental health concerns by any professional regarding the ... child. The undersigned has been concerned about the mental health of the mother; however, it does not appear the ... child's records would assist anyone in the allegations of mental health issues in the mother.

"... This Honorable Court previously ordered on April 19, 2023, that it would not order any further evaluations on the minor child unless recommended by Thea Langley. Therefore, the guardian ad litem does not understand why Dr.

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... Blotky ... would need the ... child's records in this matter if he has not examined the ... child."

The father likewise filed a response opposing the mother's motion for the release of the child's records to Dr. Blotky. According to the father, that motion "seem[ed] like nothing more than a second attempt to circumvent the orders of this court as it is nearly a verbatim copy of [the mother's April 2023 motion], requesting essentially the same relief."

The circuit court entered an order on November 8, 2023, denying the mother's motion for the release of the child's records to Dr. Blotky for purposes of trial preparation. Thereafter, the mother filed a motion requesting that the circuit court reconsider the denial of her motion for the release of the child's records, again alleging that the review of those records was necessary for trial preparation, particularly so that her expert witness could evaluate the veracity and reliability of the statements that had been made by the child and so that the mother could be on "equal footing" with regard to the evidence regarding the child's "safety and wellbeing." On November 12, 2023, the circuit court entered an order denying the mother's motion to reconsider.

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On December 20, 2023, the mother filed a petition for a writ of mandamus with this court.

"Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court."

Ex parte Perfection Siding, Inc., 882 So. 2d 307, 309-10 (Ala. 2003) (quoting Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995)).

The mother argues that the circuit court erred by denying her request for a forensic examination of the child pursuant to Rule 35(a), Ala. R. Civ. P. She correctly notes that an order denying a motion made pursuant to Rule 35(a) is reviewable by petition for a writ of mandamus. See Ex parte Wal-Mart Stores, Inc., 729 So. 2d 294, 296 (Ala. 1999). However, the mother's motion for a forensic examination of the child was made and denied in April 2023. Thus, her petition for a writ of mandamus is untimely under Rule 21(a)(3), Ala. R. App. P., and she has provided no "statement of circumstances constituting good cause for the appellate court to consider the petition, notwithstanding that it was filed beyond the presumptively reasonable time." Id. Also, the mother's

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October 2023 motion did not request a forensic examination of the child by Dr. Blotcky, but, even if it had, it is well settled that a party cannot file a motion on the same grounds that were previously denied to "have a second bite at the apple or "reset the clock"" for purposes of mandamus review. Ex parte A.L., 368 So. 3d 400, 404 (Ala. Civ. App. 2022) (quoting Ex parte T.M., 358 So. 3d 1155, 1160 (Ala. Civ. App. 2022)). Accordingly, the mother's petition is due to be denied insofar as she is seeking review of the April 2023 order denying her motion requesting a forensic examination of the child by Dr. Blotcky.

As for the circuit court's order denying the mother's October 2023 motion requesting that the child's Butterfly Bridge records and other mental-health records be provided to Dr. Blotcky for trial preparation, the mother makes a few brief statements about her need for that information in preparation for trial, but she cites no legal authority for the proposition that a trial court abuses its discretion by denying a request for such records. Instead, the legal authorities she cites address whether the denial of a motion for a mental examination pursuant to

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Rule 35(a) amounts to an abuse of discretion.¹ Accordingly, her mental-health-records argument is inadequately made. See Rule 21(a)(1)(E), Ala. R. App. P.; see also Ex parte Young, 352 So. 3d 1160, 1165 (Ala. 2021) (quoting Ex parte Showers, 812 So. 2d 277, 281 (Ala. 2001), for the proposition that, "[i]f anything, the extraordinary nature of a writ of mandamus makes the Rule 21[, Ala. R App. P.,] requirement of citation to authority even more compelling than the Rule 28[, Ala. R. App. P.,] requirement of citation to authority in a brief on appeal").

Based on the foregoing, the mother's petition for a writ of mandamus is denied.

PETITION DENIED.

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

¹We note that neither party has discussed whether the records at issue are the subject of a privilege or whether any applicable privilege has been waived. See Ex parte Holm, 283 So. 3d 776, 781 (Ala. Civ. App. 2019); see also Ex parte Johnson, 219 So. 3d 655, 657-58 (Ala. Civ. App. 2016) ("[T]he Advisory Committee's Notes [to Rule 503, Ala. R. Evid.,] also tend to refute any suggestion that the child's records should be disclosed because they may be relevant to the mental state of the former wife or the former husband, i.e., the parties to the custody action.").