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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2022-2023

1210248

**Ex parte John Bodie, as guardian ad litem for G.A., a minor
child**

**PETITION FOR WRIT OF CERTIORARI TO THE COURT OF
CIVIL APPEALS**

(In re: H.P.

v.

Jefferson County Department of Human Resources)

**(Jefferson Juvenile Court: JU-18-1718.02;
Court of Civil Appeals: 2200469)**

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**Ex parte John Bodie, as guardian ad litem for D.P., a minor
child**

**PETITION FOR WRIT OF CERTIORARI TO THE COURT OF
CIVIL APPEALS**

(In re: H.P.

v.

Jefferson County Department of Human Resources)

**(Jefferson Juvenile Court: JU-18-1716.02;
Court of Civil Appeals: 2200467)**

1210251

**Ex parte John Bodie, as guardian ad litem for M.P., a minor
child**

**PETITION FOR WRIT OF CERTIORARI TO THE COURT OF
CIVIL APPEALS**

(In re: H.P.

v.

Jefferson County Department of Human Resources)

**(Jefferson Juvenile Court: JU-18-1717.02;
Court of Civil Appeals: 2200468)**

PER CURIAM.

John Bodie, as guardian ad litem for G.A., D.P., and M.P. ("the children"), has filed three separate petitions for the writ of certiorari, one on each child's behalf, regarding a decision of the Court of Civil Appeals reversing judgments of the Jefferson Juvenile Court ("the juvenile court") that terminated the parental rights of H.P. ("the mother") to the children. See H.P. v. Jefferson Cnty. Dep't of Hum. Res., [Ms. 2200467, Oct. 8, 2021] ___ So. 3d ___, ___ (Ala. Civ. App. 2021). We granted the petitions, and, for the reasons explained below, we reverse the judgments of the Court of Civil Appeals and remand these cases for further proceedings.

Background

In June 2020, the Jefferson County Department of Human Resources ("DHR") filed separate petitions seeking the termination of the mother's parental rights to the children. The Court of Civil Appeals' decision set out the following pertinent factual summary:

"The mother herself had been adopted out of foster care as a result of her biological mother's drug abuse. When the mother was 16 years old, she left her adoptive home and reunited with her biological mother; her biological mother introduced the mother to drugs at that time. The mother gave birth to her first child at the age of 16. The mother testified that DHR initially became involved with her family in October 2018 when she and D.P. tested positive for amphetamines at

his birth. Although it had been recommended in November 2018 that she attend intensive outpatient drug-rehabilitation classes, the mother admitted that she had failed to complete those classes. The mother testified that she had been arrested in 2019 for possession of a forged instrument and had been ordered to complete 14 months' probation. She testified that she had participated in Family Wellness Court in 2019 but that she had been dismissed from that program in October 2019 for testing positive for marijuana and amphetamines; she was ordered to complete inpatient drug-rehabilitation treatment at that time but did not do so.

"Kenya Franklin, who is a case manager for the comprehensive addiction and pregnancy ('CAP') program at the University of Alabama at Birmingham, testified that the mother had been referred to the CAP program in March 2020 and that it had been recommended at that time that the mother complete inpatient drug-rehabilitation treatment. Franklin testified that the mother had decided to attend outpatient treatment instead and had not been compliant.

"The mother testified that she had been arrested in the fall of 2020 for possession of marijuana and a pipe. Franklin testified that the mother had completed a drug assessment in October 2020 and that it was again recommended that the mother attend inpatient drug-rehabilitation treatment. In November 2020, the mother was admitted to an inpatient treatment program at Aletheia House.

"The mother testified that, through her inpatient treatment at Aletheia House, she had been prescribed medications for her mental health and had stopped using illegal drugs. She admitted that she was unable to care for the children at the time of the trial and testified that she wanted them to stay temporarily with the foster parents, whom she considered to be her godparents and with whom she and the children had a relationship even before they became the children's foster parents.¹ Aletheia House employees

transport the mother to visits with the children. The mother expressed a desire to care for the children once she has completed her treatment and has utilized the resources at Aletheia House to obtain housing and employment.

"Franklin testified that she had noticed a change in the mother in November 2020. According to Franklin, the mother seemed to be taking responsibility for her actions and making better choices; she testified that the mother has matured and has self-control. Franklin testified that, at the time of trial, the mother was 'on a right track ... and [that,] if she continues to make appropriate choices, good choices, and utilizes the resources and support that she has with CAP and Family Wellness and Aletheia House,' she can be successful. She testified that she had no reason to think that the mother would not continue doing those things. Katie Day, the mother's therapist at Aletheia House, testified that the mother had been compliant with the program and had tested negative on all drug screens other than on tests when she first entered the program. Day testified that the mother had made much progress in the two months she had been in the program and that she considered the mother to be at a low risk for relapse.

" _____

"¹The mother testified that the foster parents had been 'hurt' by her because of her drug use but that she wanted to make amends to them. She testified that she is grateful to them for caring for the children."

H.P., ____ So. 3d at ____.

After conducting a trial in February 2021, the juvenile court entered separate, but almost identical, judgments terminating the mother's parental rights to the children. At the time of the trial, the

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children were six years old, three years old, and two years old, respectively. They had been in foster care for more than two years.

As quoted in the Court of Civil Appeals' decision, the juvenile court's judgments provided the following pertinent analysis:

"The mother ... testified that she is currently residing at Aletheia House, an inpatient substance abuse treatment facility and has been inpatient since November 25, 2020. Before this[,] she lived many other places including with her sister in a housing project, a van in a parking lot[,] and with the [children's] maternal grandmother. The maternal grandmother has a long history with substance abuse[,] and when the mother and maternal grandmother are together it is very disruptive and is a trigger for the mother to use. [The mother] has never had her own housing. She has worked multiple jobs but [has] not work[ed] at any one job more than four months.

"[The] Mother currently has ... criminal court cases pending involving marijuana and a pipe that was found on or near her.

"The [children have] been in foster care since October 2018. [The] Mother was ordered to participate in Wellness Court (Drug Court) but was unsuccessful; [to] participate in mental health treatment but has not; [to] obtain stable housing and employment but has not; [to undergo] random drug screening but has not until recently; and to participate in a parenting skills course in which she has received a certificate of completion. [The] Mother states that she has provided the name of relatives to [DHR] willing to take custody of her child[ren]. [The] Mother states that she participated in the CAP [comprehensive addiction and pregnancy] program, which is a program to assist pregnant women with substance use problems but [tested] positive at

th[e] birth of [J.P., the mother's fourth] child[,] and custody of that child was removed and is in the custody of family friends.

"[The] Mother states that her last drug use was in November 2020. She is currently on the medicated assisted treatment[,] and she states that her mind is clear today.

"Ma[rn]jika Brown was the next witness who is the [DHR] social worker. She states that there is no legal father for [any of the children]. [The] mother has provided no financial support or any items for the child[ren]'s day to day needs. [The] Mother has had many opportunities to complete services but unfortunately has not complied. [The] mother is currently in inpatient treatment and is doing well but has only been in the program approximately three months. Adoption by current foster parents is the case plan.

"[Brown] did investigate the mother's sister ... as a possible relative resource[,] but she had no employment[,] and the home was not appropriate. [DHR] knows of no other services that can be offered to the mother.

"During the second day of trial, the Court learned that the [children were] placed with a foster family, who [are] also ... friend[s] of the family. At the close of case, the Court requested the [DHR] social worker, Ms. Brown, to talk to the foster family to determine if they desired to obtain full legal custody or if their intention was to adopt the child[ren]. Ms. Brown did talk to them, [and] their desire was to continue to provide foster parenting and eventually adopt if termination of parental rights were to occur.

"Katie Day was the next witness who is the mother's therapist at Aletheia[] House. She reports that [the] mother has been in the program since the end of November 2020. [The mother's] treatment plan is working on her co-dependency, stress management, confidence in herself, parenting skills and mental health. [The mother] is compliant

with meeting her treatment plan and goals. [Day] states that [the mother] came to Aletheia House because of her legal issues regarding substance abuse and [DHR] involvement with her child[ren]. The program is on average a ninety[-]day program but it is likely that [the mother] will be there four to five months.

"Kenya Franklin testified that she is a case worker for the CAP Program. [The] mother had participated in the program while she was pregnant with [J.P.,] her fourth child. ... [U]nfortunately, [the] mother was not compliant[,] and her fourth child was removed due to continued substance use, but she has continued to work with the mother. She states that [the] mother has done well at Aletheia House in that she is clean, she has matured, shows better self[-]control and is making better decisions.

"Having considered the ore tenus testimony and evidence offered on the hearing date, the Court finds that the Petition[s] to Terminate Parental Rights [are] due to be GRANTED.

"This Court specifically finds that there is clear and convincing evidence, competent, relevant, and material in nature that the mother, ... and/or any unknown fathers, are not willing or able to discharge their responsibilities to and for the minor child[ren]; that the conduct or condition of the mother and any unknown fathers renders them unable to properly care for the minor child[ren] and that said conduct or condition is unlikely to change in the foreseeable future.

"The Court further finds that there are no viable alternatives to Termination of Parental Rights and no potential relative resources available for the permanent placement of [the children]. This Court finds [a]doptive resources have been identified for the minor child[ren]. In making the foregoing finding, the Court has considered the factors set forth in [§] 12-15-319(a)[, Ala. Code 1975]."

H.P., ____ So. 3d at ____.

The mother filed a postjudgment motion in each action, and the juvenile court denied each postjudgment motion. The mother appealed from each of the juvenile court's judgments to the Court of Civil Appeals. The Court of Civil Appeals consolidated the appeals ex mero motu.

On appeal, the mother argued that the evidence presented regarding her current circumstances at the time of trial did not clearly and convincingly prove that she was unable to care for the children and that it was unlikely that she would be able to do so in the foreseeable future. She also argued that maintaining the status quo was a viable alternative to termination of her parental rights. The Court of Civil Appeals agreed with the mother on both points and reversed the juvenile court's judgments and remanded the cases for the entry of judgments consistent with its opinion. H.P., ____ So. 3d at _____. Presiding Judge Thompson authored a dissent, which Judge Edwards joined.

Bodie thereafter filed three separate petitions for the writ of certiorari in this Court, one on each child's behalf, and we granted the petitions, and consolidated these cases, to examine whether the Court of Civil Appeals' decision conflicts with a portion of this Court's decision in

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Ex parte McInish, 47 So. 3d 767 (Ala. 2008). For the reasons explained below, we reverse the Court of Civil Appeals' judgments and remand these cases for further proceedings consistent with this opinion.

Standard of Review

"In reviewing the Court of Civil Appeals' decision on a petition for the writ of certiorari, 'this Court "accords no presumption of correctness to the legal conclusions of the intermediate appellate court. Therefore, we must apply de novo the standard of review that was applicable in the Court of Civil Appeals.'" Ex parte Exxon Mobil Corp., 926 So. 2d 303, 308 (Ala. 2005)(quoting Ex parte Toyota Motor Corp., 684 So. 2d 132, 135 (Ala. 1996))."

Ex parte Wade, 957 So. 2d 477, 481 (Ala. 2006).

""[W]hen a trial court hears ore tenus testimony, its findings on disputed facts are presumed correct and its judgment based on those findings will not be reversed unless the judgment is palpably erroneous or manifestly unjust." Fadalla v. Fadalla, 929 So. 2d 429, 433 (Ala. 2005)(quoting Philpot v. State, 843 So. 2d 122, 125 (Ala. 2002))."

Ex parte Butcher, 297 So. 3d 442, 447 (Ala. Civ. App. 2019). ""The ore tenus rule is grounded upon the principle that when the trial court hears oral testimony it has an opportunity to evaluate the demeanor and credibility of witnesses.' Hall v. Mazzone, 486 So. 2d 408, 410 (Ala. 1986)."" Id. (quoting Spencer v. Spencer, 258 So. 3d 326, 327 (Ala. 2018), quoting in turn Reed v. Board of Trs. for Alabama State Univ., 778 So. 2d

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791, 795 (Ala. 2000), quoting in turn Raidt v. Crane, 342 So. 2d 358, 360 (Ala. 1977)).

Analysis

"In order to terminate an individual's parental rights, the trial court must find by clear and convincing evidence that the child is dependent and that an alternative less drastic than the termination of parental rights is not available. § 12-15-319, Ala. Code 1975; Ex parte Beasley, 564 So. 2d 950, 952 (Ala. 1990)."

Ex parte A.S., 73 So. 3d 1223, 1228 (Ala. 2011).

In his certiorari petitions, Bodie argued that the Court of Civil Appeals' decision conflicts with a portion of this Court's decision in Ex parte McInish. Specifically, Bodie argued that the Court of Civil Appeals did not appropriately apply the following principles pertinent to the appropriate standard of review:

"[T]he evidence necessary for appellate affirmance of a judgment based on a factual finding in the context of a case in which the ultimate standard for a factual decision by the trial court is clear and convincing evidence is evidence that a fact-finder reasonably could find to clearly and convincingly establish the fact sought to be proved. Even if an appellate court in considering the evidence of record would reach its own conclusion that the evidence presented does not clearly and convincingly establish the fact sought to be proved, it is not for that court to act upon its own factual determination but to determine instead whether the fact-finder below reasonably could have made a different finding based on the same evidence.'"

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Ex parte McInish, 47 So. 3d at 776 (quoting KGS Steel, Inc. v. McInish, 47 So. 3d 749, 761 (Ala. Civ. App. 2006)(Murdock, J., concurring in the result)).

On appeal, the Court of Civil Appeals cited the following provisions of § 12-15-319(a), Ala. Code 1975, in articulating the pertinent grounds for termination of the mother's parental rights:

"(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 a hearing on a petition for termination of parental rights, the court shall consider the best interests of the child. In determining whether or not 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:

"....

"(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.

"....

"(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.

"....

"(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.

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

In his brief before this Court, Bodie first argues that the Court of Civil Appeals erred by failing to consider whether the juvenile court "reasonably" could have determined that clear and convincing evidence had been presented demonstrating that the mother was presently unable to properly care for the children and that that condition was unlikely to

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change in the foreseeable future. See Ex parte McInish, 47 So. 3d at 776 (quoting KGS Steel, Inc., 47 So. 3d at 761 (Murdock, J., concurring in the result))(emphasis added).

As noted above, the juvenile court made the following factual findings regarding the mother's conditions at the time of trial:

"[The mother] has never had her own housing. She has worked multiple jobs but [has] not work[ed] at any one job more than four months.

"[The] Mother currently has ... criminal court cases pending involving marijuana and a pipe that was found on or near her.

"The [children have] been in foster care since October 2018. [The] Mother was ordered to participate in Wellness Court (Drug Court) but was unsuccessful; [to] participate in mental health treatment but has not; [to] obtain stable housing and employment but has not; [to undergo] random drug screening but has not until recently; and to participate in a parenting skills course in which she has received a certificate of completion. ...

"'....

"'... [The] mother is currently in inpatient treatment and is doing well but has only been in the program approximately three months.'"

H.P., ____ So. 3d at ____.

Thus, the juvenile court's judgments essentially identified five conditions demonstrating the mother's present inability to properly care

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for the children: (1) her failure to participate in mental-health treatment; (2) her failure to obtain stable housing; (3) her failure to obtain employment; (4) her pending criminal charges; and (5) her failure to adjust her circumstances to comply with all reunification goals and directives. All the foregoing conditions exemplified the failure of DHR's efforts at rehabilitation. As noted above, the mother admitted at trial that she was presently unable to care for the children. The juvenile court's judgments further stated, in relevant part: "'This Court specifically finds that there is clear and convincing evidence ... that said conduct or condition is unlikely to change in the foreseeable future.'" H.P., ____ So. 3d at ____.

In contrast, the Court of Civil Appeals evaluated the evidence presented as follows:

"In the present cases, like in A.A. [v. Jefferson County Department of Human Resources, 278 So. 3d 1247 (Ala. Civ. App. 2018)], DHR became involved with the mother at the time of D.P.'s birth because of the mother's drug use. Therefore, like in A.A., in these cases 'we must determine from the evidence in the record whether the juvenile court could have been clearly convinced that the mother had failed to cease her drug use at the time of the trial.' 278 So. 3d at 1252. Although in these cases the evidence is clear that the mother had failed to complete outpatient drug-rehabilitation treatment multiple times and had rejected multiple recommendations to enter inpatient drug-rehabilitation

treatment, [Kenya] Franklin[, a caseworker for the comprehensive addiction and pregnancy program the mother participated in,] testified that she had seen a change in the mother beginning in November 2020 when the mother began inpatient treatment at Aletheia House. By the time of trial, the mother had entered an inpatient drug-rehabilitation program, had complied with the requirements of that program, had tested negative for illegal drugs, and had obtained treatment for her mental-health issues. The mother's therapist considered her a low risk for relapse. Based on the foregoing, we cannot conclude that there was clear and convincing evidence indicating that the mother would be unable to parent the children in the foreseeable future."

H.P., ____ So. 3d at ____.

Bodie argues that, by focusing on only the mother's drug use, the Court of Civil Appeals overlooked the other issues preventing her from being able to properly care for the children. He asserts:

"Over the 27 months that these dependency cases have [been] open in the [juvenile] court, [the m]other has failed or refused to change her circumstances to meet the needs of the [c]hildren. ...

"Instead of affirming the trial court, the majority of the Court of Civil Appeals focused only on whether [the m]other was currently using drugs, ... disregarding the facts that [the m]other had no stable housing or employment, [that] she refused to cooperate with mental health treatment, and [that] she had ongoing criminal charges. It is apparent that, by focusing only on [the m]other's drug use and not her housing, employment, mental health treatment, or pending criminal charges, the majority of the Court of Civil Appeals has reweighed the evidence and reached its own conclusion as to

whether there was sufficient evidence to support a finding by clear and convincing evidence that [the m]other's conduct or conditions were unlikely to change in the foreseeable future, contrary to this Court's mandate in McInish: to determine whether the fact-finder below reasonably could have made a different finding based on the same evidence."

Bodie's brief at 22-24. We generally agree with Bodie's assertions.

It is somewhat unclear from its decision how the Court of Civil Appeals viewed the evidence presented concerning the mother's inability to obtain suitable housing and employment and her pending criminal charges. It appears, however, that the Court of Civil Appeals viewed those deficiencies as connected to the mother's participation in an inpatient drug-rehabilitation program. As noted above, the Court of Civil Appeals stated the following regarding the mother's potential ability to obtain housing and employment in its summary of the pertinent factual history: "The mother expressed a desire to care for the children once she has completed her treatment and has utilized the resources at Aletheia House to obtain housing and employment." H.P., ____ So. 3d at ____.

At trial, the following exchange occurred between the mother and her attorney:

"Q. I think you talked a little bit about the fact that[,] as we sit here today[,] you don't really have stable housing so to speak and you don't have employment. Correct?"

"A. Correct.

"Q. I think you said something in response to that question that you have to level down first in order to get a job?

"A. Yes.

"Q. What does that mean?

"A. That means that I have -- I've got a couple of more goals to mark off. So far I've marked off five -- three -- two or three. I'm not a hundred percent sure. I knocked off the codependency. I knocked off -- I forgot the other one. I think it's parenting. I'm not a hundred percent sure. I do know that I have to mark off relapse prevention. My legal issues I put in my treatment plan also. My therapist has been in touch with [someone] for my criminal stuff. But I guess as long as that's ongoing that will remain my treatment plan. Then I'll work with Ms. Marilyn -- I'll level down and get to work with Ms. Marilyn. So far I've marked off dental, eye care for her. It's just self[-]care really with her. I knocked off confidence too on Ms. Katie [Day's] I think. With her, I'll do housing and getting GED.

"Q. Now, Ms. Marilyn, is that your case manager?

"A. Yes, ma'am.

"Q. So, as part of these treatment plans and goals that you're talking about, is it your understanding that Aletheia House will help you to find employment once you're eligible?

"A. Yes, through vocational rehab I think. They have some other programs with housing too that they're hoping will open back up now, like Shelter Care Plus and things like that. They also have apartments too. I don't have much

information on that. I'm kind of looking forward to finding out more about that when I can level down."

Thus, according to the mother's testimony, it is possible that, assuming she successfully completes her remaining treatment goals, she will be eligible to seek additional assistance from Aletheia House in obtaining suitable housing, obtaining a GED certificate, completing vocational rehabilitation, and obtaining and maintaining suitable employment. Her testimony also indicated that she intended to address her pending "legal issues" as a part of her treatment plan. Consequently, it is clear from the evidence presented that the likelihood of the mother being able to properly care for the children in the foreseeable future was dependent upon her willingness and ability to complete a variety of goals in addition to abstaining from drug use.

The Court of Civil Appeals' analysis indicates that it placed significant weight on the evidence indicating that the mother presented a low risk of relapse for drug abuse and how that condition affected the likelihood that the mother would be able to properly care for the children in the foreseeable future. The Court of Civil Appeals' reasoning was rooted in its precedent holding that, "'[a]lthough a court may consider a parent's history, 'the existence of evidence of current conditions or

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conduct relating to a parent's inability or unwillingness to care for his or her children is implicit in the requirement that termination of parental rights be based on clear and convincing evidence."'" H.P., ____ So. 3d at ____ (quoting A.A. v. Jefferson Cnty. Dep't of Hum. Res., 278 So. 3d 1247, 1252 (Ala. Civ. App. 2018), quoting in turn D.O. v. Calhoun Cnty. Dep't of Hum. Res., 859 So. 2d 439, 444 (Ala. Civ. App. 2003)). Based on the evidence, the Court of Civil Appeals stated: "[W]e cannot conclude that there was clear and convincing evidence indicating that the mother would be unable to parent the children in the foreseeable future." H.P., ____ So. 3d at ____.

As Bodie points out, however, the applicable standard of review required the Court of Civil Appeals to base its decision not on its own evaluation of the evidence presented but, instead, to specifically consider whether the juvenile court could have reasonably reached the conclusion that it did. In so doing, it must be acknowledged that the juvenile court's judgments did not disregard the mother's progress toward rehabilitation but specifically noted the diminished weight the juvenile court had given that evidence, stating: "[The] Mother has had many opportunities to complete services but unfortunately has not complied. [The] mother is

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currently in inpatient treatment and is doing well but has only been in the program approximately three months." H.P., ____ So. 3d at ____ (emphasis added). Bodie also notes that the mother testified: "I always had a bad habit of not finishing what I started." Indeed, the Court of Civil Appeals' decision conceded that "in these cases the evidence is clear that the mother had failed to complete outpatient drug-rehabilitation treatment multiple times and had rejected multiple recommendations to enter inpatient drug-rehabilitation treatment." H.P., ____ So. 3d at ____.

Moreover, it was undisputed that, after the children were removed from the mother's care because she had tested positive for drug use at the time of D.P.'s birth, the mother lost custody of a fourth child because she and that child had tested positive for marijuana and amphetamines when that child was born almost two years later.

As noted by Presiding Judge Thompson in his dissent, the Court of Civil Appeals' precedent is clear regarding the discretion afforded to juvenile courts in considering evidence of recent attempts at rehabilitation by a parent:

"The main opinion focuses on the mother's recent progress in the substance-abuse program that she had been participating in for only two months when the trial on the termination-of-parental-rights petitions began. However, the

mother began those efforts more than five months after DHR had filed its termination-of-parental-rights petitions and after the young children had been in foster care for more than two years. The juvenile court was in the best position to determine the mother's credibility and to assess her demeanor. Ex parte Fann, 810 So. 2d 631, 636 (Ala. 2001); D.M. v. Walker Cnty. Dep't of Hum. Res., 919 So. 2d 1197, 1214 (Ala. Civ. App. 2005). Accordingly, given the evidence in the record, the juvenile court could have determined that the mother's then current participation in substance-abuse treatment was not an adjustment of her circumstances but, rather, was undertaken as an attempt to prevent the termination of her parental rights. See A.M.F. v. Tuscaloosa Cnty. Dep't of Human Res., 75 So. 3d 1206, 1213 (Ala. Civ. App. 2011)('[T]he juvenile court could have determined that, to the extent the mother may have allegedly improved her condition, those efforts were merely last-minute efforts undertaken in anticipation of the impending termination-of-parental-rights trial.');

and K.J. v. Pike Cnty. Dep't of Hum. Res., 275 So. 3d [1135,] 1145 [(Ala. Civ. App. 2018)] (same); H.T. v. Cleburne Cnty. Dep't of Hum. Res., 163 So. 3d 1054, 1070 (Ala. Civ. App. 2014); S.S. v. Calhoun Cnty. Dep't of Hum. Res., 212 So. 3d 940, 949 (Ala. Civ. App. 2016)."

H.P., ____ So. 3d at ____ (Thompson, P.J., dissenting).

In light of the foregoing, we conclude that, although the Court of Civil Appeals' opinion cited and acknowledged this Court's decision in Ex parte McInish, Bodie has adequately demonstrated that the Court of Civil Appeals' analysis regarding the juvenile court's dependency determination conflicts with this Court's decision in Ex parte McInish. Based on the evidence presented at trial, the juvenile court could have

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reasonably concluded that clear and convincing evidence had been presented proving that it was unlikely that the mother would be able to properly care for the children in the foreseeable future.

Bodie next argues that the Court of Civil Appeals' analysis regarding viable alternatives to the termination of the mother's parental rights is also in conflict with Ex parte McInish. Again, we agree.

The Court of Civil Appeals analyzed this issue as follows:

"[W]e note that the children are currently placed with foster parents who had a relationship with the mother and the children before DHR became involved with the family. The mother testified that she is content with the children being placed with the foster parents but that she would like to be reunited with the children once she completes her inpatient program and obtains housing and employment. In Ex parte A.S., [73 So. 3d 1223, 1229 (Ala. 2011)], our supreme court held that, in that case, because the mother was 'satisfied with the grandmother's care of the child,' ... and because the mother was making progress in rehabilitation despite being incarcerated, maintaining custody with the maternal grandmother was a viable alternative to termination of the mother's parental rights. Id. at 1229-30. Similarly, in the present cases, we cannot conclude that there was clear and convincing evidence indicating that maintaining the status quo while the mother continued her rehabilitation was not a viable alternative to termination of her parental rights."

H.P., ____ So. 3d at ____.

In Ex parte A.S., the child was dependent because the mother in that case was incarcerated, but the mother had no convictions involving

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drugs. "The child was placed with the child's grandmother (the mother's adoptive mother), who [wa]s also the child's paternal great-aunt (the mother's paternal aunt)." 73 So. 3d at 1224. The mother testified that she was a kleptomaniac and was enrolled in a counseling program that could allow her to be released in six months. She also testified that, if she was not released early under that program, she would nevertheless be eligible for early release under a different probation program. She testified that she would be able to obtain employment while on release as a part of the probation program.

Although the 80-year-old grandmother had filed the termination-of-parental-rights petition in Ex parte A.S., the grandmother also testified that, if something happened to her, she would want the mother to care for the child and the child's sibling if the mother was out of prison and doing well. This Court held: "The grandmother's maintaining custody of the child and having the ability to determine and supervise the mother's visitation with the child is a viable alternative to termination of the mother's parental rights while the mother is making progress towards rehabilitation." Ex parte A.S., 73 So. 3d at 1229-30.

As noted above, the juvenile court in these cases could have reasonably determined that clear and convincing evidence had been presented demonstrating that the mother would not be able to properly care for the children in the foreseeable future. Katie Day, the mother's therapist at Aletheia House, testified:

"[W]e are an individualized program. It's an average of about ninety days, but because [the mother]'s a part of Mother's Hope[,] it's more specialized and more individualized. So, on average girls spend about four to five months there. But it just depends on progress, and, you know, how determined they are to finish their goals and, you know, if they're compliant with the rules and regulations. But each goal has a different target date because each one is -- it depends on how complex the goal is."

During cross-examination by DHR's attorney, Day further testified:

"Q. ... I'm guessing that's assuming that everything goes smoothly and there's no setbacks or positive screens or anything like that?"

"A. Yes, sir.

"Q. I guess how does it work after the four or five months are up. What's the next step?"

"A. So, usually when somebody successfully graduates, I as the clinical therapist will recommend them for outpatient if I think that they need to continue services. I like to recommend everyone to outpatient services because you could always use more help, you know. So, yes, I recommend outpatient. If they successfully complete, they get a year's worth of free mental health counseling

"....

"Q. As a therapist would it be, I guess, fair to say that even after that four to five month period of time that they're being treated at Aletheia House that that's sort of a safety area, sort of under the umbrella with everybody there, staff supporting them, therapists, et cetera?

"A. Yes. We tend to tell clients that. You're doing real good in here, but you have to take the information and tools that we give you and apply it out there. So, a lot of times[,] when I do treatment plans[, I] identify and implement because if they cannot learn to implement their tools and their, you know, coping skills or whatever, they're not going to be able to handle it out in the real world. Like you said, we are a safety net. It's up to each person."

As noted above, the juvenile court's judgments demonstrate that, in addition to abstaining from drug use, the mother would have to address several other deficiencies, including her lack of suitable housing and employment, before being able to properly care for the children. The evidence presented at trial indicates that, unlike in Ex parte A.S., the juvenile court in these cases could have reasonably concluded that any attempt to predict when the mother could correct those deficiencies was speculative, especially in light of her failed attempts at rehabilitation in the past. In other words, even assuming that the mother continued to make progress in her personal treatment goals, the juvenile court could

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have reasonably determined that the time frame for adequate rehabilitation was indefinite.

As Bodie notes, "maintaining a child in foster care indefinitely is not a viable alternative to termination of parental rights." T.G. v. Houston Cnty. Dep't of Hum. Res., 39 So. 3d 1146, 1152-53 (Ala. Civ. App. 2009). "[A]t some point the [children's] need for permanency must outweigh repeated efforts by DHR to rehabilitate the mother." N.A. v. J.H., 571 So. 2d 1130, 1134 (Ala. Civ. App. 1990). As noted above, in considering the grounds for termination of the mother's parental rights under § 12-15-319(a), the juvenile court was also obligated to consider the following:

"(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.

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

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In light of the foregoing, we conclude that the Court of Civil Appeals erred in rejecting the possibility that the juvenile court could have reasonably determined that clear and convincing evidence had been presented demonstrating that no viable alternative to termination of the mother's parental rights existed.

Conclusion

For the reasons explained above, the judgments of the Court of Civil Appeals are hereby reversed, and these cases are remanded for further proceedings.

1210248 -- REVERSED AND REMANDED.

1210250 -- REVERSED AND REMANDED.

1210251 -- REVERSED AND REMANDED.

Bolin, Shaw, Wise, Bryan, Sellers, Mendheim, and Stewart, JJ.,
concur.

Mitchell, J., concurs specially, with opinion.

Parker, C.J., concurs in part and concurs in the result, with opinion.

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MITCHELL, Justice (concurring specially).

I write separately to acknowledge my interest in Chief Justice Parker's proposed framework for cases involving termination of parental rights. I invite parties and amici curiae in future cases to address this Court's current analytical approach in these cases.

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PARKER, Chief Justice (concurring in part and concurring in the result).

Parental rights are fundamental. See Ex parte J.E., 1 So. 3d 1002, 1006 (Ala. 2008); Ex parte E.R.G., 73 So. 3d 634, 637, 642-43, 648-49 (Ala. 2011) (plurality opinion); id. at 650-56 (Parker, J., concurring specially); id. at 672 (Bolin, J., concurring in result); Troxel v. Granville, 530 U.S. 57, 65-66 (2000) (plurality opinion); id. at 80 (Thomas, J., concurring in judgment). And the State has a duty to protect children from abuse and neglect. See Ex parte Kelley, 296 So. 3d 822, 838-39 (Ala. 2019) (Parker, C.J., concurring specially); cf. Ex parte G.C., 924 So. 2d 651, 686 (Ala. 2005) (Parker, J., dissenting). How to reconcile the two? In this writing, I hope to clarify the answer to that question by assembling a more coherent analytical framework for cases regarding termination of parental rights. Such a framework is necessary, in my view, to ensure that we remain a government of laws and not of men.

But first, I must explain my position in this case. I concur in reversing the judgments, and I concur with the main opinion with the following exceptions. Within the opinion's analysis of the requirement that no viable alternative to termination exists, the opinion refers to the children's need for permanency "'outweigh[ing]'" rehabilitation efforts of

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the Department of Human Resources ("DHR"). ___ So. 3d at ___ (quoting N.A. v. J.H., 571 So. 2d 1130, 1134 (Ala. Civ. App. 1990)). In my view, the no-viable-alternative element is a structural protection of parental rights; it does not involve an ad hoc weighing or balancing of parties' interests. In addition, the opinion points to the possibility that the children have emotional ties with the foster parents. It is not clear to me how this possibility is relevant to the no-viable-alternative element. Ties with foster parents seem relevant only to the question whether termination is in a child's best interests, the analysis of which is separate from the no-viable-alternative element.

Which leads me back to the purpose of this writing: a suggested framework. Before a court terminates a parent's fundamental rights of parenthood, I believe that three elements must be met: a ground for termination, the absence of a viable alternative to termination, and a showing that termination is in the best interests of the child.

I. Constitutional elements:
ground for termination and no viable alternative

Parental rights are fundamental, so government interference with them is subject to strict scrutiny: No interference is permitted except to advance a compelling government interest, and any interference must be

limited to the least restrictive means of advancing that interest. Montgomery Cnty. Dep't of Hum. Res. v. N.B., 196 So. 3d 1205, 1214 (Ala. Civ. App. 2015); see Ex parte E.R.G., 73 So. 3d 634, 642-45 (Ala. 2011) (plurality opinion). In close alignment with this constitutional framework, a decision whether to terminate parental rights requires that two primary elements be met: a ground for termination and the absence of a viable alternative to termination. See Ex parte T.V., 971 So. 2d 1, 4-5 (Ala. 2007). The party seeking termination bears the burden of proving both elements. Id. at 4; M.E. v. Shelby Cnty. Dep't of Hum. Res., 972 So. 2d 89 (Ala. Civ. App. 2007). And both elements must be proved by clear and convincing evidence. T.V., 971 So. 2d at 4; see § 12-15-319(a), Ala. Code 1975 (codifying clear-and-convincing-evidence standard as to ground-for-termination element).

A. Ground for termination

Termination of a parent's legal relationship with his or her child is the most extreme form of government interference with parental rights. See Santosky v. Kramer, 455 U.S. 745, 759 (1982); M.H. v. Cleburne Cnty. Dep't of Hum. Res., 158 So. 3d 471, 482 (Ala. Civ. App. 2014). Thus, termination is permissible only when the parent is legally unfit to care

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for and protect the child. In recognition of this requirement, the Alabama Juvenile Justice Act, § 12-15-101 et seq., Ala. Code 1975, describes the grounds for termination:

"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"

§ 12-15-319(a). That statute then provides a detailed, nonexclusive list of factors that a juvenile court must consider in determining whether one or more of these grounds exist. § 12-15-319(a)(1)-(13). The statute also provides for presumptions of unfitness in some situations. § 12-15-319(b), (d).

The statutory grounds embody the State's compelling interest in "protecting children from [further] abuse and neglect." Ex parte Kelley, 296 So. 3d 822, 838 (Ala. 2019) (Parker, C.J., concurring specially). In addition, when the State has taken custody of children because the parents are unfit, the State has an interest in promoting the "care, guidance, and discipline," § 12-15-101(b)(4), of those children. That general interest includes a compelling interest in facilitating permanent (rather than perpetually temporary) arrangements for those children's

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care. See In re N.K., 99 S.W.3d 295, 301 n.9 (Tex. App. 2003) ("The goal of establishing a stable, permanent home for a child is a compelling interest of the government.").

B. No viable alternative

The second constitutional requirement, limiting the government's interference to the least restrictive means of advancing the government's interest, finds embodiment in the no-viable-alternative element of termination analysis. See M.E. v. Shelby Cnty. Dep't of Hum. Res., 972 So. 2d 89, 101-02 (Ala. Civ. App. 2007) (plurality opinion); D.M.P. v. State Dep't of Hum. Res., 871 So. 2d 77, 85-90 (Ala. Civ. App. 2003) (plurality opinion) (tracing history of no-viable-alternative element). Termination is the most extreme or restrictive form of interference with parental rights. See Santosky v. Kramer, 455 U.S. 745, 759 (1982). Thus, if a viable alternative to termination exists in a particular case, then logically termination is not the least restrictive means. Accordingly, the party seeking termination must prove that there is no viable alternative. Ex parte T.V., 971 So. 2d 1, 9 (Ala. 2007).

Logically, a viable alternative is one that satisfies the State's compelling interest. See In re S.H.A., 728 S.W.2d 73, 91 (Tex. App. 1987)

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(holding that strict scrutiny requires "a particularized showing ... that the state[s compelling] interest is promoted by terminating the relationship [and that] it is impossible to achieve the goal through any less restrictive means"); In re ARC, 258 P.3d 704, 710 (Wyo. 2011) (holding that state was required to use least restrictive means of accomplishing its goal of protecting children). Initially, removal of a child from an unfit parent's custody is justified by the State's interest in protecting children from further abuse and neglect. However, once that removal occurs and the child is safe in foster care or another arrangement, the interest in protection is satisfied. Thus, if the parent is later found unfit at a termination trial, at that point the primary State interest at stake is the interest in facilitating permanent (rather than perpetually temporary) arrangements for the child's care ("permanency").

The Alabama Juvenile Justice Act recognizes four child-placement options as permanent: adoption, relative placement, kinship guardianship, and "another planned permanent living arrangement." § 12-15-315(a)(2), (3), (4), (6), Ala. Code 1975. "[A]nother planned permanent living arrangement" generally means long-term foster care.

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See Josh Gupta-Kagan, The New Permanency, 19 U.C. Davis J. Juv. L. & Pol'y 1, 9 n.3 (2015) (explaining that, in child-welfare jargon, "another planned permanent living arrangement" means long-term foster care).¹

Among these options, only adoption requires termination of parental rights. Thus, if adoption is not a viable option, then termination does not further the State's interest in permanency. See C.M. v. Tuscaloosa Cnty. Dep't of Hum. Res., 81 So. 3d 391, 398 (Ala. Civ. App. 2011); B.A.M. v. Cullman Cnty. Dep't of Hum. Res., 150 So. 3d 782, 784-86 (Ala. Civ. App. 2014). In such a case, termination is not only not the least restrictive means, it is not a means at all.

Kinship guardianship and long-term foster care are legally recognized permanency options. However, the statute conditions these options on a determination by DHR that adoption is not in the particular child's best interests. § 12-15-315(a)(4)a, (e)(1), (b). Indeed, the statute

¹The statute also lists the option of "adult custodial care." § 12-15-315(a)(5). However, that option relates to children who, because of their physical or mental disabilities, will not likely be able to function in a family setting even into adulthood. See Alabama Unified Judicial System Form JU-34 ("Permanency Hearing Order") ¶ 2 (rev. July 2016) (currently available at: <https://eforms.alacourt.gov/media/vkultems/permanency-hearing-order-adult-custodial-care.pdf>); see, e.g., B.V. v. Davidson, 77 So. 3d 1187, 1189 (Ala. Civ. App. 2010). Thus, that option will not be relevant in most cases.

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describes adoption as a "more permanent" option than kinship guardianship, § 12-15-315(e)(5), and requires DHR to exhaust all other options if the court chooses long-term foster care, § 12-15-315(b). These prioritizing provisions imply a Legislative judgment that kinship guardianship and long-term foster care generally do not satisfy the State's interest in permanency to the same degree as adoption does. To the extent that that judgment is entitled to judicial deference, then, if adoption is a viable option, kinship guardianship and long-term foster care are not ordinarily options that sufficiently satisfy the State's interest in permanency and thus are not ordinarily viable alternatives to termination.

The remaining option, relative placement, satisfies (without statutory qualification) the State's interest in permanency without requiring termination. Therefore, if relative placement is a viable option in a particular case, then it is a viable alternative to termination. See, e.g., Ex parte J.R., 896 So. 2d 416, 423-28 (Ala. 2004) (illustrating relative placement as possible viable alternative); Ex parte Ogle, 516 So. 2d 243 (Ala. 1987) (same); V.M. v. State Dep't of Hum. Res., 710 So. 2d 915, 921 (Ala. Civ. App. 1998) (same).

Accordingly, to meet the no-viable-alternative element, at a minimum DHR must prove by clear and convincing evidence that adoption is a viable option and that relative placement is not a viable option.

In my view, much of Alabama courts' discussion of the no-viable-alternative element has focused on factors and circumstances that generally are not relevant to this element. For example, many decisions, including the present one, have examined the possibility that the parent will be sufficiently rehabilitated to resume custody at some future time. See, e.g., Ex parte A.S., 73 So. 3d 1223, 1229-30 (Ala. 2011); P.M. v. Lee Cnty. Dep't of Hum. Res., 335 So. 3d 1163, 1172 (Ala. Civ. App. 2021). But I believe that, ordinarily, the viability of alternatives to termination should be analyzed based on the circumstances that are before the juvenile court at the time of the termination judgment, not based on potential future circumstances. I reach this conclusion for two reasons.

First, a parent does not have a constitutional right to be rehabilitated by the State. In many cases, DHR has a statutory obligation to make reasonable efforts to rehabilitate the parent. See § 12-15-312(a)(3), (c). However, that obligation arises out of the State's interest

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in preserving families intact, which is generally also in children's best interests. See § 12-15-101(b)(1), (8) (listing goal of Alabama Juvenile Justice Act "[t]o preserve and strengthen the family of the child whenever possible" and expressing "a preference at all times for the preservation of the family"); H.H. v. Baldwin Cnty. Dep't of Hum. Res., 989 So. 2d 1094, 1101 (Ala. Civ. App. 2007) (opinion on return to remand) (per Moore, J., with two Judges concurring in the result) ("A primary goal of the [predecessor AJJA] is to reunite a dependent child and a parent as quickly and safely as possible."). To the extent that the parent stands to benefit from that obligation, the parent may have a corresponding statutory right to DHR's efforts and a defense to termination if DHR fails to make those efforts. But that statutory right is ultimately rooted in the State's interest in intact families, not the parent's own constitutional rights. Thus, the sufficiency of DHR's rehabilitation efforts is not relevant to the constitutional question whether no viable alternative exists.

Second, the State's compelling interest in permanency, as applied to a particular child, is time-sensitive. Thus, in general, the time frame for the parent's completion of rehabilitation (achievement or resumption

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of fitness) should be objectively fixed and not left amorphous and open-ended. In the context of a termination proceeding, normally the most natural fixed point in time for evaluating that fitness is the time of the judgment. In contrast, evaluating the present likelihood of the parent's future fitness necessarily involves uncertainty and weighing of probabilities, which would ordinarily seem to undermine satisfaction of the State's interest in permanency. Therefore, if a parent is presently unfit, the no-viable-alternative element should not generally require a juvenile court to take a "wait and see" approach, keeping the child in limbo in order to give the parent a further opportunity to become fit.

Another issue that has received much attention, but that I believe is irrelevant to the no-viable-alternative element, is whether an emotional bond exists between the parent and child. See, e.g., T.D.K. v. L.A.W., 78 So. 3d 1006, 1011 (Ala. Civ. App. 2011); C.M., 81 So. 3d at 397; B.A.M., 150 So. 3d at 785-86; Montgomery Cnty. Dep't of Hum. Res. v. N.B., 196 So. 3d 1205, 1214-15 (Ala. Civ. App. 2015); A.M. v. Colbert Cnty. Dep't of Hum Res., 236 So. 3d 81, 87-88 (Ala. Civ. App. 2015); C.P. v. Cullman Cnty. Dep't of Hum. Res., 203 So. 3d 1261, 1270 (Ala. Civ. App. 2016); S.P. v. Madison Cnty. Dep't of Hum. Res., 315 So. 3d. 1126,

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1131 (Ala. Civ. App. 2020); P.M., 335 So. 3d at 1172. Certainly, preservation of emotional bonds between parents and children is an important consideration in determining whether to terminate parental rights. But it is a consideration that is based on the State's interest in promoting the best interests of dependent children, see D.M.P., 871 So. 2d at 95 n.17 (plurality opinion); C.M., 81 So. 3d at 397-98; T.N. v. Covington Cnty. Dep't of Hum. Res., 297 So. 3d 1200, 1219-21 (Ala. Civ. App. 2019); it is not based on the parent's constitutional rights. That is because a parent whose abuse or neglect of a child has rendered him or her unfit does not have a constitutional right to preservation of his or her emotional bond with the child. Thus, the no-viable-alternative element asks whether there is a viable alternative to termination not of the parent's emotional relationship with the child, but of the parent's legal relationship with the child. Accordingly, although the existence of a parent-child bond is properly considered within the juvenile court's analysis under the best-interests-of-the-child element (which I will discuss in the next part), it has no place within the no-viable-alternative element.

Finally, because these first two elements for termination of

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parental rights -- a ground for termination and no viable alternative -- are rooted in constitutional strict scrutiny, their manifest purpose is to limit the power of the State as it seeks to further its interests. These elements are ultimately expressions of strict constitutional limitation, not merely nice suggestions for the betterment or well-being of families, or even merely legislative or common-law impositions that can be fundamentally modified by popular will or judicial sentiment.

II. Best interests of the child

If, and only if, both constitutional elements for termination are met, the juvenile court should then proceed to evaluate the best interests of the child. Although at this point termination is constitutionally authorized, nevertheless the court now determines whether it is best for the child. Taking all the circumstances into consideration, the court must ask itself whether termination will best promote the child's well-being. These circumstances may include myriad factors, just a few of which are mentioned above: the status of the parent's and DHR's attempts at rehabilitation, emotional bonds between the parent and the child, the desirability of permanency for the child, and emotional ties between the child and foster parents. In this way, this third element acts as a

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backstop, a final check on the government's power, to ensure that termination is not only permitted but also prudent. Cf. D.M.P. v. State Dep't of Hum. Res., 871 So. 2d 77, 95 & n.17 (Ala. Civ. App. 2003) (plurality opinion). Whereas the first two elements exist to protect the parent's rights, this third element exists to protect the child's interests.

Importantly, under this framework, there are several things that the best-interests-of-the-child element is not. First, it is not a substitute or synonym for the government's compelling interests. "Best interests of the child" is necessarily and properly a generalized concept; in contrast, government interests must be articulated with specificity and precision to ensure that they can be sufficiently analyzed as to whether they are compelling and whether the government's actions are the least restrictive means to achieve them. See Richard H. Fallon, Jr., Strict Judicial Scrutiny, 54 UCLA L. Rev. 1267, 1324 (2007) ("Surely there is a compelling interest in protecting children, at least from serious harm, if the interest is stated wholly abstractly, but this much generality may not be helpful for anyone who takes the compelling interest question seriously.").

Second, best interests is not a "super factor" that can override the

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first two, constitutional, elements. Put another way, best interests is not a license for the judiciary to ignore or loosen the first two elements to achieve a particular result. In application, this means that, if the first two elements are not met, a court cannot terminate a parent's rights, regardless of whether it concludes that termination would be in the child's best interests. This framework also implies that, whatever cases mean when they say that best interests is a "paramount concern," they cannot mean that it overrides the constitutional and statutory requirements for termination. Further, under this framework, if one of the first two elements is not met, then termination is not permitted, and it is unnecessary to analyze best interests. See, e.g., Ex parte J.R., 896 So. 2d 416, 423-28 (Ala. 2004) (reversing based on no-viable-alternative element without discussing best interests); Ex parte A.S., 73 So. 3d 1223, 1228-38 (Ala. 2011) (same); Ex parte T.V., 971 So. 2d 1, 7-10 (Ala. 2007) (reversing based on no-viable-alternative element without engaging in best-interests analysis). The best-interests element cannot be allowed to swallow the whole constitutional and statutory analysis.

Third, best interests is not an overarching "consideration" that, in some ill-defined way, influences the analysis of the first two elements.

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Although the three elements are applied to the same evidence, as explained above they each serve a different legal purpose and analyze the evidence through a different conceptual lens.

III. Conclusion

As I mentioned at the beginning, one of my concerns underlying this writing is to reinforce the primacy of the rule of law. A broad sampling of Alabama courts' termination-of-parental-rights jurisprudence leaves one with a clear impression that many of the decisions do not follow a consistent conceptual framework of analysis. As a consequence, the language and results of the decisions are "all over the map," with a paucity of unifying analytical threads to explain or reconcile them. Given the fundamental nature of parental rights, I believe we need a strong analytical framework for termination cases. In particular, we need a framework that moves this area of the law away from its tendency to allow the subjective perceptions and predilections of juvenile and appellate courts to determine individual case results through vague, amorphous, and unstructured rhetorical pathways. Of course, such a framework would need to maintain deferential standards of review, to preserve the discretion of on-the-ground juvenile-court judges on issues

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where their function requires leeway. But such a framework would focus and channel that discretion, enable meaningful and disciplined appellate review, improve the predictability of results, and fortify the rule of law.