

Rel: October 27, 2023

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

SC-2023-0587

Ex parte S.J.

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

(In re: S.J.

v.

Henry County Department of Human Resources)

**(Henry Juvenile Court: JU-19-81.02;
Court of Civil Appeals: CL-2022-0831)**

STEWART, Justice.

WRIT DENIED. NO OPINION.

Shaw, Wise, Sellers, Mendheim, Mitchell, and Cook, JJ., concur.

SC-2023-0587

Parker, C.J., dissents, with opinion.

Bryan, J., dissents.

PARKER, Chief Justice (dissenting).

I respectfully dissent from the Court's denial of the petition for the writ of certiorari by S.J. ("the father") in this termination-of-parental-rights case. The father has presented sufficient allegations of conflict between the Court of Civil Appeals' decision in this case (see S.J. v. Henry County Department of Human Resources, (No. CL-2022-0831, May 19, 2023), ___ So. 3d ___ (Ala. Civ. App. 2023) (table), with Y.M. v. Jefferson County Department of Human Resources, 890 So. 2d 103 (Ala. Civ. App. 2003), to justify granting the petition and issuing the writ. I write to emphasize that courts ought to uphold the high evidentiary standard required in cases in which such fundamental rights as parental rights are concerned.

Previous decisions of the Court of Civil Appeals and of this Court have held that hearsay is incompetent evidence at a proceeding to terminate parental rights. See, e.g., Y.M., 890 So. 2d at 109; Ex parte State Dep't of Hum. Res., 890 So. 2d 114, 117 (Ala. 2004). The father alleges that the termination of his parental rights was based largely on the admission of inadmissible hearsay evidence elicited through testimony and by the juvenile court's taking judicial notice of records

containing hearsay statements, which, he says, was admitted only because his court-appointed counsel failed to object. He argues that this case therefore presents a direct conflict with Y.M. I agree. The facts presented to this Court show that the juvenile court admitted copious amounts of hearsay evidence, both through testimony and by taking judicial notice of records containing hearsay statements, and based its decision upon that evidence.

The admission of hearsay evidence in a termination-of-parental-rights hearing is subject to a harmless-error standard of review. J.L. v. State Dep't of Hum. Res., 688 So. 2d 868, 871 (Ala. Civ. App. 1997); Menniefield v. State Dep't of Hum. Res., 549 So. 2d 496, 500 (Ala. Civ. App. 1989); Hutchens v. State Dep't of Pensions & Sec., 497 So. 2d 156, 158 (Ala. Civ. App. 1986). However, in Y.M., the Court of Civil Appeals held that the admission of hearsay evidence was not harmless when the juvenile court in that case had based its decision to terminate a mother's parental rights largely upon hearsay evidence in its own case file from previous proceedings that it had taken judicial notice of. In this case, the father alleges that the juvenile court did the same. And we have no facts properly before us to give any indication to the contrary.

Not only does the father allege that the juvenile court based its decision largely on incompetent evidence, but he also argues that the court admitted the incompetent evidence only because his court-appointed attorney failed to object to it. He does not merely argue that his attorney did an ineffective job representing him in the termination hearing. He argues that his attorney "did not do any job to defend him in this termination" case. Petition at 9-10. Consistent with Strickland v. Washington, 466 U.S. 668 (1984), the father argues that, without the admission of that evidence, the juvenile court would not have had sufficient evidence to terminate his parental rights. It seems to me that the father has made apparently meritorious arguments that the termination judgment was based on legally insufficient evidence and that the father received ineffective assistance of counsel. And without an explanation from the Court of Civil Appeals or the record on appeal, I do not believe this Court possesses sufficient information to dismiss the possibility that the decision of the Court of Civil Appeals conflicts with Y.M.

I believe that the father has presented this Court with a procedurally compliant petition that presents a probability of merit. And

I believe that the nature of the rights being terminated, combined with the facts properly before this Court, presents "special and important reason" to issue the writ and investigate the record more thoroughly. See Ex parte E.R.G., 73 So. 3d 634, 643-45 (Ala. 2011) (plurality opinion); Rule 39(a), Ala. R. App. P. Parental rights are too valuable to terminate based on hearsay evidence, and a parent facing the possibility of having his or her parental rights terminated deserves competent legal representation. Therefore, I respectfully dissent.