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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2007-2008

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H.H.

v.

Baldwin County Department of Human Resources

Appeal from Baldwin Juvenile Court
(JU-00-621.06)

MOORE, Judge.

This is a termination-of-parental-rights case. H.H.
("the mother") appeals from a judgment entered on January 17,

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2007, by the Baldwin Juvenile Court, terminating her parental rights to A.O. ("the child").¹ We reverse and remand.

The mother appeals on two grounds. The mother first contends that the Baldwin County Department of Human Resources ("DHR") failed to use reasonable efforts to reunite the child with her. The mother next argues that the juvenile court failed to consider other alternatives to termination of her parental rights. Because we find the resolution of the first issue to be dispositive of the case, we do not address the second issue.

DHR contends that it had no duty to use reasonable efforts to reunite the mother with the child because, it says, the mother abandoned the child. See Ala. Code 1975, § 26-18-7(a)(1); Ala. Code 1975, § 12-15-65(m)(1) ("[r]easonable efforts [to reunite a parent with a child] shall not be required to be made ... where a court of competent jurisdiction has determined that a parent has ... [s]ubjected

¹The judgment also terminated the parental rights of J.O., the child's father. The father has not appealed.

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the child to an aggravated circumstance, including, but not limited to, abandonment"); and 42 U.S.C., § 671(a)(15)(D).²

Although we agree with the general proposition that reasonable efforts to reunite a parent with a child are not required when a parent has abandoned the child, we note that the juvenile court in this case did not make any finding that the mother had abandoned the child. In fact, the juvenile court found that DHR had used reasonable efforts to reunite the child with the mother, a finding that is inconsistent with any conclusion that the mother had abandoned the child. See S.A.B. v. Mobile County Dep't of Human Res., 845 So. 2d 825 (Ala. Civ. App. 2002).

²DHR also argues that in In re Hutchins, 474 So. 2d 1152, 1154 (Ala. Civ. App. 1985), the court indicated that DHR has no duty to rehabilitate a parent, but that it may do so voluntarily, in which case the juvenile court shall consider whether the attempt at rehabilitation failed as a factor in deciding whether the parent is unable or unwilling to discharge his or her responsibilities to the child. DHR accurately summarizes this statement from Hutchins. However, because the case was not decided on that issue, the statement is dicta. At any rate, the statement is no longer correct due to subsequent changes in the Alabama Juvenile Justice Act requiring DHR to use reasonable efforts to reunite the child with its parents as mandated by the federal Adoption and Safe Families Act as set out above.

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In this case, the evidence shows that DHR picked up the child on January 11, 2005, when a nonrelative individual contacted DHR to report that the mother had left the child in that individual's care without proper medication. Thereafter, the mother initially visited with the child; however, the mother did not visit the child at all between November 2005 and April 2006, and she visited the child only twice between April 2006 and October 2006, before resuming regular weekly visitation. The mother did not support the child at all after DHR obtained custody of the child in April 2005. As in S.A.B., such evidence could support a finding that the mother abandoned the child, either at the time DHR first picked up the child or later when the mother ceased visiting the child and supporting the child. However, the inconsistent finding by the juvenile court that DHR used reasonable efforts to reunify the child with the mother prevents this court from assuming that the juvenile court made a finding of abandonment.

In S.A.B., this court remanded the case for the juvenile court to determine whether the parent had abandoned the child, a possibility that the juvenile court apparently overlooked.

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If so, this court held, the juvenile court did not need to determine whether DHR had used reasonable efforts to reunite the parent with the child; if not, this court held, the juvenile court was required to determine whether DHR had used reasonable efforts to reunite the parent and the child.

Based on the similarities between the facts in this case and the facts in S.A.B., as well as the nearly identical arguments asserted by DHR, we hold that the judgment in this case should also be remanded for the juvenile court to make a specific finding as to whether and, if so, when, the mother abandoned the child. If the juvenile court determines, based on clear and convincing evidence, that the mother abandoned the child before DHR obtained custody, it should specify that DHR had no duty to use reasonable efforts to reunite the mother with the child. If the juvenile court finds that the mother abandoned the child when she ceased visitation and support, the juvenile court should determine whether DHR engaged in reasonable efforts to reunite the child with the mother before the mother's abandonment. If the juvenile court finds that the mother did not abandon the child at any time, the juvenile court should make a determination as to the

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reasonableness of DHR's efforts to reunite the mother with the child. The juvenile court shall make a return to remand within 28 days of the release of this opinion.

REMANDED WITH INSTRUCTIONS.

Thompson, P.J., and Pittman, Bryan, and Thomas, JJ.,
concur.