Rel: 09/27/2013

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2013

1120536

Ex parte F.V.O.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS

(In re: F.V.O.

v.

Coffee County Department of Human Resources)

(Coffee Juvenile Court, JU-09-149.01; JU-09-150.01; and JU-09-151.01; Court of Civil Appeals, 2110398)

PER CURIAM.

F.V.O., the respondent in a dependency action in the Coffee Juvenile Court, appealed to the Court of Civil Appeals from orders entered by the trial court after a dispositional-review hearing in a dependency case. A majority of the Court of Civil Appeals affirmed the orders; this Court granted certiorari review. We reverse and remand.

The Coffee County Department of Human Resources ("DHR") filed petitions in the Coffee Juvenile Court on April 10, 2009, asserting that M.A.H., A.H., and B.H.V. ("the children") were dependent and in need of care and supervision. DHR alleged that M.A.H. had been sexually molested and that the children had been removed from the home of F.V.O. ("the mother") and E.H.A. ("the father"). DHR requested an award of custody to protect the children while it completed an investigation. After a hearing on April 10, 2009, the trial court awarded custody of the children to DHR. The father was later arrested and charged with sexual abuse of M.A.H.; DHR determined that the mother could not protect the children.

On August 27, 2010, the trial court entered orders finding, among other things, that the children were dependent, that DHR had made reasonable efforts to prevent removing the

children from their home and that those efforts had failed, that placement of the children in the home with the mother would be contrary to the children's best interests, that DHR was to continue to make reasonable efforts to reunite the children with the mother and to restore custody of the children to her, and that DHR was not required to make any further efforts to reunite the children with the father. The trial court entered similar orders after a dispositional-review hearing held on February 2, 2011.

The trial court held another dispositional-review hearing on August 4, 2011. DHR requested that the permanency plan for the children be changed to "adoption with unidentifiable resources." Amanda Wallace, a foster-care worker with DHR, testified that DHR had exhausted its investigation of all potential relative resources. She stated that DHR could not approve any of the maternal relatives identified as possible relative resources, that reunification with the mother had been unsuccessful, and that the mother had not met the goals DHR had given her in working toward reunification. The trial court entered three orders on January 3, 2012, one as to each

child. Other than the name of the child, the orders were identical. The trial court concluded in each order:

> "This case comes before the Court for a dispositional review hearing on August 4, 2011. Present at the hearing were Letitia Myers, guardian ad litem, Jodee Thompson, attorney for [DHR], [F.V.O.], mother of the child, Mary Katherine Head, attorney for the mother, and Gary Bradshaw, attorney for the father. The father, [E.H.A.], is incarcerated in the Alabama Department of Corrections, and was not present at the hearing.
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> "Pursuant to Public Laws [Act No.] 96-272 and § 12-15-312 of the Code of Alabama [1975], review of the Department of Human Resources['] report, testimony and other evidence presented, the Court finds as follows:
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> "1) Placement of the child in [his or her] home continues to be contrary to the best interest and welfare of the child.
>
> "2) Reasonable efforts have been made to reunite the mother and child and said efforts have failed.
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> "3) On June 9, 2010, [E.H.A.] plead[ed] guilty to Sexual Abuse of a Child less than twelve, in the Circuit Court of Coffee County, Enterprise Division, case number CC-2009-617. Therefore, pursuant to § 12-15-312(c) of the Code of Alabama [1975], reasonable efforts to reunite the child with the father, [E.H.A.,] shall no longer be required.
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> "4) The most appropriate permanency plan is adoption.
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> "5) Reasonable efforts have been made to finalize a permanency plan.

> "6) Custody shall remain with the Coffee County Department of Human Resources.
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> "7) The Coffee County Department of Human Resources shall have discretion in planning and placement, with the concurrence of the guardian ad litem.
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> "8) The Department of Human Resources shall not change the placement of a child without the prior approval of the [g]uardian ad litem, except in emergency circumstances, in which case, the guardian ad litem shall be immediately notified of the change and the reason for the change."

The mother appealed to the Court of Civil Appeals from the three orders entered on January 3, 2012. A majority of the Court of Civil Appeals affirmed, holding that the orders were final, appealable judgments but that the mother had failed to preserve her arguments on the merits for appellate review. F.V.O. v. Coffee Cnty. Dep't of Human Res., [Ms. 2110398, December 7, 2012] ___ So. 3d ___ (Ala. Civ. App. 2012). Presiding Judge Thompson dissented from the majority opinion. F.V.O., ___ So. 3d at ___ (Thompson, P.J., dissenting). He concluded that the orders from which the mother's appeal was taken were nonfinal orders and that the appeal should therefore be dismissed. This Court granted certiorari review.

The mother argued to the Court of Civil Appeals and argues in her petition for certiorari review that (a) "the juvenile court erred in determining that adoption is the most appropriate permanency plan" because this finding was not supported by the evidence, and (b) "the juvenile court erred in concluding that DHR had made reasonable efforts to reunite the mother with the children." ___ So. 3d at ___. The pertinent language of the trial court's orders of January 3, 2012, provides:

> "2) Reasonable efforts have been made to reunite the mother and child and said efforts have failed.
>
> "....
>
> "4) The most appropriate permanency plan is adoption."

(Emphasis added.) Neither of the above findings challenged by the mother is an adjudication of grounds from which an appeal would lie.

First, as to the finding by the trial court regarding the efforts made to date by DHR to reunite the mother and the children, this was simply a finding as to an historical fact. DHR had made efforts at reunification up to that point, and those efforts had failed. As to the mother, the January 3,

2012, orders contain no language expressly relieving DHR of its legal obligation to make reasonable efforts toward her rehabilitation and reunification with the children going forward. The Court of Civil Appeals concluded that a finding that DHR is statutorily relieved of its obligation to make reasonable efforts to reunite the mother with her children is implicit in the January 3, 2012, orders; we do not agree. The trial court found only that "[r]easonable efforts have been made to reunite the mother and child and said efforts have failed," a finding that did not relieve DHR of continuing those reasonable efforts and a finding that was not an adjudication of substantive rights from which an appeal would lie.[1]

Second, the trial court's announcement of a new permanency plan, i.e., adoption, does not adjudicate any rights of the mother and, more particularly, does not relieve DHR from the burden of proving at the time of any subsequent termination hearing that all the elements necessary under our statutes for any such termination are in place. See, e.g., Ex

[1]We note that, as to the father, the trial court found that DHR was no longer required to make reasonable efforts to reunite the children with the father, thus relieving DHR of that obligation as to the father.

parte T.V., 971 So. 2d 1, 5 (Ala. 2007) (quoting D.O. v. Calhoun Cnty. Dep't of Human Res., 859 So. 2d 439, 444 (Ala. Civ. App. 2003)). Under the facts of this case, the announcement of adoption as the permanency plan as presented in the trial court's orders was in the nature of an administrative matter and did not of itself actually constitute an adjudication of any right of the mother from which an appeal would lie. F.V.O., ___ So. 3d at ___ (Thompson, P.J., dissenting).

After considering the record in this case, the briefs of the parties, the main opinion of the Court of Civil Appeals, and Presiding Judge Thompson's dissent, we conclude that the orders entered by the trial court on January 3, 2012, as to the mother are not final judgments. See Ex parte T.C., 96 So. 3d 123, 129-30 (Ala. 2012). Both arguments presented by the mother--regarding the finding by the trial court as to the efforts made to January 3, 2012, by DHR to reunite the mother and the children and the announcement of a new permanency plan (i.e., adoption)--fail to adjudicate any rights of the mother from which an appeal would lie. We reverse the judgment of the Court of Civil Appeals and remand the case for the Court

of Civil Appeals to dismiss the mother's appeal and to remand the case to the trial court for further proceedings.

REVERSED AND REMANDED.

Moore, C.J., and Parker, Main, and Wise, JJ., concur.

Murdock, J., concurs specially.

Stuart, Bolin, and Shaw, JJ., dissent.

Bryan, J., recuses himself.*

*Justice Bryan was a member of the Court of Civil Appeals when that court considered this case.

MURDOCK, Justice (concurring specially).

I concur in the main opinion and write separately to further explain my reasons for doing so.

I begin by noting the unique language of § 12-15-601, Ala. Code 1975:

> "A party, including the state or any subdivision of the state, has the right to appeal a judgment or order from any juvenile court proceeding pursuant to this chapter. The procedure for appealing these cases shall be pursuant to rules of procedure adopted by the Supreme Court of Alabama. All appeals from juvenile court proceedings pursuant to this chapter shall take precedence over all other business of the court to which the appeal is taken."

(Emphasis added.) Obviously, the emphasized language was not intended by the legislature to give a right of appeal from any order by a juvenile court in a juvenile proceeding because, among other things, such orders would include nonsubstantive administrative orders regarding scheduling and other matters. It is, however, an effort by the legislature to recognize that juvenile proceedings are different and that, unlike conventional civil cases, typically do involve a number of intermediate "juvenile court proceedings" that result in judgments from which a party should be able to appeal because those judgments decide the rights of the parties to custody,

visitation, and other significant matters that the parent and the child -- and the State -- must live by until the next hearing.

Accordingly, against the backdrop of the emphasized language, this Court and the Court of Civil Appeals have recognized the unique nature of juvenile proceedings that make an appeal appropriate from any one of multiple judgments that may be entered during the life of a juvenile case. Citing the Court of Civil Appeals' opinion in C.L. v. D.H., 916 So. 2d 622 (Ala. Civ. App. 2005), we stated in Ex parte T.C., 96 So. 3d 123, 130 (Ala. 2012), that,

> "unlike other civil cases, dependency and termination-of-parental-rights proceedings may involve multiple 'final' appealable orders before the juvenile case is closed. For example, temporary custody orders are treated as final, appealable orders. See, e.g., C.L. v. D.H., 916 So. 2d 622 (Ala. Civ. App. 2005) (holding that order awarding maternal grandmother primary physical custody of a child in a dependency case was a final appealable order as opposed to a pendente lite order)."[2]

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[2]Unlike in C.L., the juvenile judge in Ex parte T.C. made it clear that she was interrupting the hearing simply to allow the maternal grandparents to receive notice of and to participate in the hearing. She scheduled the resumption of the hearing for a date three weeks later and announced that she would finish receiving the evidence at that time. She made it clear that, in the meantime, she was not making a custody award based on the evidence heard up to that point but

Unlike normal civil cases in which a fixed set of facts is at issue, the facts of juvenile cases are dynamic: children grow from month to month, and the facts regarding the parents' rehabilitation and suitability are subject to change. In effect, each review of the dependency and custody of the child represents a new "case." Each resulting judgment adjudicates the issue of dependency and custody in relation to the extant facts and establishes the rights —- or lack thereof —- of a parent to his or her child for a period following that particular judgment.

In contrast to the judgment at issue in Ex parte T.C., the judgment of the trial court at issue in C.L. was one that was intended to fully adjudicate the dependency vel non of the child based on the state of the facts as they existed at the time of the hearing, not to put things "on hold" with a pendente lite custody order pending the completion of hearing to allow grandparents time to present some additional evidence regarding the state of those facts. The Court of Civil

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was merely maintaining in place the pendente lite custody arrangement ordered at an earlier date in that juvenile proceeding.

Appeals explained in C.L. that juvenile cases are unique for the reasons stated above:

> "The setting of the case for a 'review' approximately four months later does not make the juvenile court's May 28 judgment a pendente lite order. The juvenile court's judgment does not indicate that the purpose of the September 2004 'review' hearing would be to finish receiving evidence as to the extant facts as of May 2004. To the contrary, the record and the juvenile court's May 28 judgment fully indicate that it had already heard that evidence and was entering a judgment based thereon. Instead, the judgment indicates that the juvenile court would at its 'review' consider a modification of the custody of the child based on whatever new facts might come into existence between the time the juvenile court entered its judgment on May 28, 2004, and the scheduled 'review' on September 15, 2004. Cf. Hodge v. Steinwinder, 919 So. 2d 1179 [(Ala. Civ. App. 2005)] (holding that the issue of the finality of an order in a child-custody case was controlled by the fact that the trial court's judgment was final as to the facts presented at trial and would only be modified in the event that new facts subsequently developed justifying a modification of that judgment).
>
> "In other words, the setting of the September 'review' hearing was not a function of a need for the parties to complete the gathering and presentation to the court of the evidence of the facts already in existence [as we subsequently held to be the case in Ex parte T.C.]. The court's expressed willingness to consider a change in the custodial placement of the child was made in contemplation of new facts -- i.e., developments in the lives of the mother and the child and their relationship that might occur after the court entered its order.

"Consistent with the general principles discussed above, orders such as the one at issue here have been held in dependency cases to be appealable. In Morgan v. Lauderdale County Department of Pensions & Security, 494 So. 2d 649 (Ala. Civ. App. 1986), the trial court entered an order dated February 17, 1984, adjudicating children to be dependent and awarding their temporary custody to the Department of Pensions and Security ('DPS'). Like the review contemplated by the juvenile court in this case (indeed, in most dependency cases), the case was periodically 'reviewed' by the trial court (once on May 10, 1984 (approximately two months after the trial court's initial dependency adjudication), and again on November 21, 1984 (approximately six months later)). After each of those subsequent 'reviews,' the trial court entered an order finding that the child remained dependent and making a custodial disposition of that child until the next review hearing. As in the present case, the setting of those subsequent review hearings gave the mother an opportunity to improve herself or her condition and to regain custody of the children -- i.e., to change the 'facts' and present a 'new case' to the court, not to present new evidence of already existing facts. As this court explained, each of '[t]he three 1984 judgments of the juvenile court which removed and maintained temporary custody of the children away from the mother [were] treated as appealable orders.' Morgan, 494 So. 2d at 651. See State Dep't of Human Res. v. R.E.C., 899 So. 2d 251, 265 n. 16 (Ala. Civ. App. 2003) ('the fact that the order was therefore "temporary" or "interlocutory" in the sense that it did not bring closure to the dependency proceeding does not prevent the order from being appealable'), rev'd on other grounds, Ex parte R.E.C., 899 So. 2d 272 (Ala. 2004); and Ex parte D.B.R., 757 So. 2d 1193, 1195 (Ala. 1998) (approving of this court's holding in Potter v. State Department of Human Resources, 511 So. 2d 190, 192 (Ala. Civ. App. 1986), 'that a decision of a juvenile court finding

> that children were dependent and awarding temporary custody to the children's maternal grandparents and the state, constituted a "final judgment, order, or decree" for the purposes of the rule giving parents 14 days from the entry of a "final judgment, order, or decree" in which to file a notice of appeal'). And well they should have been, for each of those orders constituted an adjudication of the mother's rights pending not the preparation of the case and the scheduling of the case for trial, and the unavoidable delay attendant to that process, but pending the passage of a fixed period of time set aside by the trial court specifically for the purpose of allowing different facts, to have an opportunity to develop. Cf. Hodge v. Steinwinder. Each of those orders was final as to that period of time and therefore was appropriately appealable.
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> "....
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> "Consistent with the well-established principle that an adjudication of dependency and an accompanying custodial placement of a child in a dependency proceeding is an appealable order, the juvenile court in the present case stated in its May 28, 2004, judgment that 'any party may appeal this decision within 14 days.' The juvenile court was right. We therefore proceed to consider this appeal on its merits."

C.L. v. D.H., 916 So. 2d at 624-26 (emphasis added).

The Court of Civil Appeals' explanation of the issue in T.C. v. Mac.M., 96 So. 3d 115, 117 (Ala. Civ. App. 2011), also is helpful:

> "This court has explained the circumstances under which a juvenile court's order or judgment is sufficiently final to support an appeal:

> "'Although a juvenile court's orders in a dependency case are, in one sense, never "final" because the court retains jurisdiction to modify its orders upon a showing of changed circumstances, see C.L. v. D.H., 916 So. 2d 622 (Ala. Civ. App. 2005); Committee Comments, Rule 4, Ala. R. App. P., this court has always treated formal dependency adjudications as final and appealable judgments despite the fact that they are scheduled for further review by the juvenile court.'
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> "D.P. v. Limestone Cnty. Dep't of Human Res., 28 So. 3d 759, 762 (Ala. Civ. App. 2009) (holding that an order finding, with regard to the father, that reasonable efforts at reunification were no longer required of the Department of Human Resources was a permanency order that was sufficiently final to support an appeal; that order also expressly left in place previous awards of legal custody incident to dependency findings)."

Fully in keeping with the "well established" principles upon which C.L. was decided, the Court of Civil Appeals also explained as follows in J.J. v. J.H.W., 27 So. 3d 519, 521-22 (Ala. Civ. App. 2008):

> "The first issue raised by both the mother and by the maternal grandparents is whether the judgment under review is final. In its August 2007 judgment, the juvenile court determined that the children remained dependent, denied the maternal grandparents' request for termination of the parents' parental rights, and made a disposition of the children's custody. Under our caselaw, a formal determination by a juvenile court of a child's dependency coupled with an award of custody incident to that determination will give rise to an

> appealable final judgment even if the custody award is denominated as a 'temporary' award and further review of the case is envisioned. See Potter v. State Dep't of Human Res., 511 So. 2d 190, 192 (Ala. Civ. App. 1986); see also C.L. v. D.H., 916 So. 2d 622, 625-26 (Ala. Civ. App. 2005). We thus reject the appellants' challenges to the finality of the judgment under review."

27 So. 3d at 521-22 (emphasis added).[3]

In the present case, the judgments at issue did make appealable adjudications as to two matters: (1) that the children continued to be "dependent" at the time of the judgment, i.e., based on the facts existing at that time, and would continue to be treated that way until the next hearing, and (2) that, at least until the next hearing, the mother would have no right to custody of the children and that the Coffee County Department of Human Resources ("DHR") would have that right. Clearly, the aspects of the judgments finding that the children were dependent as of the date of the January 3, 2012, judgments and that custody would continue in the

[3]I note the absence in J.J. of any requirement that the award of custody to the State going forward has to involve a custody award that differs from an award included in some prior judgment. As noted above, the trial court's order held to be appealable in D.P. v. Limestone County Department of Human Resources, 28 So. 3d 759 (Ala. Civ. App. 2009), expressly left in place previous awards of legal custody incident to dependency findings.

State after that date constituted a final adjudication of those matters for the period following the judgments, just as similar adjudications in the cases discussed above were deemed final and appealable. In other words, orders adjudicating such matters are within the uniquely worded ambit of § 12-15-601.[4]

Notwithstanding the foregoing, Presiding Judge Thompson argued in the Court of Civil Appeals for the correct result in this particular case because the mother was not, in fact, appealing from either of the aforementioned dependency and custody adjudications. Neither does she appeal from a decision by the trial court that the State need no longer provide services to her or engage in reasonable efforts to reunite her with the child or locate alternative placement

[4]I therefore disagree with Presiding Judge Thompson's view that the January 3, 3012, orders were not appealable because "the custodial arrangement for the children has not changed." F.V.O. v. Coffee Cnty. Dep't of Human Res., [Ms. 2110398, Dec. 7, 2012] ___ So. 3d ___, ___ (Ala. Civ. App. 2012) (Thompson, P.J., dissenting). Indeed, adopting Judge Thompson's position would require this Court to overrule substantial well established and sound precedent, some of which is discussed above.

resources, although the main opinion in the Court of Civil Appeals infers otherwise.[5]

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[5]If the Court of Civil Appeals was correct and such adjudications had in fact been made in this case, they could have a real physical impact on the mother and/or create a real-life trajectory that would make it more difficult for her to improve her circumstances or otherwise to prevail in an eventual termination-of-parental-rights case. For that reason, if no other, such adjudications (assuming also the mother had actually argued them in her appeal), would have fallen within the well established view of precedent as to the uniquely worded provision in § 12-15-601 for appeal from a "judgment or order from any juvenile proceeding." As the Court of Civil Appeals aptly explained in L.M. v. Jefferson County Department of Human Resources, 68 So. 3d 859, 860 (Ala. Civ. App. 2011):

> "Initially, we note that the juvenile court's July 15, 2010, judgment finding that the mother had abandoned the children and relieving DHR from making further reasonable efforts at reunification is a final judgment that will support an appeal. See M.H. v. Jefferson County Dep't of Human Res., 42 So. 3d 1291, 1293 (Ala. Civ. App. 2010) ('In D.P. [v. Limestone County Department of Human Resources, 28 So. 3d 759, 764 (Ala. Civ. App. 2009),] this court held that a permanency order relieving DHR of the duty to use reasonable efforts to reunite a parent with a dependent child constitutes a final judgment that will support an appeal.'); and D.P. v. Limestone County Dep't of Human Res., 28 So. 3d 759, 764 (Ala. Civ. App. 2009) ('We hold that it is immaterial, for purposes of finality and appealability, that a juvenile court's order emanates from the permanency-plan hearing rather than from the periodic review of a dependency determination. If the order addresses crucial issues that could result in depriving a parent of the fundamental right to the care and custody of his or her child, whether immediately or in the future,

Instead, as the main opinion here notes, the pertinent language of the January 3, 2012, orders of the trial court from which the mother appeals merely states as follows:

> "2) Reasonable efforts have been made to reunite the mother and child and said efforts have failed.
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> "....
>
> "4) The most appropriate permanency plan is adoption."

(Emphasis added.) Further, according to the main opinion in the Court of Civil Appeals, the mother's arguments on appeal were limited to arguments (a) that "the juvenile court erred in determining that adoption is the most appropriate

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> the order is an appealable order.')."

(Emphasis added.)

Because such adjudications were not made in the present case, we also need not decide today the "debate" between Judge Moore, the author of the Court of Civil Appeals' opinion, and Presiding Judge Thompson as to the further issue whether these adjudications would have a formal collateral estoppel effect in any subsequent termination-of-parental-rights proceeding in which the trial court must decide whether there are at that time grounds for termination and/or "viable alternatives" to termination. As explained by the Court of Civil Appeals, the approval by the trial court of DHR's new plan to pursue termination of the mother's parental rights and an adoption of the children is not itself, at least not as presented in this case, an appealable adjudication of the mother's substantive rights.

permanency plan" because this finding was not supported by the evidence, and (b) that "the juvenile court erred in concluding that DHR had made reasonable efforts to reunite the mother with the children." ___ So. 3d at ___.

To the extent the mother challenges the trial court's announcement of a new permanency plan (i.e., adoption), the particular announcement found in the orders of the trial court in this case is not appealable. As worded, it does not adjudicate any rights of the mother, and, specifically, it does not relieve the State from the burden of proving at the time of a subsequent termination hearing that all the elements necessary under our statutes for such a termination are in place at that time.[6] As a corollary, neither does this announcement of a new "direction" relieve the State of any continuing obligations it might have to the mother leading up to any such termination hearing, including, for example, the investigation of alternative placements or other viable

[6]See D.V. v. Colbert Cnty. Dep't of Human Res., [Ms. 2110590, Dec. 14, 2012] ___ So. 3d ___ (Ala. Civ. App. 2012) (noting that a termination of parental rights must be based on the existence of conditions or conduct relating to a parent's inability or unwillingness to care for his or her children at the time of the termination); D.O. v. Calhoun Cnty. Dep't of Human Res., 859 So. 2d 439, 444 (Ala. Civ. App. 2003) (to same effect).

alternatives to the termination of her parental rights that might be presented. I agree with Presiding Judge Thompson, at least in regard to the facts of this case, that the announcement of adoption as the permanency plan as presented in the trial court's orders was in the nature of an administrative matter and did not of itself actually constitute an adjudication of any rights of the mother from which an appeal would lie. F.V.O., ___ So. 3d at ___ (Thompson, P.J., dissenting).

Similarly, the above-quoted finding by the trial court regarding the efforts made to date by DHR to reunite the mother and the children were not an adjudication of substantive rights of the mother from which an appeal would lie. I agree with the main opinion that, as presented by the trial court in this case, this was only a finding as to historical fact; that DHR had made such efforts up to that point; and that the efforts it had made thus far had in fact failed. As to the mother, the January 3, 2012, judgments contain no language expressly relieving DHR of its legal obligation to make reasonable efforts toward her rehabilitation and reunification with the children going

forward.[7] Any doubt as to the import of the trial court's judgments in this regard is largely alleviated in this case by the mother's position in her brief to this Court that we should consider only what is set out in the trial court's written orders and that those orders "did not make any finding that would cause DHR to be statutorily relieved of its obligation to make reasonable efforts to reunite the mother with her children." Mother's brief, at 16. Although the Court of Civil Appeals' opinion concludes that such findings are implicit in the judgments, Presiding Judge Thompson makes a reasonable argument that they are not. F.V.O., ___ So. 3d at ___ n.5. In light of the mother's position on this issue in this Court, we are not at liberty to conclude other than does Judge Thompson for purposes of the present review.

Because in this particular case the mother did not challenge on appeal any appealable adjudication by the trial court, I agree that the mother's appeal should have been dismissed. I therefore concur in the main opinion.[8]

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[7]By contrast, the juvenile court specifically stated in the January 3, 2012, orders that "reasonable efforts to reunite the child with the father ... shall no longer be required."

[8]In so doing, I do not wish to be understood as agreeing with all the views expressed by Judge Thompson in his dissenting opinion.

STUART, Justice (dissenting).

The main opinion would reverse the judgment entered by the Court of Civil Appeals affirming the orders entered by the Coffee Juvenile Court following a permanency hearing on the ground that those orders were nonfinal and therefore would not support an appeal. I disagree with the conclusion that the orders appealed from were nonfinal, and I accordingly dissent.

Section 12-15-601, Ala. Code 1975, provides, in relevant part, that "[a] party, including the state or any subdivision of the state, has the right to appeal a judgment or order from any juvenile court proceeding pursuant to this chapter." In Ex parte T.C., 96 So. 3d 123, 129 (Ala. 2012), we explained that this language does not grant the parties to a juvenile-court proceeding a right to immediately appeal any judgment or order entered in such a proceeding; rather, § 12-15-601 provides a basis for appealing only those judgments or orders entered by a juvenile court that are considered "final." We have elsewhere explained that a final judgment is one which "'conclusively determines the issues before the court and ascertains and declares the rights of the parties.'" Queen v. Belcher, 888 So. 2d 472, 475 (Ala. 2003) (quoting Palughi v. Dow, 659 So. 2d 112, 113 (Ala. 1995)).

Juvenile-court proceedings, however, are unique and, unlike other civil cases, "may involve multiple 'final' appealable orders before the juvenile case is closed." Ex parte T.C., 96 So. 3d at 130. In D.P. v. Limestone County Department of Human Resources, 28 So. 3d 759, 762-64 (Ala. Civ. App. 2009), the Court of Civil Appeals discussed the unique nature of juvenile-court cases and further described when judgments and orders entered in these proceedings may be appealed:

> "Although a juvenile court's orders in a dependency case are, in one sense, never 'final' because the court retains jurisdiction to modify its orders upon a showing of changed circumstances, see C.L. v. D.H., 916 So. 2d 622 (Ala. Civ. App. 2005); Committee Comments, Rule 4, Ala. R. App. P., this court has always treated formal dependency adjudications as final and appealable judgments despite the fact that they are scheduled for further review by the juvenile court.
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> "....
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> "In H.H. v. Baldwin County Department of Human Resources, 989 So. 2d 1094, 1108 (Ala. Civ. App. 2007) (opinion on return to remand) (authored by Moore, J., with two judges concurring in the result), this court explained that a permanency hearing is statutorily mandated as the means by which the juvenile court is to determine the 'permanent disposition' of the child. In two other recent cases, Judge Moore issued special writings outlining a shift in procedure with respect to dependency/termination-of-parental-rights cases that, he perceived, had been accomplished by our legislature's amendment of the Alabama Juvenile Justice Act of 1990 ('the former AJJA'), § 12-15-1

et seq., Ala. Code 1975, and the Child Protection Act ('CPA'), § 26-18-1 et seq., Ala. Code 1975, in order to comply with federal legislation known as the Adoption and Safe Families Act ('ASFA'), 42 U.S.C. § 671 and § 675; in separate special writings in those cases, Judge Bryan and Judge Thomas agreed with Judge Moore as to this issue. See T.V. v. B.S., 7 So. 3d 346 (Ala. Civ. App. 2008), and A.D.B.H. v. Houston County Dep't of Human Res., 1 So. 3d 53 (Ala. Civ. App. 2008).

> "'In a permanency hearing, the juvenile court is to "determine" which of several custodial arrangements -- return to the parent, referral for termination of parental rights and adoption, or placement with a relative or other legal custodian -- "shall be" the permanency plan. Id. The purpose of requiring the 12-month permanency hearing is to comply with the policy behind the ASFA to ensure "that children are provided a permanent home as early as possible." Kurtis A. Kemper, Annotation, Construction and Application by State Courts of the Federal Adoption and Safe Families Act and Its Implementing State Statutes, 10 A.L.R. 6th 173, 193 (2006).'

"A.D.B.H., 1 So. 3d at 69 (Moore, J., concurring in part and concurring in the result) (footnotes omitted).

"The ASFA and the amendments to the former AJJA and the CPA placed new emphasis on the permanency hearing as a 'vitally important' step in dependency/termination-of-parental-rights proceedings. See A.D.B.H., 1 So. 3d at 68 (Thomas, J., concurring specially). T.V. and A.D.B.H. make it clear that issues such as DHR's plan to reunify a family, the reasonableness of DHR's efforts to rehabilitate a parent, and the possible placement of a child with a relative are meant to be aired and resolved at a permanency hearing. To the extent that a juvenile court's permanency order resolves

crucial issues, therefore, it is reasonable to expect that a parent has the right to judicial review of the juvenile court's decision with respect to those issues. See T.V. v. B.S., 7 So. 3d at 361 (Moore, J., concurring in the result) (stating that '[i]f the mother had had any complaint about the reasonableness of DHR's efforts to reunite the family, the finding that her efforts to rehabilitate had been unsuccessful, the placement of the child with [a relative] without consideration of other relatives, or the terms of her visitation, the mother's remedy was to appeal the judgment entered after the permanency hearing').

"Accordingly, we have treated a juvenile court's permanency order as final and appealable when it results in depriving a parent of the care, custody, or visitation with his or her child. See R.J.L. v. Lee County Dep't of Human Res., 976 So. 2d 455, 456 (Ala. Civ. App. 2007) (appeal of a permanency order transferring 'physical custody of ... the mother's two-year-old son[] from the child's foster parents in Alabama to the mother's cousins ... in Watertown, New York'), and D.B. v. Madison County Dep't of Human Res., 937 So. 2d 535, 536 (Ala. Civ. App. 2006) (appeal of a permanency order awarding legal and physical custody of the child to the maternal aunt).

"In determining whether any juvenile-court order that is subject to revision is appealable, we consider that the focus should be on whether the order addresses crucial issues that, if not objected to by the aggrieved party, are thereafter precluded from appellate review. This court has long considered dependency determinations to be final and appealable, but there is nothing magic about dependency determinations as opposed to permanency orders. We hold that it is immaterial, for purposes of finality and appealability, that a juvenile court's order emanates from the permanency-plan hearing rather than from the periodic review of a dependency determination. If the order addresses crucial issues that could result in depriving a parent of the fundamental right to the care and

> custody of his or her child, whether immediately or in the future, the order is an appealable order.
>
> "Turning to the permanency order in the present case, we consider that it addresses crucial issues with respect to both parents. The court approved the permanency plan for the mother as 'reunification with a parent'; thus, the mother had no reason to appeal. However, had the permanency plan been termination of parental rights or permanent relative placement, the mother's remedy would have been 'to appeal the judgment entered after the permanency hearing.' T.V. v. B.S., 7 So. 3d at 361 (Moore, J., concurring in the result). The permanency order in the present case addressed a crucial issue with respect to the father because it removed his entitlement to rehabilitation or reunification services provided by DHR. We hold that the permanency order was final and appealable with respect to both parties; therefore, there was no need for the juvenile court to certify the judgment as final pursuant to Rule 54(b), Ala. R. Civ. P., before we could entertain the father's appeal."

(Emphasis added.) Thus, as D.P. explains, a parent may immediately appeal an issue that is resolved in a permanency hearing if the resolution of that issue could result in depriving the parent of his or her fundamental right to care for and have custody of his or her child.

In the instant case, the mother appeals the findings made by the juvenile court in its January 3, 2012, orders entered following the August 4, 2011, permanency hearing (1) that adoption was the most appropriate permanency plan, and (2) that DHR had made reasonable efforts to reunite the mother

with the children.[9] The Court of Civil Appeals described the effects of these findings as follows in its opinion affirming the juvenile court's judgments:

> "[W]hen a juvenile court orders that a child be placed for adoption with an unidentified resource, the law requires DHR to file a petition to terminate the parental rights of the parents of the child. See 12-15-315(a)(2), Ala. Code 1975 (stating that DHR 'shall' file a petition to terminate parental rights when the permanency plan calls for adoption by an unidentified resource or a foster parent). Thus, unless the juvenile court provides for concurrent permanency planning, see § 12-15-315(b), Ala. Code 1975 (authorizing concurrent permanency planning), which the judgments at issue in this appeal did not do, the approval of a permanency plan of adoption, without any express direction for DHR to continue to make reasonable family-reunification efforts, necessarily implies that the juvenile court has turned its focus away from family reunification and toward the severance of the parent-child relationship. Accordingly, the judgments at issue in this case relieved DHR of continuing to make reasonable efforts to rehabilitate the mother or to reunite her with the children.
>
> "The judgments also relieved DHR of continuing to make efforts to locate relatives 'qualified to receive and care for the child[ren].' § 12-15-314(a)(3)c., Ala. Code 1975. When a permanency plan establishes a goal of relative placement, the juvenile court and DHR have a duty to make reasonable efforts to accomplish that goal. See § 12-15-312(b), Ala. Code 1975. In this case, DHR presented evidence indicating that, after nearly

[9]In orders entered following previous permanency hearings, the juvenile court had held that DHR should continue to make reasonable efforts to reunite the children with the mother and that the most appropriate permanency plan for the children was placement with a relative.

> three years of intensive investigation, it could not locate a willing relative fit to care for the children. After receiving that evidence, the juvenile court changed the previous permanency plan from placement with a relative to adoption. That determination implies that the juvenile court found that none of the relatives proffered by the mother would be suitable custodians for the children or that it would otherwise be in the best interests of the children to be adopted by an unidentified resource rather than to be placed in a relative's custody. As such, the juvenile court, in effect, directed DHR to cease its efforts to locate a qualified relative to receive the children and to redirect its efforts toward adoption with a termination of the mother's parental rights."

F.V.O. v. Coffee Cnty. Dep't of Human Res., [Ms. 2110398, December 7, 2012] ___ So. 3d ___, ___ (Ala. Civ. App. 2012) (footnotes omitted). Thus, the import of the juvenile court's judgments is that DHR may cease its efforts both to rehabilitate the mother and to locate a qualified relative to take custody of the children. These are crucial issues, and the juvenile court's resolution of these issues could result in depriving the mother of her fundamental right to care for and have custody of her children. Accordingly, the mother should be entitled to seek immediate appellate review of the juvenile court's judgments.

I am not persuaded by the suggestion in the main opinion that the mother may subsequently relitigate these issues in a termination-of-parental-rights proceeding or in an appeal from

a later judgment entered following such a proceeding. As explained by the Court of Civil Appeals, the relevant statutes indicate that parent-rehabilitation and relative-identification-and-placement issues are meant to be resolved in the context of permanency hearings, and it is logical and consistent with those same statutes that appellate review of those issues takes place following the permanency order making those determinations, not following an entirely separate termination-of-parental-rights action:

> "Section 12-15-319[, Ala. Code 1975,] requires a juvenile court, when deciding whether grounds for termination [of parental rights] exist, to consider whether DHR's reasonable parental-rehabilitation efforts have failed. However, nothing in § 12-15-319 requires the juvenile court to relitigate the issue of the reasonableness of DHR's efforts during the adjudicatory phase of a termination-of-parental-rights proceeding. By that point, in an ordinary case like this case, the legislature intended that any questions regarding the reasonableness or success of DHR's rehabilitation efforts would have long ago been decided in a permanency hearing. D.P., supra. Although a juvenile court must consider the failure of reasonable family-reunification efforts, it should do so only by taking judicial notice of its prior judgment. See generally Ex parte State Dep't of Human Res., 890 So. 2d 114 (Ala. 2004) (authorizing juvenile court to take judicial notice of its own records but not of court reports containing inadmissible hearsay evidence). Otherwise, allowing a parent to raise the issue at such a late stage would not only be duplicative and a waste of judicial resources but could cause an unwarranted delay in the final determination of the termination-of-parental-rights petition. See T.V. v. B.S., 7 So. 3d 346, 361 (Ala.

Civ. App. 2008) (Moore, J., concurring in the result).

"In Ex parte Beasley, 564 So. 2d 950, 954 (Ala. 1990), the supreme court held that, under former § 26-18-7, Ala. Code 1975, the predecessor statute to § 12-15-319, a juvenile court could not terminate a parent's parental rights without exhausting viable alternatives. After Beasley was decided, our legislature amended the former Alabama Juvenile Justice Act, former 12-15-1 et seq., Ala. Code 1975, to comply with the federal Adoption and Safe Families Act, 42 U.S.C. § 671 and § 675, by, among other things, mandating that juvenile courts decide the merits of relative placement at permanency hearings. See A.D.B.H. [v. Houston Cnty. Dep't of Human Res.], 1 So. 3d [53,] 69 [(Ala. Civ. App. 2008)] (Moore, J., concurring in part and concurring in the result). Those legislative changes did not abrogate the need for juvenile courts to exhaust viable alternatives, which is mandated by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, see Roe v. Conn, 417 F. Supp. 769, 779–80 (M.D. Ala. 1976), but established a new judicial procedure for implementing that standard, at least for children in foster-care placement. Instead of awaiting the adjudicatory hearing to determine whether placement with a relative could be accomplished as a viable alternative to termination of parental rights, the legislature decided that the issue would be decided in a separate permanency hearing to take place before the termination-of-parental-rights adjudicatory hearing. See § 12-15-315. Thus, contrary to Presiding Judge Thompson's dissent, ___ So. 3d at ___, it would not be 'premature' to consider any issue regarding relative placement on an appeal from a permanency judgment; it would, in fact, be too late to consider those issues on an appeal from a judgment terminating a parent's parental rights.

"In D.P., this court held that a dependency order should be considered final and appealable if it decides crucial issues regarding the fundamental

> rights of parents that would otherwise evade appellate review. 38 So. 3d at 764. The judgments in this case decide issues that adversely affect the fundamental rights of the mother. Unless we allow this appeal, the mother generally will be precluded from raising those same issues in any subsequent appeal. Hence, the holding in D.P. only reinforces our conclusion that the judgments at issue are final and appealable. We note Presiding Judge Thompson's concern that allowing appeals from permanency-hearing judgments may slow down the progress toward termination of parental rights in some cases. ___ So. 3d at ___. However, we cannot overlook the stated legislative intent that certain issues be adjudicated in permanency hearings or ignore that parents have a statutory right to raise those issues on appeal from the judgment in which they were decided, see § 12-15-601, and not from a later judgment in a totally separate action."

F.V.O., ___ So. 3d at ___ (emphasis added). I believe the orders entered by the juvenile court following the August 4, 2011, permanency hearing were final and that the mother accordingly had a right to appeal those orders pursuant to § 12-15-601. I therefore respectfully dissent.

Bolin and Shaw, JJ., concur.