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# ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2014

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C.S.

v.

Mobile County Department of Human Resources

Appeal from Mobile Juvenile Court  
(JU-01-1999.01)

PER CURIAM.

C.S. ("the mother") appeals from a judgment of the Mobile Juvenile Court terminating her parental rights as to a 12-year-old minor child, A.L.C. ("the child"), in response to a petition filed by the Mobile County Department of Human Resources ("DHR") and after holding an ore tenus proceeding at which a DHR caseworker and her supervisor, a psychologist who

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had evaluated the mother, a mental-health therapist who has counseled the child, a family counselor, the child's foster father, and the child's maternal grandmother testified. In pertinent part, the judgment under review provides as follows:

"[The child] is a dependent child as that term is defined in the Code of Alabama having been adjudicated to be a dependent child by order of this Court lastly in 2004. The child has remained in the custody of [DHR] since [that] time.

"... This Court previously issued an order terminating the rights of the mother and the father, [R.C.,] but the mother appealed said judgment and the same was reversed [see C.S.B. v. State Dep't of Human Res., 26 So. 3d 426 (Ala. Civ. App. 2009) ('C.S. I')]. The father did not appeal and this Court determines that the father's rights have been terminated.

"... Subsequent to remand to this Court, the Court dismissed the termination of parental rights petition and [adjudicated in the mother's favor] a subsequent termination of parental rights petition [via a] summary judgment [see Mobile Cnty. Dep't of Human Res. v. C.S., 89 So. 3d 780 (Ala. Civ. App. 2012) ('C.S. II')]. The Court thereafter directed [DHR] to resume efforts at reunification.

"... From the evidence presented this date, the Court finds [DHR] exercised all reasonable efforts to promote a reunification plan but that said plan failed because the mother is incapable of taking care of the child and providing for the child's needs.

"... The Court finds that although [DHR] has made little if any efforts to find relative placement ... the evidence shows that only the maternal grandmother is a relative who has had any involvement with the child[] and the mother, and that the maternal grandmother has never sought

custody of the child. The Court further finds that the maternal grandmother is well aware of the circumstances surrounding the child and the mother, and that her failure to seek to intervene in this matter establishes, in the Court's opinion, that she is not a viable placement resource. The Court therefore concludes that there are no relatives who are able or willing to take the care, custody, and control of [the] child.

"... The Court further finds that the child has been in the care of the current foster parents for most of the child's life, has formed a significant bond with said foster parents, and that said foster parents are desirous of adopting this child. The Court finds that it is in the best interest of the child that she be allowed to be adopted by said foster parents.

"... The Court concludes from all of the evidence that although the mother and child have a relationship, the child has a more significant relationship with the current foster parents and that said relationship should be made permanent by adoption and that therefore it is necessary to terminate the parental rights of the mother.

"... Given the age of the child, and the relationship between the child and the mother and the relationship between the mother and the foster parents, this Court is convinced that the foster parents, (and later the adoptive parents), will allow the child to maintain a significant relationship with the mother and that the same would be in the best interest of the child.

"... Wherefore the Court finds that termination of parental rights is in the best interest of the child."

As a prefatory matter, we note that, in C.S. I, although a majority of this court opined that while the juvenile court could properly have determined the mother to have a mental

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defect and that "expert testimony should not be required to prove an obvious mental deficit," 26 So. 3d at 433 (Moore, J., concurring specially but agreeing to proposition asserted in dissent authored by Thomas, J., and joined by Bryan, J.), a different majority of this court simultaneously concluded that DHR had failed to secure the admission of "evidence as to the extent of the mother's limited mental capacity, whether the mother's mental limitations prevent her from being able to fulfill her parental responsibilities to the child, and whether the mother's condition is likely to change" and noted that DHR had not appealed from the judgment to the extent that the juvenile court had excluded testimonial and documentary evidence of the mother's mental evaluations that might have supported the initial termination judgment. 26 So. 3d at 432 (per Thompson, P.J., with Pittman, J., concurring and Moore, J., concurring specially). Similarly, in C.S. II, we held that DHR's second action seeking the termination of the mother's parental rights had been foiled by DHR's own admission that nothing had changed since the filing of its initial termination petition and by DHR's failure to timely submit evidence rebutting that admission. 89 So. 3d at 783-84. Thus, neither of our previous decisions foreclosed DHR from seeking to demonstrate that the mother's mental condition

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was sufficiently severe to prevent her from fulfilling her parental responsibilities and, therefore, to warrant termination of her parental rights.

One of the means by which DHR sought to fulfill that burden in this third termination proceeding was by soliciting the expert testimony of the psychologist who had evaluated the mother in 2012. Trial counsel for the mother objected to that evidence on two grounds: (a) the purported applicability of the psychotherapist-patient evidentiary privilege and the absence of a valid release waiving the privilege and (b) contravention of federal medical-nondisclosure laws. After trial counsel for DHR argued that the psychotherapist-patient privilege did not apply in cases involving the custody of children, citing Rule 503(d)(5), Ala. R. Evid., the juvenile court overruled the mother's objection; that court later denied a motion to strike asserted after the psychologist had given testimony in the case. The mother's appellate brief, filed by newly appointed counsel, raises as its first issue the propriety, in light of the psychotherapist-patient privilege, of the juvenile court's ruling allowing the admission of the psychologist's testimony.

We conclude that DHR's position, that the psychologist's testimony was admissible, is the correct one. Rule 503(d)(5),

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Ala. R. Evid., provides that "[t]here is no privilege ... for relevant communications offered in a child custody case in which the mental state of a party is clearly an issue and a proper resolution of the custody question requires disclosure." Although the mother's point that a termination action does not easily fit within the boundaries of a "child custody case" is facially sound, the mother overlooks the fact that Rule 503(d)(5) "continues Alabama's preexisting, judicially created, exception to the psychotherapist-patient privilege." Rule 503, Ala. R. Evid., Advisory Committee's Notes.

Among the cases cited by the Advisory Committee as recognizing the exception is a termination-of-parental-rights case, In re Von Goyt, 461 So. 2d 821 (Ala. Civ. App. 1984), in which this court rejected a privilege claim under Ala. Code 1975, § 34-26-2, asserted by a respondent parent as to records of her psychiatric treatment that was substantially similar to the claim raised by the mother in this case regarding testimony as to her psychological condition:

"Our courts have consistently held that the paramount consideration in a custody matter is the child's best interests. A court cannot determine the best interests of the child without considering whether a party to a custody proceeding is physically, financially, or mentally able to care for the child. We find it significant that the

legislature in [Ala. Code 1975, § 26-18-7, the statutory predecessor to current Ala. Code 1975, § 12-15-319,] indicates that a court may consider a parent's mental illness or deficiency in determining whether to terminate parental rights. Particularly, where the state has petitioned our court to terminate a mother's custody of her children because of her mental instability, the court should be permitted to investigate her mental health records in order to determine whether a termination is necessary.

"We recognize that the psychologist-patient privilege is an important one, not to be easily disregarded. We do not seek to discourage troubled parents from obtaining professional help. However, we are convinced that where the issue of the mental state of a party to a custody suit is clearly in controversy, and a proper resolution of the custody issue requires disclosure of privileged medical records, the psychologist-patient privilege must yield.

"Substantial doubt was cast on [the respondent's] ability to care for her children. We find, therefore, that the trial court had sufficient evidence before it concerning [her] instability to warrant an inspection of her medical records."

461 So. 2d at 823-24 (citations omitted). Thus, because Rule 503(d)(5) carries forward preexisting Alabama judicial interpretations of the extent of the psychotherapist-patient privilege, and specifically the interpretation espoused in In re Von Goyt, we conclude that the juvenile court properly permitted the psychologist to testify regarding his evaluation of the mother in light of the crucial importance of the

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mother's mental condition concerning her possible ability to ever regain custody of the child.

The mother's remaining arguments concern whether the juvenile court correctly determined that DHR had made reasonable efforts to effect reunification, that no viable alternative to termination existed (such as, the mother suggests, continued visitation without custody or relative placement with the maternal grandmother), and that termination of parental rights is in the best interest of the child. Those arguments, in effect, largely challenge the sufficiency of the evidence to support the judgment of termination as provided for in § 12-15-319(a), Ala. Code 1975, which authorizes termination of parental rights upon a judicial determination, based upon clear and convincing evidence, that a child's parents "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," and caselaw interpreting that statute and its predecessors. In making that determination, the pertinent court is directed to consider certain factors, including whether a parent suffers from "[e]motional illness, mental illness or mental deficiency ...

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of a duration or nature as to render the parent unable to care for needs of the child." Id. at subsection (a)(2). Because the juvenile court's judgment was entered after an ore tenus proceeding, the applicable standard of review is that espoused in Ex parte State Department of Human Resources, 834 So. 2d 117, 120-21 (Ala. 2002), namely that appellate courts are to presume that trial courts' findings in cases involving child custody are correct and that reversal will not obtain absent a clear abuse of discretion or plain error. See also Ex parte State Dep't of Human Res., 682 So. 2d 459, 460 (Ala. 1996).

Apart from asserting that the juvenile court should have excluded certain evidence regarding the extent and severity of the mother's mental conditions (i.e., mental retardation and schizophrenia of the paranoid type), the mother does not assert on appeal the insufficiency of the evidence adduced at trial to support the juvenile court's conclusion that she "is incapable of taking care of the child and providing for the child's needs" -- that is, that the mother is unable to discharge her parental responsibilities. In that respect, the procedural posture of this appeal is markedly different from C.S. I, in which the sufficiency of the evidence to support the mother's incapacity was squarely at issue, and C.S. II, in

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which evidence that might have supported a different outcome was not timely tendered by DHR.

As to the remaining specific issues raised by the mother in this appeal, we cannot conclude that the juvenile court erred. The mother first asserts that DHR was required to exert reasonable efforts toward reunification and generally posits that DHR failed to undertake such efforts in this case. Notably, the mother's two-page argument contains no citations of legal authority supporting her position to the effect that DHR failed to discharge any legal duty it might have had with respect to effecting possible reunification between the mother and the child, and that omission arguably warrants affirmance on that ground. See Rule 28(a)(10), Ala. R. App. P.; L.T. v. W.L., 47 So. 3d 1241, 1247 (Ala. Civ. App. 2009). Even our addressing the merits, however, would not mandate reversal. As DHR's brief correctly notes, neither the Alabama Juvenile Justice Act nor pertinent caselaw requires DHR to effect rehabilitation of a parent having a mental condition that renders the parent unable to care for the child and that is unlikely to change in the foreseeable future. See D.W. v. State Dep't of Human Res., 595 So. 2d 502, 504 (Ala. Civ. App. 1992); accord Ala. Code 1975, § 12-15-312(c)(1)e. Under the circumstances of this case, in which the psychologist who had

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evaluated the mother testified that no mental-health services could assist the mother so as to offer hope for improvement, the juvenile court could properly have deemed DHR's efforts to help the mother, which had included offers of a physical examination, a psychological examination, and transportation assistance to visitation in addition to counseling, to have been reasonable.<sup>1</sup>

Moreover, we disagree with the mother that the juvenile court erred in declining to implement the two less-drastic alternatives to termination she has advanced. With respect to maintaining the status quo, under which the mother would remain able to exercise regular supervised visitation with the child, this court has, on occasion, observed that to allow a parent restricted visitation rights may indeed amount to "a viable alternative to termination of parental rights when it appears that a wayward parent cannot be rehabilitated but still shares a deep and beneficial emotional relationship with

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<sup>1</sup>Our conclusion as to that issue obviates any need to consider DHR's obligation to make reasonable efforts in light of DHR's having adduced evidence demonstrating that the mother's parental rights to a sibling of the child had been terminated in 2001. Cf. Ala. Code 1975, § 12-15-312(c) (indicating that reasonable efforts to preserve and reunify families are not required if a juvenile court determines that parental rights to a sibling have been involuntarily terminated).

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his or her children." T.D.K. v. L.A.W., 78 So. 3d 1006, 1011 (Ala. Civ. App. 2011). In this case, however, DHR adduced evidence that tended to show that no such significant, meaningful relationship exists between the mother and the child, who have been separated since April 2004 (when the now-12-year-old child was 2 years old); the record reflects that the child, during scheduled hour-long visitations, principally talks to DHR representatives about her daily routine and that the mother "shuts down" emotionally during the visits and/or makes complaints about the behavior of the mother's current and former husbands and the child's foster father. Further, the juvenile court heard testimony that the mother regularly makes spurious abuse allegations to DHR regarding the child's foster parents, tending to indicate that she would not be content to exercise only residual visitation rights as to the child.<sup>2</sup>

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<sup>2</sup>In his special writing, Judge Moore takes issue with our reliance upon the foregoing evidence in reaching the conclusion that the juvenile court's judgment was correct, opining that "the juvenile court obviously rejected that evidence when it found, based on the evidence favorable to the mother, that the mother and the child share a 'significant relationship' and that it would serve the best interests of the child to maintain that relationship." \_\_\_ So. 3d at \_\_\_ (Moore, J., concurring in the result in part and dissenting in part). The juvenile court's judgment actually provides that "the mother and child have a relationship" but that "the child has a more significant relationship with the current foster

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As to placement of the child with the maternal grandmother, the sole relative resource the mother identified, the record reflects that the maternal grandmother declined to respond to a DHR inquiry concerning her willingness to assist the mother in caring for the child, that the maternal grandmother admitted at trial to having no interest in visiting with the child, and that the maternal grandmother had not previously presented herself as a potential custodian during the nine-year history of the case. As we noted in M.J.C. v. G.R.W., 69 So. 3d 197, 209 (Ala. Civ. App. 2011), "the last-minute proffer of a potential resource for a child's placement will not suffice to delay the termination of parental rights."

Based upon the foregoing facts and authorities, the juvenile court could properly have determined, as it did, that the mother's parental rights as to the child were subject to termination under Ala. Code 1975, § 12-15-319(a)(2). Further, that court, in light of the evidence that the child and the

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parents and that said relationship should be made permanent by adoption" (emphases added). The juvenile court's aspirational expectation that the child's long-term foster parents would permit some continued postjudgment contact between the child and the mother in no way undercuts the force of that court's determination to the effect that the child in this case, after almost 10 full years in foster care, deserves the stability and permanency of adoption by her long-term foster caregivers.

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mother had no significant relationship whose severance would have harmed the child, could properly have determined that the termination of the mother's parental rights in order to facilitate the child's adoption by her long-term foster parents would be in her best interests. We therefore affirm the judgment of the juvenile court.

AFFIRMED.

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

Moore, J., concurs in the result in part and dissents in part, with writing.

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MOORE, Judge, concurring in the result in part and dissenting in part.

I concur that the expert testimony of Dr. Jack Carney, a licensed psychologist, was admissible and that reasonable reunification efforts were made in this case; however, I do not agree with all of the statements of the law made in the main opinion to reach those conclusions. Moreover, as to the remaining issues addressed in the main opinion, I respectfully dissent.

At the trial of the third petition to terminate the parental rights of C.S. ("the mother") to her natural child, A.L.C. ("the child"), the Mobile Juvenile Court ("the juvenile court") received evidence indicating that, although the child had been removed from the custody of the mother in 2004, when the child was 2 years of age, the mother and the child had since consistently visited with one another both formally and informally 2 to 4 times a month for 45 minutes to an hour at a time. Carmelita Millsap, a caseworker for the Mobile County Department of Human Resources ("DHR"), who had observed the visitations between the mother and the child since 2008, testified that, during the visitations, the mother and the child had interacted with one another, had played, had snacked, had done homework, had watched television, and had

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talked, all typical things a parent would do with a child during visitation. Millsap also testified that the child knows the mother as her "other mom," that the child greets the mother with a hug, that the mother and the child love one another, that the mother and the child look forward to their visitations together, and that the child still wants to visit with the mother. B.S. ("the maternal grandmother") testified that, during the informal visits, the child had appeared happy to see the mother and that the mother and the child had talked, laughed, and joked together; she also testified that the mother and the child share a mother/daughter bond.

In its final judgment, the juvenile court determined that, "although the mother and child have a relationship, the child has a more significant relationship with the current foster parents"; however, the juvenile court also found as follows:

"Given the age of the child, and the relationship between the child and the mother and the relationship between the mother and the foster parents, this Court is convinced that the foster parents, (and later the adoptive parents), will allow the child to maintain a significant relationship with the mother and that the same would be in the best interest of the child."

(Emphasis added.) Reading the foregoing provisions of the judgment in pari materia, so as to give effect to every word

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used by the juvenile court, see Moore v. Graham, 590 So. 2d 293, 295 (Ala. Civ. App. 1991) ("Separate provisions of judgments, like provisions of contracts, should be construed in pari materia, and the entire judgment -- all provisions considered -- should be read as a whole in the light of all the circumstances, as well as of the conduct of the parties."), it becomes apparent that the juvenile court found that the child had maintained a significant relationship with the mother, the continuation of which would be in the best interests of the child.

The judgment, when read as a whole, cannot reasonably be interpreted in any other way. The juvenile court stated exactly those words in its judgment when it found that the foster parents would allow "the child to maintain a significant relationship with the mother and that the same would be in the best interest of the child." It may be true that the juvenile court found that the relationship between the child and the foster parents was more significant than the relationship between the child and the mother, but that statement does not in any way detract from the finding that the child does, indeed, have a significant relationship with the mother. The juvenile court also concluded, as a matter of fact, that adoption by the foster parents would be in the best

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interests of the child, but, again, that does not contradict the factual finding that it also would be in the best interests of the child to continue her relationship with the mother. Those two findings are not mutually exclusive as a matter of fact, although, as I will explain later, they present a legal conundrum. To the extent that the main opinion concludes that the juvenile court did not find that the mother and the child share a significant relationship that should be continued, \_\_\_ So. 3d at \_\_\_, the main opinion is simply incorrect.

Instead of applying the law to the facts as found by the juvenile court, the main opinion purports to make its own finding of fact as to the relationship between the mother and the child. The main opinion recites some of the evidence that is unfavorable to the mother and then concludes that "no such significant, meaningful relationship exists between the mother and the child." \_\_\_ So. 3d at \_\_\_. DHR did adduce the evidence cited by the main opinion, but the juvenile court obviously rejected that evidence when it found, based on the evidence favorable to the mother, that the mother and the child share a "significant relationship" and that it would serve the best interests of the child to maintain that relationship. The above-quoted language from the main opinion

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directly contradicts the express findings of the juvenile court; however, this court cannot reweigh the evidence or substitute its judgment for that of the juvenile court who observed and heard the witnesses. See Ex parte T.V., 971 So. 2d 1, 9 (Ala. 2007). The main opinion clearly errs in making factual findings that are totally contrary to those found by the juvenile court.

Applying the law to the facts as actually found by the juvenile court, and not as found by the main opinion, the judgment should be reversed.

Some jurisdictions allow for parents to maintain their visitation rights even after termination of their parental rights, see Kristina V. Foehrkolb, When the Child's Best Interest Calls for It: Post-Adoption Contact By Court Order in Maryland, 71 Md. L. Rev. 490 n.4 (2012) (citing Md. Fam. Law § 5-324(b)(1)(ii)(5)), or even after adoption by a third party, id. at 510 n.145 (citing Annette Ruth Appell, Reflections on the Movement Toward a More Child-Centered Adoption, 32 W. New Eng. L. Rev. 1, 3 n.6 (2010)), if it is in the best interests of the child. However, Alabama law provides that a judgment terminating parental rights concludes the parent's right to any contact or association with the child. See Ex parte M.D.C., 39 So. 3d 1117, 1124 (Ala. 2009)

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(quoting M.D.C. v. K.D., 39 So. 3d 1105, 1112 (Ala. Civ. App. 2008) (Moore, J., dissenting)) ("A judgment terminating parental rights immediately and permanently severs the parent's right to custody, control, and affiliation with the child."). Alabama law does not provide a mechanism, such as a so-called "open adoption," see Foehrkolb at 509, which would allow for a parent whose parental rights have been severed to maintain a legally enforceable right to continued visitation with his or her child. Furthermore, Alabama law does not provide any legal means by which a child may compel an adoptive parent to allow continued contact with a former parent whose parental rights have been terminated. Under Alabama law, a juvenile court may legally protect a parent's right to, and a child's interest in, continued association only by maintaining the parent-child relationship.

That does not mean that a juvenile court that finds that it is in the best interests of the child to maintain the parent-child relationship must sacrifice the child's interest in permanency and stability. Our legislature has recognized that termination of parental rights and adoption by foster parents is only one of many ways to achieve permanency for a dependent child. See Ala. Code 1975, § 12-15-315(a)(2). A juvenile court may also achieve permanency by placing a child

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"in another planned permanent living arrangement," Ala. Code 1975, § 12-15-315(a)(6), which would include permanent placement of the child in a long-term foster home without a termination of parental rights and adoption. See Department of Human Servs. v. G.N., 263 Or. App. 287, 328 P.3d 728 (2014).

In this case, the mother, through her attorney's questioning of Ashley Carlock, Millsap's supervisor, adduced evidence indicating that the foster parents, who have already raised the child in their home for the last 10 years, were committed to the child regardless of whether the mother's parental rights were terminated and regardless of whether they were allowed to adopt the child. Carlock essentially admitted that the foster parents would continue to raise the child under another planned permanent living arrangement ("APPLA"). However, Carlock testified that she, as the DHR representative, did not recommend APPLA because "APPLA is not permanency. APPLA is letting this child linger in foster care until she ages out ...." On that point, Carlock is incorrect. APPLA is a legislatively acknowledged form of a permanent-custody arrangement for a dependent child.

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Carlock also testified that

"[w]e have a family that is willing to provide a permanent home for [the child] through adoption. APPLA is normally a plan that's utilized once all other plans have been exhausted. And, also due to [the child's] age. She's only 12. APPLA is not usually a plan that we apply to children until they're age 14."

However, Alabama law provides that all viable alternatives must be exhausted before terminating parental rights. See Ex parte Beasley, 564 So. 2d 950 (Ala. 1990). If a child has a strong emotional bond with a parent that should be continued, a juvenile court must determine whether the child can be placed in a safe and permanent custodial arrangement that preserves that relationship without subjecting the child to parental harm. See T.D.K. v. L.A.W., 78 So. 3d 1006, 1011 (Ala. Civ. App. 2011). If a foster family is willing to provide a permanent home for a child while supervising beneficial visitation with the parent, then maintenance of the status quo represents a viable alternative to termination of parental rights. See B.A.M. v. Cullman Cnty. Dep't of Human Res., [Ms. 2130014, March 7, 2014] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Civ. App. 2014).

When a viable APPLA exists, neither DHR nor a juvenile court can simply elect to pursue termination of parental rights with adoption because it considers that to be a better

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option for the child. Parents and children have a fundamental right to maintain association with one another. K.W. v. J.G., 856 So. 2d 859, 874 (Ala. Civ. App. 2003). Substantive due process guarantees that the government cannot dissolve that right when a less-drastic alternative is available that will protect the interests of the child. Ex parte Beasley, supra. In this case, the mother specifically identified a viable APPLA for the juvenile court that would simultaneously protect the child from harm, preserve the beneficial relationship between the mother and the child, and provide the child with stability and permanency. DHR did not present any evidence indicating that using APPLA would adversely affect the child psychologically or otherwise.<sup>3</sup> As a matter of law, the juvenile court could not reject APPLA in order to facilitate the adoption of the child by the foster parents with a mere "aspirational expectation" that the foster parents would voluntarily continue visitation between the mother and the child. \_\_\_ So. 3d at \_\_\_ n.2.

The main opinion provides that

"[t]he juvenile court's aspirational expectation that the child's long-term foster parents would

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<sup>3</sup>Notably, DHR also failed to present any expert testimony as to the expected psychological effect on the child of the termination of the mother's parental rights.

permit some continued postjudgment contact between the child and the mother in no way undercuts the force of that court's determination to the effect that the child in this case, after almost 10 full years in foster care, deserves the stability and permanency of adoption by her long-term foster caregivers."

\_\_\_ So. 3d at \_\_\_ n.2. The main opinion is legally incorrect. The finding that it is in the best interests of the child to continue to have contact with the mother does override the finding that it would serve the best interests of the child to be adopted. As a matter of Alabama law, the juvenile court cannot simultaneously terminate parental rights so as to allow for the adoption of the child and preserve the mother's right to, and the child's interest in, a continued relationship with the mother. Because of substantive-due-process concerns, the right to a continued parent-child relationship prevails in such cases, as explained above. The main opinion does not cite any law in support of its proposition otherwise.

The mother argued before the juvenile court, and now argues before this court, that the judgment terminating her parental rights should be reversed because the juvenile court failed to exhaust all viable alternatives. The main opinion affirms the judgment based on a distorted version of the facts, but not on an application of the law to the facts as actually found by the juvenile court. When the law is applied

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to the facts as actually found by the juvenile court, the only legally correct result is a reversal of the judgment. Therefore, I cannot concur with the decision to affirm the judgment of the juvenile court terminating the mother's parental rights.