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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2016-2017

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K.T.

v.

B.C.

**Appeals from Lee Juvenile Court
(JU-16-137.01 and JU-16-138.01)**

MOORE, Judge.

K.T. ("the mother"), who is herself a minor, appeals from a judgment of the Lee Juvenile Court ("the juvenile court") declaring S.T. and E.B. ("the children") dependent and awarding joint legal custody of the children to the mother and

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the children's paternal grandmother, B.C. ("the paternal grandmother"), awarding physical custody of the children to the mother, and awarding specified visitation to the paternal grandmother. We dismiss the appeals.

Procedural History

On April 1, 2016, the paternal grandmother filed two separate verified petitions alleging that the children were dependent; those petitions were assigned case number JU-16-137.01 and case number JU-16-138.01. After the mother signed a stipulation of dependency, the juvenile court rendered a single judgment that was entered in both case number JU-16-137.01 and case number JU-16-138.01 on November 1, 2016, declaring each child dependent and awarding joint legal custody of each child to the mother and the paternal grandmother, awarding physical custody of each child to the mother, and awarding specified visitation to the paternal grandmother. On November 11, 2016, the mother filed a postjudgment motion in each case alleging that the juvenile court lacked subject-matter jurisdiction, that proper service had not been perfected, that her counsel had not provided her with adequate representation, and that there was not

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sufficient evidence to support the juvenile court's judgment. On November 23, 2016, the juvenile court entered separate orders providing that the postjudgment motions were "granted in part" and further providing:

"The [November 1, 2016, judgment] is hereby set aside as a final Order, but the terms thereof remain in place, pendente lite, to determine issues of service related to the mother's unique status as a minor herself."

On December 7, 2016, the mother filed notices of appeal to this court. On December 12, 2016, the juvenile court purported to set the cases for a hearing on the service issue on January 9, 2017.

Discussion

Initially, we point out that, "[u]nder 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." J.J. v. J.H.W., 27 So. 3d 519, 522 (Ala. Civ. App. 2008). Because, in the present case, the juvenile court's judgment declared the

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children dependent and determined their custody, the judgment was a final judgment.

The mother filed timely postjudgment motions, which the juvenile court purported to "grant in part" by setting aside the judgment in order to conduct a hearing and to decide the service issue argued by the mother. We have held that an order indicating that a trial court intends to hold a hearing on an issue raised in a postjudgment motion is not a ruling on the merits of the issue. See Smith v. Smith, 4 So. 3d 1178, 1180-81 (Ala. Civ. App. 2008). Rule 1(B), Ala. R. Juv. P., provides, in pertinent part:

"All postjudgment motions, whether provided for by the Alabama Rules of Civil Procedure or the Alabama Rules of Criminal Procedure, must be filed within 14 days after entry of order or judgment and shall not remain pending for more than 14 days, unless, within that time, the period during which a postjudgment motion may remain pending is extended:

"(1) By written order of the juvenile court on its own motion, or upon motion of a party for good cause shown, for not more than 14 additional days; or

"(2) Upon the express written consent of all the parties, which consent shall appear of record; or

"(3) By the appellate court to which an appeal of the judgment would lie."

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In substance, the juvenile court entered written orders extending the time to rule on the service issue raised in the mother's postjudgment motions, which was allowable. However, the juvenile court purported to retain jurisdiction to address the issue beyond the "14 additional days" allowed by Rule 1(B)(1), which it could not do. Under the circumstances, pursuant to Rule 1(B), the postjudgment motions could not remain pending after December 12, 2016, the date upon which they were deemed denied by operation of law.¹ At that point, the judgment became appealable and the notices of appeal filed

¹The mother filed her postjudgment motions on November 11, 2016. Rule 1(B), Ala. R. Juv. P., provides that no postjudgment motion shall "remain pending for more than 14 days, unless, within that time, the period during which a postjudgment motion may remain pending is extended" Friday, November 25, 2016, was designated as a state holiday by the Governor and, thus, was a "legal holiday." See Rule 6(a), Ala. R. Civ. P. Because November 26 and 27, 2016, fell on a Saturday and a Sunday, the initial 14-day period for the juvenile court to rule on the mother's postjudgment motions was extended to November 28, 2016. See Williamson v. Fourth Ave. Supermarket, Inc., 12 So. 3d 1200, 1203-04 (Ala. 2009) (construing analogous language in Rule 59.1, Ala. R. Civ. P.); see also Rule 6, Ala. R. Civ. P. The juvenile court, however, extended the time for ruling on those motions an additional 14 days, see Rule 1(B)(1), Ala. R. Juv. P., but, because the juvenile court did not rule within that additional 14-day period, the motions were deemed denied by operation of law on December 12, 2016.

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by the mother on December 7 became effective. See Rule 4(a)(5), Ala. R. App. P.

On appeal, the mother reiterates the arguments raised in her postjudgment motions. We find the mother's argument regarding improper service to be dispositive.²

Rule 1(A), Ala. R. Juv. P., provides, in pertinent part: "If no procedure is specifically provided in these Rules or by statute, the Alabama Rules of Civil Procedure shall be applicable to those matters that are considered civil in nature and the Alabama Rules of Criminal Procedure shall be applicable to those matters that are considered criminal in nature." Rule 13, Ala. R. Juv. P., which provides the rules for service of process in dependency cases, does not address the issue of service of process on a minor parent. Therefore, we look to the Alabama Rules of Civil Procedure, specifically Rule 4(c)(2), Ala. R. Civ. P., which provides that service of process shall be made upon a minor "by serving any one of the

²Although doing so was not necessary to the disposition of this appeal, this court has examined the issue of subject-matter jurisdiction and has determined that no jurisdictional defect has been proven. See, e.g., W.T.H. v. M.M.M., 915 So. 2d 64, 71-72 (Ala. Civ. Appl. 2005); and M.W.H. v. R.W., 100 So. 3d 603,606-07 (Ala. Civ. App. 2012).

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following: the father, the mother, the guardian, the individual having care of the minor or with whom the minor lives, or the spouse, if the minor is married, and, if the minor is over the age of sixteen (16) years, by also serving the minor personally."

The record reveals that the mother, who is a minor and who was over the age of 16 years when the underlying dependency actions were initiated, was served personally with process. The record indicates, however, that none of the other persons identified in Rule 4(c)(2) were served with process. We recognize that the mother appeared and entered into an agreement while represented by a guardian ad litem. However, in Roberts v. Hall, 373 So. 2d 1103, 1103-04 (Ala. Civ. App. 1979), this court held that, although the minor in that case, by and through her court-appointed guardian ad litem, had filed an answer and had entered into an agreement upon which the trial court's judgment had been based, that judgment was void because service had not been properly perfected under Rule 4(c)(2), Ala. R. Civ. P.³ The court

³In 1979, former Rule 4(c)(2), Ala. R. Civ. P., required service on an "infant" if the infant was over the age of 12 years.

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further held that a minor may not waive the service requirements of Rule 4(c)(2). Id. Indeed, this court held that the trial court in Roberts had not acquired jurisdiction over the minor and, therefore, that its order appointing the guardian ad litem was void, that the minor's answer and the agreement were of no effect, and that the trial court's judgment, which had been entered based upon that agreement, was void. Id.

Similarly, in the present case, because the mother's "father, ... mother, ... guardian, [or] the individual having care of the [mother] or with whom the [mother] lives" was not served with process in this matter, service of process was not perfected in accordance with Rule 4(c)(2) and, thus, the juvenile court never obtained jurisdiction over the mother. Therefore, the juvenile court's appointment of the guardian ad litem is void, the dependency agreement executed by the mother is of no effect, and the juvenile court's judgment based upon that agreement is void. "A void judgment will not support an appeal, and 'an appellate court must dismiss an attempted appeal from such a void judgment.'" Colburn v. Colburn, 14 So. 3d 176, 179 (Ala. Civ. App. 2009) (quoting Vann v. Cook,

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989 So. 2d 556, 559 (Ala. Civ. App. 2008)). Accordingly, we dismiss the mother's appeals, albeit with instructions to the juvenile court to set aside its void judgment.

2160180 -- APPEAL DISMISSED WITH INSTRUCTIONS.

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

Donaldson, J., concurs in the result, with writing.

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DONALDSON, Judge, concurring in the result.

I believe that the appeals should be dismissed because K.T. ("the mother") has appealed from nonfinal orders. "An appeal will ordinarily lie only from a final judgment; that is, a judgment that conclusively determines the issues before the court and ascertains and declares the rights of the parties." Palughi v. Dow, 659 So. 2d 112, 113 (Ala. 1995).

The juvenile court entered an identical final judgment in each case on November 1, 2016 ("the final judgments"). The mother filed timely postjudgment motions on November 11, 2016, seeking to vacate the final judgments. See Rule 1(B), Ala. R. Juv. P. One of the grounds argued by the mother in support of her motions was that she had not been properly served. On November 23, 2016, the juvenile court entered an electronically generated order in each case addressing the postjudgment motions. The November 23, 2016, orders are titled "ORDER REMOVING THE FINALITY OF THE PRIOR ORDER." The first sentence of each order reads: "ALTER OR AMEND filed by [the mother's last and first names] is hereby GRANTED IN PART." The style and phrasing of the first sentence of the orders appear to have been automatically generated by the electronic-filing

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system provided to the trial courts. The remainder of the electronic orders, however, including the titles, appears to have been created by the trial court and contains the following:

"The Order enforcing Dependency Agreement of November 1, 2016 is hereby set aside as a final Order, but the terms thereof remain in place, pendente lite, to determine issues of service related to the mother's unique status as a minor herself."

I agree that in some cases an order that purports to "grant" a postjudgment motion but that actually only sets a hearing on the motion is ineffective. Smith v. Smith, 4 So. 3d 1178, 1181 (Ala. Civ. App. 2008). The first sentence of the November 23, 2016, orders purporting to grant the postjudgment motions "in part" is confusing. See Venturi v. Venturi, [Ms. 2150279, Sept. 16, 2016] ___ So. 3d ___ (Ala. Civ. App. 2016) (Donaldson, J., concurring specially) (observing the confusion that might result from the automatically generated language used in the electronic-filing system provided to the trial courts). Despite the first sentence, however, I read the remaining portions of the November 23, 2016, orders as specifically vacating the final judgments by setting them aside. Although insufficiency of service was also a ground

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raised in support of the postjudgment motions, the sufficiency of service on the mother must be addressed before the matters can further proceed after the vacation of the final judgments, as noted by the trial court in the November 23, 2016, orders:

"[S]ufficiency of service has been put into question. While dependency cases may proceed when otherwise necessary persons cannot be found it is not clear at this point and time whether the facts support the need for additional service or whether the present service is adequate. The Court will set a hearing on those Issues by separate order. Until such times the parties shall abide by the terms of the Dependency agreement entered into by the mother [on] October 31, 2016."

Therefore, despite the "granted in part" language in the first sentence of the November 23, 2016, orders, I construe the orders as vacating the final judgments and entering non-appealable pendente lite orders. P.B. v. P.C., 946 So. 2d 896, 898 (Ala. Civ. App. 2006) (pendente lite orders are not final judgments). Accordingly, I would dismiss the appeals, but not for the reasons expressed in the main opinion.