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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2017-2018

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M.D.

v.

Russell County Department of Human Resources

**Appeal from Russell Juvenile Court
(JU-14-136.01)**

DONALDSON, Judge.

Consolidated actions retain their separate identities and require the entry of a separate judgment in each action. R.J.G. v. S.S.W., 42 So. 3d 747, 752-53 (Ala. Civ. App. 2009). Under current Alabama law, however, a judgment entered in

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consolidated actions that does not dispose of all the claims in those actions will not support an appeal unless it is certified as final under Rule 54(b), Ala. R. Civ. P. Hanner v. Metro Bank & Prot. Life Ins. Co., 952 So. 2d 1056, 1061 (Ala. 2006). The judgment being appealed in this case was entered in a consolidated action, but the claims in the other consolidated actions remain pending; therefore, the judgment is not sufficiently final to support an appeal.

Facts and Procedural History

The Russell County Department of Human Resources ("DHR") took custody of C.R.D. ("the child") in June 2014 and initiated proceedings in the Russell Juvenile Court ("the juvenile court") that involved M.D. ("the mother"). That case was designated as case no. JU-14-136.01 ("the .01 action"). On June 9, 2014, the juvenile court entered an order in the .01 action adjudicating the child to be dependent and transferring custody of the child to DHR.

In July 2014, R.T. ("the father") filed a petition in the .01 action seeking to adjudicate his paternity of the child and seeking custody of the child. Also in July 2014, the child's maternal grandmother filed a separate petition for

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custody of the child, which was docketed in the juvenile court as case no. JU-14-136.02 ("the .02 action"). On July 24, 2014, the juvenile court dismissed the .02 action and allowed the maternal grandmother to intervene in the .01 action. That same day, the juvenile court entered an order adjudicating R.T. as the biological father of the child.

On August 28, 2014, after a hearing, the juvenile court entered an order in the .01 action denying the mother's motion to reconsider its June 9, 2014, order of dependency, but it noted in its order that it would treat the mother's motion as a petition to modify custody.

On November 5, 2014, the juvenile court entered an order in the .01 action that, among other things, continued the mother's, the father's, and the maternal grandmother's petitions "until the final resolution of the mother's pending criminal charges." That order also incorporated an agreement of the parties regarding medical care for the child. That order indicates that it was also entered in case no. JU-14-136.03 ("the .03 action") and case no. JU-14-136.04 ("the .04 action"). The record does not indicate the nature of the .03 action, and, although the record is not entirely clear, it

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appears that the .04 action was initiated with the maternal grandmother's filing of a dependency petition in September 2014.

On October 23, 2015, the mother and the maternal grandmother filed a petition seeking custody of the child, which was docketed as case no. JU-14-136.06 ("the .06 action"). On October 29, 2015, the juvenile court entered an order consolidating the .06 action with case no. JU-14-136.05 ("the .05 action").¹

On February 2, 2016, the mother filed a handwritten request for a custody hearing, on which she designated that her request was applicable to the .01 action through the .06 action. On March 31, 2016, the father filed a "counterclaim for custody" in the .06 action, which he also filed in the .01 action on April 7, 2016.

On April 1, 2016, the juvenile court entered an order in the .06 action consolidating that action with the .01 action, the .03 action, and the .04 action.

¹The supplemental record on appeal indicates that the .05 action involved a petition seeking to terminate the mother's parental rights, but that action has been dismissed.

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The juvenile court held a trial on the mother's petition to modify custody on August 8, 2017. On August 26, 2017, after the trial, the juvenile court entered a judgment in the .01 action that, among other things, found that the child remained dependent, denied the mother's petition to modify custody, and denied the father's petition for custody. On September 6, 2017, the mother filed a notice of appeal to this court from the judgment entered in the .01 action. The mother has proceeded in this appeal without the assistance of counsel.

Discussion

The mother raises numerous arguments on appeal; however, before addressing those arguments, we must determine whether this court has jurisdiction to consider the mother's appeal because "jurisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu." Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987).

The record indicates that the .01 action, the .03 action, the .04 action, and the .06 action were consolidated in the juvenile court. The mother appeals from a judgment entered only in the .01 action, and it appears that claims remain pending in the consolidated .03, .04, and .06 actions. The

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judgment in the .01 action does not contain a certification of finality pursuant to Rule 54(b), Ala. R. Civ. P.

In Hanner, supra, our supreme court held that a judgment entered in a consolidated action that does not dispose of all the pending claims in the consolidated actions is not sufficiently final to support an appeal. The court held that "a trial court must certify a judgment as final pursuant to Rule 54(b), Ala. R. Civ. P., before a judgment on fewer than all the claims in a consolidated action can be appealed." 952 So. 2d at 1061. On this point, Hanner, decided in 2006, found "decisions interpreting the Federal Rules of Civil Procedure, on which our own Rules of Civil Procedure are based," to be persuasive. Id. We note that in Hall v. Hall, ___ U.S. ___, ___, 138 S. Ct. 1118, 1131 (2018), the United States Supreme Court recently analyzed this issue under Rule 42(a), Fed. R. Civ. P., and held that "when one of several consolidated cases is finally decided, a disappointed litigant is free to seek review of that decision in the court of appeals." We must, however, apply Hanner.

We asked the parties to submit letter briefs addressing whether a final judgment had been entered in the .03 action,

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the .04 action, and the .06 action and, if not, what effect Hanner has on the finality of the mother's appeal in the .01 action. The mother did not respond to our request. DHR responded, asserting that the mother had appealed only from the judgment entered in the .01 action and that the lack of a final judgment in the .03 action, the .04 action, and the .06 action does not affect the finality of the judgment entered in the .01 action. DHR did not discuss the application of Hanner to this appeal.

Because the record shows that claims remain pending in the .03 action, the .04 action, and the .06 action, and because those actions were consolidated with the .01 action, the judgment entered in the .01 action is not final for purposes of appeal. See Hanner, 952 So. 2d at 1061; see also Palughi v. Dow, 659 So. 2d 112, 113 (Ala. 1995) ("An appeal will ordinarily lie only from a final judgment."). On the authority of Hanner, we remand this case to the juvenile court for 21 days to determine whether the August 26, 2017, judgment entered in the .01 action should be certified as final pursuant to Rule 54(b), Ala. R. Civ. P. See Lighting Fair, Inc. v. Rosenberg, 63 So. 3d 1256, 1263 (Ala. 2010) (discussing

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the appropriate standard for reviewing Rule 54(b) certifications). If the juvenile court takes any action, a supplemental record should be submitted to this court within 21 days of the date of this opinion. If the trial court chooses to take no action, this appeal will be dismissed.²

REMANDED WITH INSTRUCTIONS.

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

Thomas, J., concurs in the result, without writing.

²We point out that this court's decision to remand the cause does not imply that such a certification is appropriate. In Ragland v. State Farm Mutual Automobile Insurance Co., 238 So. 3d 641 (Ala. 2017), the supreme court remanded the cause to the trial court for it to consider issuing a Rule 54(b) certification regarding a judgment that disposed of fewer than all the claims in consolidated actions. On remand, the trial court certified the judgment as final, but the supreme court ultimately determined that the certification was inappropriate and dismissed the appeal.