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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

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2170540

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D.L.

v.

Calhoun County Department of Human Resources

Appeal from Calhoun Juvenile Court  
(JU-13-355.02)

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2170619, 2170620, and 2170621

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S.H.

v.

Calhoun County Department of Human Resources

Appeals from Calhoun Juvenile Court  
(JU-13-353.02, JU-13-354.02, and JU-13-355.02)

2170540; 2170619; 2170620; 2170621

PITTMAN, Judge.

In these consolidated appeals, S.H., the mother of M.H., T.H., and Da.L. (hereinafter collectively referred to as "the three children"), appeals from judgments of the Calhoun Juvenile Court ("the juvenile court") insofar as they terminated her parental rights to the three children, and D.L., the father of Da.L. only, appeals from one of those judgments insofar as it terminated his parental rights to Da.L. only. For the reasons discussed below, we dismiss the mother's appeal from the judgment terminating her parental rights to M.H., and we dismiss the mother's other two appeals and D.L.'s appeal with instructions.

#### Procedural History

In September 2017, the Calhoun County Department of Human Resources ("DHR") commenced actions to terminate the parental rights of the parents of the three children. As noted above, S.H. is the mother of the three children, while D.L. is the father of Da.L. only. The father of M.H. is Vont.M., while the father of T.H. is A.B.

On December 4, 2017, in response to a motion filed by Vont.M. in the termination-of-parental-rights action pertaining to M.H., the juvenile court stayed DHR's

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termination-of-parental-rights claim against Vont.M. and transferred that claim to the juvenile court's administrative docket. Later in early December 2017, D.M.H. ("the maternal grandmother"), the maternal grandmother of the three children, and Vond.M., the paternal grandmother of M.H. only, each filed motions for leave to intervene and for custody in the termination-of-parental-rights actions pertaining to the three children.<sup>1</sup> Thereafter, on December 6, 2017, the juvenile court granted the maternal grandmother's motions for leave to intervene in the termination-of-parental-rights actions pertaining to the three children, made the maternal grandmother a party to those actions, and set her custody claims in those actions for trial on January 26, 2018. The juvenile court also granted Vond.M.'s motion for leave to intervene in the termination-of-parental-rights action pertaining to M.H., made her a party to that action, and transferred Vond.M.'s custody claim in that action to the juvenile court's administrative docket; however, the juvenile court denied Vond.M.'s motions for leave to intervene in the

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<sup>1</sup>The maternal grandmother and Vond.M. also filed motions for leave to intervene and for custody in the dependency actions pertaining to T.H. and Da.L.; however, those dependency actions are not before us.

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termination-of-parental-rights actions pertaining to T.H. and Da.L. The juvenile court also set a trial on February 20, 2018, for DHR's termination-of-parental-rights claim against the mother in the termination-of-parental-rights action pertaining to M.H., for DHR's termination-of-parental-rights claims against both the mother and A.B. in the termination-of-parental-rights action pertaining to T.H., and for DHR's termination-of-parental-rights claims against the mother and D.L. in the termination-of-parental-rights action pertaining to Da.L.

On January 26, 2018, the juvenile court held a bench trial regarding the maternal grandmother's custody claims in the termination-of-parental-rights actions pertaining to the three children. After that trial had been concluded, the juvenile court, on January 29, 2018, entered orders in those actions denying the maternal grandmother's custody claims.

On February 12, 2018, the maternal grandmother filed notices of appeal in the termination-of-parental-rights actions pertaining to the three children. This court docketed the maternal grandmother's appeals as case numbers 2170475, 2170476, and 2170477. Later on February 12, 2018, the maternal grandmother also filed a motion titled "Motion for New Trial

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or, in the Alternative, to Alter, Amend, or Vacate" in the termination-of-parental-rights action pertaining to M.H. only. The juvenile court never ruled on that motion. On February 16, 2018, the maternal grandmother filed a document titled "Amend Appeal" in the termination-of-parental-rights action pertaining to M.H. only. Although that document added the case numbers for the dependency actions pertaining to T.H. and Da.L., that document was in all other material respects the same as the notice of appeal previously filed in the termination-of-parental-rights action pertaining to M.H.

On February 19, 2018, the mother filed motions in the termination-of-parental-rights actions pertaining to M.H. and T.H. only that asked the juvenile court to stay the termination-of-parental-rights claims against the mother in those actions pending the resolution of the maternal grandmother's appeals. On February 20, 2018, the juvenile court denied those motions. Also on February 20, 2018, the juvenile court held a bench trial regarding the termination-of-parental-rights claim against the mother in the termination-of-parental-rights action pertaining to M.H., the termination-of-parental-rights claims against the mother and A.B. in the termination-of-parental-rights action pertaining

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to T.H., and the termination-of-parental-rights claims against the mother and D.L. in the termination-of-parental-rights action pertaining to Da.L. After the trial, the juvenile court, on February 20, 2018, entered judgments in the termination-of-parental-rights actions pertaining to the three children. The judgment entered in the termination-of-parental-rights action pertaining to M.H. terminated the parental rights of the mother only and stated that DHR's termination-of-parental-rights claim against Vont.M. had been stayed and would be tried after the disposition of criminal charges pending against Vont.M. That judgment made no reference to Vond.M.'s pending custody claim in that termination-of-parental-rights action, which the juvenile court had transferred to its administrative docket when it granted her motion for leave to intervene.

The judgment entered in the termination-of-parental-rights action pertaining to T.H. terminated the parental rights of both the mother and A.B. to that child. The judgment entered in the termination-of-parental-rights action pertaining to Da.L. terminated the parental rights of both the mother and D.L. to that child. D.L. filed a notice of appeal in the termination-of-parental-rights action pertaining to

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Da.L. within 14 days after the entry of the judgment in that action, and this court docketed his appeal as case number 2170540. The mother filed a "Motion for New Trial or, in the Alternative, to Alter, Amend, or Vacate" in the termination-of-parental-rights actions pertaining to the three children within 14 days after the entry of the judgments in those actions. The juvenile court entered orders denying those motions within 14 days after they had been filed, and, thereafter, the mother filed notices of appeal in those actions within 14 days after the entry of the orders denying those motions. This court docketed the mother's appeal from the judgment terminating her parental rights to M.H. as case number 2170619, docketed her appeal from the judgment terminating her parental rights to T.H. as case number 2170620, and docketed her appeal from the judgment terminating her parental rights to Da.L. as case number 2170621. We subsequently consolidated the mother's three appeals with D.L.'s appeal for the purpose of adjudicating them in a single decision. This court has jurisdiction over the mother's and Da.L.'s appeals pursuant to Rule 28(A)(1)(c)(ii), Ala. R. Juv. P., because the trial of the claims at issue in those appeals

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was stenographically recorded and transcribed by a licensed court reporter.

On July 26, 2018, this court dismissed the maternal grandmother's appeals in case numbers 2170475, 2170476, and 2170477 because she did not file a brief in those appeals. This court issued its certificates of judgment in the maternal grandmother's appeals on August 13, 2018.

#### Jurisdiction

Although none of the parties has raised the issue whether this court may consider D.L.'s and the mother's appeals, "matters of jurisdiction are of such importance that a court may consider them ex mero motu." Reid v. Reid, 844 So. 2d 1212, 1214 (Ala. Civ. App. 2002).

"It is a well established rule that, with limited exceptions, an appeal will lie only from a final judgment which determines the issues before the court and ascertains and declares the rights of the parties involved." Owens v. Owens, 739 So. 2d 511, 513 (Ala. Civ. App. 1999), quoting Taylor v. Taylor, 398 So. 2d 267, 269 (Ala. 1981). This court has stated:

"A final judgment is one that completely adjudicates all matters in controversy between all the parties.

"... An order that does not dispose of all claims or determine the rights and liabilities of all the parties to an action is not a final judgment. In such an



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instance, an appeal may be had "only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." See Rule 54(b), Ala. R. Civ. P.'"

Adams v. NaphCare, Inc., 869 So. 2d 1179, 1181 (Ala. Civ. App. 2003) (quoting Eubanks v. McCollum, 828 So. 2d 935, 937 (Ala. Civ. App. 2002)).

The judgment entered in the termination-of-parental-rights action pertaining the M.H. did not adjudicate DHR's termination-of-parental-rights claim against Vont.M. or Vond.M.'s custody claim; it adjudicated the termination-of-parental-rights claim against the mother only. Therefore, that judgment did not "'completely adjudicate[] all matters in controversy between all the parties.'" Id. Moreover, the juvenile court did not certify that judgment as a final judgment pursuant to Rule 54(b), Ala. R. Civ. P. See E.H. v. K.H., 221 So. 3d 485, 488 (Ala. Civ. App. 2016) (recognizing the applicability of Rule 54(b) in juvenile actions); see also Rule 1(A), Ala. R. Juv. P. ("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 ...."). Therefore, an appeal will not lie from the judgment entered in the termination-of-

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parental-rights action pertaining to M.H., and we must dismiss the mother's appeal from that judgment (case no. 2170619) as being from a nonfinal judgment.

The judgments entered in the termination-of-parental-rights actions pertaining to T.H. and Da.L. did completely adjudicate all matters in controversy between all the parties, and, therefore, those judgments are final. However, "[o]nce an appeal is taken, the trial court loses jurisdiction to act except in matters entirely collateral to the appeal." Jackson v. Sasser, 158 So. 3d 469, 471 (Ala. Civ. App. 2014) (quoting Ward v. Ullery, 412 So. 2d 796, 797 (Ala. Civ. App. 1982)). This is the case regardless of whether the appeal is taken prematurely from an interlocutory order or properly taken from a final judgment. See Busby v. Lewis, 993 So. 2d 31, 34 (Ala. Civ. App. 2008) (holding that a trial court lacked jurisdiction to enter a judgment resolving pending claims while the action was before this court on appeal, despite the fact that the appeal had been prematurely taken from an interlocutory order). Therefore, we need not determine whether the orders denying the maternal grandmother's custody claims in the termination-of-parental-rights actions pertaining to

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T.H. and Da.L. were final judgments or interlocutory orders.<sup>2</sup>

The filing of the maternal grandmother's notices of appeal in the termination-of-parental-rights actions pertaining to T.H. and Da.L. divested the juvenile court of jurisdiction over all matters involved in those actions that were not entirely

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<sup>2</sup>If the order denying the maternal grandmother's custody claim in the termination-of-parental-rights action pertaining to M.H. was a final judgment, the "Motion for New Trial or, in the Alternative, to Alter, Amend, or Vacate" would have been a postjudgment motion that would have held the notice of appeal she had filed in that action in abeyance until that motion was denied by operation of law on February 26, 2018. See Ex parte Troutman Sanders, LLP, 866 So. 2d 547, 550 (Ala. 2003) ("A 'Rule 59 motion may be made only in reference to a final judgment or order.'" (quoting Malone v. Gainey, 726 So. 2d 725, 725 n.2 (Ala. Civ. App. 1999))); Rule 4(a)(5), Ala. R. App. P.; and Rule 1(B), Ala. R. Juv. P. Thus, if the order denying the maternal grandmother's custody claim in the termination-of-parental-rights action pertaining to M.H. was a final judgment, the juvenile court would have had jurisdiction to enter its judgment terminating the mother's parental rights on February 20, 2018. However, we nonetheless need not determine whether the order denying the maternal grandmother's custody claim in the termination-of-parental-rights action pertaining to M.H. was a final judgment because, as demonstrated above, the order terminating the mother's parental rights to M.H. was not a final judgment and, therefore, the mother's appeal from that judgment must be dismissed on that ground, even if the juvenile court had jurisdiction to enter that judgment. The maternal grandmother did not file a "Motion for New Trial or, in the Alternative, to Alter, Amend, or Vacate" in the termination-of-parental-rights actions pertaining to T.H. and Da.L., so the notices of appeal the maternal grandmother filed in those actions immediately divested the juvenile court of jurisdiction upon their filing on February 12, 2018, regardless of whether those judgments were final or interlocutory. See Busby, supra.

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collateral to the maternal grandmother's appeals until this court had disposed of the maternal grandmother's appeals. The termination-of-parental-rights claims were not entirely collateral to the maternal grandmother's custody claims because the relief sought by DHR in its termination-of-parental-rights claims included, among other things, custody of the three children. The maternal grandmother's appeals were still pending in this court when the juvenile court entered its judgments terminating the parental rights of the parents of T.H. and Da.L. on February 20, 2018, and, therefore, the juvenile court did not have jurisdiction to enter those judgments. See Busby, supra. A judgment entered by a court without jurisdiction is void, and a void judgment will not support an appeal. Id. Therefore, we must dismiss (1) the mother's appeals from those judgments, which this court has docketed as case numbers 2170620 and 2170621, and (2) D.L.'s appeal from the judgment entered in the termination-of-parental-rights action pertaining to Da.L., which this court has docketed as case number 2170540, and we instruct the juvenile court to vacate those judgments.

2170540 -- APPEAL DISMISSED WITH INSTRUCTIONS.

2170619 -- APPEAL DISMISSED.

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2170620 -- APPEAL DISMISSED WITH INSTRUCTIONS.

2170621 -- APPEAL DISMISSED WITH INSTRUCTIONS.

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