JUVENILE CASE LAW UPDATE 2022

CUSTODY LANGUAGE
THERE ARE ONLY FIVE STATUTORY CUSTODY "LABELS" IN ALABAMA AS DEFINED IN § 30-3-151:

1. Joint Custody: Joint legal & joint physical
2. Joint Legal Custody: Both parents have equal rights and responsibilities for major decisions concerning the child, including, but not limited to, the education of the child, health care, and religious training. The court may designate one parent to have sole power to make certain decisions while both parents retain equal rights and responsibilities for other decisions.
3. Joint Physical Custody: Physical custody is shared by the parents in a way that assures the child frequent and substantial contact with each parent. Joint physical custody does not necessarily mean physical custody of equal durations of time.
4. Sole Legal Custody: One parent has sole rights and responsibilities to make major decisions concerning the child, including, but not limited to, the education of the child, health care, and religious training.
5. Sole Physical Custody: One parent has sole physical custody and the other parent has rights of visitation except as otherwise provided by the court.

YOU HEAR ABOUT THESE, BUT THEY DO NOT EXIST:

- Primary custody
- Primary residential parent
- Primary parent
- Full custody
- 50/50 custody

See *Reeves v. Fancher,* 210 So.3d 595 (Ala. Civ. App. 2016); J.C.L. v. J.B.L., 2022 WL 3134031 (Ala.Civ.App.2022); and *Smith v. Smith*, 887 So. 2d 257 (Ala. Civ. App. 2003).

DEPENDENT OR NOT?

S.B.T. v. P.B., 2022 WL 1817926 (Ala. Civ. App. June 3, 2022)

- Maternal grandparents filed dependency petitions regarding their 3 grandchildren. Mother and father were still married.
- A family friend filed to intervene in the dependencies and attached to friend's motion were documents signed and notarized by mother and father which purported to nominate family friend and her husband as "conservators, guardians, and custodial guardians for the children."
- JU Court has hearing #1 in April of 2020 and gives pendente lite custody to family friend and adding Limestone Co. DHR as a party. DHR had prior involvement with the family due to allegations of child abuse.

S.B.T. v. P.B., 2022 WL 1817926 (Ala. Civ. App. June 3, 2022)

- Two months later, JU court has hearing #2 in June of 2020 and awards pendente lite custody to maternal grandparents.
- In August of 2020, JU court enters orders removing DHR as party and directing DHR to "close its file."
- JU court also grants GAL's motion to add CASA of North Alabama as a party.
- 13 months later, on July 1, 2021, JU court adjudicates the children to be dependent, awards custody to maternal grandmother, and gives mother visitation. The opinion does not state whether this was after a third hearing.
- On September 20, 2021, GAL files to suspend mother's visitation because she gave one child food containing peanuts while knowing the child was allergic.
- JU grants the motion and orders that mother's visitation be supervised by maternal grandparents. JU court also sets a dispositional hearing.

S.B.T. v. P.B., 2022 WL 1817926 (Ala. Civ. App. June 3, 2022)

- After a hearing, JU court enters orders on November 30, 2021, awarding sole custody of the children to the maternal grandmother, giving mother unsupervised visitation, and ordering that father's visitation be supervised.
- Mother timely filed her notice of appeal on December 3, 2021.
- Mother contended that the JU court erred nits November 2021 dispositional orders by failing to find that the children were dependent at that time.
- The Court of Civil Appeals cited the plethora of case law requiring that a child be dependent at the time of disposition.
- If the child isn't dependent at the time of the dispositional judgment, then the JU court does not have jurisdiction to make a custody determination. *M.D. v. S.C.*, 150 So. 3d 210, 212 (Ala. Civ. App. 2014).

S.B.T. v. P.B., 2022 WL 1817926 (Ala. Civ. App. June 3, 2022)

- The Court cited *J.P. v. S.S.*, 989 So. 2d 591 (Ala. Civ. App. 2008) which held that if the evidence supports a finding of dependency, then "in the interest of judicial economy this court may hold that a finding of dependency is implicit" even if the trial court failed to make a specific finding of dependency.
- The Court held that the evidence at the dispositional hearing—**five months after the adjudication of dependency**– indicated that there had been positive and negative changes in the mother's circumstances.
- Due to the extended period of time, the Court could not determine if the JU court found the children to be dependent when it issued the November 30, 2021, dispositional orders.
- Case remanded to the JU court to make an expeditious determination as to whether the children were dependent at the time the November 30, 2021, orders were entered.

R.R. v. Chilton County Dep't. of Hum. Res., 2022 WL 90436 (Ala. Civ. App. January 7, 2022)

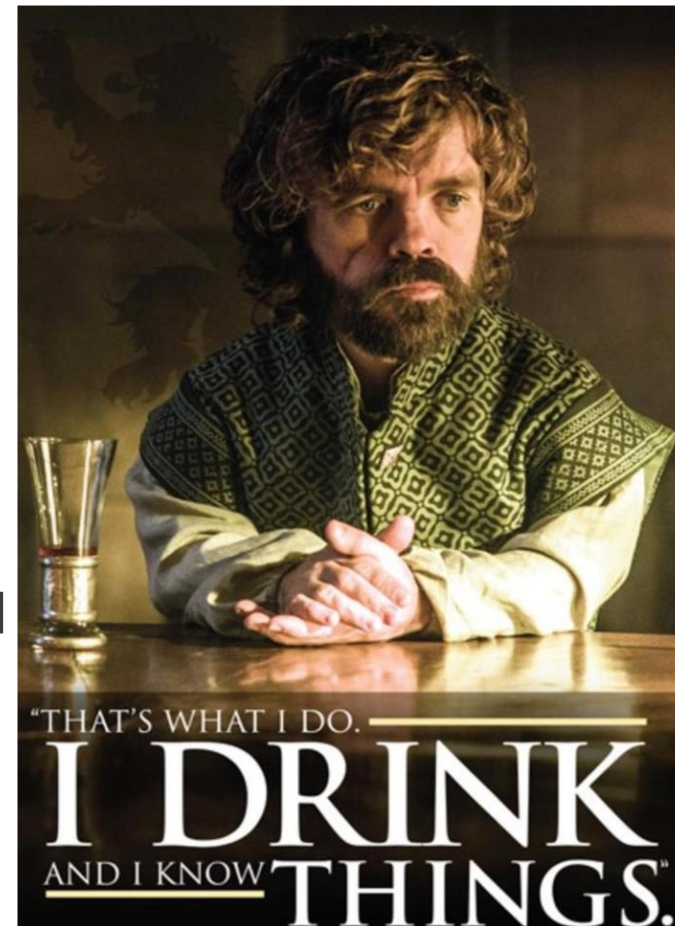
- Second time R.R., the father, had been before the Court of Civil Appeals. First reversal was due to JU court adjudicating R.R.'s child dependent without taking any testimony or receiving evidence.
- JU court adjudicated the child dependent again at a dispositional hearing on 5/4/21, and awarded custody to a maternal aunt and giving R.R. visitation at aunt's discretion.
- Dependency finding must be supported by clear & convincing evidence.
- Evidence of father's lack of contact, failure to cooperate with DHR and refusal to participate in DHR's services supported the judgment.
- Affirmed but reversed in part with instructions to set a specific visitation schedule.

C.F.D. v. J.P., 2022 WL 333711 (Ala. Civ. App. February 4, 2022)

- C.F.D. gave birth to the child at issue on 11/21/19
- Custodians J.P. and S.P. filed a dependency and custody petition on 11/26/19. C.F.D. answered and consented to the petition that same day. At trial, C.F.D. testified that she no longer consented.
- On 7/7/21, JU court entered a judgment adjudicating the child dependent and awarding custody to custodians.
- JU court's order cited the mother's delay of 19 months in withdrawing consent, lack of visits, conviction for chemical endangerment which occurred while pregnant with the child, and numerous other drug convictions including trafficking & distribution.
- Sufficient clear & convincing evidence of dependency.

JURISDICTION—AN APPELLATE DRINKING GAME

- ***M.L. v. Jefferson County Department of Human Resources*, 2022 WL 628294 (Ala. Civ.App. March 4, 2022)**
- Question of first impression before the Court of Civil Appeals
- Mother M.L. had two children—J.D.M. (DOB 12/11/2002) and L.D.C. (DOB 01/19/2007)
- On 6/17/2020, Jefferson County DHR petitioned to terminate M.L.'s rights to L.D.C.
- On 10/13/2020, DHR petitioned to terminate M.L.'s rights to J.D.M.
- After a trial, JU court entered nearly identical orders terminating rights to both children on 8/18/2021.



M.L. v. Jefferson County Department of Human Resources, 2022 WL 628294 (Ala. Civ. App. March 4, 2022)

- Mother argued on appeal that the JU court did not have jurisdiction to terminate her parental rights as to J.D.M. because the Alabama Juvenile Justice Act does not give the JU courts statutory authority to terminate a parent's rights to a child over the age of 18.
- DHR and the GAL argued that Ala. Code 1975 § 12-15-117(a) gives the JU courts jurisdiction to terminate a parent's rights to a dependent child even after that child turns 18.

M.L. v. Jefferson County Department of Human Resources, 2022 WL 628294 (Ala. Civ. App. March 4, 2022)

§ 12-15-117(a)

- "Once a child has been adjudicated dependent…, jurisdiction of the juvenile court shall terminate when the child becomes 21 years of age unless, prior thereto, the judge of the juvenile court terminates its jurisdiction by explicitly stating in a written order that it is terminating jurisdiction over the case involving the child."

Formerly § 12-15-32

- "For purposes of [the former AJJA], jurisdiction obtained by the juvenile court in any case of a child shall be retained by it until the child becomes 21 years of age unless terminated prior thereto by order of the judge of the juvenile court ...."

COURT OF CIVIL APPEALS ON § 12-15-32:

- JU court was vested with statutory and equity powers to allow it to have "continuing jurisdiction over minors when their welfare and best interests require it." (*In re Warrick*, 501 So.2d 1223, 1227 (Ala. Civ. App. 1985)
- "Equitable power to make, enforce, and modify ustody orders regarding a dependent child" to the "exclusion of other courts." See *Minchew v. Mobile Cnty. Dep't of Hum. Res.*, 504 So.2d 310, 311 (Ala. Civ. App. 1987) and *Heller v. Heller*, 558 So.2d 961, 963 (Ala. Civ. App. 1990).
- Once JU court's dependency jurisdiction attaches, that court retains "exclusive, continuing jurisdiction to exercise its statutory power to terminate parental rights." See *Carter v. Griffin*, 574 So. 2d 800, 801 (Ala. Civ. App. 1990).

THE COURT OF CIVIL APPEALS ORIGINALLY INTERPRTED § 12-15-117(a) AS LIMITING A JUVENILE COURT'S CONTINUING JURISDICTION OVER DEPENDENCIES, DELINQUENCIES & CHINS

- In response, the legislature enacted § 12-15-117.1 to clarify and confirm its intent that JU courts retain continuing jurisdiction to modify/enforce all judgments properly initiated in JU court.
- M.L. Court reasoned that, despite the differences between § 12-15-32 and § 12- 15-117(a), the legislature did not intend to alter the scope of JU courts' continuing jurisdiction. However, the JU court may act only in accordance with those powers set forth in the AJJA.

THE COURT OF CIVIL APPEALS REJECTED THE ARGUMENTS MADE BY DHR AND THE GAL:

- § 12-15-117(a) gives the JU courts continuing *subject matter jurisdiction*, but it does not allow a JU court to TPR in contradiction of other sections of the AJJA.
- “AJJA clearly and unambiguously provides that a JU court may terminate the parental rights of a parent only to a ‘child’, an individual under 18 years of age.
- Legislature could have expanded to include a dependent child subject to the continuing jurisdiction of the JU court, but it did not.

M.L. v. Jefferson County Department of Human Resources, 2022 WL 628294 (Ala. Civ. App. March 4, 2022)

- "Therefore, a juvenile court, even one exercising continuing jurisdiction under § 12- 15-117(a), lacks statutory authority to terminate the parental rights of a parent to an individual who is over the age of 18 years."
- DHR filed its petition to terminate M.L.'s rights to J.D.B. on October 13, 2020, while the child was still 17 years old.
- The Court held that J.D.M. turned 18 more than 8 months prior to the JU court issuing the TPR order on August 18, 2021.
- The Court cited *A.C. v. In re E.C.N.*, 89 So. 3d 777 (Ala. Civ. App. 2012) in concluding that the JU court "lacks jurisdiction to adjudicate a petition to terminate parental rights if, during the pendency of the case, the child at issue reaches 18 years of age so that he or she no longer qualifies as a "child" within the meaning of the AJJA.

A.R. v. J.C.R., 2022 WL 138559 (Ala. Civ. App. January14, 2022)

- Maternal great grandmother filed a dependency petition on 11/22/2019 and got temporary custody at the 72-hour-hearing when mom failed to appear.
- JU court entered dependency order on 10/20/2020 after a hearing where mother stipulated. Maternal great-grandmother and maternal grandfather were awarded temporary custody.
- 8/6/21, JU court conducts a permanency hearing where the court made it clear that the only issue being considered was the permanent custody due to the October 2020 stipulation on dependency.
- 8/9/21, JU court gives custody to maternal grandfather.
- JU court lacked jurisdiction because it failed to find the child dependency at the time of the custodial disposition. Reversed with instructions to vacate the 8/9/21 order and remanded for the court to take additional evidence to determine dependency prior to making a custodial disposition.

Ex Parte T.M., 2022 WL 259949 (Ala. Civ. App. January 28, 2022)

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- J.D., the father, petitioned to enroll/modify the parties' 2019 Mississippi chancery court custody order in the Bessemer Division of the Jefferson JU court.
- The Mississippi order gave the parents joint legal custody; physical custody wasn't explicitly awarded to T.M., but the visitation schedule implied that she had sole physical custody.

  J.D. lived in Birmingham at the time of that order and mom/child lived in MS.
- March of 2020, the parties filed a joint motion in MS to terminate J.D.'s child support. That motion alleged that the parties were all living together in Birmingham and they were engaged to be married.

Ex Parte T.M., 2022 WL 259949 (Ala Civ. App. January 28, 2022)

- By September of 2020, T.M. and the child moved back to MS. J.D. stayed in Birmingham but continued visiting according to the MS order.
- On 3/25/2021, T.M. filed a habeas and contempt petition in MS because J.D. refused to return the child after his last visitation that should have ended on 3/1/2021.
- J.D. was served with T.M.'s petition, but he still filed to register & modify the MS order in the Bessemer division of JU court on 4/27/2021.
- J.D. made all sorts of salacious accusations against T.M. in support of his custody mod—that she exposed the child to sexual activities and content including pornography, causing the child to exhibit sexual behavior.
- In his petition, J.D. neglected to mention T.M.'s pending MS action that was filed and served on him prior to his petition.
- On 5/18/2021, T.M. moved to dismiss the Bessemer JU action; in the alternative, she argued that J.D. lives in the Birmingham Division and should have been filed there.

Ex Parte T.M., 2022 WL 259949 (Ala. Civ. App. January 28, 2022)

- On 5/25/2021, the JU court entered an order granting J.D.'s motion to register the MS judgment and denied T.M.'s motion to dismiss, citing its emergency jurisdiction under § 30- 3B-204. JU court also made Jefferson County DHR part of the action to investigate the "alleged sexual abuse" and gave mother supervised visitation. Trial was set for 9/20/2021.
- On 9/14/2021, T.M., through new counsel, filed a second motion to dismiss or in the

  alternative motion to transfer to the Birmingham division. JU court denied her motion on 9/15/2021 and she filed her mandamus petition on 9/17/2021. The Court of Civil Appeals granted T.M.'s motion to stay the 9/20/2021 trial.
- The Court of Civil Appeals agreed with J.D.'s argument that T.M.'s mandamus petition was not filed within the presumptively reasonable time (the time for taking an appeal).
- However, lack of subject matter jurisdiction can be challenged at any time including in an otherwise untimely mandamus petition. See *Ex parte K.R.*, 210 So. 3d 1106, 1112 (Ala. 2016).

Ex Parte T.M., 2022 WL 259949 (Ala. Civ. App. January 28, 2022)

- T.M. argued that the JU court lacked SMJ to modify custody because J.D. failed to allege that the child was dependent.
- The record indicated that T.M. and the child reside in MS, that MS is the child's home state, and that the MS chancery court has continuing jurisdiction over its own child custody determination.

- § 30-3B-204(a):
- "A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse."

Ex Parte T.M., 2022 WL 259949 (Ala. Civ. App. January 28, 2022)

- § 30-3B-102(6):
- Defines "court" as an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.
- JU courts, however, are statutory inventions and have extremely limited jurisdiction. *T.B. v. T.H.*, 30 So. 3d 429, 431 (Ala. Civ. App. 2009).
- A JU court can only make a child custody determination if the court is explicitly authorized to do so according to the AJJA. See *Ex parte M.M.T.*, 148 So. 3d 728, 736 (Ala. Civ. App. 2014).
- § 12-15-114(a) specifically excludes "custody dispute[s] between parents" from the jurisdiction of the juvenile court.

- The Court reasoned J.D.'s allegations were sufficient to imply that the child is dependent, his action is still a "quintessential" custody dispute between parents.
- Overruled *T.K. v. M.G.*, 82 So. 3d 1 (Ala. Civ. App. 2011) and its progeny by concluding that those cases did NOT properly apply the jurisdiction-limiting language of § 12-15-114(a).
- JU court DOES NOT have jurisdiction to resolve a custody dispute between parents on the basis of dependency allegations in the pleadings.
- Court also equated the MS chancery court to AL circuit court in ruling that the JU court lacked SMJ.

Ex Parte T.M., 2022 WL 259949 (Ala. Civ. App. January 28, 2022)

FINAL. APPEALABLE ORDERS.

- ***B.J. v. Calhoun County Department of Human Resources*, 2022 WL 4282320 (Ala. Civ. App. September 16, 2022)**
- Mother B.J. appealed 3-15-22 order giving custody of her
  child to a paternal aunt.
- On 1/15/2021, Calhoun County DHR filed a dependency petition.
- On 1/27/2021, the JU court awarded DHR pendente lite custody. DHR placed the child with a paternal aunt and uncle.
- On 4/15/2021, JU court adjudicates the child dependent,
  gave custody to DHR, and ordered that reasonable efforts be made to reunite with mother and father.
- On 10/4/2021, JU court determined that reasonable efforts
  had not succeeded but should continue, and that the most appropriate plan was "relative custody."
- On 12/7/2021, DHR files a motion to transfer custody to
  paternal aunt and uncle. The Father filed a response requesting custody.

- On 3/11/2022, JU court conducted a trial. Father consented to paternal aunt and uncle having custody.
- On 3/11/2022, JU court entered an "Order of Modification of Dependency and Disposition Order" which gave custody to the paternal aunt.
- Mother filed her notice of appeal on 3/16/2022.
- On 3/21/2022, GAL filed a motion requesting that the JU court correct the order to reflect that both paternal aunt and uncle were given custody, and to award visitation to the parents.
- On 4/7/2022, JU court entered an order purporting to grant the GAL's motion.

B.J. v. Calhoun County Department of Human Resources, 2022 WL 4282320 (Ala. Civ. App. September 16, 2022)

B.J. v. Calhoun County Department of Human Resources, 2022 WL 4282320 (Ala. Civ. App. September 16, 2022)

- Court of Civil Appeals held that the 4/15/21 order adjudicating the child dependent and giving DHR custody was a final, appealable order.
- However, that order didn't resolve the dependency proceedings because it ordered DHR to make reasonable efforts to reunite the family.
- The order therefore gave DHR custody only as a temporary protective measure for the child until parents could resume custody or, if that fails, some other permanent disposition can be made.
- In its 12/7/21 motion, DHR stated that reasonable efforts had failed, that the child remained dependent, and that paternal aunt & uncle should have custody.
- JU court characterized DHR's motion as a modification.
- The Court of Civil Appeals disagreed stating that "DHR only invoked the continuing jurisdiction of the juvenile court to resolve the remaining issues in the ongoing dependency proceedings by making a permanent custodial disposition."

B.J. v. Calhoun County Department of Human Resources, 2022 WL 4282320 (Ala. Civ. App. September 16, 2022)

- The 3/15/22 order adjudicated DHR's motion by giving custody to the aunt without expressly addressing DHR's request for custody to paternal uncle.
- The 3/15/22 order also failed to address the parents' visitation, which was litigated during the 3/11/22 hearing. Paternal aunt and parents contested whether the visitation should be supervised, and whether mother should be awarded more visitation than she currently had.
- "When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." Rule 15(b), Ala. R. Civ. P.
- "A judgment is sufficient if it indicates both an intention to adjudicate and the substance of the adjudication." See Rule 58, Ala. R. Civ. P.
- The Court reiterated that it cannot "assume in every case that, by failing to rule on a certain claim, a trial court intended to deny that claim." See *Heaston v. Nabors*, 889 So. 2d 588, 590 (Ala. Civ. App. 2004).

B.J. v. Calhoun County Department of Human Resources, 2022 WL 4282320 (Ala. Civ. App. September 16, 2022)

- The record as a whole showed that the JU court did not intend to adjudicate the paternal uncle's custody claim or the parents' claims regarding visitation.
- The GAL's 3/21/22 motion sought to correct those deficiencies, and, during a hearing on the motion, the JU court stated it failed to address those claims due to an oversight.
- The JU court untimely attempted to fix the 3/15/22 order by issuing an order on 4/7/22, which was 22 days after the mother filed her notice of appeal.
- To the Court of Civil Appeals, this clearly indicated that the JU court did not intend for the omission of an express determination of those claims to be construed as an implied denial.
- Therefore, the 3/15/22 order was not a final judgment that would support an appeal.

J.P. v. K.W. and J.D., 2022 WL 829315 Ala. Civ. App. March 18, 2022)

- On 10/28/2020, K.W. (sister to the mother, J.P.) and her common-law husband, J.D., filed a petition to terminate J.P.'s parental rights to her child, J.M.H. The petition also sought to terminate the unknown father's parental rights. Unknown father was served via publication in January 2021.
- On 2/25/2021, the JU court entered an order terminating J.P.'s rights; unknown father's rights weren't

  addressed by that order. J.P. filed her notice of appeal on 3/4/2021. The record on appeal was inadequate, so the Court of Civil Appeals transferred the appeal to the circuit court for a trial de novo.
- On 4/28/2021, the JU court entered an order purporting to terminate unknown father's rights.
- On 6/22/2021, after a hearing, the circuit court entered an order terminating J.P.'s rights and she appealed.
- "A final judgment is a terminal decision which demonstrates there has been a complete adjudication of all matters in controversy between the litigants." *Dees v. State*, 563 So. 2d 1059, 1061 (Ala. Civ. App. 1990).
- The JU court's 2/25/2021 order wasn't final because it failed to address unknown father's rights; therefore J.P.'s appeal was not from a final judgment.
- Circuit court should have dismissed the appeal, so its order is void.
- JU court had no jurisdiction to enter its 4/28/2021 order because J.P. filed a notice of appeal.
- The Appeal was dismissed with instructions to circuit court to dismiss its case and for JU court to conduct further proceedings on the father's rights.

SUFFICIENT ~ OR ~ INSUFFICIENT EVIDENCE

Ex parte Bodie, 2022 WL 7918716 (Ala. October 14, 2022)

- Bodie was the GAL for G.A., D.P., and M.P. He appealed the decision of the Court of Civil Appeals which reversed the Jefferson JU court's orders terminating the parental rights of the children's mother, H.P.
- Jefferson County DHR petitioned to terminate H.P.'s rights to the children based on her consistent history of drug use including during pregnancy, failure to complete drug rehab
  classes, criminal history, and her admitted inability to care for the children.
- H.P. wanted the JU court to keep the children in temporary custody of their foster parents (who H.P. considered her godparents) while she finished rehab at Aletheia House.
- H.P.'s case manager from the CAP program (Comprehensive Addiction and Pregnancy program at UAB) testified that she'd seen improve in H.P. including taking responsibility, maturity, self-control, and the likelihood that H.P. would continue to improve with CAP resources & support.
- H.P.'s therapist testified that H.P. had made so much progress that she considered her to be at low-risk of relapse.

Ex Parte Bodie, 2022 WL 7918716 (Ala. October 14, 2022)

- After a trial in February of 2021, the JU court entered separate but nearly identical orders terminating H.P.'s rights to the children, who were 6, 3 and 2 years old. They had been in foster care more than 2 years.
- The Court of Civil Appeals agreed with H.P.'s arguments that she was able to care for the children, that her circumstances had improved and were likely to continue improving in the foreseeable future, and that maintaining the status quo was a viable alternative to TPR.
- JU court's orders identified 5 reasons that demonstrated H.P.'s present inability to care for the children—her failure to participate in mental health treatment, failure to obtain stable housing, failure to obtain employment, her pending criminal charges, and her failure to adjust her circumstances to comply with all reunification goals and directives.
- Court of Civil Appeals mistakenly focused solely only on whether H.P. was currently using drugs, ignoring the other findings made by the JU court.

Ex Parte Bodie, 2022 WL 7918716 (Ala. October 14, 2022)

"Although a court may consider a parent's history, the existence of evidence of current conditions or conduct relating to a parent's inability or unwillingness to care for his or her children is implicit in the requirement that termination of parental rights be based on clear and convincing evidence." Court of Civil Appeals' opinion in *H.P.*, citing *A.A. v. Jefferson Cnty Dep't of Hum. Res.*, 278 So. 3d 1247, 1252 (Ala. Civ. App. 2018).

- By focusing only on mother's current drug use, the Court of Civil Appeals improperly based its decision on its own evaluation of the evidence presented, rather than considering whether the JU court could have reasonably reached the conclusion that it did.
- The AL Supreme Court cited PJ Thompson's dissent in *H.P.*, which addressed the precedent regarding a parent's recent attempts at rehabilitation being viewed as an attempt to prevent termination of parental rights rather than being a genuine adjustment of circumstances. See *A.M.F. v. Tuscaloosa Cnty. Dep't of Hum. Res.*, 75 So. 3d 1206, 1213 (Ala. Civ. App. 2011).

OLD HABITS DIE HARD!

Ex Parte Bodie, 2022 WL 7918716 (Ala. October 14, 2022)

- The Alabama Supreme Court agreed with the GAL's argument that the decision of the Court of Civil Appeals in *H.P.* conflicted with the Supreme Court's decision in *Ex Parte McInish*, 47 So. 3d 767, 776 (Ala. 2008):

- "In reviewing a decision of the trial court, an appellate court is not permitted to reweigh the evidence, because weighing the evidence is solely a function of the trier of fact."

- If the clear and convincing evidence standard is what the trial court must consider, then all that is necessary for the appellate court to affirm the trial court's decision is a determination of whether the fact-finder could have reasonably found that the evidence clearly and convincingly established the fact sought to be proved.

K.R. v. Houston County Department of Human Resources, 2021 WL 5858389 (Ala. Civ. App. December 10, 2021)

- In January of 2020, Houston County DHR filed to terminate the parental rights of K.R. (mother) and T.L. (father) to Ty.L. (child). The initial record on appeal was inadequate, so the appeal was transferred to the Circuit Court for Houston County for a trial de novo.
- Circuit court held its trial on 2/17/2021 and entered a judgment terminating K.R.'s rights.
- Court of Civil Appeals reversed despite extensive testimony regarding K.R.'s history of drug abuse, lack of contact, and lack of cooperation.
- Holding—DHR must establish at the time of the TPR trial that a parent's "conduct or condition negatively impacts his or her ability to parent" in order to prove that TPR is necessary. See *J.C. v. Madison Cnty. Dep't of Hum. Res.*, 293 So. 3d 901, 909 (Ala. Civ. App. 2019).
- DHR's reliance on mother's failure to visit was "extremely disingenuous" when DHR and the ISP team prohibited her from visiting.

K.H. v. Limestone County Department of Human Resources, 2022 WL 497335 (Ala. Civ. App. February 18, 2022

- Mother K.H. appeals judgments terminating her rights to three children—H.H. (Born 8/2020), M.S. (born 12/2018) and A.S. (born 11/2017).
- On 4/9/2021, Limestone County DHR filed to terminate K.H.'s and father H.S.'s rights to the children.
- Neither parent showed up for trial on 6/1/2021.
- DHR's attorney requested submission of the three cases on the verified petitions only.
- At the request of K.H.'s lawyer, JU court heard limited testimony from a DHR social worker, after which the JU court said all petitions would be granted.
- JU court entered nearly identical orders on 6/1/2021 & K.H. timely appealed.

K.H. v. Limestone County Department of Human Resources, 2022 WL 497335 (Ala. Civ. App. February 18, 2022)

- K.H. argued that there was insufficient evidence to terminate.
- DHR failed to present clear and convincing evidence in support of JU court's findings: that K.H. engaged in excessive drug use, she was unwilling to discharge parental responsibilities, and that she failed to maintain contact with the children. Also DHR failed to present evidence that it made reasonable efforts to reunify and that no viable alternatives to TPR existed.
- DHR "candidly conceded" in its brief that the JU court improperly terminated K.H.'s rights.
- Court of Civil Appeals did not hold back on DHR or the trial court—"even if DHR had not conceded those points on appeal, however, the highly attenuated record presented for review does not support affirming… the judgments…"
- "Any desire of the juvenile court to 'let this train pass real quick' as stated at the outset of the mere nine pages of testimony… is not a valid basis for the termination of parental rights—an extreme remedy that has been described… as being draconian and equivalent to a civil death penalty."

DELINQUENCY

M.L.W. v. State, 2022 WL 4006997 (Ala. Crim. App. September 2, 2022)

- In October 2021, then 15-year-old M.L.W. was arrested and charged with murder for shooting T.H.
- The State moved to certify M.L.W. as an adult and to transfer the case to circuit court for trial.
- Madison county JU court conducted a transfer hearing where the state called only 2 witnesses—a Huntsville PD Investigator and an Intake/Probation officer.
- The investigator's testimony was based on statements he obtained from 5 witnesses at the scene of the shooting. The intake and probation officer that testified M.L.W. tested positive for marijuana when he was arrested.
- M.L.W. objected to the hearsay and obtained a standing objection to the admission of hearsay testimony.
- The JU court granted the State's motion after the hearing.
- M.L.W. filed a motion to amend or vacate the JU court's transfer order arguing that probable cause to transfer was based solely on hearsay, and also that the evidence showed M.L.W. acted in self-defense.
- On appeal, the State conceded that the JU court's findings were based solely on hearsay, and the State requested that the case be remanded to the JU court to conduct a new transfer hearing.

- Hearsay is allowed in a transfer hearing. See *Tucker v. State*, 426 So. 2d 513, 515 (Ala. Crim. App. 1982).
- However, hearsay evidence cannot be the sole basis for a finding of probable cause. *M.B.M. v. State*, 848 So. 2d 283 (Ala. Crim. App. 2002).
- The doctrine of res judicata is inapplicable in a transfer hearing.
- "Jeopardy does not attach in a transfer hearing where there was no adjudicatory finding that the juvenile was delinquent or had actually violated a criminal law." *Breed v. Jones*, 421 U.S. 519 (1975).
- Remanded back to the Madison JU court for a new transfer hearing to be "conducted in conformity with the principles set out herein." See *O.M. v. State*, 595 So. 2d 514, 526 (Ala. Crim. App. 1991).

M.L.W. v. State, 2022 WL 4006997 (Ala. Crim. App. September 2, 2022

A.P.S. v. State, 2022 WL 3135260 (Ala. Crim. App. August 5, 2022)

- Then 14-year-old A.P.S. was charged initially in a delinquency petition with the capital murder of Ricardo Santiago Gonzalez and Adalberta Chavez Ruiz, whose son, Leo Chavez (17-years-old at the time), was also charged with capital murder.
- The State moved to transfer A.P.S. to the circuit court for prosecution as an adult. Chavez was convicted and sentenced to LWOP prior to A.P.S.'s transfer hearing.
- The State's only witness at the probable cause phase of the transfer hearing was an investigator from the Blount County Sheriff's Department.
- The investigator testified that Leo Chavez, A.P.S., and a third individual, Jose Villanueva, were seen together on surveillance footage at a cell phone store where Chavez made a purchase with his father's credit card on12/16/2021, the day after the murders.

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- Over A.P.S.'s objection, the investigator testified about the out-of-court statement of Jose Valadez, who said he picked up Villanueva and A.P.S. from Villanueva's house on 12/15/2021.
- Valadez told the investigator that they went to Chavez's house around midnight.
- Valadez stayed in the car, but A.P.S. and Villanueva went in the house.
- Valadez heard gunshots. They came outside, got him, and took him in the house where saw the dead bodies of Ricardo and Adalberta.
- They cleaned the bodies up, put them in a white truck, and buried them.
- The investigator admitted during the transfer hearing that there was no other evidence connecting A.P.S. to the murders.
- JU court entered an order on 10/1/2021 finding probable cause that A.P.S. committed capital murder and transferring him to the circuit court for prosecution as an adult.
- On appeal, A.P.S. argued that the JU court's admission of Valadez's out-of-court statement violated his right to confront and cross examine all witnesses against him.

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- § 12-15-202(f)(3):"The child has the right to confront all witnesses against the child, subject to limitations recognized by the United States Supreme Court."
- "Hearsay evidence that violates the child's right of confrontation <u>may not even be admitted</u>, much less constitute the sole basis for a finding of probable cause to transfer the child to circuit court." *C.E.B. v. State*, 661 So. 2d 786, 787 (Ala. Crim.App. 1994).
- "The Alabama Supreme Court has made it clear that evidence which could not be constitutionally admitted at a criminal trial should be excluded from a transfer hearing." *O.M. v. State*, 595 So. 2d 514, 518 (Ala. Crim. App. 1991).

- The State conceded during OA that Valadez "was apparently available for testimony" and that his out-of- court statement was testimonial hearsay being offered for the truth of the matter asserted, i.e., that A.P.S. murdered Chavez's parents. However, the State claimed this was "harmless error" due to all of the other evidence that implicated A.P.S. in the murders.

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- The Court of Criminal Appeals disagreed with the State's argument that the evidence was harmless because there was enough other evidence of probable cause.
- The dispositive question was whether there was a reasonable probability that Valadez's statement might have contributed to the JU court's probable cause decision.
- Factors in determining harmless error: importance of the witness's testimony, whether the testimony was cumulative, presence or absence of corroborating or contradicting evidence, extent of cross-examination otherwise permitted, and the overall strength of the prosecution's case. *Delaware v.Van Arsdall*, 475 U.S. 673, 684 (1986).
- The Court had "no trouble" concluding that there was a reasonable probability that Valadez's statement contributed to the JU court's probable cause determination.
- Without that statement, the State's case was weak because there was no other evidence directly implicating A.P.S. in the murders.
- The Court did not need to address A.P.S.'s other claim that the JU court failed to address the 6 factors required for consideration in a transfer hearing, but it did "reiterate that, when a juvenile court transfers an accused juvenile to the circuit court…the transfer order must reflect that the juvenile court considered each of the six factors in § 12-15-203(d)."

LAST ONE PROMISE!

K.G. v. M.E., 2021 WL 5751848
(Ala. Civ. App. December 3, 2021)

- Father M.E. testified that he wanted his son with K.G. to have his last name simply because he was the father of the child and he felt it was important for his son to have his last name.
- GAL recommended the name change because of the lack of negative impact the change would have on the child due to his young age.
- Mother argued on appeal that M.E. failed to present any evidence that the name change would serve the child's best interest, and, as a result, the statutory prerequisite for granting the name change was not met.
- The Court cited *J.M.V. v. J.K.H.*, 49 So. 3d 1100 (Ala. Civ. App. 2014) in reversing the trial court because the lack of detriment to the child doesn't justify the name change and also proving detriment to the child would shift the burden of proof to the nonmoving parent.