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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2023-2024

CL-2023-0074 and CL-2023-0075

S.R.

v.

B.G. and K.G.

Appeals from Morgan Juvenile Court
(JU-19-142.03 and JU-19-144.03)

EDWARDS, Judge.

This is the second time that these parties have been before this court. See S.R. v. B.G. and K.G., 346 So. 3d 973 (Ala. Civ. App. 2020) (table). In S.R. we affirmed the March 2020 judgments ("the March 2020 judgments") entered by the Morgan Juvenile Court ("the juvenile court") in case number JU-19-142.01 and in case number JU-19-144.01, which

related to B.S. and R.S. ("the children"), respectively. In those judgments, the juvenile court determined that the children were dependent, awarded their custody to B.G. and K.G. ("the custodians"), divested the Morgan County Department of Human Resources ("the Morgan County DHR") of the legal custody of the children, and instructed the Morgan County DHR to close its cases regarding the children.

In May 2022, the mother filed in the juvenile court separate petitions seeking to modify the custody and/or visitation provisions of the March 2020 judgments entered by the juvenile court; those petitions were assigned case number JU-19-142.03 and case number JU-19-144.03. After several continuances, the juvenile court began the trial on the mother's modification petitions on November 28, 2022. After ordering the parties to submit briefs on the issue of the finality of the March 2020 judgments, which the mother had raised at the trial, and after receiving those briefs, the juvenile court entered an order in each action on December 21, 2022, determining that the March 2020 judgments were final judgments, that the mother was required to meet the standard set out in Ex parte McLendon, 455 So. 2d 863 (Ala. 1984), to secure a

modification of the children's custody, and that the mother had not met the burden imposed by Ex parte McLendon. The December 21, 2022, orders set an additional evidentiary hearing on the issue regarding the mother's alternative request to modify the visitation provisions of the March 2020 judgments for January 9, 2023. After the conclusion of the January 9, 2023, hearing, the juvenile court entered a judgment in each action setting out a visitation schedule for the mother. After considering the postjudgment motions filed in each action by the mother and by the custodians, the juvenile court entered an amended judgment in each action on January 26, 2023. The mother then filed a timely notice of appeal in each action.

Insofar as the mother's appeal challenges the evidentiary support for the January 2023 judgments denying her petitions to modify custody, we note that our review of the judgments is limited. See J.W. v. C.B., 56 So. 3d 693, 698 (Ala. Civ. App. 2010). We are bound by the ore tenus standard, under which we presume that the factual determinations made either explicitly or implicitly by the juvenile court are correct, if the record contains the necessary evidence, or inferences from that evidence,

to support those findings. Ex parte R.T.S., 771 So. 2d 475, 476 (Ala. 2000). Our supreme court has explained that "'the trial court is in the better position to consider all of the evidence, as well as the many inferences that may be drawn from that evidence, and to decide the issue of custody.'" Ex parte Patronas, 693 So. 2d 473, 475 (Ala. 1997) (quoting Ex parte Bryowsky, 676 So. 2d 1322, 1326 (Ala. 1996)). Furthermore, the mother carried a heavy burden on her petitions, because,

> "[w]hen a juvenile court has entered a judgment awarding custody of a dependent child to a relative, a parent seeking to modify that custody judgment must meet the [Ex parte] McLendon standard in order to regain custody of the child. J.W. v. C.B., 56 So. 3d 693, 699 (Ala. Civ. App. 2010); M.B. v. S.B., 12 So. 3d 1217, 1219-20 (Ala. Civ. App. 2009); and In re F.W., 681 So. 2d 208 (Ala. Civ. App. 1996)."

P.A. v. L.S., 78 So. 3d 979, 981 (Ala. Civ. App. 2011).

The evidence adduced at the first day of the trial on November 28, 2022, indicated the following.[1] Testimony indicated that, in the years between the entry of the March 2020 judgments and the trial, the mother had given birth to another child, M.S., to whom she had been a "good

[1]The testimony presented on January 9, 2023, was solely concerned with determining the plan for modifying the mother's visitation with the children.

mother." S.F., the mother's great-aunt, testified that the mother was a totally different person after she conquered her addiction. S.F. also testified that the mother had been stable for two-and-a-half to three years. Another great-aunt of the mother, D.B., testified that the mother had stable employment with the same company at which D.B. worked and that the mother had turned her life around. Both D.B. and S.F. testified that the mother had a good support system and was capable of caring for the children.

Two of the mother's aunts, H.R. and T.T., likewise testified that the mother had made a huge change in her life. They, too, indicated that the mother had the ability to care for the children. T.T. testified that she had supervised the mother's visitations with the children and that the mother had handled all the parental tasks during those visits. According to both H.R. and T.T., the custodians had taken good care of the children.

T.T. also testified, however, that the mother had overdosed in August 2020. T.T. said that the mother had sought treatment after her overdose and that she had "really started to see the change" in the mother after the mother had begun that treatment. Although T.T. stated that

she would not have left her dog in the mother's care during the mother's period of active addiction, she said that she would feel comfortable leaving her children in the mother's care at the time of the trial.

The mother admitted that she had relapsed into drug use in July or August 2020. She testified that she had completed outpatient drug rehabilitation and had also completed parenting classes. She further testified that she was in a supervised drug-treatment program under which she was prescribed suboxone to combat her addiction. She said that she lives rent-free in a house that is owned by her parents and that she otherwise pays her own bills. She testified that she is employed, that she works from 8:00 a.m. to 4:30 p.m. on Monday through Friday of each week, and that M.S. attends daycare while she works.

The mother testified that she regularly visits with the children, that she eats lunch with them at their school twice per month, and that she attends programs at the children's school. The mother admitted that the children were well cared for by the custodians. When asked why she was seeking a return of their custody, she stated that she wanted the children back because "I'm their mom." She further testified that she

desired that the children be returned to her custody so that they could make up for lost time and so that the children could bond with M.S.

In her brief on appeal, the mother indicates that she is challenging the constitutionality of the Alabama Juvenile Justice Act ("the AJJA"), Ala. Code 1975, § 12-15-101 et seq., and the constitutionality of the application of the custody-modification standard set out in Ex parte McLendon to her actions seeking to modify the custody provisions of the March 2020 judgments. In the juvenile court, however, the mother did not specifically make an argument that any particular statutory provision of the AJJA is unconstitutional; in fact, she did not provide the juvenile court with any citation to the AJJA in her oral arguments on the record or in her postjudgment motion. Instead, she focused her argument on what she contended was the unconstitutional application of the standard set out in Ex parte McLendon to a judgment that awarded custody of a dependent child to a third-party custodian and not to the Department of Human Resources ("DHR").

We cannot consider a constitutional challenge that was not first advanced in the juvenile court. J.K. v. N.J., 23 So. 3d 57, 60 (Ala. Civ.

App. 2009). A constitutional challenge to a statute must include references to the specific statute being challenged. P.F.-T. v. M.T., [Ms. 2210366, Jan. 13, 2023] ___ So. 3d ___, ___ (Ala. Civ. App. 2023). Furthermore, as our supreme court explained in Alabama Power Co. v. Turner, 575 So. 2d 551, 553 (Ala. 1991), "in order to challenge the constitutionality of a statute, an appellant must identify and make specific arguments regarding what specific rights it claims have been violated." Therefore, because the mother did not raise a specific challenge to any particular section of the AJJA before the juvenile court, we will not consider the mother's argument in her brief on appeal that the AJJA is unconstitutional.[2] We will instead confine our discussion to the question whether the application of the Ex parte McLendon custody-modification standard to actions initiated by parents of children whose custody was awarded to relatives or other individuals in a dependency

[2]We therefore need not determine whether the mother properly served the attorney general with her challenge to the constitutionality of the AJJA.

proceeding violates the rights of those parents to due process and equal protection.[3]

The mother contends that application of the standard set out in Ex parte McLendon to her modification actions violates her right to due process. She contends that she has been deprived of a liberty interest "encompassed by the 14th Amendment's protection of liberty and property." In making her argument that the application of the custody-modification standard set out in Ex parte McLendon violates her right to due process, the mother begins by contending that she retains a fundamental right to the custody and control of her children.[4] Citing

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[3]A party need only serve the attorney general with a constitutional challenge to a statute or ordinance. See Ala. Code 1975, § 6-6-227 ("In any proceeding which involves the validity of a municipal ordinance, or franchise, such municipality shall be made a party and shall be entitled to be heard; and if the statute, ordinance, or franchise is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard.").

[4]The mother does retain "residual parental rights and responsibilities," which are defined in Ala. Code 1975, § 12-15-102(23), as

> "[t]hose rights and responsibilities remaining with a parent after a transfer of legal custody of a child under the jurisdiction of the juvenile court pursuant to this chapter, including, but not necessarily limited to, the right of

Santosky v. Kramer, 455 U.S. 745, 753 (1982), she next says that her fundamental right did not "evaporate" upon her "loss of temporary custody" of the children. She then argues that application of the custody-modification standard set out in Ex parte McLendon "effectively neuter[s] a natural parent's constitutionally protected prima facie right to the custody of his or her child, despite the fact that the natural parent's right have not been terminated." According to the mother, the standard set out in Ex parte McLendon "presupposes" the continued dependency of the child who is the subject of the custody order that the parent is seeking to modify.

What the mother fails to recognize in her argument is that her fundamental right as a parent to the care and custody of the children was affected by the adjudications entered in the dependency actions regarding the children. By virtue of the March 2020 judgments, which awarded the custodians custody of the children, she lost the parental

visitation, the right to withhold consent to adoption, the right to determine religious affiliation, and the responsibility for support, unless determined by order of the juvenile court not to be in the best interests of the child."

presumption in her favor that would apply in an initial custody dispute between a parent and a third party.[5] Ex parte McLendon, 455 So. 2d at 865 ("The superior right of the mother in this case was cut off by the prior decree awarding custody to the grandparents."). Once the mother was no longer entitled to that presumption, she could no longer rely upon it to elevate her claim to the custody of the children, at least in a custody dispute with the custodians. Gamble v. Segers, 833 So. 2d 658, 661 (Ala. Civ. App. 2002) (explaining that "the natural parent's prima facie right to custody does not survive a voluntary forfeiture of custody or a prior judgment removing custody from the natural parent and awarding it to a non-parent"). That is, she had no presumptive right to custody to assert against the custodians, in whose custody the children had been placed

[5]Our supreme court explained in Ex parte J.P., 642 So. 2d 276, 278 (Ala. 1994), that the use of the term "temporary custody," which refers to an award of custody that may be modified under appropriate and changed circumstances, should be distinguished from the use of the term "pendente lite custody," which denotes that the award of custody is limited to the period during the pendency of the litigation and is subject to revision upon the conclusion of the trial court's receipt of evidence and a final determination of the issue of custody. Notably, the March 2020 judgments that awarded the custodians "custody" of the children and did not use the modifier "temporary" or "pendente lite."

after the mother stipulated to their dependency. Stevens v. Reynolds, 523 So. 2d 460, 461 (Ala. Civ. App. 1988) (explaining that "the earlier temporary custody decree operates to rebut the presumption favoring a natural parent"); Willette v. Bannister, 351 So. 2d 605, 608 (Ala. Civ. App. 1977) ("Where a parent has transferred to another party the custody of a minor child either voluntarily or as a result of a prior judicial decree and the party to whom the child is transferred has acted in the manifest interest and welfare of the child, the parent will not be permitted to reclaim custody of the child unless that parent can show that a change in custody will materially promote the child's welfare and best interests."); Chandler v. Manning, 411 So. 2d 160, 161 (Ala. Civ. App. 1982) ("In situations of this kind, in which the natural parent seeks to regain custody of a minor child who by prior judicial decree has been temporarily placed with another, the natural parent has the burden of proving that a change in custody is necessary to promote the child's best interest. ... Such a prior award of temporary custody to another rebuts any presumption which favors the natural parent.").

Although the mother argues that a child's dependency is not resolved through his or her placement in the custody of a third party, she is incorrect. Once a child is determined to be dependent, a juvenile court has numerous options, and it may enter a judgment placing the child in the legal and physical custody of a suitable relative, like the custodians in the present case. Ala. Code 1975, § 12-15-314(a)(3). When that is accomplished in a final dispositional order, under which DHR is no longer directed to provide supervision or to make reasonable efforts to rehabilitate the parent, and after which the juvenile court does not contemplate further proceedings to determine whether the parent has rehabilitated and whether the child remains dependent, the child's dependency is resolved because the child has a suitable custodian and is no longer in need of care or supervision.[6] See B.C. v. A.A., 143 So. 3d 198, 205 (Ala. Civ. App. 2013) ("Once a juvenile court has placed a dependent

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[6]The mother argues that the definition of "dependent child" in Ala. Code 1975, § 12-15-102(8)a., which requires that a child (1) be adjudicated dependent by a juvenile court, (2) be in need of care or supervision, and (3) meet one of several enumerated circumstances prevents the resolution of the state of dependency by a permanent custodial placement. We find that argument to be illogical and unsupported by any persuasive authority.

child into the 'permanent' custody of a proper caregiver, the dependency of the child ends ...."); S.P. v. E.T., 957 So. 2d 1127, 1131 (Ala. Civ. App. 2005) (explaining that "[u]nder ideal circumstances, ... final dispositional orders coincide with the end of the child's dependency, i.e., the child has a proper custodian 'and' is no longer 'in need of care or supervision' by persons other than the custodian); see also D.E.F. v. L.M.D., 76 So. 3d 834, 839 (Ala. Civ. App 2011) (Moore, J., concurring in the result) (explaining that "when a juvenile court enters a final dispositional judgment ending the dependency of the child ... that judgment implies a judicial determination that family reunification no longer serves the best interests of the dependent child ...."). A child who has been placed in the custody of a suitable relative or other individual without further DHR supervision under a final dispositional order of the juvenile court is no longer a dependent child, B.C., 143 So. 3d at 205, "and the law shifts its focus from preserving family integrity to securing the safety and stability of the child in the new custodial arrangement." D.E.F., 76 So. 3d at 839 (Moore, J., concurring in the result). Thus, contrary to the mother's assertions, the application of the custody-

modification standard set out in Ex parte McLendon does not "presuppose" the dependency of a formerly dependent child or "subject a parent whose child has been found to be dependent in a prior case to a more simplistic dependency proceeding." The only issue in the custody-modification action arising out of a previous judgment awarding custody of a child to an individual is the custody of the child; dependency is no longer a consideration.

Although the mother is correct that, in Santosky, the Unites States Supreme Court stated that "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child," the mother ignores the final words of that sentence from Santosky, which concludes "to the State." 455 U.S. at 753 (emphasis added). When a child remains in the legal custody of the State through DHR, the "temporary," or, more properly, pendente lite, nature of the State's custodial rights does not work a final effect on the parents' fundamental rights. However, once a child is determined to be dependent based on the conduct or condition of that child's parents and

that dependency is concluded by a final dispositional decision that the child will be placed in the care and custody of an individual custodian, the parents lose the right to assert the prima facie presumption that they are entitled to custody as against such custodian. See Ex parte Terry, 494 So. 2d 628, 632 (Ala. 1986) (quoting Ex parte Mathews, 428 So. 2d 58, 59 (Ala. 1983) (explaining that "'[t]he prima facie right of a natural parent to the custody of his or her child, as against the right of custody in a nonparent, is grounded in the common law concept that the primary parental right of custody is in the best interest and welfare of the child as a matter of law," but that that presumption is defeated by either "a voluntary forfeiture of that right" or "by a finding, supported by competent evidence, that the parent seeking custody is guilty of such misconduct or neglect to a degree which renders that parent an unfit and improper person to be entrusted with the care and upbringing of the child in question'" (emphasis omitted)).

The application of the custody-modification standard set out in Ex parte McLendon does not violate the mother's due-process rights. Although "[t]he Fourteenth Amendment provides that a state may

infringe on the custodial rights of a parent only through constitutionally adequate procedures," Gallant v. Gallant, 184 So. 3d 387, 398 (Ala. Civ. App 2014), the mother was granted all the process to which she was entitled -- including the heightened clear-and-convincing evidentiary standard, Ala. Code 1975, § 12-15-310(b), and proof, via her own stipulation, of her inability or unwillingness to properly parent the children, Ala. Code 1975, § 12-15-102(8)a.6. -- such that the juvenile court could determine that the presumption that she would act in the best interest of her children could be overcome in the initial dependency actions. See S.U. v. Madison Cnty. Dep't of Hum. Res., 91 So. 3d 716, 722 (Ala. Civ. App. 2012) (plurality opinion) (explaining that the parental "presumption is overcome only when clear and convincing evidence shows that the parent cannot discharge basic parental responsibilities"); H.E.B. v. J.A.D., 909 So. 2d 840, 843 (Ala. Civ. App. 2005) (indicating that, without a finding of either unfitness or dependency, a court may not award custody of a child to a nonparent over a parent). When the dependency actions culminated in the March 2020 judgments, the mother lost the parental-custody presumption in her favor as to any dispute with

the custodians, see In re F.W., 681 So. 2d 208, 211 (Ala. Civ. App. 1996) (stating that, after the entry of a judgment awarding custody of a child to a third party, "the [Ex parte] McLendon standard is activated when the biological parent seeks to regain custody and that a parent's presumptive superior right does not apply"); Ex parte McLendon, 455 So. 2d at 865, and her status as a noncustodial parent at the time she filed the modification petitions required application of the standard set out in Ex parte McLendon to protect the right of the children to "the valuable benefit of stability and the right to put down into [their] environment those roots necessary for the [children's] healthy growth into adolescence and adulthood." Wood v. Wood, 333 So. 2d 826, 828 (Ala. Civ. App. 1976).

We likewise reject the mother's argument that application of the standard set out in Ex parte McLendon to her custody-modification actions violated her right to equal protection. That is, the mother argues that applying the standard set out in Ex parte McLendon to her petitions to modify custody treats her differently than similarly situated persons and draws distinctions between her and other parents of dependent children based on differences that are not relevant to a legitimate

governmental objective. See M.V.S. v. V.M.D., 776 So. 2d 142, 151 (Ala. Civ. App. 1999) (explaining an equal-protection challenge). The mother specifically contends that she is similarly situated to a parent who has "temporarily" lost custody of his or her child to DHR in a dependency action brought under the AJJA. Parents whose child is placed only temporarily in the legal custody of DHR and into foster care, the mother says, are protected by the requirement that DHR continue to prove that the child remains dependent when DHR seeks to make a change to the child's custodial disposition and are not subjected to the custody-modification standard set out in Ex parte McLendon. See, e.g., E.H. v. Calhoun Cnty. Dep't of Hum. Res., 323 So. 3d 1226, 1230 (Ala. Civ. App. 2020); H.C. v. S.L., 251 So. 3d 793, 794 (Ala. Civ. App. 2017). Thus, she posits, an award of a dependent child's custody to a suitable relative or other individual should also be considered as "pendente lite" so as to provide the opportunity for parents to rehabilitate and resume custody of the child.

In contrast to orders that place dependent children in the pendente lite legal custody of DHR, the March 2020 judgments did not award

pendente lite custody of the children to any entity or person. Instead, after the Morgan County DHR filed dependency petitions relating to the children in February 2019, three sets of relatives, including the custodians, filed petitions to intervene in the initial dependency actions relating to the children. After a trial at which the mother stipulated to the children's dependency, the juvenile court determined in the March 2020 judgments that the children were dependent, that the custodians were the most suitable among the relatives, and that the children's interests would best be served by an award of their custody to the custodians. The March 2020 judgments ordered DHR to close its cases relating to the children and, thus, were final judgments concluding the dependency proceedings, subject to any future modification or enforcement actions. See J.F. v. J.S., [Ms. 2210399, Dec. 2, 2022] ___ So. 3d ___ (Ala. Civ. App. 2022) (explaining that a judgment determining the dependency of a child and awarding custody to a third party is a final judgment concluding dependency proceedings that may be modified only by an action instituted for that purpose); Ala. Code 1975, § 12-15-117.1 (providing that the juvenile court retains jurisdiction over enforcement

or modification actions related to judgments entered by those courts in the exercise of juvenile-court jurisdiction). The mother appealed those judgments, which were affirmed without a published opinion. S.R., 346 So. 3d 973 (table). The mother made no argument in that appeal[7] that the juvenile court had prematurely proceeded to final disposition and had relieved DHR of any further responsibility to her. Interlocutory orders awarding pendente lite custody of a child to DHR pending DHR's provision of reasonable efforts to rehabilitate the parents, see Ala. Code 1975, § 12-15-312, or pending DHR's efforts to locate a proper permanent placement, see Ala. Code 1975, § 12-15-315, are continuing, interim orders that await further proceedings regarding a determination concerning the continued dependency of the child until a child may be returned to his or her parent or placed with a suitable custodian. In contrast, in these cases, the March 2020 judgments were final, conclusive judgments that awarded custody of the children to the custodians as a method of ensuring permanency for the children and resolving their

[7]We have taken judicial notice of the record in the mother's previous appeal. See B.W. v. S.S., [Ms. 2200869, Feb. 18, 2022] ___ So. 3d ___, ___ n.1 (Ala. Civ. App. 2022).

dependency. See B.C., 143 So. 3d at 205 (explaining that the entry of a judgment placing a child in the custody of a relative terminates the dependency of the child); § 12-15-315(a)(3) (indicating that DHR should present to the juvenile court a plan to ensure the permanency of a dependent child, which may include the child's being "[p]ermanently placed with a relative with a transfer of legal and physical custody to the relative or with a transfer of physical custody to the relative but with the Department of Human Resources retaining legal custody").

Thus, the mother is not similarly situated to parents who have dependent children in the pendente lite custody of DHR. The dependency of the children was resolved by the entry of the March 2020 judgments, and the children are no longer dependent children. Thus, we reject the mother's equal-protection challenge to the application of the standard set out in Ex parte McLendon to actions seeking modification of final custody judgments in dependency actions awarding the custody of a child to a suitable relative or other individual.

The mother next asserts that the custody-modification standard set out in Ex parte McLendon "ends up granting the nonparent custodians a

quasi-protected interest to the natural parents' child that was created by the state despite the fact that the nonparent custodians have no interest to protect." To the extent that this argument might be a claim that the application of the custody-modification standard set out in Ex parte McLendon creates an improper classification of persons with protected interests in the custody of a child, we disagree. The custody-modification standard set out in Ex parte McLendon is concerned not with the rights of the custodian of a child, but the interests of the child whose parent has lost his or her custodial presumption. Our supreme court explained that the requirement that a parent seeking to modify an existing custody arrangement prove that the child's best interests would be materially promoted by a change to that custody arrangement

> "'is a rule of repose, allowing the child, whose welfare is paramount, the valuable benefit of stability and the right to put down into its environment those roots necessary for the child's healthy growth into adolescence and adulthood. The doctrine requires that the party seeking modification prove to the court's satisfaction that material changes affecting the child's welfare since the most recent decree demonstrate that custody should be disturbed to promote the child's best interests. The positive good brought about by the modification must more than offset the inherently disruptive effect caused by uprooting the child. Frequent disruptions are to be condemned.'"

Ex parte McLendon, 455 So. 2d at 865-66 (quoting Wood, 333 So. 2d at 828). The application of the standard set out in Ex parte McLendon does not create in the nonparent custodians of formerly dependent children any "quasi-protected" interest in those children.

The mother also argues, as she did before the juvenile court, that the March 2020 judgments were not final judgments because they did not award child support. As noted previously, we affirmed the March 2020 judgments and did not observe a jurisdictional defect in those judgments. Moreover, the March 2020 judgments did address child support by specifically deferring the calculation of child support. Based on the information from the record in the previous appeal, we agree with the custodians that the evidence at that time reflected that (1) the custodians had not sought child support and were financially able to support the children without contributions by the mother or the father, (2) that the father was incarcerated and, therefore, without income with which to pay child support, and (3) that the mother was in an inpatient drug-rehabilitation facility. The record of the previous appeal contained no evidence indicating that the mother was financially able to pay child

support. Accordingly, we conclude, as we did in the previous appeal, that the failure of the juvenile court to order either the mother or the father to pay child support did not affect the finality of the March 2020 judgments. See § 12-15-314(e) (indicating that a juvenile court shall award child support "when the parent, legal guardian, or legal custodian of the child has resources for child support").

Finally, the mother argues that the juvenile court erred by determining that she had failed to meet the custody-modification standard imposed by Ex parte McLendon. In support of her argument, the mother relies on the principle that both she and the children have rights to the preservation of family integrity; however, as previously noted, that right to family integrity was affected by the mother's stipulation of the children's dependency and the resulting March 2020 judgments awarding custody of the children to the custodians. Although the mother complains that "[t]he current custodial placement of the children is denying the children the chance to form a normal sibling bond with their younger sibling and denying the children a chance to bond with their extended family members," the mother has not successfully argued

that forging those bonds would somehow materially promote the best interest and welfare of the children to such a degree as to warrant a modification of custody. In fact, contrary to the mother's argument, we have explained that resumption of the biological relationship between a child and a parent is not, in and of itself, sufficient to offset the negative uprooting effect that would accompany a change of custody. R.W. v. D.S., 85 So. 3d 1005, 1007 (Ala. Civ. App. 2011) (stating that, in cases in which a parent has lost custody of a child under a prior judicial determination, "a parent cannot regain custody merely by proving his or her biological connection to, and fitness to raise, the child, but also must show that the change in custody would so materially promote the best interests of the child that the positive good brought about from the change of custody would more than offset the disruptive effects caused by uprooting the child"); Gamble, 833 So. 2d at 661 (same). See also M.B. v. S.B., 41 So. 3d 79, 83 (Ala. Civ. App. 2009) (explaining that a mother's improvement in "'behavior, finances, circumstances, parental fitness, and overall situation,'" while laudable, was not sufficient evidence upon which to base a custody modification under Ex parte McLendon).

The record reflects that the children are well cared for by the custodians. Although the mother has improved her circumstances and appears to have overcome the issues that resulted in the removal of the children from her custody, the record does not contain evidence indicating that the interests of children would be materially promoted by placement in her custody. Thus, we must reject her argument that the juvenile court erred in concluding that she had not met the custody-modification standard imposed by Ex parte McLendon. See Ex parte D.B., 255 So. 3d 755, 760 (Ala. 2017) (determining that a mother had failed to establish under the Ex parte McLendon standard that a modification of custody was warranted when she did not present evidence indicating that her child's best interests would be materially promoted by a return to her custody).

Having considered and rejected the mother's arguments on appeal, we affirm the judgments of the juvenile court denying the mother's custody-modification petitions.

CL-2023-0074 -- AFFIRMED.

CL-2023-0075 -- AFFIRMED.

Thompson, P.J., and Hanson, J., concur.

Moore and Fridy, JJ., concur in the result, without opinions.