

H.J. v. S.L.

Court of Civil Appeals of Alabama

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CL-2026-0170, CL-2026-0171, CL-2026-0172, CL-2026-0173, CL-2026-0174, and CL-2026-0175

Reporter

2026 Ala. Civ. App. LEXIS 110 *; 2026 LX 577003; 2026 WL 2795095

H.J. and J.C. v. S.L., Jr.; G.H.; Sarah Brazzolotto, in her capacity as guardian ad litem; and St. Clair County Department of Human Resources

Notice: THIS OPINION IS SUBJECT TO FORMAL REVISION BEFORE PUBLICATION IN THE ADVANCE SHEETS OF THE SOUTHERN REPORTER.

Prior History: [*1] Appeals from St. Clair Juvenile Court. (JU-23-201.03, JU-23-201.06, JU-23-201.08, JU-23-202.03, JU-23-202.06, and JU-23-202.08).

Disposition: CL-2026-0170 -- REVERSED AND REMANDED WITH INSTRUCTIONS. CL-2026-0173 -- REVERSED AND REMANDED WITH INSTRUCTIONS. CL-2026-0171 -- APPEAL DISMISSED. CL-2026-0174 - - APPEAL DISMISSED. CL-2026-0172 -- APPEAL DISMISSED. CL-2026-0175 -- APPEAL DISMISSED.

Judges: BOWDEN, Judge. Hanson, J., concurs. Moore, P.J., and Edwards and Fridy, JJ., concur in the result, with opinions. Moore, P.J., and Edwards, Hanson, and Fridy, JJ., concur. Edwards, Hanson, and Fridy, JJ., concur. Moore, P.J., concurs in the result, with opinion.

Opinion by: BOWDEN

Opinion

BOWDEN, Judge.

H.J. and J.C. ("the foster parents") appeal from judgments of the St. Clair Juvenile Court ("the juvenile court") that, among other things, awarded custody of N.H. and D.H. ("the children"), who are the children of S.L., Jr. ("the father"), and G.H. ("the mother"), to their mother. We reverse the judgments to the extent that they awarded custody of the children to the mother. We also instruct the juvenile court to vacate orders that it entered after jurisdiction over the underlying matters

was vested in this court as a result of the foster parents' appeals. [*2]

Facts and Procedural History

The St. Clair County Department of Human Resources ("DHR") commenced dependency actions concerning the children that were assigned case numbers JU-23-201.03 and JU-23-202.03 ("the .03 dependency actions"). In those actions, the juvenile court found the children dependent and awarded legal custody of the children to DHR; physical custody of the children was awarded to the foster parents. DHR thereafter commenced actions to terminate the parental rights of the parents that were assigned case numbers JU-23-201.06 and JU-23-202.06 ("the .06 termination actions"). The foster parents intervened in the .03 dependency actions and the .06 termination actions.

In November 2025, the mother filed motions to dismiss the .06 termination actions. In her motions to dismiss, the mother asked the juvenile court to return custody of the children to her. The juvenile court initially set the mother's motions to dismiss for a hearing on December 9, 2025. Later, it scheduled a hearing on those motions for January 27, 2026.

On January 20, 2026, seven days before the scheduled hearing on the mother's motions to dismiss, the foster parents commenced actions in the juvenile court seeking [*3] legal custody of the children. The foster parents' actions were assigned case numbers JU-23-201.08 and JU-23-202.08 ("the .08 custody actions"). In their petitions commencing the .08 custody actions, the foster parents alleged that the children were dependent and that the juvenile court should award them sole legal custody or joint legal custody of the children. The foster parents also alleged that the juvenile court should terminate the parents' parental rights and then award them permanent legal custody. They asserted that the termination of the parents' parental rights would be in the best interests of the children.

The juvenile court held a hearing on the mother's motions to dismiss as scheduled on January 27, 2026. The juvenile court received evidence from witnesses that included opinions from those witnesses on what they considered to be the best interests of the children. The juvenile court also made statements concerning the scope of the January 27, 2026, hearing at the start of the hearing, during the parties' presentation of evidence, and at the close of the hearing.

At the start of the January 27, 2026, hearing, the juvenile court noted that the hearing was set "for a hearing [*4] on all pending motions, status, a determination of whether or not dependency still exists, and then how we are going to proceed going forward." It stated that it would start with the mother's attorney "because I think what we said, we would have a hearing on whether or not custody should be returned to your client, which would mean that I've got to make a finding in order to do that, that the children are no longer dependent."

The juvenile court also made statements about the scope of the January 27, 2026, hearing during the parties' presentation of evidence. During the cross-examination of a witness, the juvenile court stated: "And just so everybody knows, I'm focused at this point right now, like, is -- I'm sorry, are [the children] dependent is the key. Are they dependent? That's my question. I mean, that's ultimately, I think, what the issue that we're arguing about right now, isn't it?" Later, during recross-examination of a witness by the foster parents, the foster parents referenced a psychologist's report. The reference drew objections. In response to those objections, the juvenile court stated: "Well, I'm going to say for what purpose? For what purpose? Are you wanting -- I [*5] mean, I'm going to give you wide leeway, but for what purpose? Because, really, what I'm focusing on right now is whether or not these children are dependent." Additionally, during the testimony of Jenna Gardner, the mother asked Gardner whether she had concerns about the children being placed with the foster parents; that question drew an objection, resulting in the following statement from the juvenile court about the scope of the January 27, 2026, hearing:

"[Counsel for the mother]: Do you have concerns as we stand here today, with the children being placed in their current foster placement?

"[Counsel for DHR]: Judge, I'm going to object. This motion is about return [of] custody to the mother and not about the foster parents' petition.

"[The Court]: Sustained. I just want to focus on our dependency. So, sustained."

(Emphasis added.) The foster parents also cross-examined Gardner. The foster parents asked Gardner about the mother's alleged pregnancy, which drew a relevancy objection from DHR. DHR argued that the testimony was not relevant because "[w]e're here on, I guess, on [counsel for the mother's] motion to return custody." The juvenile court sustained the objection.

The juvenile court also commented about the scope of the January 27, 2026, hearing after the close of evidence. At one point, the juvenile court stated that it [*6] was not conducting a dependency hearing but, instead, a hearing on a motion to return custody. Nonetheless, the juvenile court indicated that it intended to find that the children were not dependent and to return custody to the mother. The foster parents then asked about the transition of the custody of the children back to the mother. In response, the juvenile court stated:

"[The Court]: So this is what I want to have happen. I want y'all to sit down because, although, legally, the issue of best interest was not technically before the Court today, the issue was whether or not -- was, number one, the status of all the petitions. Number two, whether or not the children are dependent. This Court is always concerned with the best interest of the children. ..."

(Emphasis added.)

Later, in response to the father's statement that he wanted to invoke his constitutional rights as a parent, the juvenile court commented:

"And, technically, the issue of dependency, and whether or not there's going to be a return to custody, technically, is in front of the court every time we come back. But we were here specifically because [of an oral motion for the return of custody made] the last time we were here. [*7] So I want to make sure the kids' best interests are looked out for. I've made some legal rulings based on the law, based on the evidence that was submitted today. But I have some concern about the bond that exists and how that is going to take place, moving from one place to another. Just like I have the concern, when I issue orders in the middle of the night, removing children from their parents' care and putting them into somebody else's care. I recognize that every time we move a child, even when it's unnecessary, even when it's [a], quote/unquote,

'good move,' it causes some level of harm for children. I want to make sure that we, as a system do the least amount of harm possible. And with the number of people I have right here, I'm not -- I hope that y'all can talk about it and really put the kids' best interests forward. So it's definitely a concern of mine. It's a fair question."

(Emphasis added.)

The juvenile court entered the same judgment in each action on January 30, 2026. The January 30, 2026, judgments found that the children were no longer dependent and returned custody of the children to the mother. The juvenile court dismissed the .06 termination actions and the .08 custody [*8] actions; however, it did not dismiss the .03 dependency actions and ordered DHR to continue to provide services to the mother. It also set the .03 dependency actions for a review hearing and expressly noted that it was retaining jurisdiction over those matters.

The foster parents filed a motion to alter, amend, or vacate under [Rule 59, Ala. R. Civ. P.](#) ("the first-filed [Rule 59](#) postjudgment motion"). In that motion, the foster parents argued that the juvenile court had improperly concluded that the children were no longer dependent. They reasoned that the children were dependent because the father was not able or willing to provide for the children and, therefore, the children were dependent under Alabama's "one-parent doctrine." The foster parents also argued that, because the juvenile court did not find the children to be dependent, it lacked jurisdiction to make a custodial disposition of the children. They also argued that the juvenile court had received limited evidence as to the best interests of the children at the January 27, 2026, hearing, and they requested that the juvenile court "set[] a hearing during which the children's custody may be disposed of with proper consideration of their best interests."

On [*9] February 9, 2026, the juvenile court entered an order setting the foster parents' first-filed [Rule 59](#) postjudgment motion for a hearing. That order provided: "MOTION TO ALTER OR AMEND filed by [the foster parents] is hereby set for hearing at 10:00 a.m. on February 17, 2026. DONE and ORDERED this 9th day of February, 2026." (Capitalization in original; bold typeface omitted.)

A hearing was held on February 17, 2026. At the start of the hearing, the juvenile court stated that the parties were present "for a hearing on a motion to alter, amend, or vacate an order that this Court entered on January

30[, 2026]" The juvenile court stated that "part" of the foster parents' first-filed [Rule 59](#) postjudgment motion was due to be granted. The juvenile court noted that it agreed with the foster parents that the children were dependent "as to the father." The juvenile court stated that, in its opinion, there was "zero evidence" to support a finding that the children were dependent "as to [the mother]." The foster parents argued that, if the children are dependent, then the juvenile court was compelled to hold a hearing on the best interests of the children. The juvenile court then stated:

"I think that we [*10] had evidence presented at the last hearing and I am certainly willing to hear any evidence anybody has today about best interest. My recollection is I heard from two [DHR] workers who rendered their opinions as to what was best for these children and whether or not the children were dependent, whether or not the children should return home. I heard testimony from a counselor based on her interactions with the children. And I'm trying to remember, the family, children, it was her opinion that the children should be returned home, which I think is implicit that it's in their best interest. ... So I don't -- I mean, I'm certainly willing to do that and I don't mind cleaning it up in the amended order that I'm going to enter today that includes a clarification. I'm just going to set that order aside. There will be a new order issued, and I will address the best interest. I'm not so sure that that's necessary but I will do it so that if it goes up on appeal the appellate court has my thinking and my opinion as to what those best interests are, even if unnecessary."

The foster parents then requested "to be able to present evidence" regarding the best interests of the children. In response, [*11] the juvenile court asked what evidence the foster parents would like to proffer with respect to the best interests of the children. The juvenile court later stated:

"I feel very confident in a position that if any court in this State finds that a child is not dependent as to a particular parent, that that court is not faced with the opportunity to leave that child in foster care. It goes against Federal law. It goes against State law. I think that that is something that I personally would get blistered by the appellate courts."

Later, the foster parents again requested a hearing on the best interests of the children. In response the juvenile court stated:

"I'm giving you that opportunity. I gave you that opportunity kind of, but I understand where you're coming from because I did hammer down -- I did at that hearing on dependency. So I agree with you there I'm more than willing to let you proffer what you believe that I would be able to use to make a finding of it being in the children's best interest to leave them in the State's custody. The reason that there's -- part of what I'm struggling with is like if the state of facts that existed as of the date of the January 27th [hearing] [*12] and that continued to exist ..., unless somebody has evidence to the contrary, like there is no chance I would have removed those children from [the mother] under this set of circumstances."

Later, the juvenile court again provided the foster parents with an opportunity to "proffer anything that you have to offer the Court why it would be in the best interest to leave custody of these children with the State of Alabama versus Mother." In response, the foster parents argued that the February 17, 2026, hearing was being held on the first-filed [Rule 59](#) postjudgment motion and that they were not prepared to make an argument or proffer evidence at the February 17, 2026, hearing, "as we would in a custody hearing." The juvenile court then asked the foster parents what witnesses they would like to call. The foster parents named some witnesses and described some potential testimony, which the juvenile court dismissed as not sufficient to compel it to reach a result different than awarding custody to the mother. Later, the foster parents and the juvenile court discussed the purpose of the February 17, 2026, hearing:

"[Counsel for the foster parents]: For purposes of establishing a record, I just want [*13] to assert, again, that today's hearing is for the motion to alter, amend, or vacate. We are not prepared for an evidentiary hearing on best interest.

"[The Court]: Let me say this. ... [A] part of your motion to alter, amend, or vacate was based on best interest. I mean, today's the day.

"[Counsel for the foster parents]: Well --

"[The Court]: I'm not saying that you're not prevented. I'm just saying the Court has been -- it has been, is ready, willing, and able to hear that evidence. That's a part of your motion to alter, amend, or vacate.

"[Counsel for the foster parents]: We did not come

prepared to do that.

"[The Court]: I'm saying I set it for that.

"[Counsel for the foster parents]: Well, you set it to hear our argument on alter, amend, or vacate.

"[The Court]: 100 percent. Was it or was it not part of the basis for your motion to alter, amend or vacate that the best interest was not looked at?

"[Counsel for the foster parents]: It was

"[The Court]: That's what we're here for today.

"[Counsel for the foster parents]: No. We are not here for an evidentiary hearing on that.

"[The Court]: We are here 100 percent for an evidentiary hearing on that. That's what I set it for. That's why I set [*14] it for hearing instead of just issuing an order.

"[Counsel for the foster parents]: So on that basis, Judge, we would object to not holding an evidentiary hearing on that.

"[The Court]: For the record, like your objection is overruled, because we are here for an evidentiary hearing today on that, which is included in my calculus of determining whether or not I should alter, amend, or vacate the order. Again, I'm going to say it very clearly, my first inclination when I read the motion was I was going to grant it and clarify exactly what I said, make a finding that the children were dependent as to father, not dependent as to mother, and then go on about my business. Then I'm like, wait a second, he argued in here about best interest. I'm going to let them flesh that out, which, again, is why I didn't just issue an order. I set it for hearing."

The juvenile court then received testimony regarding whether the foster parents had returned certain items to DHR.

That same day, February 17, 2026, the juvenile court entered the same new judgment in each action. Those judgments state, in pertinent part:

"This matter was called for hearing on February 17, 2026, on a Motion to Alter, Amend or Vacate filed by [the foster parents]. All parties and counsel were present. Evidence was presented, testimony was heard ore tenus, and arguments were heard. Upon consideration thereof, it is hereby ORDERED,

ADJUDGED, and DECREED as follows:

"1. Foster Parents' motion is hereby GRANTED. The Court's order entered on January 30, 2026 is hereby set aside and held for naught. The provisions set forth below constitute an AMENDED ORDER of this Court, after considering [*15] evidence, testimony and arguments presented at hearings before this Court on January 27, 2026, and February 17, 2026.

"2. The [children] made the subject of these proceedings ... [are] no longer dependent as to [the mother].

"3. The [children] remain[] dependent as to [the father].

"4. The Court finds that it is in the minor child[ren's] best interests to return [to] and award[s] custody to [the mother]."

(Capitalization in original.) The February 17, 2026, judgments dismissed the .06 termination actions and the .08 custody actions. They also ordered DHR to continue to provide services in the .03 dependency actions and set the .03 dependency actions for a review hearing.

On February 26, 2026, the foster parents filed a second motion to alter, amend, or vacate under [Rule 59](#) ("the successive [Rule 59](#) postjudgment motion"). In that motion, the foster parents argued that the juvenile court had failed to set or notify the foster parents of a "full evidentiary hearing." The foster parents argued that the juvenile court had expanded the scope of the February 17, 2026, hearing to be a "full evidentiary hearing" to include the topic of the children's best interests, rather than simply a hearing on their first-filed [*16] [Rule 59](#) postjudgment motion. They argued that such an expansion was done without proper notice and cited cases indicating that a lack of notice deprives a party of due process. They also argued that they were entitled to have a full evidentiary hearing on the issue of the best interests of the children, and they included a list of witnesses that they indicated that they would call at such a hearing. Finally, the foster parents argued that the juvenile court had applied a standard different than the best-interests-of-the-child standard when deciding the cases. They argued that the juvenile court should have -- but did not -- consider the factors for determining the best interests of the children set forth in [Ex parte Devine, 398 So. 2d 686 \(Ala. 1981\)](#).

The juvenile court entered an order denying the foster parents' successive [Rule 59](#) postjudgment motion on

February 28, 2026. The foster parents appealed on March 4, 2026. On March 17, 2026, the juvenile court entered orders removing the foster parents as parties to the .03 dependency actions.

The Mother's Motion to Dismiss

The mother filed a motion to dismiss the foster parents' appeals that we must consider before reaching the merits of the appeals. In her motion to dismiss, the mother alleges [*17] that the foster parents' appeals are untimely. The mother argues that the successive [Rule 59](#) postjudgment motion did not suspend the time to appeal because, she argues, it did not raise arguments different from those that could have been raised in the first-filed [Rule 59](#) postjudgment motion. Because the successive [Rule 59](#) postjudgment motion did not suspend the time to appeal, the mother argues, the foster parents' appeals are untimely. The mother's argument is not persuasive.

An appeal must be timely filed; if it is not timely filed, we must dismiss it for lack of jurisdiction. [Rule 2\(a\)\(1\), Ala. R. App. P.; Moultrie v. Wall, 143 So. 3d 128, 135 \(Ala. 2013\); Webb v. Jefferson Cnty. Bd. of Health, \[Ms. CL-2025-0387, Dec. 12, 2025\] So. 3d , 2025 Ala. Civ. App. LEXIS 137 \(Ala. Civ. App. 2025\)](#). Generally, the required period in which to file an appeal from a juvenile-court judgment is 14 days from the date that the juvenile court entered its judgment. See [Rule 28\(D\), Ala. R. Juv. P.](#) The required period in which to file an appeal changes, however, if a party files a motion asserting grounds for relief under [Rule 59](#), such as a motion to alter, amend, or vacate a judgment under [Rule 59\(e\)](#).

When a [Rule 59](#) postjudgment motion is denied in a juvenile case, a party must file an appeal within 14 days from the date of the entry of the order denying the [Rule 59](#) postjudgment [*18] motion or within 14 days from the date that the [Rule 59](#) postjudgment motion is denied by operation of law; otherwise, the appeal is untimely. When a trial court grants a [Rule 59](#) postjudgment motion and issues a new or amended judgment, however, a party's successive [Rule 59](#) postjudgment motion will alter the required period in which to appeal if (1) the trial court takes some action on a first-filed [Rule 59](#) postjudgment motion that prompts a "new objection," i.e., one that could not have been raised in the first-filed [Rule 59](#) postjudgment motion, and (2) the successive [Rule 59](#) postjudgment motion asserts that new objection. [Docen v. Docen, 294 So. 3d 767, 771 \(Ala. Civ. App. 2019\); McGinnis v. Steele, 199 So. 3d 69,](#)

72 (Ala. Civ. App. 2015); cf. C & D Logging v. Mobley, 61 So. 3d 1067 (Ala. Civ. App. 2009) (holding that a party's successive Rule 59 postjudgment motion did not alter the required period in which to appeal because, although the trial court had entered an amended judgment in response to the party's first-filed Rule 59 postjudgment motion, the party's successive Rule 59 postjudgment motion asserted the same issues that had been raised in first-filed postjudgment motion), and Green v. Green, 43 So. 3d 1242, 1244 (Ala. Civ. App. 2009) (holding that a party's successive Rule 59 postjudgment motion did not alter the required period in which to appeal because, although the trial court had entered an amended judgment, the party's successive Rule 59 postjudgment motion asserted grounds [*19] that could have been brought in the first-filed postjudgment motion).

Here, the foster parents asserted arguments in the successive Rule 59 postjudgment motion that were not and could not have been raised in the first-filed Rule 59 postjudgment motion. In the successive Rule 59 postjudgment motion, the foster parents argued that findings in the February 17, 2026, judgments stemmed from a hearing on their first-filed Rule 59 postjudgment that, they argued, was erroneously not a "full evidentiary hearing" on the issue of the best interests of the children. That hearing occurred, of course, after the entry of the January 30, 2026, judgments and, therefore, the issues regarding that hearing that the foster parents raised in the successive Rule 59 postjudgment motion could not have been raised in the foster parents' first-filed Rule 59 postjudgment motion. The foster parents also argued in the successive Rule 59 postjudgment motion that the juvenile court had applied an incorrect standard when determining the best interests of the children. That argument also could not have arisen before the issuance of the February 17, 2026, judgments because the juvenile court did not apply any standard regarding the best interests of the children in [*20] the January 30, 2026, judgments, in which it had found that the children were not dependent and had returned custody of the children to the mother.

Accordingly, the foster parents' successive Rule 59 postjudgment motion was not an impermissible repetitive postjudgment motion, see Docen, 294 So. 3d at 771, or a motion to reconsider a denied postjudgment motion. It was, instead, a successive Rule 59 postjudgment motion raising new issues that could not have been brought in the first-filed Rule 59 postjudgment motion. The successive Rule 59 postjudgment motion therefore altered the required

period in which to appeal. Specifically, the foster parents had 14 days from February 28, 2026, which is the date their successive Rule 59 postjudgment motion was denied, to appeal the February 17, 2026, judgments. The foster parents appealed on March 4, 2026. Their appeals were therefore timely, and the mother's motion to dismiss the foster parents' appeals is denied.

Issues

The foster parents assert three arguments on appeal. They argue that the juvenile court violated their right to due process by holding an evidentiary hearing on the issue of the best interests of the children during the hearing on the first-filed Rule 59 postjudgment motion without providing them [*21] with sufficient notice of that hearing. They argue that the juvenile court failed to apply the correct best-interests-of-the-child standard when awarding custody of the children. And they argue that the juvenile court lacked jurisdiction to remove the foster parents as parties to the .03 dependency actions while their appeals were pending.

The foster parents' arguments do not concern whether the February 17, 2026, judgments improperly dismissed the .06 termination actions or the .08 custody actions. Furthermore, our holdings in these appeals, discussed below, do not require a reversal of the February 17, 2026, judgments to the extent that they dismissed the .06 termination actions and the .08 custody actions. Accordingly, the foster parents' appeals relating to the .06 termination actions and the .08 custody actions are dismissed as moot. See Reeves v. Reeves, 363 So. 3d 996, 1001 (Ala. Civ. App. 2021) ("The former husband does not raise any issue in regard to the claims asserted in case number DR-15-900460.02 or the orders or judgments relating to those claims; therefore, we dismiss appeal number 2200217, which arises from case number DR-19-900460.02, as moot").

Analysis

I. Whether the juvenile court violated the foster parents' right to due [*22] process

A. As parties to the .03 dependency actions, the foster parents were entitled to due process in those actions, including the right to reasonable notice of a dispositional hearing.

The foster parents intervened in the .03 dependency actions; therefore, they are parties to those actions. "Procedural due process requires 'notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950). "Briner v. City of Midfield, 831 So. 2d 53, 56 (Ala. Civ. App. 2002). "The operative test is that "the notice as published must reasonably apprise any interested person of the issues involved in the proceeding.'" North Alabama Express, Inc. v. United States, 585 F.2d 783, 787 (5th Cir. 1978) (citation omitted). "Del Vecchio v. Board of Comm'rs of Dothan, [Ms. CL-2025-0262, Aug. 29, 2025] So. 3d , , 2025 Ala. Civ. App. LEXIS 103 (Ala. Civ. App. 2025). In these cases, the notice provided to the foster parents did not reasonably apprise them of the issues that were ultimately decided at the February 17, 2026, hearing. Specifically, the notice provided by the juvenile court did not apprise the foster parents that the juvenile court would conduct a dispositional hearing on February 17, 2026, and issue judgments disposing of the custody of the children.

In [*23] the first-filed Rule 59 postjudgment motion, the foster parents argued that the juvenile court had improperly concluded that the children were not dependent and that the juvenile court had received limited evidence as to the best interests of the children at the January 27, 2026, hearing. They requested, as relief, that the juvenile court set a hearing to receive evidence regarding the children's best interests before disposing of their custody. The juvenile court then issued an order on February 9, 2026, stating only that it was setting a hearing on the foster parents' first-filed Rule 59 postjudgment motion.

During the hearing on the first-filed Rule 59 postjudgment motion, the juvenile court indicated that it would grant that motion and would find the children dependent as to the father but as not to the mother. That comment indicated that the juvenile court would enter judgments finding the children to be dependent, even though the children were not dependent as to the mother. See Ex parte W.E., 64 So. 3d 637, 638 (Ala. 2010)(Murdock, J., concurring specially)("[D]ependency is a status created by law that either is true of a child or is not."); M.C.A. v. Etowah Cnty. Dep't of Hum. Res., 397 So. 3d 962, 968 (Ala. Civ. App. 2024)("In Ex parte L.E.O., [61 So. 3d 1042 (Ala. 2010)], our supreme court held that a child is dependent if he or she does not receive 'adequate care [*24] and supervision from

those persons legally obligated to care for and/or to supervise the child.' 61 So. 3d at 1047 (some emphasis omitted). 'Persons' is a plural form of the word 'person.'"); J.L. v. D.G.H., 402 So. 3d 261, 267 (Ala. Civ. App. 2024)(Moore, P.J., concurring specially)("Ex parte L.E.O., [61 So. 3d 1042 (Ala. 2010)], as interpreted by this court, mandates that a child be adjudicated dependent even if one of two joint custodial parents can properly provide the child with care and supervision." (emphasis added)). After finding a child to be dependent, a trial court must then hold a dispositional hearing. K.R. v. Z.B., 249 So. 3d 523, 527 (Ala. Civ. App. 2017)(holding that "juvenile court erred in failing to hold a hearing concerning the issue of the disposition of the custody of the child"). After indicating that it would find the children dependent, the juvenile court appears to have immediately conducted a dispositional hearing on February 17, 2026, rather than set a dispositional hearing for a future date. It then entered judgments awarding custody of the children to the mother.

Of course, a juvenile court may proceed immediately to a dispositional hearing after an adjudicatory hearing. Rule 25(A), Ala. R. Juv. P.; T.B. v. Cullman Cnty. Dep't of Hum. Res., 6 So. 3d 1195, 1203 (Ala. Civ. App. 2008). But the February 17, 2026, hearing was set as a postjudgment proceeding, see Rule 59(g), not as an adjudicatory hearing, and the only issue before the juvenile [*25] court -- and the only issue that it had provided notice to the parties that it would consider -- was whether to alter, amend, or vacate the January 27, 2026, judgments based on the arguments asserted in the foster parents' first-filed Rule 59 postjudgment motion. Accordingly, the February 9, 2026, order providing notice of a hearing on the first-filed Rule 59 postjudgment motion did not reasonably apprise the foster parents that the juvenile court would immediately conduct a dispositional hearing after granting that motion.

Although not directly on point, dependency cases discussing the due process that parents must receive further persuade us that the foster parents, who are parties to the .03 dependency actions, were not afforded due process in these cases. In N.J.D. v. Madison County Department of Human Resources, 110 So. 3d 387 (Ala. Civ. App. 2012), this court noted that the Alabama Juvenile Justice Act, § 12-15-101 et seq., Ala. Code 1975, provides for three types of hearings: an adjudicatory hearing, a dispositional hearing, and review hearings. After the father's child in N.J.D. was removed from the father's home by the Madison County Department of Human Resources, the child was found

dependent after an adjudicatory hearing. The father then received notice that the trial court had set a review hearing. However, after conducting the review hearing, [*26] the trial court entered an order awarding legal custody of the child to a relative. On appeal, this court noted that the father's attorney had come to the scheduled hearing prepared for a review hearing and "not for a final dispositional hearing for which [the father's attorney] had no notice." [N.J.D., 110 So. 3d at 394](#). We held that, "in failing to notify the father of the nature of the proceedings, the trial court deprived the father of his right to due process." *Id.* See also [M.E. v. Jefferson Cnty. Dep't of Hum. Res., 148 So. 3d 737 \(Ala. Civ. App. 2014\)](#) (holding that trial court violated mother's right to due process in child-dependency proceeding when trial court held a permanency hearing even though trial court had notified mother that the scheduled hearing was a "review hearing"); [A.D.G. v. D.O., 160 So. 3d 783 \(Ala. Civ. App. 2014\)](#) (holding that mother's due-process rights were violated when only notice that mother received about hearing was that hearing was to be a dispositional hearing and the trial court instead held a permanency hearing); [Gilmore v. Gilmore, 103 So. 3d 833, 835-36 \(Ala. Civ. App. 2012\)](#) (reversing judgment after noting that "there was no indication in the record that the trial court intended to consider the parties' claims seeking a final custody determination at the February 2, 2012 hearing"). As parties, the foster parents were entitled to notice of the juvenile court's [*27] intent to conduct a dispositional hearing. See [Rule 13\(C\), Ala. R. Juv. P.](#) (providing, subject to exceptions not applicable here, that "written notice of all hearings ... shall be provided to all parties in the proceedings, and such notice shall include the date, time, place, and purpose of the hearings"). And, similar to the parents in the foregoing cases, their procedural-due-process rights were violated.

B. The due-process violation was not harmless error

This court will not reverse the judgment of a trial court if the error complained of is harmless error. *Rule 45, Ala. R. App. P.*; [Professional Educ. Servs. Grp., LLC v. Ford, \[Ms. CL-2025-0215, Feb. 13, 2026\] So. 3d , 2026 Ala. Civ. App. LEXIS 15 \(Ala. Civ. App. 2026\)](#) ("The judgment of the trial court will not be reversed for harmless error." (quoting [Coastal Bail Bonds, Inc. v. Cope, 697 So. 2d 48, 52 \(Ala. Civ. App. 1996\)](#))). At the February 17, 2026, hearing, the juvenile court indicated that, based on the evidence received at the January 27, 2026, hearing, it would have found that it was in the best interests of the children to remain with the mother. It

then memorialized that finding in its February 17, 2026, judgments, which provide that it is in the children's best interests to be returned to the mother. If the January 27, 2026, hearing had been a simultaneous adjudicatory [*28] and dispositional hearing, see [T.B., supra](#), the juvenile court's holding of a dispositional hearing on February 17, 2026, without notice to the foster parents and subsequent award of custody may have been harmless error. But, as indicated above, the juvenile court indicated on multiple occasions that the January 27, 2026, hearing was not a dispositional hearing but was, instead, an adjudicatory hearing to determine the issue of dependency. *Cf. K.R., 249 So. 3d at 526* (reversing judgment awarding custody because "the juvenile court made it clear that the disposition of the child [would] not [be] considered at that hearing"). Accordingly, we cannot say that the juvenile court's failure to provide notice to the foster parents of the dispositional hearing on February 17, 2026, was harmless error.

C. Conclusion

The February 17, 2026, judgments are reversed to the extent that they awarded custody of the children to the mother. The juvenile court is instructed to hold a dispositional hearing in accordance with [§ 12-15-311, Ala. Code 1975](#), and to enter judgments regarding the disposition of the children. In making its decision, the juvenile court is not to apply the parental presumption from *Ex parte Terry, 494 So. 2d 628 (Ala. 1986)*, which "does not apply if the child or children, the custody [*29] of whom is disputed, have been found to be dependent, as is the case here." [P.D. v. S.S., 67 So. 3d 128, 131-32 \(Ala. Civ. App. 2011\)](#). We note, however, that the pendente lite custody award to the mother remains in effect pending the juvenile court's entry of dispositional judgments. See [K.R., supra](#).

II. Whether the juvenile court applied the correct best-interests-of-the-child standard when awarding custody of the children

Because of our decision to reverse the February 17, 2026, judgments to the extent that they awarded custody of the children to the mother, we pretermitted discussion of the foster parents' argument regarding whether the juvenile court applied the correct best-interests-of-the-child standard when awarding custody.

III. Whether the juvenile court lacked jurisdiction to enter the order removing the foster parents as parties to the .03 dependency actions

"The question of jurisdiction is fundamental, [Reynolds v. Colonial Bank](#), 874 So. 2d 497, 502 (Ala. 2003)(citing [Mobile & Gulf R.R. v. Crocker](#), 455 So. 2d 829, 831 (Ala. 1984)); it is a question of primary importance in every case. [Wilkinson v. Henry](#), 221 Ala. 254, 256, 128 So. 362, 364 (1930); [Reynolds](#), 874 So. 2d at 503."

[Cleveland v. Armstrong](#), [Ms. CL-2025-0331, Apr. 3, 2026] So. 3d , 2026 Ala. Civ. App. LEXIS 39 (Ala. Civ. App. 2026)(plurality opinion). "[W]hen an appeal is taken, unless it is from a proper [Rule 54\(b\)](#), [Ala. R. Civ. P.,] order, the appeal divests the lower court of jurisdiction over the case until the appellate court provides [*30] a disposition of the appeal " [Million v. Shumaker](#), 384 So. 3d 609, 615 (Ala. 2023) (quoting [Erskine v. Guin](#), 384 So. 3d 583, 598 (Ala. 2023)). When a trial court is divested of jurisdiction over a case because it is on appeal, the trial court can act only in matters entirely collateral to the appeal. [Portis v. Alabama State Tenure Comm'n](#), 863 So. 2d 1125, 1126 (Ala. Civ. App. 2003).

"'Collateral' matters are those that 'd[o] not raise any question going behind the [judgment] appealed from, nor [do they] raise any question decided by that [judgment].' [Osborn v. Riley](#), 331 So. 2d 268, 272 (Ala. 1976). More broadly speaking, collateral matters 'd[o] not involve the "rights and equities" relative to the question on appeal.' [[Reynolds v. Colonial Bank](#), 874 So. 2d [497,] 503 [(Ala. 2003)] (quoting [Osborn](#), 331 So.2d at 272)."

[Vesta Fire Ins. Corp. v. Liberty Nat'l Life Ins. Co.](#), 893 So. 2d 395, 412 (Ala. Civ. App. 2003). The identity of a party to an action is not a collateral matter to an appeal from that action.

The juvenile court issued the March 17, 2026, orders removing the foster parents as parties to .03 dependency actions after the foster parents had appealed the judgments entered in those actions, but the removal of the foster parents as parties was not collateral matter. Accordingly, the juvenile court lacked jurisdiction to enter the March 17, 2026, orders removing the foster parents as parties to the .03 dependency actions.

Conclusion

We dismiss the foster parents' appeals relating to the .06 termination actions and the .08 custody actions. The February 17, 2026, judgments entered [*31] in the .03 dependency actions are reversed to the extent that they awarded custody of the children to the mother. The juvenile court is instructed to hold a dispositional hearing in accordance with [§ 12-15-311](#) and to enter judgments regarding the disposition of the children. In making its decision, the juvenile court is not to apply the parental presumption from [Ex parte Terry](#), *supra*. The pendente lite custody award to the mother remains in effect pending the juvenile court's entry of dispositional judgments. Finally, we instruct the juvenile court to vacate its March 17, 2026, orders removing the foster parents as parties to the .03 dependency actions.

CL-2026-0170 -- REVERSED AND REMANDED WITH INSTRUCTIONS.

CL-2026-0173 -- REVERSED AND REMANDED WITH INSTRUCTIONS.

Hanson, J., concurs.

Moore, P.J., and Edwards and Fridy, JJ., concur in the result, with opinions.

CL-2026-0171 -- APPEAL DISMISSED.

CL-2026-0174 -- APPEAL DISMISSED.

Moore, P.J., and Edwards, Hanson, and Fridy, JJ., concur.

CL-2026-0172 -- APPEAL DISMISSED.

CL-2026-0175 -- APPEAL DISMISSED.

Edwards, Hanson, and Fridy, JJ., concur.

Moore, P.J., concurs in the result, with opinion.

Concur by: EDWARDS; FRIDY; MOORE

Concur

EDWARDS, Judge, concurring in the result in case numbers CL-2026-0170 and CL-2026-0173.

In May 2024, the St. Clair County Department of Human Resources ("DHR") filed [*32] in the St. Clair Juvenile Court ("the juvenile court") dependency petitions relating

to N.H. and D.H. ("the children"), the children of G.H. ("the mother") and S.L., Jr. ("the father"); those petitions were assigned case numbers JU-23-201.03 and JU-23-202.03, respectively. The juvenile court apparently found the children dependent at some point during the proceedings, and DHR provided services to the mother and to the father. DHR later filed petitions seeking to terminate the parental rights of the mother and of the father; those petitions were assigned case numbers JU-23-201.06 and JU-23-202.06. At some point, H.J. and J.C. ("the foster parents") intervened in DHR's dependency actions and termination-of-parental-rights actions.

In November 2025, the mother filed motions to dismiss the termination-of-parental-rights actions in which she requested that the juvenile court return the children to her custody. Thereafter, the foster parents commenced separate actions seeking custody of the children; those actions were assigned case numbers JU-23-201.08 and JU-23-202.08, respectively. On January 30, 2026, after an evidentiary hearing held on January 27, 2026, at which the juvenile court continuously [*33] refused to accept evidence relating to the best interests of the children, the juvenile court entered judgments concluding that the children were no longer dependent, awarding custody of the children to the mother, ordering DHR to continue to offer services to the family, and ordering that the father's visitation with the children be set through an individualized service plan ("ISP"). The juvenile court also dismissed case numbers JU-23-201.06, JU-23-202.06, JU-23-201.08, and JU-23-202.08. The foster parents appealed from the various judgments, and, after the filing of the notices of appeal, the juvenile court purported to dismiss the foster parents as parties to case numbers JU-23-201.03 and JU-23-202.03.

Although the juvenile court purported to determine that the children were not dependent in its January 2026 judgments, the juvenile court, in fact, implicitly determined that the children remained dependent at least as to the father by failing to dismiss the dependency petitions, by requiring that DHR provide further services to the family, and by requiring that the father's visitation be determined in an ISP. In my opinion, the juvenile court erred by failing to take evidence regarding [*34] the best interests of the children at the January 27, 2026, evidentiary hearing because it was required to consider the best interests of the children in making its custodial dispositions. See, e.g., M.P.G. v. Jefferson Cnty. Dep't of Hum. Res., 215 So. 3d 1096, 1101 (Ala. Civ. App. 2016); T.W. v.

Madison Cnty. Dep't of Hum. Res., 946 So. 2d 469 (Ala. Civ. App. 2006). I believe that this error of the juvenile court alone warrants reversal of the January 2026 judgments, as amended by the February 17, 2026, postjudgment orders. I would therefore not consider whether the juvenile court's error was compounded by the actions it took during postjudgment practice.

I agree with the main opinion that the foster parents' appeals of the judgments dismissing the petitions in case numbers JU-23-201.06, JU-23-202.06, JU-23-201.08, and JU-23-202.08 should be dismissed and that the juvenile court's orders removing the foster parents as parties to case numbers JU-23-201.03 and JU-23-202.03 are void. However, because I would reverse the custodial dispositions of the children in the dependency judgments entered in case numbers JU-23-201.03 and JU-23-202.03 for reasons different than those discussed in the main opinion, I concur in the result reached by the main opinion regarding the appeals from the judgments entered in case numbers JU-23-201.03 and JU-23-202.03.

FRIDY, Judge, concurring in the result in case numbers [*35] CL-2026-0170 and CL-2026-0173.

Regarding the appeals from the judgments entered in case numbers JU-23-201.06 and JU-23-202.06, which the main opinion refers to as "the .06 termination actions," I concur in the main opinion. Regarding the appeals from the judgments entered in case numbers JU-23-201.08 and JU-23-202.08, I concur in the main opinion, although I would refer to those actions as "the .08 dependency actions" rather than "the .08 custody actions" to allay any confusion regarding the nature of the petitions that initiated those actions. Regarding the appeals from the judgments entered in case numbers JU-23-201.03 and JU-23-202.03, which the main opinion refers to as the ".03 dependency actions," I concur in the result and agree with Presiding Judge Moore's analysis in his special writing.

MOORE, Presiding Judge, concurring in the result in case numbers CL-2026-0170, CL-2026-0173, CL-2026-0172, and CL-2026-0175.

H.J. and J.C. ("the foster parents") appeal from separate but identically worded judgments entered in six separate actions relating to N.H. and D.H., the children of S.L., Jr. ("the father"), and G.H. ("the mother"). The first two actions were commenced in May 2024 when [*36] the St. Clair County Department of Human Resources ("DHR") filed dependency petitions ("the .03 dependency actions"); the next two actions were

commenced in April 2025 when DHR filed petitions to terminate the parental rights of the mother and the father to the children ("the .06 termination actions"). In June 2025, the foster parents intervened in the .03 dependency actions and the .06 termination actions. The final two actions were commenced on January 20, 2026, when the foster parents filed custody petitions relating to the children ("the .08 custody actions").

The juvenile court never acquired jurisdiction over the .08 custody actions, however. As explained in J.S. v. Greene County Department of Human Resources, [Ms. CL-2025-0181, Aug. 22, 2025] So. 3d , 2025 Ala. Civ. App. LEXIS 99 (Ala. Civ. App. 2025), juvenile courts generally do not have subject-matter jurisdiction over custody petitions. If a child is the subject of a pending dependency proceeding, and the juvenile court determines that the child at issue is dependent, it may adjudicate the custody of the child, but only in the dependency proceeding. The Alabama Juvenile Justice Act, Ala. Code 1975, § 12-15-101 et seq., does not authorize an independent or collateral action to adjudicate the custody of a dependent [*37] child. A custody petition relating to a child who is the subject of an ongoing dependency proceeding does not validly commence a new action, and any judgment entered in that invalid action is a legal nullity that will not support an appeal. Thus, the appeals from the judgments entered in the .08 custody actions should be dismissed.¹

That does not mean, however, that the foster parents did not have valid claims for the custody of the children. A person seeking custody of a dependent child "who is not already being considered a placement option for the child by the juvenile court should file a motion to intervene in the dependency proceeding regarding the child." J.S., So. 3d at , 2025 Ala. Civ. App. LEXIS 99. The juvenile court permitted the foster parents to intervene in the .03 dependency actions. Although the foster parents never filed a formal petition for custody in the .03 dependency actions, the foster parents effectively asserted a claim seeking the permanent custody of the children in their intervention motion, and the other parties and the juvenile court treated them as parties to the .03 dependency actions for that purpose. Hence, the foster parents properly raised their custody claim in the .03 dependency [*38] actions.

¹ The foster parents do not argue that the juvenile court erred in dismissing the .06 termination actions, so I concur that the appeals from the judgments entered in those actions also should be dismissed.

On November 14, 2025, the mother filed in the .06 termination actions a motion seeking the return of the custody of the children and a dismissal of the .06 termination actions. In that motion, the mother alleged, among other things, that, since July 2024, when the children were removed from her custody because of ongoing domestic-violence issues between her and the father, her circumstances had improved and that those circumstances would only continue to improve in the future. The mother alleged that she had separated from the father and that she had obtained a protection-from-abuse order against him, that she had received counseling to overcome her domestic-violence issues, that she had moved into The Presbyterian Home for Children in Talladega and was participating in a family-reunification program, and that she had progressed from supervised visitation to extended overnight unsupervised visitation with the children. The mother requested a hearing on the motion.

The juvenile court had previously conducted an adjudicatory hearing and had entered judgments finding the children to be dependent in July 2024. In those judgments, the juvenile court awarded custody of the children [*39] to DHR, who placed the children with the foster parents. Following the entry of those judgments, the juvenile court held periodic review hearings in the .03 dependency actions to monitor the mother's and the father's progress leading toward their rehabilitation and family reunification. The juvenile court had found that the children remained dependent at each hearing, and it had consistently maintained the children in the protective legal custody of DHR in the home of the foster parents, without making a final, permanent custodial disposition.

When the mother filed the motion for return of the custody of the children, the juvenile court was required to hold a dispositional hearing in the .03 dependency actions to determine whether the children could be safely reunited with the mother. See T.W. v. Madison Cnty. Dep't of Hum. Res., 946 So. 2d 469, 474 (Ala. Civ. App. 2006); M.P.G. v. Jefferson Cnty. Dep't of Hum. Res., 215 So. 3d 1096 (Ala. Civ. App. 2016).² The

² The record does not disclose any formal consolidation order, but the juvenile court regularly treated the pending cases relating to the children interchangeably, holding hearings in all the cases simultaneously. On January 13, 2026, the juvenile court entered an order in the .03 dependency actions and the .06 termination actions scheduling a hearing on the mother's motion, although it was filed only in the .06 termination actions. The foster parents have not raised any argument that

juvenile court conducted that dispositional hearing on January 27, 2026. At that hearing, the juvenile court had to first determine whether the children remained dependent. See *H.T. v. A.C.*, 392 So. 3d 87, 96 (Ala. Civ. App. 2023). But it also had to determine whether returning the children to the mother was in their best interests. *Id.* After hearing from five witnesses -- who corroborated that the mother, through reasonable efforts expended [*40] by DHR and her considerable effort in adjusting her circumstances to meet the needs of the children, had successfully progressed to the point that she could safely resume custody of the children, at least with DHR's supervision -- the juvenile court, on January 30, 2026, entered judgments concluding that the children were no longer dependent and awarding the mother custody of the children, subject to DHR protective services and supervision, but it did not find that returning the children to the mother was in their best interests.

The foster parents filed a postjudgment motion challenging the finding that the children were not dependent and arguing that the juvenile court had unduly restricted the scope of the dispositional hearing solely to the issue of whether the children remained dependent without allowing an inquiry into their best interests. During the January 27, 2026, dispositional hearing, the juvenile court repeatedly informed the parties that the inquiry would focus solely on the dependency of the children. At several points, witnesses had testified that it was in the best interests of the children to be returned to the mother's custody, but the juvenile court regularly redirected [*41] the evidence toward the dependency issue. The foster parents argued in their postjudgment motion that the juvenile court had erred in changing the custody of the children without finding that it was in their best interests and that the juvenile court should set another dispositional hearing to allow them to present evidence regarding the best interests of the children.

During the hearing on the postjudgment motion, the juvenile-court judge agreed to amend the dependency findings, and he offered to hear any evidence that the foster parents had to support their position that it would not be in the best interests of the children to be removed from foster care and returned to the mother's custody. *Rule 59(a), Ala. R. Civ. P.*, allowed for that procedure because that rule, which applies in juvenile proceedings, see *Rule 1, Ala. R. Juv. P.*, grants a juvenile court

discretion in a nonjury case, when a party files a motion for a new trial, to open a judgment, to take additional testimony, and to amend the judgment to reflect the findings based on that additional evidence. However, the foster parents declared that they were not prepared to present evidence at the time of the postjudgment hearing because, as their counsel stated, the juvenile [*42] court had notified them that the hearing would only address their postjudgment motion.

In my opinion, the foster parents had moved for a new trial by specifically requesting that the juvenile court set an evidentiary hearing regarding the best interests of the children, and they should have been prepared to present evidence in support of their position. A trial court may take additional testimony regarding the merits of a case during a hearing on a motion for a new trial, see *Nesmith v. Nesmith*, 419 So. 2d 247, 248 (Ala. Civ. App. 1982), and the juvenile court in this case had scheduled a hearing on the foster parents' postjudgment motion. However, I cannot locate any case holding that the notice of a postjudgment hearing impliedly encompasses notice of the opportunity for an evidentiary hearing. Without clear precedent on this issue, I must agree that the foster parents were not notified that they would be allowed to present evidence during the postjudgment hearing regarding the best interests of the children.

In the final amended judgments, the juvenile court determined that the children were no longer dependent as to the mother, that they remained dependent as to the father, and that it was in the best interests of the children to be returned [*43] to the mother's custody, subject to DHR's providing the family continuing services.³ See *Ala. Code 1975, § 12-15-314(a)(1)* (providing that a juvenile court may, to protect the welfare of a dependent child, "[p]ermit the child to remain with the parent ..., subject to conditions and limitations as the juvenile court may prescribe"). However, upon a fully developed record, the juvenile court could have made "any other order as the juvenile court in its discretion ... deem[ed] to be for the welfare and best interests of the child[ren]." *§ 12-15-314(a)(4).*

³ The foster parents appealed from the amended judgments, and, afterward, the juvenile court purported to enter orders dismissing the foster parents as parties in the .03 dependency actions. Because the filing of the notices of appeal divested the juvenile court of jurisdiction, I concur that the juvenile court lacked jurisdiction to enter the orders dismissing the foster parents as parties, that the dismissal orders are void, and that the dismissal orders should be vacated.

As the main opinion concludes, the foster parents were not provided a meaningful opportunity to present evidence indicating that leaving the children in their care would serve the best interests of the children. Thus, I concur that the amended judgments should be reversed and the cases remanded for the juvenile court to conduct another dispositional hearing regarding the best interests of the children and for the entry of amended judgments based on the evidence adduced at that hearing.⁴ Nothing in the main opinion should be construed to preclude the juvenile court from considering evidence regarding the children's current circumstances.

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⁴Because we are remanding for the entry of amended judgments, I concur that we should not address any alleged error committed by the juvenile court in misapplying the best-interests-of-the-child standard in the current amended judgments that were entered in the .03 dependency actions.