UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1212

September Term, 2015

IN RE: H.C.

Graeff,
Reed,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: December 22, 2015

H.C. is the adopted child of Mrs. C., mother ("Mother"), and Mr. C., father ("Father") (collectively "Parents"). Parents[1] appeal from an order of the Circuit Court for Worcester County, sitting as a juvenile court, granting the motion of the Worcester County Department of Social Services ("WCDSS"), waiving the requirement that it provide reasonable efforts to reunify them with H.C. Parents present the following question for our review, which we have rephrased slightly:[2]

> Did the circuit court err in granting the motion of WCDSS to waive reunification efforts?

For the following reasons, we answer in the negative, and accordingly, affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Father and Mother are 76 and 81 years old, respectively, and the adoptive parents of H.C., born February 5, 2003; and her older brother, J.C., born August 11, 2000. H.C. and J.C. are both the biological children of Parent's adopted daughter, who, as a result of a chronic drug problem, was unable to take care of the children. Parents maintain a primary household in Montgomery County, where the children would attend school, and own several rental properties in Worcester County, where they would spend their summers.

[1] The record reflects that only Father filed the notice of appeal, but for the purposes of this appeal, we will refer to the appellants as "Parents."

[2] Parents' original question presented was as follows:

> Whether the trial court was clearly erroneous in granting the request of the Worcester County Department of Social Services to waive reunification efforts?

The family has an extensive child protective services history, dating from June 2006. In 2006, after "numerous" reports of neglecting H.C. and J.C. against Parents, a WCDSS investigation determined that the allegations against Parents were "indicated."[3] As a result, WCDSS referred the family for intensive family services. Unfortunately, in what would become a routine procedure, Parents did not accept the services of one county (here, WCDSS), and instead left for the other (here, Montgomery County). When WCDSS referred the family to the Montgomery County Department of Health and Human Services ("MCDHHS") for similar services, Parents refused their help as well.

In November 2008, WCDSS completed a second child neglect investigation regarding the children's hygiene and overall care. The investigation determined that Parents had taken J.C. off his bipolar medication without consulting his doctor, but WCDSS ruled the allegations to be "unsubstantiated."[4]

One month later, WCDSS investigated allegations of physical abuse when H.C. reported being hit in the face by Father, resulting in a bruise above her right eye. WCDSS made a finding of indicated abuse, but that was later changed to unsubstantiated after Father appealed. As a result of that incident, however, WCDSS filed a children in need of assistance ("CINA")[5] petition, which was granted by the circuit court in March 2009.

[3] "'Indicated' means a finding that there is credible evidence, which has not been satisfactorily refuted, that abuse, neglect, or sexual abuse did occur." Md. Code (2012 Repl. Vol., 2015 Supp.) § 5-701(m) of the Family Law Article ("FL").

[4] "'Unsubstantiated' means a finding that there is an insufficient amount of evidence to support a finding of indicated or ruled out." FL § 5-701(y). "'Ruled out' means a finding that abuse, neglect, or sexual abuse did not occur." FL § 5-701(w).

[5] "'Child in need of assistance' means a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a (continued…)

Parents again did not cooperate with WCDSS and moved back to Montgomery County in August 2009. WCDSS again requested that MCDHHS offer services to the family, and Parents again chose not to cooperate with them. Those CINA cases were eventually closed.

In July 2011, when she was eight years old, H.C. disclosed that J.C. had been touching her inappropriately and had shown her pornographic material in a bedroom that they shared in the Worcester County residence. WCDSS found her report of sexual abuse to be indicated.[6] As before, WCDSS continued to offer services, but Parents declined and returned to Montgomery County.

In February 2012, MCDHHS held a meeting to discuss planning options with Parents, but Parents did not follow through and returned to Worcester County. In April 2012, Parents again declined WCDSS' services. Four months later, WCDSS received two referrals regarding both children; one regarding their hygiene, the other regarding concerns they were often left unsupervised. WCDSS referred the family for ongoing in-home services, and Parents declined. This time, WCDSS filed a CINA petition, but the family returned to Montgomery County before the court was able to rule on the matter. Predictably, MCDHHS social workers were unable to contact the family in their Montgomery County residence because Parents had returned to Worcester County.

developmental disability, or has a mental disorder; and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Md. Code (2013 Repl. Vol.) § 3–801(f) of the Courts and Judicial Proceedings Article ("CJP").

[6] H.C. also reported that J.C. had injured her leg, shoulder, and stomach areas, but those reports were ruled unsubstantiated because there were no visible injuries.

In July 2012, the juvenile court granted WCDSS's CINA petition, finding that H.C.'s hygiene was poor, she was not taking her medication regularly, and Parents often left her unsupervised. H.C. was placed into shelter care[7] in Worcester County and J.C. remained in the home. Once again, Parents returned to Montgomery County, and the case was transferred to MCDHHS, where Parents again refused services, and the cases were closed.

In July 2014, when H.C. was 11 years old and the family was living in Worcester County, WCDSS received a second report that J.C. was inappropriately touching H.C. in a sexually abusive manner. During the course of the protective services and police investigation of that allegation, H.C. explained, and J.C. admitted, that he had bribed H.C. with candy to allow him to have inappropriate sexual contact with her. H.C. also told investigators that the inappropriate touching had also happened for each of the past 3 years.

Also during the interviews, H.C. explained that she had disclosed the abuse to Mother, but Mother dismissed the abuse, telling H.C., that "you guys are brother and sister he doesn't mean anything by it." Mother also told H.C., in her native Greek, "[D]on't tell anybody because they will put you in foster-care and I'm not getting you back." H.C. told the interviewers that she did not feel safe at her residence and did not like being left alone with J.C.

After the interviews, when Parents were given an opportunity to make an appropriate plan for H.C., Mother called H.C. a "liar," stating that she was "special needs"

[7] "'Shelter care' means a temporary placement of a child outside of the home at any time before disposition." CJP § 3-801(y).

and that J.C. was a "good boy." Moreover, even after J.C. admitted to some of the allegations, social workers reported that Mother continued to "minimize" his actions.

On June 9, 2014, WCDSS held a "Family Involvement" meeting, where Parents were required to develop a safety plan. During this meeting, Mother explained that in Greek culture, allegations like the ones in this case are not discussed. Due to the fact that Parents were unable to come up with a plan for H.C. during the meeting, H.C. was taken into emergency shelter care that same day. The court sustained all of the facts alleged in the CINA petition adjudicated on July 14, 2014, and, a week later, declared H.C. to be a CINA based on J.C.'s sexual and physical abuse of H.C. and Parents' neglect of both children. Among the conditions ordered as a result of the CINA finding were that H.C. be placed in foster care by WCDSS, any visitation between Parents and H.C. be supervised by WCDSS, and that "there shall be no contact whatsoever between [H.C.] and her brother, [J.C.]"

A month later, the matter came before the circuit court for a permanency plan review hearing. The circuit court also recommended that H.C. remain in foster care in Worcester County and that any visitation between H.C. and Parents be supervised, and ordered another review hearing take place on January 26, 2015.

On January 22, 2015, WCDSS filed a motion to waive reunification efforts, which was joined by counsel for H.C. and opposed by Parents. In her findings of fact, the master found that H.C. was, by all accounts, thriving in her new home and "[u]nequivocally" did not want to return home. The master additionally found that, despite the no contact provision, Parents brought J.C. to their second visit, and, allegedly, Mother put a finger to her lips "to caution [H.C.] not to divulge that [J.C.] was waiting in the lobby." The master

also found that "[J.C.] had been found delinquent and involved as to fourth degree sex offense and is currently on probation, supervised through Montgomery County courts." In the master's view,

> the facts are clear that [H.C.] was telling the truth when she insisted that [J.C] was sexually inappropriate with her, and that she was fearful of it. Her statements were repeatedly dismissed by her parents, and [J.C.] not only remained in the home, but continued his sexual misconduct toward his sister. [Mother]'s claim that [H.C.] was a, "liar" and that any behaviors between the child and her brother were, "normal," resulted in a child being sexually abused over an unknown period of time. [H.C.] is now in the position of being forced to come to terms with that abuse, and with the fact that her parents did not protect her. Whatever statements she has made in the past that may have been misleading or false, she continually and stubbornly insisted that [J.C.] was hurting her—and, he was. She was, "subjected" to sexual abuse—not because her parents planned or orchestrated it, but because they failed to take the necessary steps to credit her statements and then protect her.
>
> [WCDSS] has met its burden of proof: clear and convincing evidence of sexual abuse by a family member. Having made that finding, based on this case's history and the unrefuted fact of [J.C.]'s sexual misconduct, . . . [WCDSS] should be allowed to waive any efforts at reunifying this family.

Parents filed exceptions to the master's report and recommendation, and requested a *de novo* hearing.

On June 16, 2015, the juvenile court held a *de novo* hearing on Parents' exceptions to that report, where both Parents testified. After hearing the testimony and arguments, and a brief recitation of the applicable statutes and case law, the court held as follows:

> So in this case the [c]ourt finds by clear and convincing evidence that [H.C.] was the victim of sexual abuse that was perpetrated by her brother, [J.C.], while in the home of [Parents]. The [c]ourt finds that complaints of the sexual abuse were presented to [Parents] at various times and that [Parents] would not accept the fact that the sexual abuse had occurred to [sic] [H.C.]. The [c]ourt makes these findings, again, as clear and convincing evidence.

> The effect of the failure of them to take seriously [H.C.]'s complaints was to allow her to be back in the presence of [J.C.] who continued to abuse her according to the records in this case. Therefore, the [c]ourt finds by clear and convincing evidence that they aided him and abetted him, perhaps not intentionally, but through their actions [and] their failure to accept the findings of the department that sexual abuse had occurred, they subjected [H.C.] to additional abuse by [J.C.,] increasing the amount of damage that was done the—this poor young woman and her psyche.
>
> So having made those findings by clear and convincing evidence according to the [*Joy*] case, the [c]ourt has no other alternative but to grant the request for waiver of unification efforts by [WCDSS], and the [c]ourt does so here today.
>
> Now, I understand that there may be some efforts to allow for some visitation between [H.C.] and her parents—adoptive parents who are her grandparents. And if [WCDSS] feels that's in [H.C.]'s best interest, they can certainly do so, but there is no requirement for them to do so.
>
> At this point, the [c]ourt finds that the efforts for reunification would be fruitless for the purposes of Courts and Judicial Proceedings Article 3-812, and therefore, [WCDSS] is released from any further obligation to continue those efforts.

Parents filed timely appeal on July 8, 2015.

DISCUSSION

A. Parties' Contentions

Parents first contend that the juvenile court erred in finding that Parents "aided [J.C] and abetted him, perhaps not intentionally," because "[u]nintentionally aiding and abetting is a *non sequitur*." Parents then set forth the main thrust of their argument, which is that, because the juvenile court made its ruling based on Parents' testimonies and the court file, and never indicated that it reviewed the court file before ruling, "it is difficult to imagine how the [juvenile] court could have found that [WCDSS]' request that reasonable efforts are not required based on these facts . . ., let alone making findings by clear and convincing evidence." Parents argue that, although the statutory language states that a motion to waive

reunification efforts "shall" be granted if provisions of the statute are met, the intention of that statute is "clearly to protect children from abuse and not to destroy family relationships." Parents continue, arguing that "where reunification may be possible, as in this case, [WCDSS]' motion is premature and should have been either denied or at least set aside until there was a finding regarding the best interest of the child regarding future reunification." They conclude that the juvenile court, "'rubberstamped' the findings of the [m]aster" and, in doing so, "committed legal error and issued a judgment which was clearly erroneous."

H.C's counsel argues that the juvenile court's findings were not clearly erroneous because Parents failed to protect H.C. from J.C. after the first incident of sexual abuse, and therefore, "subjected" H.C. to sexual abuse within the meaning of the statute. Accordingly, the juvenile court was required to waive reunification, based both on the court's findings, and relevant legislative history of the statute. WCDSS reiterates some of those arguments, contending that the juvenile court was presented with clear and convincing evidence that Parents had subjected H.C. to sexual abuse at the hands of J.C. WCDSS argues that the juvenile court did not apply the wrong subsection of the statute, as Parents contend it did when it said they "aided and abetted" J.C.. They argue the "aiding and abetting" reference was "to describe Parents' 'conduct' and how they 'subjected' H.C. to 'sexual abuse' by knowingly failing to protect her from a known sexual abuser." WCDSS concludes that "there is no merit" to the contention that waiver was "premature" because the statute "permits WCDSS to request a waiver as early as the time for filing its initial petitions, and in advance of any permanency planning here."

B. Standard of Review

In a recent similar case, this Court explained that

> Maryland appellate courts review child custody cases under three "different but interrelated" standards of review. *In re Adoption/Guardianship of Cadence B.,* 417 Md. 146, 155, 9 A.3d 14 (2010). First, we review factual findings under the clearly erroneous standard. *Id.* Second, [if it appears the juvenile court erred as a matter of law,] we review purely legal questions *de novo,* requiring further proceedings except in cases of harmless error. *Id.* Finally, we review "the ultimate conclusion of the [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous" for a "clear abuse of discretion." *Id.* (quoting *In re Yve S.,* 373 Md. 551, 586, 819 A.2d 1030 (2003)).

In re Joy D., 216 Md. App. 58, 74 (2014) (some alterations in original).

C. Analysis

i. Findings of Fact

At issue first is whether the juvenile court, based on the record at the *de novo* hearing, was clearly erroneous in its findings of fact—namely, that H.C. had been sexually abused by J.C., and that Parents had subjected her to further abuse by failing to take action to prevent further abuse.

As an initial matter, we are not persuaded by Parents' argument that the juvenile court merely "rubberstamped" the master's findings without examining the case file that was introduced into evidence. To the contrary,

> [t]here is a distinction . . . between an explicit abdication of discretionary responsibility and the very different circumstance wherein a judge makes the required ruling but simply does so without setting forth any reasoning. In that event, the exercise of a judge's discretion is presumed to be correct, he is presumed to know the law, and is presumed to have performed his duties properly.

In re Adoption of Jayden G., 433 Md. 50, 87 (2013) (internal citations and quotations omitted). Parents are unable to point to anything in the record of the hearing, short of rhetorical incredulity, that would rebut that presumption. Without any apparent sense of irony, Parents would have us take Father's testimony as "UNCONTROVERTED FACTS," supported by the "[c]onfirming documents . . . admitted by the court as Exhibit 1." If we were to use those "[c]onfirming documents" to support his testimony, then logically, we would be able to use the rest of the record as well—a record that is undeniably replete with evidence that supports the juvenile court's conclusion.

Even assuming, *arguendo*, that the juvenile court did not review the court file, the testimony elicited at the hearing was still more than enough to support the trial court's findings. The majority of Father's testimony was about the subsequent measures the family has taken with J.C., including his participation in sexual abuse therapy and other programs "required by Juvenile Services and the probation officer"—probation stemming from his admitted sexual abuse of H.C. During cross examination by counsel for WCDSS, Mother testified as follows:

> Q: . . . [Mother], your home, that's the home where your son [J.C.] lives with you now?
>
> A: Yes, he does. But we get a lot of help. He's no [sic] sick anymore. . . .
>
> Q: And [J.C.], that's the son that was found to have sexually touched [H.C.] in an inappropriate way?
>
> A: Can you repeat that again, please?
>
> Q: That's the same son—

A: Yes.

Q: — the brother of [H.C.] who was found by this [c]ourt—let me finish. Was found by this [c]ourt to have sexually molested or touched [H.C.] in an inappropriate way?

A: Touch her in [sic] the breast, that's what he say [sic].

Q: Okay. I'm sorry. Say that again.

A: Touch her in [sic] the breast, that's what he say [sic].

Q: And he's on probation now?

A: Yes, he is. He's almost finished.

. . .

Q: And when that's over, then he'll just be at home living there with you?

. . .

A: Yes. . . .

Later, under questioning by the juvenile court, Mother testified as follows:

[THE COURT]: So the question was, when [H.C.] made the accusations against her brother, [J.C.], did you believe her?

[Mother]: Yes, I did. I did.

[THE COURT]: So you never took the position that he did not abuse her; is that correct?

[Mother]: No.

That evidence alone supports the conclusion that Parents had known about the sexual abuse committed by J.C. and failed to take appropriate steps to protect H.C.—that is, until H.C.

had been removed from the house and they started the court-ordered therapy for J.C. Such a finding of fact cannot be said to be clearly erroneous.

ii. Legal Conclusions

We then must decide those facts supported finding by the juvenile court that the parents subjected the child to sexual abuse within the meaning of CJP § 3-812. At the time of the hearing, CJP § 3-812 provided, in pertinent part:

> (b) In a petition under this subtitle, a local department *may* ask the court to find that reasonable efforts to reunify a child with the child's parent or guardian are not required *if the local department concludes that a parent or guardian has*:
>
> (1) *Subjected the child to*:
>
> (i) Chronic abuse;
>
> (ii) Chronic and life-threatening neglect;
>
> (iii) *Sexual abuse*; or
>
> (iv) Torture;
>
> (2) Been convicted, in any state or any court of the United States, of:
>
> (i) A crime of violence against:
>
> 1. A minor offspring of the parent or guardian;
>
> 2. The child; or
>
> 3. Another parent or guardian of the child; or
>
> (ii) Aiding or abetting, conspiring, or soliciting to commit a crime described in item (i) of this item; or
>
> (3) Involuntarily lost parental rights of a sibling of a child.

> (c) If the local department determines after the initial petition is filed that any of the circumstances specified in subsection (b) of this section exists, the local department may *immediately* request the court to find that reasonable efforts to reunify the child with the child's parent or guardian are not required.
>
> (d) If the court finds *by clear and convincing evidence that any of the circumstances specified in subsection (b) of this section exists*, the court *shall* waive the requirement that reasonable efforts be made to reunify the child with the child's parent or guardian.

CJP § 3–812(b)-(d) (2013 Repl. Vol., 2014 Supp.) (emphasis added).

Parents believe that the juvenile court "clearly confused" CJP § 3-812(b)(1)(iii) with CJP § 3-812(b)(2)(ii), because the court stated that Parents had "aided and abetted" J.C.'s abuse. We are not persuaded. If they were to finish the sentence, they would see the court's actual point:

> Therefore, the [c]ourt finds by clear and convincing evidence that they aided him and abetted him, perhaps not intentionally, but through their actions [and] their failure to accept the findings of the department that sexual abuse had occurred, *they subjected* [*H.C.*] *to additional abuse by* [*J.C.*,] increasing the amount of damage that was done the—this poor young woman and her psyche.

Parents instead try to seize on what they believe is a "*non-sequitur*"—that one can't "*un*intentionally aid and abet." While that may be true in theory, we believe the court was actually trying to illustrate that Parents had committed the *inverse* of unintentionally aiding and abetting: *in*tentionally turning a blind eye. Such a situation is clearly within the plain meaning of the phrase "subjected to" within the purposes of CJP § 3-812(b).[8] Accordingly,

[8] H.C.'s counsel also correctly points out that such a finding is additionally supported by the legislature's recent amendment of that section. As of October 1, 2015, CJP § 3-812(b) now reads, in pertinent part:

(continued…)

we hold that the juvenile court was legally correct in applying its findings of fact to CJP § 3-812.

iii. Juvenile Court's Conclusions

Finally, after holding that the juvenile court's findings of fact were not clearly erroneous and its application of CJP § 3-812 was legally correct, we examine the ultimate conclusion of the trial court—granting WCDSS' motion to waive reunification efforts—for an abuse of discretion. We hold that it was not.

> (b) In a petition under this subtitle, a local department may ask the court to find that reasonable efforts to reunify a child with the child's parent or guardian are not required if the local department concludes that a parent or guardian:
>
> (1) Has subjected the child to any of the following aggravated circumstances:
>
> (i) The *parent or guardian has engaged in or facilitated*:
>
> 1. Chronic or severe physical abuse of the child, a sibling of the child, or another child in the household;
>
> 2. Chronic and life-threatening neglect of the child, a sibling of the child, or another child in the household;
>
> 3. *Sexual abuse of the child*, a sibling of the child, or another child in the household; or
>
> 4. Torture of the child, a sibling of the child, or another child in the household;
>
> (ii) The *parent or guardian knowingly failed to take appropriate steps to protect the child after a person in the household inflicted sexual abuse, severe physical abuse, life-threatening neglect, or torture on the child or another child in the household*;

This conclusion is controlled by *In re Joy D.* In that case, this Court was asked to determine if a juvenile court was "required" to grant a motion to waive reasonable efforts, pursuant to § 3-812(d), after finding a condition listed in § 3-812(b). *In re Joy D.*, 216 Md. App. at 61. We unequivocally held that

> pursuant to the plain language of the statute, as well as the legislative history, that *the language of CJP § 3–812(d) is mandatory*. When a local department requests the court to waive its obligation to continue reunification efforts, and the court finds, by clear and convincing evidence, that one of the statutory waiver conditions exists, . . . the court is *required* to grant the motion.

Id. at 80-81 (emphasis added).

Accordingly, the juvenile court did not err by, and was legally correct in, granting the motion to waive the obligation of WCDSS in this case. Indeed, after finding one of the conditions of § 3-812(b) existed, the court had no choice but to grant the motion.

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.