

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1669

September Term, 2015

IN RE: TESSA S.

Meredith,
Reed,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: March 17, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The subject of this appeal, Tessa S., was 12 years of age at the time of the August 12, 2015 hearing before the Circuit Court for Garrett County sitting as a juvenile court.

On June 17, 2015, the Garrett County Department of Social Services ("DSS") filed a Child in Need of Assistance ("CINA") petition for Tessa with the circuit court. Tessa was placed in shelter care that day. A Family Magistrate, Tracey L. Henline, held a combined adjudicatory and disposition hearing on August 4, 2015. Magistrate Henline recommended to the juvenile court that the Department's charges against Tessa's mother, the appellant Mrs. D., be sustained. The Family Magistrate further recommended that custody of Tessa be awarded to Tessa's father, Jason S., living in North Carolina. No exceptions were filed to Magistrate Henline's recommendation. On August 17, 2015, Judge Raymond G. Strubin signed an order adopting the recommendations of the Family Magistrate. Judge Strubin ruled that Mrs. D. had abused Tessa and caused mental injury to her. He also ruled that Tessa's father, Jason S., was ready, willing, and able to care for Tessa. Accordingly, he awarded Tessa's custody to the father. This appeal followed.

Mrs. D. raises the two contentions:

1. that the CINA petition fails adequately to allege that Tessa was abused or neglected; and
2. that the evidence did not support the findings of the Family Magistrate and the juvenile court.

The short answer to the absolutely unsubstantiated allegation about the formal inadequacy of the CINA petition is that Mrs. D. never at any time raised any objection to the

wording of the petition and that the objection she now makes has, therefore, not been preserved for appellate review. In re Katherine C., 390 Md. 554, 559, 890 A.2d 295 (2006); Weatherly v. Great Coastal Express Co., 164 Md. App. 354, 385, 883 A.2d 924 (2005). This case is exclusively about the legal sufficiency of the evidence. The evidence, we hold, was abundantly sufficient.

Tessa lived with her mother and her father for seven years in Japan, where her father was stationed in the military. We are not told whether the mother and father were married or not. Tessa then returned with her mother to North Carolina. It was in North Carolina, in late 2012 or early 2013, that the mother, now Mrs. D., met and married Ryan D. The couple, with Tessa, subsequently relocated to Garrett County, Maryland. At the time of the hearing in this case, Mrs. D. had legal custody of Tessa.

It was on June 12, 2015, five days before DSS filed its CINA petition, that DSS first felt compelled to intervene in Tessa's case. It was on that day that John Sherbin, a Child Protective Services caseworker, was called to the Clarksburg Highland Hospital in West Virginia where Tessa was being treated. He was a key witness at the hearing before the Family Magistrate, with respect to the background reported to him by Tessa and with respect to his own subsequent investigation.

Tessa herself, however, was the key witness. Over an extended period of time, Tessa and her mother had had a highly contentious and volatile relationship. The mother routinely criticized Tessa's clothing, even though the mother had purchased it for Tessa. On such

occasions, the mother would grab the clothes from Tessa and then destroy them by ripping them up or burning them in the fireplace. The mother thought Tessa's pictures on social media were inappropriate and referred to them as "slutty" and "bitchy." More significantly, perhaps, the mother would destroy things that Tessa's father had given to her. On one occasion, the mother caught Tessa looking at pictures of her father on her iPod. The mother smashed the iPod with a hammer, destroying all of Tessa's pictures.

Frequently, when the mother would get upset with Tessa, the mother would push her down and punch her all over her body with her fists. The punching incidents had been going on "for a long time," Tessa testified, but got worse when Mr. D. came into their lives because the new step-father would support the mother in her abuse of Tessa.

Tessa's hair became a focal point of controversy. Tessa was very proud of her hair and received many compliments from teachers and friends about it. The mother was aware of how Tessa felt about her hair and used it as a device to punish her. On one occasion when the mother was angry at Tessa, she forcibly took Tessa to Walmart to get her hair shaved off. Tessa physically ran away and hid for almost an hour, after which the police found Tessa and took her to the Department. The Walmart staff, in the meantime, had called the Department because they themselves were concerned about the mother's conduct.

After Tessa was returned home, the family traveled to North Carolina. While in North Carolina, Tessa on one occasion rolled her eyes at her mother. The mother retaliated by having Mr. D. hold Tessa down on a bed while the mother grabbed Tessa's ponytail and

chopped it off. Tessa described her hair as "short and chopped up" and "not a flattering haircut."

After the family's return to Maryland, Tessa required psychiatric hospitalization. After she returned home, her mother taunted her about how bad her hair looked. After one such incident, Tessa retaliated by cutting up some of her mother's clothes. The mother, according to Tessa, "flipped out." She pulled Tessa's hair and ears, screaming at her while punching her.

It was on June 15, 2015 that Tessa confided her humiliation and home situation to a guidance counselor at school. The guidance counselor, however, did nothing but place Tessa on a bus to go home. When Tessa reported her frustration to her mother, the mother replied, "I don't give a shit. Run away. I mean, it's not my problem." Tessa then did run away, into the woods. A police officer later found her "freaking out." He transported her by ambulance to the Clarksburg Highland Hospital. She was admitted to a psychiatric facility and remained there for a week and a half. It was there that John Sherbin, the DSS caseworker, visited her and became familiar with the case. He observed that Tessa's hair looked extremely unkempt and that she was quite distressed.

During that week and a half of hospitalization, moreover, the mother had not visited or contacted Tessa in any way. The hospital staff called the mother, requesting that she bring Tessa some basics such as underwear and other clothing, but the mother refused to do so.

The hospital staff expressed its concern to John Sherbin about how the mother was handling Tessa's situation.

On June 15, 2015, John Sherbin contacted the mother to speak to her about Tessa. She was completely uncooperative and refused to provide any personal information. She refused to speak about Tessa until they were in court two days later. She then told the caseworker that Tessa's father was "out of the picture" and that he might still be in Japan. She did acknowledge having punished Tessa by cutting of her hair. She explained that Tessa took pride in her pretty hair and that cutting it off was a "good way to get the point across." The mother also told Mr. Sherbin that she did not want Tessa to return home if charges were being brought. Tessa remained in shelter care. The CINA charges were filed by DSS.

The subsequent DSS investigation, with the help of the Maryland State Police, turned up information about Tessa's father in North Carolina. A year earlier, he had retired from the military and subsequently resided with his fiancé, and her two boys aged ten and thirteen, in North Carolina. The father, Jason S., received a subpoena and attended the court hearing in Maryland. Jason S. emphatically expressed his love for Tessa, his desire for a relationship with her, and his availability as a resource to care for her.

DSS requested, and North Carolina's authorities conducted, a home inspection of the father's residence. North Carolina reported that Jason S. "seemed like he was a loving father, and that his family home had all the necessities, and that it was a safe place." Sometime between June and early August of 2015, Tessa went on a trial visit with her father in North

Carolina, which "went well." Tessa testified that since she had left her Mother's home, her life was "better" and that she felt safe with her father. The father told the Family Magistrate that he was ready, willing and able to care for Tessa. At the hearing before the Family Magistrate, the mother completely refused to testify, invoking her privilege against self-incrimination.

The final order of the circuit court sustained the allegations against Mrs. D., granted Jason S. sole physical and legal custody of Tessa, and dismissed the CINA petition without prejudice. Ironically, Mrs. D. did not contest the awarding of Tessa's sole custody to Jason S. Her only challenge is to the findings in the CINA case against her, to wit, that she had been guilty of neglect or abuse. The heart of Mrs. D.'s contention is encapsulated in her closing argument before the Family Magistrate:

"(1) 'physical abuse by the mother is conclusory'; (2) although Tessa testified that Appellant would 'punch her child, there was no testimony whether or not that hurt'; (3) 'all we have is the hair cutting'; (4) '[t]here was no testimony that Tessa did not consent to the punishment'; and (5) there was 'no testimony' to any 'physical or mental injury.'"

(Emphasis supplied).

The contention is self-evidently preposterous. We hold that the evidence overwhelmingly supported the finding of Mrs. D.'s neglect or abuse of Tessa.

**JUDGMENT AFFIRMED; COSTS
TO BE PAID BY APPELLANT.**