

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1915

September Term, 2015

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IN THE MATTER OF M.B., FOR THE  
APPOINTMENT OF A GUARDIAN OF THE  
PERSON

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Krauser, C.J.,  
Berger,  
Leahy,

JJ.

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Opinion by Leahy, J.

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Filed: April 29, 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.

M.B. is a special needs child and has been adjudicated a child in need of assistance (“CINA”) as defined by Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article (“CJP”), § 3-801 *et seq.* Appellants, George and Donna Anderson (the “Andersons”), applied for adoptive services through the St. Mary’s County Department of Social Services (the “Department”) and began visiting with M.B. in October 2014. However, the Department later terminated the adoption process. In response, the Andersons filed a petition for guardianship in the Circuit Court for St. Mary’s County. The circuit court denied that petition, finding that the Anderson’s lacked standing. The Andersons timely appealed and present the following issue:

Was it legally erroneous for the circuit court to deny the Appellants’ Petition for Guardianship, without a show cause hearing, for lack of standing?

We conclude that the circuit court correctly found that the Andersons lacked standing under both the Family Law Article and the Estates and Trusts Article to petition the court for guardianship of a child previously adjudicated CINA. We affirm.

### **BACKGROUND**

On November 10, 2010, the Circuit Court for St. Mary’s County terminated the parental rights of M.B.’s biological parents without consent and appointed the Department as M.B.’s guardian.<sup>1</sup> In October 2014, the Andersons applied for adoptive services through

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<sup>1</sup> After a minor child has been adjudicated CINA, in an effort to achieve a suitable permanent placement for the child, the juvenile court may schedule a hearing on the termination of parental rights (“TPR”), CJP § 3-823(g)(2), or the local department may petition for TPR pursuant to FL §§ 5-313 *et seq.* In determining whether (continued...)

the Department and were prequalified as an adoptive family. From October 2014 through March 2015, the Andersons visited with M.B. on nine occasions, including six extended visits at their home in Virginia. The Department later concluded, however, that the Andersons were not a potential adoption resource for M.B. and terminated the adoption process.<sup>2</sup>

On October 1, 2015, the Andersons filed a petition for guardianship of M.B. Along with their petition, the Andersons also filed a proposed show cause order, an advice of rights directed to M.B., and notice to interested persons. On October 13, 2015, the circuit court stamped “denied” on the proposed show cause order and provided the following hand written annotation: “Petitioners have no standing to pursue guardianship of a CINA who is under guardianship of [the Department].” Docket entries in the circuit court indicate that, at that time, both the petition and requested show cause order were denied. On October 22, the Andersons filed a notice of appeal from the denial of their petition.

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TPR is in the child’s best interest, the court must give primary consideration to the health and safety of the child and consider the factors enumerated in FL § 5-323(d).

<sup>2</sup> There is nothing in the record that indicates the grounds for the Department’s determination that the Andersons were no longer a potential adoptive resource. At oral argument before this Court, the parties acknowledged that a petition for judicial review of the Department’s termination of adoption proceedings is pending in the circuit court. The matter *sub judice* addresses only the jurisdictional issue before this Court and should not be construed as a judgment on the merits of the Department’s determination regarding adoption or on the Andersons’ suitability as an adoptive resource.

## DISCUSSION

The parties do not dispute that the Andersons lack standing to petition for guardianship pursuant to Maryland Code (1984, 2012 Repl. Vol.), Family Law Article (“FL”), § 5-313.<sup>3</sup> However, the Andersons maintain that they filed the petition for guardianship pursuant to Maryland Code (1974, 2011 Repl. Vol., 2015 Supp.) Estates and Trusts Article (“ET”), § 13-702(a)(1), reproduced *infra*. The Andersons argue that it “is implied that a circuit court judge is allowed to appoint a guardian of the person of a minor pursuant to Estates and Trusts § 13-702(a) where, as here, the parents’ rights have been terminated in this state pursuant to Title 5 of the Family Law Article.” The Department argues, however, that CINA guardianship proceedings are governed by the Family Law Article and that the juvenile court has exclusive jurisdiction over the matter.

Children who have been adjudicated CINA fall within the provisions of the Juvenile Causes—Children in Need of Assistance subtitle found at CJP § 3-801 *et seq.* CJP § 3-803 provides, in pertinent part:

(a) In addition to the jurisdiction specified in Subtitle 8A of this title, the [juvenile<sup>4</sup>] court has **exclusive original jurisdiction** over:

\* \* \*

- (5) **Guardianship review proceedings after a TPR proceeding**; and
- (6) Adoption proceedings, if any, after a TPR proceeding.

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<sup>3</sup> FL § 5-313(b) provides that “[o]nly the individual who would be subject to guardianship or a local department may file a petition for guardianship under this Part II of this subtitle.”

<sup>4</sup> CJP 3-801 provides that, in the juvenile causes subtitle, “‘Court’ means the circuit court for a county sitting as the juvenile court.”

(Emphasis added). The purposes of the subtitle are, *inter alia*, “(1) To provide for the care, protection, safety, and mental and physical development of any child coming within the provisions of this subtitle; . . . (7) To achieve a timely, permanent placement for the child consistent with the child's best interests; and (8) To provide judicial procedures for carrying out the provisions of this subtitle.” CJP § 3-802. To those ends, as part of CINA proceedings the juvenile court “may grant custody and guardianship to a relative or a nonrelative under this subtitle.” CJP § 3-819.2(b). However, before granting custody or guardianship the court must consider a host of statutory factors. CJP § 3-819.2 provides, in pertinent part:

- (f) *Considerations*. — (1) Before granting custody and guardianship under this section, the court shall consider:
- (i) Any assurance by the local department that it will provide funds for necessary support and maintenance for the child;
  - (ii) All factors necessary to determine the best interests of the child; and
  - (iii) A report by a local department or a licensed child placement agency, completed in compliance with regulations adopted by the Department of Human Resources, on the suitability of the individual to be the guardian of the child.
- (2) The report under paragraph (1)(iii) of this subsection shall include a:
- (i) Home study;
  - (ii) Child protective services history;
  - (iii) Criminal history records check; and
  - (iv) Review of the proposed guardian's physical and mental health history.

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(g) *Consideration — Relative of nonrelative*. — In determining whether to grant custody and guardianship to a relative or a nonrelative under this section, a disability of the relative or nonrelative is relevant only to the extent

that the court finds, based on evidence in the record, that the disability affects the best interest of the child.

(h) *Limitations.* — A court may not enter an order granting custody and guardianship under this section until the report under subsection (f)(1)(iii) of this section is submitted to and considered by the court.

The statute governing Estates and Trusts is clearly intended to address the very different and limited circumstances relating to the administration of the estates of minors and disabled persons for purposes such as when an individual “[h]as been judged by a court to be unable to manage his property[.]” ET § 13-101(e)(1). In contrast to the lengthy considerations and limitations a court must consider under CJP § 3-819.2, ET § 13-702 simply provides, in pertinent part, that:

(a)(1) If neither parent is serving as guardian of the person and no testamentary appointment has been made, on petition by any person interested in the welfare of the minor, and after notice and hearing, the court may appoint a guardian of the person of an unmarried minor.

Notably, the purpose of title 13 of the Estates and Trusts Article is

to simplify the administration of the estates of minors and disabled persons, to reduce the expenses of administration, to clarify the law governing the estates of minors and disabled persons, and to eliminate certain provisions of existing law which are archaic, often meaningless under modern procedures, and no longer useful. This article shall be liberally construed and applied to promote its underlying purposes.

ET § 13-102. This is distinct from the purposes of either the CINA subtitle, reproduced in part above, or the guardianship subtitle in the Family Law article (to: *inter alia* “(1) timely provide permanent and safe homes for children consistent with their best interests . . . (3) ensure adoption only by individuals fit for the responsibility . . .”). FL § 5-303. Moreover, we have been unable to locate any case in which ET § 13-702 was relied upon to petition

for guardianship in a CINA case. Rather, the appellate courts of Maryland have constrained ET § 13-702 within narrow bounds, recognizing that “[g]uardianship is a statutory concept that is bounded by the legislative policy expressed in the Maryland Code.” *In re Adoption/Guardianship No. 3155*, 103 Md. App. 300, 306 (1995).

In the present case, the Department is M.B.’s current guardian. The Andersons maintain that “[i]t is in the best interest of [M.B.], for the trial court to consider the petition for guardianship to determine whether the Andersons . . . are more appropriate guardians than [the Department.]” However, the legislature has made it plain that exclusive jurisdiction to review CINA guardianship after a TPR proceeding lies with the juvenile court. CJP § 3-803. Clearly ET § 13-702 fails to mandate any of the numerous considerations and protections required when parties proceed through the Family Law article.

Recently, in *In re Guardianship of Zealand W.*, we declined to apply ET § 13-702 to grant guardianship to a third-party where one parent was alive to act as guardian, and we compared the statutory guardianship scheme in the Family Law Article to ET § 13-702, stating:

Title 5 of the Family Law Article requires the courts to make very specific inquiries into the best interests of the child before ruling on the termination of the parental rights. Under the petitioner's interpretation, the Orphans' Court would have the jurisdiction to determine whether the parent is serving as a guardian, but the statute does not give the Orphans' Court a standard by which to answer this question. *It is unlikely that the Legislature intended for the circuit and juvenile courts to engage in an intensive, statutorily-guided, and fact-based inquiry, but left the Orphans' Court to determine its own standard.*

220 Md. App. 66, 82 (2014) (emphasis in original) (citation omitted). The same rationale applies to the present matter. We conclude that the legislature did not intend to permit total circumvention of its grant of exclusive jurisdiction to the juvenile court over the review of guardianship of CINAs, by the mere invocation of an Estates and Trusts provision aimed at simplifying the administration of the estates of minors.

The circuit court correctly determined that the Andersons lacked standing to petition for guardianship of a child in need of assistance. Because the Andersons lacked standing to file such a petition, the court was not required to conduct a show cause hearing pursuant to Maryland Rule 10-104.<sup>5</sup>

**JUDGMENT AFFIRMED.  
COSTS TO BE PAID BY APPELLANTS.**

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<sup>5</sup> Maryland Rule 10-104 provides, in part:

Except as provided in Rules 10-209(b), 10-213, and 10-705, upon the filing of a petition, the court shall issue a show cause order directing a person to show cause in writing on or before a specified date why the court should not take the action described in the order. . . .