

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2351

September Term, 2015

IN RE: CONSUELO R.-C.

Meredith,
Leahy,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: May 24, 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.

This CINA¹ case comes to us from the Circuit Court for Montgomery County (sitting as a juvenile court), which denied Carlos R.’s petition to dismiss CINA proceedings and grant him custody of his daughter, Consuelo. The court entered judgment on December 14, 2015, and Carlos filed his appeal on December 22. The minor child and the Montgomery County Department of Health and Human Services (“Department”) are appellees in the case. However, we do not reach the merits of Carlos’s appeal because we dismiss the case as moot.²

On March 23, 2016, Consuelo filed a motion to supplement the appellate record. Carlos opposed the motion to supplement the appellate record and moved to strike the portions of the appellees’ briefs that contained references to the supplement. The motion sought to supplement the record with a memorandum and affidavit filed in the juvenile court, which described the Department’s efforts to locate Carlos and the Department’s belief that Carlos had returned to his home country of El Salvador. In conversations with the Department in December 2015, Carlos stated that he had a partner and another daughter in El Salvador, and that his partner requested that he return to El Salvador, otherwise she would find another partner. Carlos told the Department that he was

¹ A “CINA” case refers to proceedings brought for the protection of children and coming within the provisions of Maryland Code (1974, 2013 Repl. Vol., 2015 Supp.), Courts and Judicial Proceedings Article (“CJP”) §§ 3-802(a)(1), 3-801(g).

² Carlos presented the following question to the Court: “Did the juvenile court err by continuing Consuelo as a CINA and denying Appellant’s motion to dismiss, where her father was willing and able to care for her?”

“leaving,” but did not answer the Department’s questions of where or when he was departing.

The Department’s memorandum recounted that the nonprofit it contracted with to do a home study in Texas said that “the last time they spoke to [Carlos] was right before the new year and since that last contact[,] they have tried calling him but his phone was disconnected.” The Department also attempted to contact Carlos and similarly found that his phone was disconnected. Carlos has not had contact with Consuelo since December 12 or 13, 2015. On January 12, 2016, the Department supervised a “visit” between Consuelo and her maternal grandmother who lives in El Salvador. Consuelo’s grandmother told the Department that Carlos is in El Salvador.

Both the Consuelo and the Department filed motions to dismiss this case as moot with their responsive briefs. The appellees argue, among other things, that the court can no longer grant Carlos the relief he seeks—custody of the Consuelo—because “he has left the country, refuses to provide his address or to accept reunification services, and cannot be located.” Carlos’s counsel responds that the Department’s memorandum and affidavit do not contain sufficient competent evidence to support a determination that Carlos is, in fact, in El Salvador or that he will remain there. Counsel further argues that this Court is not the appropriate forum to make such a determination and that the “issue is only properly litigated in the juvenile court[.]”

“[T]he doctrine of mootness applies to a situation in which past facts and occurrences have produced a situation in which, without any future action, any judgment

or decree the court might enter would be without effect.” *Hayman v. St. Martin's Evangelical Lutheran Church*, 227 Md. 338, 343 (1962). In *In re Sophie S.*, we observed:

It is well-settled Maryland law that “[a] question is moot if, at the time it is before the court, there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide.” *Hill v. Scartascini*, 134 Md. App. 1, 4, 758 A.2d 1087 (2000) (quoting *Attorney Gen. v. Anne Arundel County Sch. Bus Contr's. Assn.*, 286 Md. 324, 327, 407 A.2d 749 (1979)). The essence of the rule is that appellate courts “do not sit to give opinions on abstract propositions or moot questions; appeals which present nothing else for decision are dismissed as a matter of course.” *In re Riddlemoser*, 317 Md. 496, 502, 564 A.2d 812 (1989). Generally, moot questions will be dismissed “without expressing [appellate] views on the merits of the controversy.” *Mercy Hosp., Inc. v. Jackson*, 306 Md. 556, 562, 510 A.2d 562 (1986).

167 Md. App. 91, 96 (2006); see Md. Rule 8-602(a)(10) (“On motion or on its own initiative, the Court may dismiss an appeal” because “the case has become moot”). In other words, if this Court cannot grant effective relief to the appellant, the case is moot and may be dismissed for want of jurisdiction. See *Phyllis J. Outlaw & Associates v. Graham*, 172 Md. App. 16, 22-23 (2006).

We disagree with counsel’s argument that this is not the proper forum to consider the whereabouts of Carlos, even if they can moot the appeal. This Court may consider subsequent developments in a case to determine if it has jurisdiction to hear the case or if, instead, the case has become moot. See *In re Sophie S.*, 167 Md. App. at 95-96 (determining that issue was mooted by developments that occurred six months after the notice of appeal was filed).

Parties in a CINA proceeding have a “continuing obligation to assist the court in identifying and locating each parent of each child[.]” Md. Code (1974, 2013 Repl. Vol.), Courts & Jud. Proc. Art. (“CJP”) § 3-822(a)(2)(i). Further, “[e]ach parent of a child who is the subject of a CINA proceeding shall notify the court and the local department of all changes in the parent’s address.” CJP § 3-822(b). In this case, the Department filed its memorandum regarding the whereabouts of Carlos in the juvenile court pursuant to CJP § 3-822. We now grant Consuelo’s motion to add the memorandum and affidavit to the record in this Court.

We note that counsel for Carlos does not contend that Carlos *is* residing in the United States. Counsel also has not filed an affidavit attesting to the whereabouts of Carlos, as required by Maryland Rule 8-603(d) (“A motion to dismiss or response that is based on facts not contained in the record or papers on file in the appellate court shall be supported by affidavit and accompanied by any part of the record or papers on which it is based”). *See also* Md. Rule 8-431(c) (“A motion or a response to a motion that is based on facts not contained in the record or papers on file in or in the custody and jurisdiction of the appellate court in the proceeding shall be supported by affidavit and accompanied by any papers on which it is based”). In this case, based on the inability of the Department to contact Carlos, Carlos’s statement that he was “leaving,” and other representations that Carlos is in El Salvador, and appellant’s counsel’s failure to file an affidavit stating that Carlos is in the United States, we cannot accord Carlos the relief he

desires—an order by the court granting him custody of his child. Thus, this appeal is moot.

**APPEAL DISMISSED. MOTION TO
SUPPLEMENT RECORD GRANTED.
MOTION TO STRIKE PARTS OF
APPELLEES' BRIEFS DENIED.
COSTS TO BE PAID BY
APPELLANTS.**