

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2364

September Term, 2015

IN RE: M.W.

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

JJ.

Opinion by Zarnoch, J.

Filed: July 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.

In the fall of 2014, 15-years-old M.W. was committed to Good Shepherd Services residential treatment center due to behavioral and mental health problems.¹ Around the Thanksgiving holiday in 2015, M.W., now age 16, was allowed to return to his mother’s home for the holiday. However, according to his mother, Ms. B., M.W. became violent, destroyed objects in her home, vandalized her car, and nearly injured her young children. Because M.W. had previously escaped his treatment facility and returned home before, Ms. B. feared for her family’s continued safety. Immediately after the Thanksgiving incident, on November 30, 2015, Ms. B. sought a peace order in the Circuit Court for Baltimore City, sitting as a juvenile court, to request that her son be prohibited from coming near her home.²

At the initial hearing, the court observed two potential problems: 1) the statute required that the juvenile respondent have an opportunity to be heard on the question of whether the court should issue a peace order, and 2) ordinarily, the juvenile would need to consult with his or her parent about how to proceed, however, in this case, Ms. B.’s interests were opposed to those of her child. Acknowledging these issues, the court set a merits hearing for December 10, 2015, and issued an order to the Good Shepherd

¹ Good Shepherd is a non-profit, “residential treatment center for adolescents, ages 13 to 21 who are suffering from severe emotional and behavioral problems.” Good Shepherd Services | Residential Treatment Center and Therapeutic Day School for Adolescent Girls and Boys, <http://gssmaryland.org/> (last accessed July 21, 2016).

² Although peace orders are ordinarily issued by the district court, *see* Md. Code (1974, 2013 Repl. Vol., 2015 Supp.), Courts & Judicial Proceedings Art. (“CJP”) § 3-1501, when the respondent is a juvenile, the circuit court, sitting as a juvenile court, has jurisdiction over the proceeding. CJP § 3-8A-03(a)(2).

treatment facility to transport M.W. to court on that date only if he could be transported safely. The court told Ms. B. that her case could not proceed without him present.

M.W. did not appear at the December 10 hearing. The court determined that it could not proceed with the hearing because of M.W.’s absence. Additionally, the court considered the consequences of a peace order, noting that the order would, in effect, render M.W. homeless, if not for his hospitalization at Good Shepherd. The court recommended that Ms. B. seek help from the Baltimore City Department of Social Services, and adjourned the proceeding.

Ms. B. appealed, and now presents the following question for our review, which we have rephrased³:

³ Ms. B. phrased her questions presented as follows:

1. Did the court below abuse it’s discretion in denying a peace Order because there is no Statutory basis for relief, when the factual evidence offered by appellant, otherwise Conforms to the statutory provisions of Congress of the United States; of “The Great State of Maryland”; The Constitutions of the United States of America, and of the “Great State of Maryland” where the court below erred in refusing to accept such evidence? While unlawfully suspending the governing laws of the “Great State” and those of the United States of America?

2. By consequence of the Chief Judge’s abusive and erroneous conduct, did he knowingly and intentionally deny “full disclosure” of evidence?; “Full and fair litigation”?; Denying her full and fair hearing”? By omission of the court’s “Full Performance” and it’s fraudulent concealment?

3. Does questions (1) and (2) constructively present the court below’s unlawful abuse of discretion to deny a Peace Order constitute a fictitious posture of a [lack of subject matter jurisdiction] resulting in appellant's denial of access to courts, in violation of Amendment (1) to the

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- I. Did the court err or abuse its discretion in failing to grant a peace order to Ms. B.?
- II. If the court erred, is the issuance of a mandamus by this or another court an appropriate remedy?

For the following reasons, we deny the request for mandamus and affirm the judgment of the circuit court.

DISCUSSION

Courts and Judicial Proceedings Article § 3-8A-01, et seq. describes the procedure for adjudicating causes of action against juveniles who are not CINA.⁴ With regard to a peace order request filed against a juvenile, CJP § 3-8A-19.2(b)(1) requires that a juvenile have the opportunity to respond to the request. *See* CJP § 3-8A-19.2(b)(1) (“If a peace order request is filed under § 3-8A-19.1(b) of this subtitle, the respondent shall have an opportunity to be heard on the question of whether the court should issue a peace order”).

If, in a normal case, the juvenile and the juvenile’s guardian is given notice and a request to appear at the peace order hearing, and the juvenile voluntarily decides to not attend the hearing, the court may still determine that the juvenile has had an opportunity

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Constitution of the United States of America and Article (19) of the Maryland Declaration of Rights(Remedies), while suspending the Laws of the “Great State of Maryland” and the United States of America?

⁴ “CINA” means “child in need of assistance.” A “CINA” case refers to proceedings brought for the protection of children and coming within the provisions of CJP §§ 3-802(a)(1), 3-801(g).

to be heard, but has relinquished that opportunity. The court may then choose to proceed with the hearing on the petition for a peace order. Here, CJP § 3-8A-19.2(b)(1) required M.W. to be present at the hearing; however, he was under the care of the directors of Good Shepherd. The juvenile court correctly determined that, due to his commitment in a residential treatment facility, his absence was not voluntary, and, thus, he had not been given “an opportunity to be heard,” as required by the statute. The juvenile court did not err by refusing to proceed with the peace order hearing.

With regard to Ms. B.’s petition for mandamus, we construe her request to be for this Court to direct the juvenile court to enter a peace order against M.W. There are several legal theories under which mandamus relief is possible; however, none is applicable to the present case. Ms. B. requests mandamus under 28 U.S.C. § 1361 (2012), but that federal statute only provides authority to *federal district courts* to compel an officer, employee, or agency *of the United States* to perform a duty.⁵ Both this Court and the juvenile court are state courts, and are not subject to 28 U.S.C. § 1361.

Under Maryland statutory and common law, this Court may issue a writ of mandamus only “in aid of our appellate jurisdiction.” *State v. Manck*, 385 Md. 581, 587 (2005) (citing *In re Petition for Writ of Prohibition*, 312 Md. 280, 292-93 (1988)). The relief that Ms. B. is asking for would not be in aid of this Court’s appellate jurisdiction. Instead, her request for mandamus is in the nature of a general order requiring an inferior

⁵ 28 U.S.C. § 1361 states “The [United States] district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.”

body to perform some duty. However, “[t]he only general statutory provision dealing with mandamus jurisdiction is [CJP] § 3-8A-01[, which] relates only to the circuit courts.” *In re Petition for Writ of Prohibition*, 312 Md. at 292.

However, even the circuit court would not have a basis to issue a writ of mandamus in this case. A court may issue the writ “to prevent disorder, from a failure of justice, where the law has established no specific remedy, and where in justice and good government there ought to be one.” *1000 Friends of Maryland v. Ehrlich*, 170 Md. App. 538, 548 (2006) (quoting *Kerpelman v. Disability Rev. Bd. of Prince George's County Police Pension Plan*, 155 Md. App. 513, 528 (2004)) (Internal quotation marks omitted). However, “[t]he plaintiff seeking a writ of mandamus must demonstrate that a public official has a plain duty to perform certain acts, that the plaintiff has a plain right to have those acts performed, and that no other adequate remedy exists by which plaintiff's rights can be vindicated.” *1000 Friends*, 170 Md. App. at 548-49 (quoting *Prince George's County v. Carusillo*, 52 Md. App. 44, 50 (1982)) (Internal quotation marks omitted). As discussed above, the court did not have “a plain duty” to issue the peace order because M.W. did not appear in the proceeding. Further, as discussed below, Ms. B. likely has another remedy in the form of a CINA petition.

The juvenile court in this case acknowledged the inherent problem presented by a peace order request in which the relief, if granted, would prohibit a child from returning to his or her home. Ordinarily, a parent may not relinquish the obligation to care for his or her child, and prohibiting M.W. from returning to his mother's home following the end

of his treatment would have the effect of abandoning parental responsibility. At this time, a peace order would not be an appropriate vehicle for Ms. B., nor is it one that would serve the interests of her family or M.W.

We are, however, cognizant of Ms. B.’s dilemma. Based on Ms. B.’s description of M.W. actions, M.W. may qualify as a child in need of assistance—stemming from Ms. B.’s inability to provide care for M.W.’s developmental disability or mental disorder. Upon petition from the Baltimore City Department of Social Services, a court may determine that it is in the best interests of M.W. for him to be placed elsewhere, on a permanent basis. This, however, is not an issue before us at this time.

As the circuit court indicated, the most appropriate course of action for Ms. B. is likely to discuss her situation with the Department of Social Services. If she makes the Baltimore City Department of Social Services aware of M.W.’s actions over Thanksgiving and requests the department’s help, the department may initiate a CINA petition pursuant to CJP § 3-809. If the department decides not to proceed, Ms. B. must follow the appeal procedures located in that section, particularly subsections (c) through (e).⁶ If Ms. B. is still unsatisfied with the department’s decision with regard to pursuing a CINA petition, she may file the petition herself, pursuant to CJP § 3-809(e).

⁶ CJP § 3-809 provides, in pertinent part:

(c) Within 15 days after notice that a local department has decided not to file a petition, the person or agency that requested that a petition be filed may request review by the Secretary of Human Resources.

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There may be other avenues for Ms. B. to receive the protection she desires, but we conclude that the methods that she has attempted to use in this case are not authorized by statute or law.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

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(d) Within 15 days after a request for review is received, the Secretary of Human Resources or the Secretary's designee, in consultation with the director of the local department, shall review the report and may direct the local department to file a petition within 5 days.

(e) If the Secretary of Human Resources or the Secretary's designee refuses to direct the local department to file a petition, the person or agency that filed the complaint under subsection (a) of this section or caused it to be filed may file the petition.