

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2143

September Term, 2016

IN RE: S.C.

Wright,
Graeff,
Arthur,

JJ.

Opinion by Graeff, J.

Filed: December 26, 2017

*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.

Diego Ciprian de Leon, appellant, appeals from the ruling of the Circuit Court for Prince George's County denying his: (1) Petition for Guardianship of S.C., a national of Guatemala; and (2) Motion for Findings of Special Immigrant Juvenile Status Eligibility. Mr. de Leon presents two questions for this Court's review,¹ which we have consolidated and rephrased, as follows:

1. Did the circuit court err in denying of the petition for guardianship?
2. Did the circuit court err in ruling on the request for Special Immigration Juvenile status?

For the reasons set forth below, we shall reverse the judgment of the circuit court and remand for additional findings consistent with this opinion.

¹ Mr. de Leon presented the following three questions for this Court's review:

1. Was the trial court's denial of Appellant's Motion for Special Immigrant Juvenile Factual Findings inconsistent with Congressional intent?
2. Was the trial court's denial of the Appellant's request for guardianship of the minor child because the minor was already 18 years old at the time of the filing and reached the age of majority, legally correct when Maryland Family Law § 1-210(b)(1) grants the trial with jurisdiction over unmarried individuals under the age of 21 years, who are considered children, in custody or guardianship proceedings of an immigrant child pursuant to a motion for Special Immigrant Juvenile factual findings requesting a determination that the child was abused, neglected, or abandoned before the age of 18 years for purposes of § 101(a)(27)(j) of the Federal Immigration and Nationality Act?
3. Was the trial court's denial of the Appellant's request for guardianship of a minor child and request for Special Immigrant Juvenile Status factual findings, legally correct when Maryland Family Law requires the trial court in child custody determinations to make decisions based on the best interest of the child and when the minor child testified to being physically abused and forced into labor by his parents?

FACTUAL AND PROCEDURAL BACKGROUND

S.C. was born in Quiche, Guatemala in May 1998. S.C. testified at the November 9, 2016, hearing that he lived with his parents in Guatemala until May 2015, when he came to live with his uncle in Maryland. His parents began hitting him when he was eight years old, often leaving marks and bruises. At ten years old, S.C. was required to “work[] in the fields” on his family’s farm to support his parents. When S.C. refused to go to work, his parents hit him with a stick.

As a field worker, S.C. would sow bean and corn crops. He used a machete and other dangerous tools without adult supervision to perform his duties, and he would “handle dangerous chemicals as well[,] such as fertilizer and poisons[,] without any protective gear.” A typical work day would last from 5:00 a.m. to 11:00 a.m., after which S.C would attend school. In 2014, when S.C. was in the ninth grade, his parents forced him to stop attending school, requiring him to work longer hours in the field, usually from 7:00 a.m. until 4:00 p.m., to financially support them.

On May 5, 2015, S.C. left Guatemala for the United States. He was intercepted by the Office of Refugee Resettlement (the “ORR”) in Houston, Texas, and ultimately released into the custody of his uncle, with whom he continued to live. Ninth grade was the last grade he completed in Guatemala, and at the time of the hearing, he was attending High Point High School, where was doing “fine.” In the declaration he filed with the Motion for Findings of Special Immigrant Juvenile Status Eligibility, S.C. stated that he wanted to attend college.

On July 14, 2016, Mr. de Leon filed a petition to become S.C.'s legal guardian.² S.C.'s parents provided their consent.

Mr. de Leon testified at the hearing that when S.C. was in Guatemala, he spoke with S.C. by phone every two weeks. He aware that S.C.'s parents hit him, and that S.C. was working in the fields to support his parents. At the time of the hearing, Mr. de Leon lived in an apartment in Hyattsville with his brother and S.C. He was employed and financially stable, and he believed that it was in S.C.'s interest that he be granted guardianship so that S.C. could "have a good future."

During closing arguments, counsel requested that the court grant guardianship of S.C. to his uncle, Mr. de Leon. He asserted that reunification with S.C.'s biological parents was not viable because there had been abuse and neglect, noting that S.C. was forced to work at a young age and forced to drop out of school.

At the conclusion of the proceeding, the court stated, as follows:

[T]he Court has had an opportunity to listen to the testimony and review the file in this matter. The Court has some concerns regarding the credibility of the witnesses in this matter.

The Court would note that this matter was filed on July 18th, 2016. At that time the child, the subject of these proceedings, had already reached the age of majority over 18, his date of birthday being May 30th, 1998 and the Court would note that guardianship as filed in this CAE matter, would be of a minor.

² During the hearing, the court stated that S.C. was not a minor because he was 18 years old, and "[i]n this country that is an adult." The court did acknowledge that, "[u]nder the special immigration status if the Court grants guardianship, that will make him a minor."

The Court understands that the child is saying he was forced to work as opposed to going to school. I also heard testimony that the minor child went to school in his home country up until the ninth grade and says he is in the tenth grade now, however, in reading this petition the school had ended in July when this case was filed says he was in the ninth grade.

I do not believe that guardianship of an 18-year-old – apparently the uncle has been allowed to register the young man in school, provide otherwise for this young man who is 18 years of age. The Court will deny the request for guardian.

Having denied the request for guardian, Madam Clerk, the Court will in fact not grant the request for special immigration status since the Court does not find that the respondent, the young man, is dependent upon a juvenile court of any kind and the Court cannot conclude that it is not in the best interest of this young man to return to his native country of his parents. Case closed statistically. Thank you.

On November 29, 2016, the circuit court issued its order with its findings of fact, as follows:

THE COURT FINDS that the child, [S.C.], was born on May 30, 1998 in Guatemala, is unmarried, and is a citizen and national of Guatemala, the Court denies the request to award guardianship of [S.C.] to [Mr. de Leon]. The Court cannot conclude that it is not in the best interest of the [S.C.] that he return home to his native country.

THE COURT FURTHER FINDS that this Court has jurisdiction under Maryland law “to make judicial determinations about the custody and care of juveniles” within the meaning of Section 101(a)(27)(J) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101(a)(27)(J), and 8 C.F.R. § 204.11(a).

THE COURT FURTHER FINDS that [S.C.] is not dependent on this court, nor is he legally committed to, or placed under the custody of a State or an individual or entity appointed by the State or Juvenile court located in the United States, because he has not committed a delinquent act, which would therefore place him under the dependency of the court.

THE COURT FURTHER FINDS that due to [S.C.'s] non dependence on this court, this court does not have the jurisdiction to make a finding of Special Immigration Juvenile Status.

STANDARD OF REVIEW

In reviewing a determination by a circuit court involving whether a child is eligible for special immigrant juvenile status (“SIJ”), “the appellate court will review the case on both law and the evidence. It will not set aside the judgment of the trial court on evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” *In re Dany G.*, 223 Md. App. 707, 719 (2015) (quoting Md. Rule 8-131(c)). The circuit court’s “[u]ltimate conclusions are reviewed under the abuse of discretion standard which asks whether the decision is off the center mark and beyond the fringe of what is deemed minimally acceptable.” *Id.* at 720. An “abuse [of discretion] may be found when the court acts without reference to any guiding rules or principles.” *Id.* (quoting *Wilson-X v. Dep’t of Human Res.*, 403 Md. 667, 677 (2008)).

DISCUSSION

Before discussing the particular contentions in this case, we note that SIJ status was created “to provide undocumented children who lack immigration status with a defense against deportation proceedings.” *In re Dany G.*, 223 Md. App. at 712. “The Immigration and Nationality Act of 1990, which established the initial eligibility requirements for SIJ status, was enacted ‘to protect abused, neglected or abandoned children, who with their

families, illegally entered the United States.” *Simbaina v. Bunay*, 221 Md. App. 440, 448-49 (2015) (quoting *Yeboah v. U.S. Dep’t of Justice*, 345 F.3d 216, 221 (3d Cir. 2003)).

To apply for SIJ status, the first step is a “filing in state court, which is often in the form of a guardianship or custody complaint.” *In re Dany G.*, 223 Md. App. at 713. There must also be a request for specific findings of fact regarding the minor’s eligibility for SIJ status. *Id.* The required findings regarding a minor’s eligibility status include:

(1) The juvenile is under the age of 21 and is unmarried; 8 C.F.R. § 204.11(c)(1)-(2);

(2) The juvenile is dependent on the court or has been placed under the custody of an agency or an individual appointed by the court; 8 C.F.R. § 204.11(c)(3);

(3) The “juvenile court” has jurisdiction under state law to make judicial determinations about the custody and care of juveniles; 8 U.S.C.A. § 1101(a)(27)(J)(i); 8 C.F.R. § 204.11(a), (c) [amended by the Trafficking Victims Protection Reauthorization Act (“TVPRA”) 2008];

(4) The reunification with one or both of the juvenile’s parents is not viable due to abuse, neglect, or abandonment or a similar basis under State law; 8 U.S.C.A. § 1101(a)(27)(J) [amended by TVPRA 2008]; and

(5). It is not in the “best interest” of the juvenile to be returned to his parents’ previous country of nationality or country of last habitual residence within the meaning of 8 U.S.C.A. § 1101(a)(27)(J)(ii); 8 C.F.R. § 204.11(a), (d)(2)(iii) [amended by TVPRA 2008]

Id. at 714-15.

The circuit court’s role in the SIJ process, however, “is not to determine worthy candidates for citizenship, but simply to identify abused, neglected or abandoned alien children under its jurisdiction who cannot reunify with a parent or be safely returned in their best interest of their home country.” *Simbaina*, 221 Md. App. at 456 (quoting *Leslie*

H. v. Superior Court, 168 Cal. Rptr. 3d 729, 737 (Ct. App. 2014)). The juvenile court’s factual findings are included within a “predicate order,” which “must be included with the application for SIJ status submitted to [the U.S. Citizen and Immigration Services].” *In re Dany G.*, 223 Md. App. at 715.³

For purposes of determining SIJ status, Md. Code (2014 Repl. Vol.) § 1-201 of the Family Law Article (FL), provides that the circuit court has jurisdiction over

custody or guardianship of an immigrant child pursuant to a motion for Special Immigrant Juvenile factual findings requesting a determination that the child was abused, neglected, or abandoned before the age of 18 years for purposes of § 101(a)(27)(J) of the federal Immigration and Nationality Act.

FL § 1-201(b)(10). In these proceedings, a “child” is defined as “an unmarried individual under the age of 21 years.” FL § 1-201(a).⁴ Thus, “circuit courts that have jurisdiction over custody and guardianship are able to make the necessary predicate order findings until the child reaches the age of 21 based upon events occurring before the child was 18 years old.”

In re Dany G., 223 Md. App. at 716.

With this background in mind, we turn to the contentions in the present case.

³ The SIJ status application also involves additional steps, which are left to the jurisdiction of the U.S. Citizen and Immigration Services. *See In re Dany G.*, 223 Md. App. 707, 712-14 (2015).

⁴ Maryland Rule 10-103(g), defines the term “minor” as a person under the age of 18, except that in proceedings under Md. Code (2014 Repl. Vol.) § 1-201(b)(10) of the Family Law Article, “minor” includes to a person that is unmarried and under the age of 21.

I.

Petition for Guardianship

Appellant contends that the circuit court erred in denying his petition for guardianship of S.C. He argues that the court denied the petition on the basis that S.C. was already 18 years old, which he argues is “not legally correct” and is inconsistent with FL § 1-201(a), which defines a child in the context of guardianship pursuant to a motion for SIJ status factual findings as “an unmarried individual under the age of 21 years.”

As indicated, to be eligible for SIJ status, a juvenile must be under the age of 21 and “dependent on the court or has been placed under the custody of an agency or an individual appointed by the court.” *In re Dany G.*, 223 Md. App. at 715; 8 C.F.R. § 204.11(c)(1)-(3). Thus, one of the first steps in applying for SIJ status is to file a “guardianship or custody complaint.” *In re Dany G.*, 223 Md. App. at 713. Pursuant to Md. Rule 10-201(a), an “interested person” may file a petition for guardianship of a minor.

In denying the petition for guardianship, the circuit court here stated: “I do not believe that guardianship of an 18-year-old – apparently the uncle has been allowed to register the young man in school, provide otherwise for this young man who is 18 years of age. The Court will deny the request for guardian.” Thus, the court appeared to deny the guardianship request because it believed that the guardianship was not appropriate for an 18-year-old person. The law is clear, however, that for purposes of SIJ status, a guardianship may be granted with respect to an unmarried individual under the age of 21 years. Deciding to deny the petition for guardianship, filed with the consent of S.C.’s

parents, on the ground that S.C. was 18 years old, was erroneous. Accordingly, we shall reverse the judgment below and remand for further fact finding on whether guardianship is appropriate.

II.

Special Immigrant Juvenile

The Court then ruled, as follows:

Having denied the request for guardian, Madam Clerk, the Court will in fact not grant the request for special immigration status since the Court does not find that the respondent, the young man, is dependent upon a juvenile court of any kind and the Court cannot conclude that it is not in the best interest of this young man to return to his native country of his parents. Case closed statistically.

We agree with appellant that the court's ruling in this regard was erroneous. First, the court's determination that S.C. was not dependent upon the juvenile court, or placed in the custody of an individual appointed by the court, was the result of the court's failure to properly apply the law in its determination on the petition for guardianship. Accordingly, the court's decision on special immigrant juvenile status must be reversed and remanded for further proceedings.

On remand, in making the requisite findings regarding a child's eligibility for SIJ status, the court shall make findings whether "reunification with one or both of the juvenile's parents is not viable due to abuse, neglect or abandonment, or a similar basis

under State law.” *In re Dany G.*, 223 Md. App. at 715; 8 U.S.C.A. § 1101(a)(27)(J).⁵ In this regard, the court should consider the testimony that S.C. was forced to go to work as opposed to going to school, and the Maryland law regarding when parents are required to send their children to school. *See* Md. Code (2014 Repl. Vol.) § 7-301 of the Education Article; *In re Dany G.*, 223 Md. App. at 721 (evidence that parents forced child to leave school at the age of 12 would be sufficient to establish neglect).⁶

Moreover, in determining the best interest of the child, this Court explained in *In re Dany G.*, 223 Md. App. at 722, that the circuit court should engage in a “straight-forward comparison,” i.e., decide whether the minor’s best interests are better served by remaining in Maryland, living with family and attending school, or by returning to Guatemala to the conditions he left, namely, “working long hours in dangerous condition with little chance for obtaining education.” Here, however, the court stated merely that it “cannot conclude that it is not in the best interest of this young man to return to his native country of his parents.” On remand, the court should reconsider this finding in light of the testimony that

⁵ At the hearing below, the court indicated that there would not be abandonment if the parents consented to guardianship. Conceding this point, counsel for Mr. de Leon stated: “Yes, Your Honor, in this case there is no abandonment. There is no argument made.” The only issues presented were of abuse and neglect, but the court did not make any findings of fact with regard to whether S.C. was abused or neglected.

⁶ The compulsory education age was under 16 years of age prior to July 1, 2015, and it rose to under 17 on July 1, 2016, and under 18 effective July 1, 2017. *See* Md. Code (2008 Repl. Vol., 2013 Supp.) § 7-301 of the Education Article.

S.C. began working in the fields at the age ten, operated equipment without supervision, used chemicals without proper protection, and was unable to complete his education.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY REVERSED AND
REMANDED FOR
PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS
TO BE PAID BY THE
APPELLANT.**