

Circuit Court for Montgomery County
Case No. 06-I-21-000024

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 339

September Term, 2021

IN RE: N.A.

Fader, C.J.,
Nazarian,
Murphy, Joseph, F., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Murphy, J.

Filed: December 7, 2021

*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.

At the conclusion of an April 26, 2021 combined adjudicatory and disposition hearing on a child in need of assistance (CINA) petition,¹ the Circuit Court for Montgomery County, sitting as a juvenile court, ordered the transfer of sole, legal and physical custody of minor child N.A. (“the child”), from her biological mother (“Mother,” or “Ms. A.” or “Appellant”) to her biological father (“Father,” or “Mr. A.”). Appellant argues that she is entitled to a new hearing on the ground that the juvenile court erroneously made findings of ultimate fact without receiving any evidence. For the reasons that follow, we hold that there is no merit in this argument, and therefore affirm the judgment of the circuit court.

CINA PROCEEDINGS

On March 30, 2021, in the Circuit Court for Montgomery County, the Montgomery County Department of Health and Human Services (“the Department”) filed a CINA petition and a request for shelter care of three-year-old N.A. The petition asserted that Appellant had “stabbed [N.A.] in the neck and on her foot. Mother is now in custody. There have been sexual abuse allegations of [N.A.] by [Father].” After holding a virtual shelter care hearing attended by Appellant; Father; their respective attorneys; a court appointed attorney for the child; two Department social workers; and an attorney for the Department, the court placed N.A. in the temporary care and custody of the Department,²

¹ See Md. Code Ann., Courts & Judicial Proceedings (“CJP”) §3-801(f), (g) (defining a CINA).

² Although both Appellant and Father denied the allegations against them in the petition, for the reasons stated in open court, the juvenile court made the following findings:

(continued...)

first in treatment foster care, and then two days later in kinship care with N.A.’s maternal aunt and uncle.³

Prior to the April 26, 2021 hearing on the CINA petition, the Department circulated to the court and the parties an amended petition that included the following background information: (1) Appellant was currently confined in the Montgomery County Correctional Facility on charges of attempted second-degree murder of N.A., first-degree assault of N.A., and first-degree child abuse of N.A.; (2) Appellant and Father were married when N.A. was born on December 27, 2017; (3) about 1 ½ years later, the Circuit Court for Montgomery County granted Appellant sole physical and legal custody of N.A., and granted Father visitation every Tuesday, Thursday, and some weekends; (4) Father, Appellant, and child lived together with the child’s maternal grandparents in Silver Spring

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1. THAT at the time of removal, the Child was in the physical and legal custody of her Mother, pursuant to an order from the Circuit Court for Montgomery County (Case No. 162098FL).
 2. THAT it is contrary to the Child’s welfare for her to remain in the home of her Mother, with whom she last resided on March 29, 2021, and that it is not possible to return the Child to that home at this time, given the allegations of Mother’s physical abuse, attempted murder, mental health issues, and lack of proper supervision. It is also contrary to the Child’s welfare for her to be placed in the home of her Father given the allegations of child sexual abuse by him.
 3. THAT emergent circumstances existed, particularly the seriousness of the allegations of physical and sexual abuse and the seriousness of the injuries sustained by the Child, such that further reasonable efforts were not necessary.

³ The Department had requested the change in placement, and both parents agreed to that change.

until September 2020, when the parents formally separated and Father moved out; (5) several months later, because of disagreements between Appellant and her father, she and N.A. moved in with Father; and (6) on March 20, 2021, Appellant and N.A. returned to Appellant’s parents’ home. The amended petition also included the following assertions:

1. On March 22, 2021, the Department began an assessment based on reports by Mother on March 13 and March 17, 2021, that Father was sexually abusing three-year old N.A. Father adamantly denied the allegations and cooperated with the Department’s investigation. N.A. was forensically interviewed and made no disclosures of abuse or neglect by Father. The allegations were investigated by Department; the Montgomery County Police Department, Special Victims Investigations Division; and the Federal Bureau of Investigation. The allegations were subsequently determined to be unfounded.
2. On March 23, Ms. Carrizo visited Mother and child at the maternal grandparents’ home and found nothing of concern regarding N.A.’s safety in that environment.
3. On March 25, the Department received a report that Mother took N.A. to urgent care because of child’s dilated pupils and quivering lip. Mother was concerned that child had ingested cousin’s medication for Bipolar Disorder while cousin was babysitting child. An urgent care physician evaluated child and had no concerns. Mother showed the physician a video of the child’s behavior but the physician saw nothing out of the ordinary. During the assessment, Mother facilitated a phone call between the physician and the cousin to determine the name of the medication. An after-hours Department social worker called Mother, who denied that the child had ingested any drugs or medication and said that the child’s eyes were likely dilated from the light.
4. Ms. Carrizo followed up with Mother and found her “increasingly irritable, evasive[.]” Mother told Ms. Carrizo that N.A. was seen by a physician but refused to provide additional details and eventually hung up the phone. Mother responds that she was cooperative with Ms. Carrizo, telling her that it was not a good time to talk because she was with N.A. She told Ms. Carrizo that there was no need to follow up with child’s pediatrician because she had observed N.A. through the night; she was a stay at home mom for the child’s entire life; and she was familiar with her child’s medical needs.

5. On March 27, 2021, N.A.’s maternal grandparents arrived home and found the locks to their home had been changed. They called a locksmith to gain entry. Upon entry they observed blood in the foyer, left the residence, and called the police. The Montgomery Police Department responded and found Mother on the bedroom floor. She had a lacerated neck, and there was blood and scissors on the floor. N.A. also had a lacerated neck, and other cuts and lacerations. Mother was transported to one hospital and N.A. was airlifted to Children’s National Medical Center (CNMC) in Washington, D.C. N.A.’s trachea and neck structure were visible upon her arrival but emergency surgery was successful. The emergency staff felt that “the actions of [the] first responders on the scene prevented [N.A.] from ‘bleeding out’ during transport.” N.A. reported to her nurse that her mother had given her medication which made her drowsy, described her mother as being ““sick””, and asked the nurse whether she was going to ““slap”” her. Mother denies “this entire paragraph.”
6. On March 27, 2021, a detective with the Montgomery Police Department interviewed maternal grandfather, who confirmed that he and his wife left their home on March 23 to travel out of state and when they returned around 2 a.m. on March 27, they were unable to enter the home because the locks were changed, even though they could see Mother through the windows. They entered their home around 9 a.m. when the locksmith arrived. Mr. Santos told the detective that there had been a recent change in Mother’s psychiatric medication.
7. On March 27, a second detective interviewed Father, who reported that Mother had “a long history of mental illness and that she was hospitalized at the Psychiatric Institute of Washington . . . in July/August 2020.”
8. On March 29, Father told Ms. Carrizo and a Department Supervisor that Mother “had mental health diagnoses.” He also told them that Mother had not only accused him of sexually abusing N.A., which he denied, but she had also “accused Mr. Santos of sexually abusing [N.A.]” Mother denies accusing her father of sexually abusing N.A.

The amended petition also stated that N.A. was discharged from the hospital and placed in shelter care on March 29, would require follow-up care with CNMC’s Child Abuse Protection Center and the Trauma Team, and would need to have her dressings on her neck and foot changed daily.

Adjudication and Disposition Proceeding

Participating in the April 26, 2021 hearing were Appellant; Father; their respective attorneys; the child’s appointed attorney; the Department’s attorney; Renee Carrizo, the investigating social worker for the Department, and Monica Reaves, the intake social worker for the Department. At the beginning of the hearing, Appellant stated, “I want some minor provisions to the petition to avoid trial and [my attorney] refused to send those to the parties.” In response to the court’s invitation to state what revisions she wanted, Appellant stated:

Certainly, I wanted to (unintelligible) that I had the opportunity to voice the fact that my daughter presents a choking hazard and she actually requires specialty care from a cranial and facial team, gastroenterologist, speech pathologist, ENT’s at Children’s which appointments I actually have adamantly kept on behalf of her safety and I believe that she should have remained in the hospital until there was a background investigation with the relatives available to take care of her in my absence.

It is my wish to have custody of my daughter, to have my daughter placed with my sister while I am facing the charges and proving my innocence before the court.

At this point, N.A.’s attorney told the court that she had no objections to adding some language to the petition as requested by Appellant because it is “clearly in the child’s best interest to have an agreed adjudication today.” Appellant then stated, “[t]here is a paragraph that [my attorney] precisely says that I deny the entire paragraph. I would like to remove that statement and not respond, neither confirm it.” Although Appellant was given the opportunity to explain why she wanted the statement removed, she ultimately agreed not to change the wording in the paragraph.

The Department then added the following language to the petition:

The Mother states that [N.A.] is at risk for a choking hazard and requires a specialized team of medical professionals to care for her special needs. Mother states that she diligently kept all of these appointments while [N.A.] was in her care. Mother also asserts that she believed [N.A.] should have stayed in the hospital longer while background checks were being done on relatives in order to avoid the Child being placed in foster care. The Mother states that it is her desire for [N.A.] to be in the care of her sister while the Mother is incarcerated and facing criminal charges.

The amended petition was then circulated to the parties and signed by social worker Ms. Carrizo, who attested: “I affirm that the facts set forth in this petition are true and correct to the best of my knowledge, information and belief.”

The court then asked if anyone had any “questions or additions or subtractions?” No one responded, and Appellant’s attorney stated, “[I]t’s my understanding [Appellant] is going to stay silent on the petition.” At this point, the court stated:

Okay. All right. So, I’ve had an opportunity to review the document that is the First Amended Child in Need of Assistance Petition. It is a recitation of the – well, let’s say it this way. It’s a recitation of what got us here today. If nothing else comes of it at least there will be truth about how this went and that by itself is probably a help to the family and when the child is old enough to understand it, the child. I don’t think there’s any question here about what should happen next. I mean, it’s clear that [N.A.]’s been physically abused and neglected by her mom and mom cannot give her proper care and attention at this point.

The court sustained the findings in the CINA petition and proceeded to the dispositional phase of the hearing, at which Appellant argued against a transfer of custody, stating that while she was incarcerated, she could make arrangements for her sister to care for N.A. Appellant also argued that N.A. should not be placed in Father’s custody because N.A. would be unsafe. The Department argued that, because there are no findings of abuse or neglect against Father and because Father was ready, willing, and able to care for his

daughter, the court should conclude that N.A. is not a CINA and should be placed in her father’s custody. The court agreed with the Department’s argument and therefore ordered transfer of physical and legal custody of N.A. from Appellant to Father.

DISCUSSION

While it is true that in this case Appellant (1) denied that she had committed any of the abuse alleged in the CINA petition and (2) claimed that Father could not provide N.A. with proper care, the record clearly shows that Appellant had a full and fair opportunity to – but did not – proffer or attempt to introduce any evidence in support of those arguments. The fact that she chose not to do so during the hearing does not entitle her to another hearing.

In *In re M.H.*, 252 Md. App. 29 (2021), while holding that a CINA “Petition may not prove itself in an adjudicatory hearing[.]” *id.* at 55, and providing the bench and bar with a very helpful “overview” of CINA procedural requirements as well as “three distinct but interrelated standards [of appellate] review of CINA proceedings[.]” *id.* at 44, this Court reaffirmed the proposition that when the juvenile court holds a CINA petition hearing:

If the allegations in the Petition are disputed, a contested adjudicatory hearing will ensue. The Department must present evidence in support of the Petition. The evidence shall comply with the Maryland Rules on Evidence as required by CJP § 3-817(b). If the Department does not meet its burden of proof, the Petition shall be dismissed. If the Department satisfies its burden, the court shall then hold a disposition hearing pursuant to CJP § 3-819 to determine whether the facts, as adduced during the adjudicatory hearing, establish that [the child] is a CINA.

Id. at 56. During the adjudicatory hearing in that case, the appellant/father (1) moved for dismissal of the petition on procedural grounds, and (2) “also argued the Report contained inadmissible hearsay and its admission into evidence during the adjudicatory hearing would violate the rules of evidence.” *Id.* at 37. In this case, however, the record clearly shows that Appellant waived her opportunity to dispute any of the specific facts asserted in the petition.

Although the introduction of evidence is obviously required whenever the trial court must resolve an actual “conflict in the evidence,” there is no merit in the argument that the trial court is prohibited from deciding a case on the basis of proffers as to which there is no disagreement. In *State v. Hiken*, 43 Md. App. 259 (1979), while affirming a grant of a motion to dismiss for lack of a speedy trial, this Court stated:

There was no evidentiary hearing below. Appellee’s motion to dismiss for lack of a speedy trial was granted at the last of five proceedings in open court... after extensive colloquies between court and counsel and upon a proffer of evidence with which the State substantially agreed.

Id. at 260-61 (footnote omitted).

In *Barnes v. State*, 31 Md. App. 25 (1976), while holding that a defendant convicted of shoplifting was entitled to a new trial on the ground that “there was no proper basis on which the court could resolve the [evidentiary] conflict” between an “agreed statement of facts” (establishing that the defendant concealed merchandise) and “proffered evidence” (that the defendant did not conceal the merchandise), this Court clarified the important distinction between two categories of cases: (1) cases in which the court as trier of fact must weigh the evidence and judge the credibility of witnesses because material facts are

disputed, and (2) cases in which there is “no conflicting evidence which required resolution to enable the court to determine the facts[, and therefore all] that remained to be done was for the court to apply to the law to the undisputed facts of the case.” *Id.* at 30, 31, 34, 35. *In re M.H.* is a classic example of category (1). This case is a classic example of category (2). It is clear that the court neither erred nor abused its discretion in applying the applicable law to the undisputed facts asserted in the petition.

Because the record fully supports the court’s conclusions that Father was capable and willing to care for N.A., the child was not a CINA. *In re Russell G.*, 108 Md. App. 366, 376-77 (1996). Under these circumstances, we affirm the judgment transferring sole legal and physical custody of N.A. from Appellant to Father.

**JUDGMENT FOR THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY, SITTING AS A JUVENILE
COURT, AFFIRMED.**

**COSTS TO BE PAID BY
APPELLANT.**