

Circuit Court for Montgomery County
Case Nos. 06-I-19-35 & 06-I-19-36

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 361

September Term, 2019

IN RE: T.S. AND Z.S.

Fader, C.J.,
Wright,
Wells,

JJ.

Opinion by Fader, C.J.

Filed: October 8, 2019

* 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.

The Circuit Court for Montgomery County, sitting as a juvenile court, determined that siblings T.S. and Z.S. each was a Child in Need of Assistance (“CINA”),¹ and committed both to the Montgomery County Department of Health and Human Services (the “Department”) for placement in kinship care with their maternal aunt (“Aunt”). K.S., the appellant and mother of the children (“Mother”), challenges the court’s decision on two grounds. First, she contends that the evidence before the juvenile court was insufficient to adjudicate either of the children a child in need of assistance. Finding no error or abuse of discretion, we will affirm. Second, she argues that the court erred in admitting testimony of her use of homophobic language around, and about, T.S. That argument has not been preserved for our review, and we decline to address it.

BACKGROUND

Mother has two sons: 14-year-old T.S. and two-year-old Z.S. Before their removal from her care earlier this year, Mother had physical custody of both children. Neither of the children’s fathers was involved in their care and neither appealed the juvenile court’s decision or participated in the appeal.²

¹ A “child in need of assistance” is one who requires court intervention because the child has been abused or neglected, or has a developmental disability or mental disorder; and his or her “parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” Md. Code Ann., Cts. & Jud. Proc. § 3-801(f) (Repl. 2013; Supp. 2018).

² T.S.’s father was incarcerated out-of-state at the time of the CINA proceedings and, although represented by counsel, did not appear at the hearings. Z.S.’s father appeared at the hearings with counsel.

The Department's History of Investigations

Mother's parenting of T.S. has been the subject of multiple investigations by different governmental entities dating back to at least 2009, when T.S. was four years old. At that time, a family services agency in Washington, D.C. notified the Department of allegations that Mother was "neglectful and physically abusive to T[S.]," and that he "appeared underweight and unhealthy." The Department performed a safety check on T.S., but took no further action. At some point, Mother and T.S. moved to North Carolina. In 2011, after they returned to Maryland, the Department learned that a child protective services agency in North Carolina had begun an investigation of Mother based on reports of neglect and domestic violence. The Department conducted another home safety check, and found that T.S., who was living with his maternal grandmother ("Grandmother"), appeared to be healthy. The Department did not know whether Mother was also living in Grandmother's home at the time.

In 2014, the Department received a report that Mother had "smacked around, punched, kicked and slammed [T.S.] into the ground and into the walls, and hit [T.S.] in the head with a metal can requiring stitches in his forehead." A case worker for the Department began to develop a safety plan in conjunction with Grandmother and Aunt that included Aunt seeking custody of T.S. That fall, Aunt filed an action for custody in Anne Arundel County and was granted temporary custody of T.S. Although the custody case ultimately was dismissed for failure to serve T.S.'s father, T.S. continued to live with Aunt.

In October 2014, Aunt contacted the Anne Arundel County Department of Social Services and reported that T.S. had a tooth abscess for which she was unable to obtain medical treatment because she could not reach Mother. The Anne Arundel department issued a Child Neglect Report, which stated that Mother had “abandoned” T.S. “over 30 days ago,” that T.S.’s school had been unable to reach her, and that “[i]t appear[ed] that [T.S.] has never had any dental care.” During the ensuing investigation, T.S. showed a case worker a scar on his forehead, which he claimed Mother had caused when she “got real mad and took a Lysol can and hit me over the top of my head.” T.S. also described other occasions in which Mother had physically abused him, claiming that she “would put socks in my mouth while she beat me so that no one could hear me screaming and crying.” Mother denied hitting T.S. with a can but admitted to the investigator that to discipline T.S. she “jacked him up” by holding him against a wall and hitting his buttocks.

In early 2017, the Department investigated allegations that T.S. was limping and had welts on his arms resulting from a beating with an electrical cord. Mother denied physically abusing T.S. and declined therapy referrals. That November, Mother had T.S. psychiatrically hospitalized for five days for “behaving aggressively” and “spending the night out” without permission. During T.S.’s hospital stay, Mother was “unresponsive and non-communicative” with his doctors. Despite doctors’ recommendations that T.S. receive therapy upon his release, Mother did not successfully obtain therapy for him.³

³ A month after his release, the Department received a report alleging that Mother had emotionally abused T.S., but it ruled out the allegation after an investigation.

In February 2018, the Department investigated new claims that Mother had abused T.S. physically (by hitting him and “flipp[ing] a bed over him,” causing injury to his head) and emotionally (by accusing him of having sex with a male friend and calling him derogatory names). The investigation revealed that Mother, among other things, had called T.S. a “faggot” and asked him, “Why are your lips so white, you’ve been sucking dick?” The Department’s investigator concluded “that there is credible evidence that [T.S.] was physically abused” and that it was Mother who “placed the child’s welfare at substantial risk of harm.” Mother agreed to “an informal kinship placement,” under which T.S. would live with Aunt for the remainder of the 2017-2018 school year. He returned to live with Mother in June 2018, and the Department provided at-home services for him and Mother until October without further incident.

The Department’s 2019 Investigation

In February 2019, Mother took then-two-year-old Z.S. to the emergency room three times in 36 hours, complaining that they were both suffering from carbon monoxide poisoning. The first two times, emergency room personnel found no evidence of a problem and cleared Mother and Z.S. to leave. Mother then returned a third time and informed emergency room personnel that “she can not keep her son and wanted to leave him at the Hospital.” The emergency room personnel told a social worker that Mother’s “speech was very rapid and she was rambling and appeared paranoid.” As a result of the incident, Mother was hospitalized for inpatient psychiatric treatment for five days.

When Mother was hospitalized, the Department filed a petition with the juvenile court asking that it find both children to be adjudicated children in need of assistance.⁴ The Department also assumed temporary custody of the children and placed them in shelter care with Aunt. On February 19, following an emergency hearing, the court issued an order authorizing their continued placement in shelter care with Aunt.

Adjudicatory Proceedings

In March 2019, the juvenile court held a three-day adjudicatory hearing on the CINA petition, during which it heard testimony from Aunt, Grandmother, two social workers, a daycare provider, and Mother. At the end of the hearing, the court found, among other things, that:

- Mother had been the subject of investigations in Washington, D.C., North Carolina, and Maryland, and she was aware of those investigations;
- Mother engaged in “corporal punishment when she is disciplining her children,” including by “jack[ing] [T.S.] up” while “holding him up against the wall”;
- Mother requested a mental health evaluation for T.S. during an investigation into abuse, but then “declined services” offered by the Department;
- T.S.’s “mental health behaviors were of concern at home and school,” and led to his psychiatric hospitalization. The Department recommended that Mother and T.S. participate in therapy and support services at that time;
- During an altercation, Mother “flipped [T.S.’s] bed over, causing knots . . . to his head,” “hit him,” called him a “faggot,” and said, “why are your lips so white, you’ve been sucking dick”;
- T.S. has lived with Aunt and Grandmother “on many occasions over the years [when] mother was unable to care for him”;
- On February 12, 2019, Mother took Z.S. to a hospital “for the third time in 36 hours,” “asserted that both she and her son suffered carbon monoxide poisoning,” and “asserted that she was unable to keep [Z.S.]”;

⁴ The Department’s second amended CINA petition is its operative petition.

- Hospital “tests failed to disclose alleged poisoning” of Mother or Z.S.;
- “[M]other was admitted for in-patient psychiatric treatment and was discharged several days later”;
- Neither child’s father was able or willing “to give proper care and attention to the children.”

Disposition Hearing

At the conclusion of a disposition hearing, the juvenile court found that T.S. and Z.S. are both children in need of assistance. The court sustained the findings made at the adjudicatory hearing and further found that (1) the Department “has made reasonable efforts to prevent or eliminate the need for removal” and conducted safety checks since 2009; (2) the children “have been neglected” and their parents “are each unable to give proper care and attention to the children’s needs at this time”; and (3) Mother “continues to allow her untreated mental health to dominate some of the choices that she makes.” The court considered “both the history in this case and the constellation of all of the issues ongoing” in reaching this determination. It then ordered that the children be committed to the Department for continued placement in kinship care with Aunt, to whom the court granted limited guardianship. The court awarded Mother supervised visitation, and ordered, among other things, that she receive mental health treatment.⁵ Mother appealed.

⁵ The court awarded Z.S.’s father supervised visitation subject to certain conditions. The court ordered that T.S.’s father have no contact with T.S. “until he presents himself to the Department,” at which time supervised visitation may be arranged.

DISCUSSION

We apply three standards of review in CINA cases: (1) we review factual findings of the juvenile court for clear error; (2) we determine, “without deference,” whether the juvenile court erred as a matter of law, and if so, whether the error requires further proceedings or, instead, is harmless; and (3) we evaluate the juvenile court’s final decision for abuse of discretion. *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018). An abuse of discretion occurs only when a court’s decision is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. 30, 45 (2017) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 313 (1977)). Whether a parent is unable or unwilling to care for his or her child “is a factual determination that an appellate court reviews for clear error.” *In re E.R.*, 239 Md. App. 334, 338 (2018). In evaluating the juvenile court’s findings of fact, we must give “the greatest respect” to the court’s opportunity to view and assess the witnesses’ testimony and evidence. *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 719 (2011).

I. THE JUVENILE COURT DID NOT ERR OR ABUSE ITS DISCRETION IN DETERMINING THAT T.S. AND Z.S. ARE CHILDREN IN NEED OF ASSISTANCE.

Mother contends first that the evidence adduced was insufficient for the court to find either child to be a child in need of assistance. She claims that there was no evidence of any abuse or neglect of Z.S. at all, and that, despite “issues with T.S.’s misbehavior,” there was insufficient evidence to find T.S. a child in need of assistance. The Department

counters that the record sufficiently established both “direct and inferential evidence of neglect” of both children. We agree with the Department.

A child in need of assistance includes a “child who requires court intervention because (1) [t]he child has been . . . neglected . . . and (2) [t]he child’s parents, guardian or custodian are unwilling or unable to give proper care and attention to the child and the child’s needs.” Md. Code Ann., Cts. & Jud. Proc. § 3-801(f) (Repl. 2013; Supp. 2018). Neglect occurs when a parent fails “to give proper care and attention to a child . . . under circumstances that indicate . . . [t]hat the child’s health or welfare is harmed or placed at substantial risk of harm.” *Id.* § 3-801(s).

Because of the protective purpose of the CINA statute, a “court need not wait for an injury to occur before finding neglect.” *In re Adoption of K’Amora K.*, 218 Md. App. 287, 311 (2014) (quoting *In re Priscilla B.*, 214 Md. App. 600, 626 (2013)); see *In re William B.*, 73 Md. App. 68, 78 (1987) (“The judge need not wait until the child suffers some injury before determining that he is neglected.”). When determining neglect, a court may consider “a parent’s past conduct” as relevant to its “consideration of the parent’s future conduct.” *In re Priscilla B.*, 214 Md. App. at 625; see also *In re Adriana T.*, 208 Md App. 545, 570 (2012) (“Reliance upon past behavior as a basis for ascertaining the parent’s present and future actions directly serves the purpose of the CINA statute.”).

Mother does not challenge any of the juvenile court’s factual findings, including its findings that (1) Mother has untreated mental health issues; (2) “on many occasions,” Mother was unable to provide care for T.S., who was sent to live with other family

members; (3) Mother has been investigated for physical and emotional abuse of T.S. at various times over ten years; (4) Mother declined therapy and other services for T.S.; (5) T.S. sustained physical injuries resulting from Mother's conduct; (6) Mother used offensive and pejorative language to insult T.S. on multiple occasions; (7) Mother told hospital workers that she could not care for Z.S.; and (8) neither child's father is involved in his life. In light of these unchallenged findings, none of which is clearly erroneous, the juvenile court did not err in concluding that Mother had neglected both children, subjecting them to "substantial risk of harm," and that she was unable to give proper care and attention to their needs. Cts. & Jud. Proc. § 3-801(s).

Although Mother does not agree that there was sufficient evidence to find either child to be a child in need of assistance, she focuses most of her argument on Z.S., contending that there was no evidence of abuse or neglect of Z.S. and that the court should not have relied on evidence regarding her relationship with T.S. to find Z.S. in need of assistance. For two reasons, we disagree. First, Mother is simply incorrect in arguing that the Department's evidence was limited to her relationship with T.S. Indeed, the court found that Mother brought Z.S. to the emergency room three times in a 36-hour period when he was not ill and she was apparently suffering from paranoid delusions. She then told the hospital staff that she was unable to care for Z.S. and wanted to leave him with the hospital. Second, a "parent[']s] ability to care for the needs of one child is probative of [his or her] ability to care for other children in the family." *In re William B.*, 73 Md. App. at 77; *see also In re Nathaniel A.*, 160 Md. App. 581, 597 (2005) (stating that a parent's

“inability to appropriately care for” one child “is predictive of [his or her] ability to care for” another child). Here, especially in light of Mother’s ongoing, untreated mental health issues, the juvenile court did not err in inferring that Mother’s actions toward T.S. were indicative of a substantial risk of harm to both children.⁶ Mother introduced no evidence to contradict that inference or to “show[] any change in her condition” that would rebut the conclusion that Z.S. is “subject to the same harm” T.S. has faced. *In re Nathaniel A.*, 160 Md. App. at 597.

We also disagree with Mother’s contention that the court erred or abused its discretion by not taking a less restrictive measure than removing the children from her care. “The purpose of CINA proceedings is to protect children and promote their best interests.” *In re Priscilla B.*, 214 Md. App. at 622 (citation and internal quotation marks omitted). In light of the juvenile court’s findings of fact, which were not clearly erroneous, and its legal conclusions, which were not an abuse of discretion, the court acted well within its discretion in deciding to remove the children from Mother’s care.

⁶ Although Mother asks us to conclude that her issues with T.S. should not be seen as indicative of any potential harm to Z.S. because those issues have been prompted “by her teenaged son’s behavior,” we note that reports of her abuse and neglect of T.S. well predate his teenage years.

II. MOTHER HAS NOT PRESERVED HER CLAIM THAT THE COURT IMPROPERLY ADMITTED PREJUDICIAL TESTIMONY OF HOMOPHOBIC LANGUAGE.

Mother also contends that the admission of her “homophobic slurs” toward T.S. was unfairly prejudicial, as “it was not probative of . . . any harm to T.S.” We agree with the Department that Mother failed to preserve this argument.

Ordinarily, “an appellate court will not decide an issue unless it plainly appears by the record to have been raised in or decided by the trial court.” *In re J.J.*, 231 Md. App. 304, 339-40, *aff’d*, 456 Md. 428 (2017) (internal quotations and quotation marks omitted); *see also In re Katherine C.*, 390 Md. 554, 560 n.10 (2006). To preserve an issue as to the admissibility of evidence, a “specific objection should be made to each question propounded.” *Kang v. State*, 393 Md. 97, 119 (2006) (quoting *State Roads Comm’n v. Bare*, 220 Md. 91, 94 (1959)).

At the adjudication hearing, Mother’s counsel did not object to the use of the offensive language or contend that it was unduly prejudicial. Even when Mother did object, she did so on a different ground that she does not raise on appeal. For example, after Aunt initially testified that Mother had called T.S. a “faggot,” Mother’s counsel objected as to the basis of Aunt’s knowledge, but not as to the introduction of the word itself. Counsel did not object at all when Aunt testified that Mother called T.S. “faggy,” or when Grandmother corroborated that Mother had used that word and testified that Mother had accused T.S. of “sucking dick.” Nor did Mother object to questions about her

own sexuality or views on the gay community on grounds of unfair prejudice. Thus, Mother has failed to preserve this issue for our review.

Even if preserved, and even if we were to agree with Mother that the court erred in permitting this testimony, we would conclude that the error was harmless as the other evidence presented is more than sufficient to support the court's determination that the children are both in need of assistance.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**