

Circuit Court for Calvert County
Case No. C-04-JV-18-000006

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 367

September Term, 2018

IN RE: T.R.

Wright,
Graeff,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: November 16, 2018

*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 Calvert County Department of Social Services (the “Department”) filed, in the Circuit Court for Calvert County, a petition for shelter care on behalf of “T.R.,” daughter of Donnie R., appellant (“Father”). After the Department amended that petition, the circuit court, sitting as the juvenile court, held a hearing and found T.R. to be a child in need of assistance (“CINA”).¹ In this appeal, Father presents two questions for our review, which we have consolidated and rephrased as:²

Did the juvenile court err in determining T.R. to be a CINA?

For reasons to follow, we answer that question in the negative and affirm the judgment of the court.

BACKGROUND

T.R. was born on June 8, 2014, to Bertina T. (“Mother”). At the time, Father was purported to be T.R.’s biological father but paternity was not established. Although Father was “around some” when T.R. was born, he eventually moved to North Carolina.

¹ Md. Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article (“CJP”), § 3-801(f), defines “child in need of assistance” as “a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.”

² Father presents the questions as:

1. Was the evidence legally sufficient to sustain a CINA finding where the natural father was ready, willing, and able to assume custody?
2. Did the juvenile court render clearly erroneous findings of fact?

Over the next few years, T.R. was in the care of her Mother and her maternal great-grandmother.

Over the course of T.R.'s life, Mother had "multiple incidents of DSS involvement" and was twice indicated for neglect of one of her other children.³ In 2017, Mother entered into a service plan with the Department. On January 17, 2018, Mother "revoked all releases of information and plans that were entered into with the Department." That day, the Department, citing concerns regarding its ability to monitor the children, removed T.R. from her home.

On January 19, 2018, the Department filed a "Petition for Shelter Care and a Finding of Child in Need of Assistance" on behalf of T.R. In that petition, the Department made multiple allegations against Mother, including: that, in 2014, Mother was indicated for neglect after she ran away from store security guards upon being caught shoplifting, leaving T.R.'s three-year-old sister at the store; that, in 2015, the Department initiated an "Alternate Response case" due to "concerns regarding [Mother's] ability to care for her children," which included "concerns regarding substance use, mental health, and inappropriate physical discipline," as well as "concerns regarding a lack of food in the home, lack of supervision, and marginal conditions in the home;" that, on January 17, 2017, Mother tested positive for Subutex⁴ at the birth of one of her other children; that, in

³ Mother has five children, including T.R. Father is not the putative father of any of Mother's other children.

⁴ Subutex (buprenorphine) is an opioid (medication used to treat narcotic addiction). <https://www.rxlist.com/club-drugs/article.htm>. (Last visited November 5, 2018).

2017, Mother was indicated for neglect after she and several of her other children (not T.R.) were involved in a car accident during which none of the children were wearing seatbelts or secured in car seats; that, on September 27, 2017, Mother tested positive for cocaine; that Mother had “a criminal history that includes drug charges and assaults;” that Mother and the father of her two youngest children had “a domestic violence history;” and, that Mother had not been T.R.’s primary caregiver for the majority of her life.

On January 26, 2018, the juvenile court issued an emergency shelter care hearing order and found that, for the reasons stated in the Department’s petition, it was “contrary to the safety and welfare of [T.R.] for [her] to be placed in the home and/or care of [Mother] or putative father.” According to the court’s order, Father was “not present – incarcerated in North Carolina.” The court ordered that T.R. remain in the care and custody of the Department and that the parties return for an adjudication and disposition hearing.

Around the same time, Father contacted the Department and stated that he wanted T.R. to come live with him in North Carolina. Father also stated that he planned to attend the upcoming adjudication and disposition hearing.

On February 20, 2018, the adjudication and disposition hearing regarding T.R. was held, and Father was present. Following that hearing, the court sustained the Department’s allegations as to Mother and ordered that Father submit to a paternity test. The court also scheduled a follow-up adjudicatory hearing as to Father, provided that he was deemed to be T.R.’s biological father. Shortly thereafter, Father submitted to a paternity test, which established that Father was T.R.’s biological father.

On March 15, 2018, the Department filed an Amended Petition for Shelter Care reiterating the allegations contained in its original petition. In addition, the Department alleged that Father had had “minimal contact” with T.R. The Department again asked that T.R. be declared a CINA based on neglect.

On April 23, 2018, the juvenile court held a hearing on the Department’s amended petition. Father testified that he currently lived in North Carolina but that his fiancé’s mother lived in Prince George’s County so he “comes up sometimes couple times out the month.” He explained that “grandma was taking care of [T.R.]” and that he was happy with that arrangement. He further explained that he did not take T.R. with him to North Carolina because “the grandmother was attached to her” and he “didn’t see anything wrong with that.” When asked about his contacts with T.R., Father responded that he “was around her when she was born” and that, since that time, he made “attempts” to visit with her but “never [got] to see her” because Mother would not answer his calls. Father also stated that he had recently visited with T.R. and that the visit “went well.” Father testified that he wanted T.R. to live with him and that he believed he could provide for her.

At the conclusion of the adjudicatory portion of the hearing, the juvenile court found that “the bulk of the allegations for the adjudication really rest[ed] with [Mother]” and that those allegations “were previously sustained.” The court also found that the “subsidiary issues about [Father’s] involvement” were “now manifest” and that it was evident that Father “really hasn’t had any substantial contacts with the child.” Based on

those findings, the court determined that there were “sufficient grounds to find that [T.R.] is a [CINA].”

At the disposition portion of the hearing, the juvenile court asked the Department why T.R. should not “get in the car and go on to North Carolina” with Father. The Department responded that T.R., who was nearly four-years-old at the time, had had “very limited” contact with Father and that, in the meantime, had developed “a strong bond” with people in Maryland, including her siblings, great-grandmother, and Mother. The Department also stated that, at the time of the hearing, T.R. was in foster care “where her needs [were] being addressed” and that visitation with Mother “[was] moving forward.” The Department added that it wanted to also “provide opportunities for Father for visitation.”

Father’s counsel proffered that Father and Mother made the conscious decision to have T.R. live with her great-grandmother “because that was what was best for her” and because it put her “out of harm’s way.” Counsel further stated that there was “no reason” why Father, who was willing and able to take care of T.R., should not have “full access to this child,” particularly in light of the fact that T.R. was in foster care rather than “with the caretaker where [Father] placed her.”

Mother’s counsel responded by informing the court that Mother and T.R. moved in with the great-grandmother shortly after T.R.’s birth and “resided there for a significant period of time.” Counsel explained that, after Mother moved out of the great-grandmother’s home, she “went to significant efforts to make sure that [T.R.] was there frequently” in order to preserve “that relationship between [T.R.] and the great-

grandmother.” Counsel noted, however, that “very rarely was [T.R.] ever left alone with the great-grandmother because concerns about her being elderly, concerns about her ability to drive.” Counsel also stated that Father “most assuredly did not reach a joint decision with [Mother] about leaving [T.R.] with the great-grandmother” and that Father “was frustrated in his attempt to see [T.R.] because he was locked up for assault on [Mother].”

In the end, the juvenile court found that the facts in the Department’s amended petition were sustained as to Father and that those facts, when combined with the sustained allegations against Mother, were sufficient to find that T.R. was a CINA. In so doing, the court stated that it was not “tak[ing] away [Father’s] rights” but rather was “mak[ing] sure that [T.R.’s] best interests are identified and that they are followed.” The court then determined that both Mother and Father were “unable to give proper care and attention to [T.R.’s] needs and [T.R. had] been neglected.” The court ordered that T.R. be declared a CINA and that she remain in the care and custody of the Department.

DISCUSSION

Father argues that the evidence was “legally insufficient to sustain a CINA finding” because the “actual evidence adduced at the adjudicatory hearing” showed that Father was “ready, willing, and able to raise [T.R.] properly.” Father contends that the juvenile court’s finding was contrary to Md. Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article (“CJP”), § 3-819(e), which states that a court may not find that a child is a CINA if the allegations in a CINA petition are sustained against only one parent and there is another parent available who is able and willing to care for the child.

Father also contends that the court “entered clearly erroneous findings of fact” when it found that Father was unable to give proper care and attention to T.R.’s needs, that T.R. had been neglected, and that Father had had minimal contact with T.R.

Appellate review of a juvenile court’s decision regarding child custody involves three interrelated standards. First, any factual findings made by the juvenile court are reviewed for clear error. *In re Yve S.*, 373 Md. 551, 586 (2003). Second, any legal conclusions made by the juvenile court are reviewed *de novo*. *Id.* Finally, if the court’s ultimate conclusion is “founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court’s] decision should be disturbed only if there has been a clear abuse of discretion.” *In re J.J.*, 231 Md. App. 304, 345 (2016) (citations omitted), *aff’d* 456 Md. 428 (2017). “A decision will be reversed for an abuse of discretion only if it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Id.* (citations and quotations omitted).

When a petition is filed alleging that a child is a CINA, the circuit court must hold an adjudicatory hearing to determine whether the allegations in the petition are true. CJP §§ 3-801(c) and 3-817(a). If such a determination is made, the court must then hold a disposition hearing to determine, among other things, whether the child is a CINA. CJP § 3-819(a)(1). If the court sustains the allegations in the petition against only one parent, “and there is another parent available who is able and willing to care for the child, the court may not find that the child is a child in need of assistance[.]” CJP § 3-819(e). An

allegation that a child is a CINA must be proven by a preponderance of the evidence. *In re Nathaniel A.*, 160 Md. App. 581, 595 (2005).

As noted, a child may be found to be a CINA if it is proved that the child has been neglected. “‘Neglect’ means the leaving a child unattended or other failure to give proper care and attention to a child . . . under circumstances that indicate: 1) that the child’s health or welfare is harmed or placed at substantial risk of harm; or 2) that the child has suffered mental injury or been placed at substantial risk of mental injury.” CJP § 3-801(s).

“In determining whether a child has been neglected, a court may and must look at the totality of the circumstances[.]” *In re Priscilla B.*, 214 Md. App. 600, 621 (2013). Moreover, in evaluating whether a “substantial risk of harm” exists, “the court has ‘a right – and indeed a duty – to look at the track record, the past, of a parent in order to predict what her future treatment of the child may be.’” *In re J.J.*, 231 Md. App. at 346 (citations omitted). As we have explained:

It makes sense to think of “neglect” as part of an overarching pattern of conduct. Although neglect might not involve *affirmative* conduct (as physical abuse does, for example), the court assesses neglect by assessing the *inaction* of a parent over time. To the extent that inaction repeats itself, courts can appropriately view that pattern of omission as a predictor of future behavior, active or passive: it has long been established that a parent’s past conduct is relevant to a consideration of the parent’s future conduct. Reliance upon past behavior as a basis for ascertaining the parent’s present and future actions directly serves the purpose of the CINA statute. Differently put, courts should be most reluctant to “gamble” with an infant’s future; there is no way to judge the future conduct of an adult excepting by his or her conduct in the past.

In re Priscilla B., 214 Md. App. at 625-26 (emphasis in original) (internal citations and quotations omitted).

Against that backdrop, we hold that the juvenile court did not err in finding T.R. to be a CINA. To begin with, the Department's sole allegation against Father was that he had had "minimal contact" with T.R. That allegation, sustained by the court, was not clearly erroneous but rather was supported by substantial evidence, not the least of which was Father's own testimony, which established that he had abandoned T.R. shortly after her birth in 2014 and had no contact with T.R. over the next several years until after she entered shelter care in January of 2018.

For that reason, Father's reliance on CJP § 3-819(e) is misplaced. That section states, in pertinent part, that a child may not be declared a CINA if "the allegations are sustained against only one parent[.]" *Id.* As noted, the allegations in the Department's petition were sustained against both Father and Mother.

Father's reliance on *In re Russell G.*, 108 Md. App. 366 (1996), is equally misplaced. In that case, we held that the juvenile court erred in finding a child, Russell G., to be a CINA because there was no evidence to support the court's finding that the father was either unwilling or unable to care for the child. *Id.* at 380. We noted that the sole basis for the juvenile court's decision – that the father knew about the mother's alcoholism and chose to ignore it – was clearly erroneous because there was no evidence to support that finding. *Id.* at 377-78.

Here, by contrast, there was ample evidence to support the juvenile court's finding that Father had minimal contact with T.R. and that, as a result, he was unwilling or

unable to care for T.R. The court's findings against Mother, which Father does not dispute, established that Mother had engaged in a pattern of behavior that was injurious to and resulted in the neglect of several of her children. Although there was no direct evidence of any affirmative neglect of T.R., the court's findings regarding the other children were more than sufficient in establishing that Mother, who had physical and legal custody of T.R., had failed to give proper care and attention to T.R. under circumstances that indicate that T.R.'s health or welfare was placed at substantial risk of harm.

Importantly, during the time that Mother was engaged in the aforementioned behavior, which spanned nearly the entirety of T.R.'s life, Father was conspicuously absent. For reasons not entirely clear from the record, Father made the conscious decision to remove himself from T.R.'s life shortly after her birth and did not return until just after she was placed in shelter care nearly four years later. In that time, other than "calling" Mother and getting "no answer," Father made no discernible effort at establishing a relationship with T.R. or even visiting with her when he traveled to Prince George's County, which, by his own admission, occurred a "couple times out the month." Moreover, there is no evidence that Father ever contacted T.R.'s great-grandmother, either to arrange a visit or discuss T.R.'s well-being, even though Father testified that he left T.R. in the care of the great-grandmother when he moved to North Carolina and that he was happy with that arrangement.

In short, Father's claim that "he made good faith efforts to visit [T.R.] but was thwarted by circumstances beyond his control" strains credulity, as does his claim that

“the record is uncontradicted” that he “is a responsible person.” Rather, the record shows that Father abandoned T.R. shortly after her birth and, over the next four years, made virtually no effort to see her or discern her whereabouts or well-being. Father’s actions (or inaction) from the time of T.R.’s birth up until the time she was placed in shelter care established that Father had irresponsibly and without any semblance of justification failed to provide proper care and attention to T.R. such that her health or welfare was placed at substantial risk of harm. Thus, even though Father testified that he was able and willing to take proper care of T.R., his track record in failing to take even the most basic steps at doing just that provided a sufficient basis for the court to find that Father was unable to take care of T.R. and had neglected her. For those reasons, the juvenile court did not err or abuse its discretion in declaring T.R. to be a CINA.

Finally, although a parent has a fundamental right to raise his child, that right “is not absolute and does not exclude other important considerations.” *In re Mark M.*, 365 Md. 687, 705 (2001). For instance, our appellate courts have long held that “the best interests of the child may take precedence over the parent’s liberty interest in the course of a custody, visitation, or adoption dispute.” *Boswell v. Boswell*, 352 Md. 204, 219 (1998). Thus, although there is a general presumption that it is in a child’s best interests to remain in the care and custody of his parent, that presumption “may be rebutted upon a showing either that the parent is ‘unfit’ or that ‘exceptional circumstances’ exist which would make continued custody with the parent detrimental to the best interest of the child.” *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495 (2007); *see also In re Adoption/Guardianship of Ta’Niya C.*, 417 Md. 90, 111 (2010) (“[W]hile the

parental rights are recognized . . . the child’s best interest standard trumps all other considerations.”) (footnote omitted).

Here, the juvenile court expressly stated that its decision to have T.R. remain in foster care was based on T.R.’s best interest, and we perceive no error in that decision. Had the court permitted T.R. to live with Father, a nearly four-year-old child would have been uprooted from Maryland, where she had lived her whole life, and taken to another state to live with people, including her Father, with whom she had had virtually no relationship or prior contact.⁵ By awarding custody to the Department, the court allowed T.R. to remain in a familiar area where her Mother, great-grandmother, and siblings all lived. *See In re Blessen H.*, 163 Md. App. 1, 18 (2005) (“CINA proceedings are designed ‘to provide for the care, protection, safety, and mental and physical development’ of a child found to be in need of assistance, ‘to conserve and strengthen the child’s family ties.’”) (emphasis removed) (quoting CJP § 3-802(a)). Given that T.R. was doing well in foster care, we see no reason to disturb the court’s ruling.

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

⁵ There is no evidence in the record to support Father’s assertion that his occupation as “a working farmer in another state” somehow affected the juvenile court’s decision. Thus, Father’s reliance on *McDermott v. Dougherty*, 385 Md. 320 (2005), is misplaced. *See id.* at 325-26 (holding that “the requirements of a parent’s employment, such that he is required to be . . . appropriately absent from the State for a period of time, and for which time he or she made appropriate arrangements for the care of the child, do not constitute ‘extraordinary or exceptional circumstances[.]’”).