Circuit Court for Baltimore City
Case Nos. 817080001 and 817080002

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 372

September Term, 2018

IN RE: T.R., Jr. AND S.F.

Fader, C.J.
Beachley,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: January 7, 2018

The Baltimore City Department of Social Services (the "Department") filed, in the Circuit Court for Baltimore City, a petition for shelter care on behalf of two minor children, T.R. and S.F., alleging that the children's parents, including their mother, S.H. ("Mother"), had physically abused the children. Following a hearing on that petition, the circuit court, acting as the juvenile court, declared T.R. and S.F. to be children in need of assistance ("CINA")[1] and ordered that both children be committed to the Department for placement. In this appeal, Mother presents several questions for our review, which we have rephrased follows[2]:

1. Did the juvenile court improperly delegate its judicial role by allowing the Department to determine whether S.F. would reside with a relative or a nonrelative?

2. Did the juvenile court err in terminating the children's voluntary placement without an investigation?

3. Did the juvenile court deprive Mother of her right to have a voice in her children's placement?

[1] Md. Code (1973, 2013 Repl. Vol., 2018 Supp.), § 3-801(f) of the Courts and Judicial Proceedings Article 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] Mother phrased the questions as:

> Did the court err in delegating its role to the Department and allowing the agency to determine whether S.F. would be placed in relative placement, or unlicensed foster care; and did the court further err in allowing the Department to move T.R., Jr., from his aunt's home, without finding that changing placement was in T.R., Jr.'s best interests?

For the following reasons, we answer all three questions in the negative, and affirm the judgment of the circuit court.

BACKGROUND

T.R. was born to Mother and T.R., Sr. on December 17, 2006.[3] Around the time of his birth, T.R. began living with his aunt, K.H. In 2009, T.R. moved in with Mother. On July 29, 2011, S.F. was born to Mother and T.F.[4] In 2013, T.R. and S.F. moved in with Mother's sister, T.W. A year later, T.R. and S.F. moved back in with their aunt, K.H. After several months, the children ultimately moved back in with Mother, where they remained.

On or about March 20, 2017, Mother and T.F. left T.R. and S.F. home alone. When they returned, Mother and T.F. found the children outside playing. When T.F. asked T.R. why he was outside, T.R. responded that he should not have been left home alone. Mother then told T.R. to go into the house because he "was going to get 'a beating.'" After everyone went inside the house, Mother hit T.R. with a belt, and T.F. punched T.R. in the face and hit him with a hanger. Sometime later, T.R. went to school, but did not report what happened to anyone at school.

That same day, Baltimore City Police Officer James Kostoplis was sitting in his patrol car when he was approached by two children, later identified as T.R. and S.F. Upon reaching Officer Kostoplis's vehicle, T.R. asked the officer if they "could talk." When the officer responded, "yes," T.R. told the officer that "he was afraid to go home because there

[3] T.R.'s father has been incarcerated for all of T.R.'s life and is not a party to this appeal.

[4] T.F. is not a party to this appeal.

was abuse." Officer Kostoplis took T.R. and S.F. to Johns Hopkins Hospital and notified Child Protective Services. After arriving at the hospital, Officer Kostoplis came into contact with Mother, whom he placed under arrest for child abuse. Officer Kostoplis also spoke with the treating physicians, who reported that T.R. showed "signs of abuse because there [were] different injuries in different stages of healing."

Dana Lewis, an investigator with Baltimore City Child Protective Services, was tasked with investigating the allegations of abuse against Mother. As part of his investigation, Mr. Lewis went to Johns Hopkins Hospital on March 20, 2017, where he met T.R. and S.F. and observed T.R.'s injuries, which Mr. Lewis later described as "cuts" and "marks" around T.R.'s chest area, face, and arms. When Mr. Lewis asked T.R. about his injuries, T.R. reported that Mother and T.F. "were physically abusing him in the household, that they used objects such as hangers and belts to discipline him[.]" Although S.F. did not have any visible injuries, she nodded her head when Mr. Lewis asked if "she had been physically abused by her mom and dad[.]"

Mr. Lewis then contacted the children's aunt, K.H., who agreed to accept both children for "kinship placement." Mr. Lewis later testified that, at the completion of his investigation into the incident, Mother was indicated for "child physical abuse."

On March 21, 2017, the Department filed emergency CINA petitions on behalf of both children, alleging that both children's parents had failed to provide the children with a "safe and stable living environment" and that Mother had used "excessive corporal punishment" when disciplining the children. That same day, the juvenile court granted the Department's emergency petitions and awarded limited guardianship of both children to

the Department. Both children remained under the care of their aunt, K.H.

In June of 2017, Mother filed an emergency motion to modify shelter care placement, alleging that the Department had removed T.R. from K.H.'s care and placed him with "another maternal relative." Mother asked that both children be placed with her sister, T.W. Following a hearing on Mother's motion, and after finding that T.W. was both willing and able to take both children, the court ordered that both children be placed in T.W.'s care "for a period not to exceed the next hearing date."

After several postponements, a contested adjudication hearing was held on March 7, 2018. At that hearing, the juvenile court held an in-camera interview with T.R.[5] During that interview, T.R. stated that he was living with Mother's sister, T.W. T.R. stated that he shared a bedroom with his cousins and that he slept on the floor. T.R. indicated that he did not "want to stay there anymore" but instead wanted to go back and live with Mother. When asked whether his aunt, T.W., wanted him and his sister to return to Mother, T.R. responded in the affirmative and stated that T.W. did not "want [them] there anymore" and could not "wait [until they] go back with [Mother]." T.R. also reported that he had previously stayed with two other aunts, "K." and "T."

[5] Prior to T.R.'s in-camera interview, Mother's counsel objected and asked if T.R. could testify in open court and be subject to cross-examination. The juvenile court held the matter *sub curia* until the end of the second day of trial, at which point the court ruled that T.R. would not be subject to cross-examination. In so doing, the court stated that it was "satisfied based on the testimony of the witnesses" that it could reach a result and that it would "not rely in any part on the results of the in-camera examination of [T.R.] in reaching its decision." It is clear from the transcript that, when the court indicated that it would not rely on T.R.'s in-camera interview in reaching a decision, it was referring to the adjudication phase of the proceeding. In any event, Mother does not challenge any reliance by the court on T.R.'s in-camera interview.

T.R.'s paternal grandmother, G.G., testified that, beginning in 2016, she regularly provided care for T.R., such as having him spend weekends at her house, taking him to appointments, and transporting him to and from school. G.G. also testified that she and Mother did not have a good relationship; that Mother would become upset with G.G. when Mother did not "get what she wants"; and that Mother would periodically "stop visitations" between G.G. and T.R. and then later resume those visitations "when she needed something."

T.R.'s aunt, T.W., testified that she had five children and that T.R. and S.F. lived with them at her house. T.W. described her relationship with T.R. as "awesome" but that there were "cracks sometimes." When asked about the circumstances surrounding T.R. and S.F. coming to live with her, T.W. stated that she "was told that [T.R.] had been abused" and that she "stepped in and asked [if she could] get them." T.W. testified that the children were placed with her in July of 2017 and that, other than during court appearances, Mother had not had any contact with T.R. since that time.

At the conclusion of the adjudicatory portion of the hearing, the juvenile court found that, based on the incident that occurred on or about March 20, 2017, T.R. had been "inappropriately and unlawfully corporally punished." The court also found, based on other evidence presented at the hearing, that Mother had left the children home for extended periods of time without adult supervision; that Mother had a history of substance abuse and regularly smoked in the family home in the presence of S.F.; and that Mother had a history of criminal convictions for assault and false imprisonment.

After the juvenile court announced its findings, counsel for the children and the attorney for T.R.'s father asked the court to postpone disposition so that several relatives could be investigated as possible placement resources for the children. Both attorneys made that request based on T.R.'s statements during the court's in-camera interview regarding the living arrangements with T.W., with whom both children were then residing. Although the Department agreed that the children's living situation appeared to be "deteriorating," it nevertheless objected to the postponement because it wanted to "get [the] ball rolling" and because it had K.H., with whom the children had previously lived, as a potential resource. Mother joined counsel for the children in asking for a postponement but insisted that the children be allowed to stay with T.W. The court ultimately agreed to postpone disposition until April 10, 2018.

At that hearing, Mr. Lewis, the CPS investigator, testified that he had investigated two relative resources, T.R.'s paternal grandmother, G.G., and his paternal aunt, C.G. Mr. Lewis told the court that both had been approved as potential placements for the children. Mr. Lewis further testified that, due to complications with C.G.'s landlord, the Department recommended that the children be placed with G.G. Mr. Lewis explained that the Department was recommending a change in the children's current placement with T.W. because "coercion [had] been going on at the aunt's house and inappropriate sleeping arrangements for the kids."

G.G. testified that she was willing and able to care for the children. She explained that, although she currently lived in a one-bedroom apartment, her building was in the process of being renovated and she would eventually be moved into a larger apartment.

On cross-examination, G.G. admitted that she took medication, which she kept in a cabinet "high up so the kids can't get to it and it's locked."

Mother testified that she wanted the children to remain with T.W. Mother explained that T.W. had "a four-bedroom house" and had just been approved "for another five-bedroom house that she was waiting upon[.]" Mother also stated that, despite prior reports, both T.R. and S.F. had "beds and everything [was] fine."

At the conclusion of the hearing, the juvenile court declared both children to be CINA. Regarding placement, the court stated:

> It is my view that with respect to [T.R.], he should be committed to the Department for relative placement, there being at least two relatives identified who can be considered.
>
> [S.F.] I will commit generally to the Department for placement with the following order controlling conduct on the parties. The [children] are to attend the same school each day on time and their activities in and outside of school. They're to be placed together, finding it to be in their best interest to do so on the specific facts of this case and the interaction between [S.F. and T.R.] since this matter arose.
>
> I'm not saying relative placement and identifying the relative. It seems to me reasonable efforts would require the Department to both visit [T.W.'s] home and to ascertain some of the things that weren't answered here today as to the sleeping arrangements and as to the present desire of the children, quietly and alone, not in the ear of anyone else.
>
> If they are placed with [G.G.], there needs to be a lock, secure lock for her medication. And wherever the [children] are placed they need to be referred to individual therapy to begin to address and repair the emotional consequences of this entire CINA circumstance.

The juvenile court then issued an order stating that T.R. was "committed to [the Department] for relative placement with limited guardianship awarded to [the Department] and [T.W.] or [G.G.]" and that S.F. was "generally committed to [the Department] with

limited guardianship to [the Department] and [T.W.] or [G.G.]." The court also ordered that the children's permanency plan be one of reunification with their respective parents.

DISCUSSION

I.

Mother first argues that the juvenile court "inappropriately delegated its judicial role" when it permitted the Department to determine whether S.F. would reside with a relative, T.W., or a nonrelative, G.G. Mother maintains that this "delegation" was legally erroneous because, under Md. Code (1973, 2013 Repl. Vol., 2018 Supp.), § 3-819(b) of the Courts and Judicial Proceedings Article ("CJP"), "[t]he decision to place a child with a non-relative is one that must be made by the court." Mother further argues that the court also violated CJP § 3-819(b)(3) by "not making findings as to why [S.F.] should be placed with a non-relative when a relative was available."

The Department responds that Mother is mistaken in her interpretation of CJP § 3-819 and that the statutory scheme actually prohibits the juvenile court from designating a specific placement when awarding custody of a child that has been declared CINA to the Department. The Department maintains that it, not the court, has the statutory duty of establishing the specific out-of-home placement of a child that has been declared CINA by the court and has been committed to the Department's care and custody.

We begin our analysis by noting that Mother's arguments all involve statutory interpretation. In that respect, we apply a *de novo* standard of review. *Reger v. Wash. Cty. Bd. of Educ.*, 455 Md. 68, 95 (2017). Beyond that, our review of the court's decision, generally, involves three interrelated standards. First, any factual findings made by the

court are reviewed for clear error. *In re Yve S.*, 373 Md. 551, 586 (2003). Second, any legal conclusions made by the 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." *Id*.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature." *Noble v. State*, 238 Md. App. 153, 161 (2018) (quoting *Williams v. Peninsula Reg'l Med. Ctr.*, 440 Md. 573, 580 (2014)). "The starting point of any statutory analysis is the plain language of the statute, viewed in the context of the statutory scheme to which it belongs[.]" *Kranz v. State*, 459 Md. 456, 474 (2018) (internal citations and quotations omitted). "If the language of the statute is unambiguous and clearly consistent with the statute's apparent purpose, our inquiry as to legislative intent ends ordinarily and we apply the statute as written, without resort to other rules of construction." *Noble*, 238 Md. App. at 161 (quoting *Espina v. Jackson*, 442 Md. 311, 321-22 (2015)). If, on the other hand, the words of a statute are ambiguous, either in isolation or when read as part of a larger statutory scheme, "a court must resolve the ambiguity by searching for legislative intent in other indicia, including the history of the legislation or other relevant sources intrinsic and extrinsic to the legislative process." *Id.* at 162 (quoting *Espina*, 442 Md. at 321-22). Regardless, the underlying purpose of statutory construction is to ascertain and effectuate legislative intent. *E.g.*, *id*.; *Schlick v. State*, 238 Md. App. 681, 692 (2018).

Subtitle 8 of CJP provides the statutory framework for CINA proceedings. This subtitle grants the juvenile court exclusive, original jurisdiction over all "[p]roceedings

arising from a petition alleging that a child is a CINA[.]" CJP § 3-803(a)(2). The subtitle also grants the court concurrent jurisdiction over "[c]ustody, visitation, support, and paternity of a child whom the court finds to be a CINA[.]" CJP § 3-803(b)(1)(i). "As a court of limited jurisdiction, the juvenile court may exercise only those powers granted to it by statute." *In re Ryan W.*, 434 Md. 577, 602 (2013).

At issue here is CJP § 3-819, which outlines the juvenile court's powers and obligations when making a disposition on a CINA petition. Specifically, the statute provides, in pertinent part:

> (b)(1) In making a disposition on a CINA petition under this subtitle, the court shall:
>
> (i) Find that the child is not in need of assistance and . . . dismiss the case;
>
> (ii) Hold in abeyance a finding on whether a child with a developmental disability or a mental illness is a child in need of assistance[;] . . . or
>
> (iii) Subject to paragraph (2) of this subsection,[6] find that the child is in need of assistance and:
>
> 1. Not change the child's custody status; or
>
> 2. Commit the child on terms the court considers appropriate to the custody of:
>
> A. A parent;
>
> B. Subject to § 3-819.2 of this subtitle,[7] a relative, or other individual; or
>
> C. A local department, the Maryland Department of Health, or both, including designation of the type of facility where the child is to be placed.
>
> * * *

[6] "Paragraph (2)" is implicated when the disability of the child's parent, guardian, or custodian is at issue. CJP § 3-819(b)(2). That paragraph is not applicable here.

[7] CJP § 3-819.2 is implicated when the court grants custody and guardianship of a child to an individual. That section is not applicable here, as the juvenile court granted custody of S.F. to the Department.

> (3) Unless good cause is shown, a court shall give priority to the child's relatives over nonrelatives when committing the child to the custody of an individual other than a parent.

Id.

A plain reading of the above statute reveals that a juvenile court, in making a disposition on a CINA petition, has three options: (1) it can find that a child is not in need of assistance; (2) it can hold in abeyance such a finding when a child has a developmental disability or a mental illness; or (3) it can find that a child is in need of assistance. When a court finds that a child is in need of assistance, the court must also either maintain the child's custody status or commit the child to the custody of a parent, a relative or other individual, or a local department and/or the Maryland Department of Health. "Custody" is defined as "the right and obligation, unless otherwise determined by the court, to provide ordinary care for a child *and determine placement*." CJP § 3-801(k) (emphasis added). If the court awards custody of the child to the local department and/or the Maryland Department of Health, the court has the discretion to designate the type of facility where the child is to be placed. *Cf. In re W.Y.*, 228 Md. App. 596, 615-16 (2016). Finally, when committing a child to the custody of an individual other than a parent, the court must give priority to the child's relatives over nonrelatives, unless good cause is shown.

Against this backdrop, we hold that the juvenile court did not err in awarding custody of S.F. to the Department while at the same time allowing the Department to determine whether S.F. would be placed with a relative, T.W., or a nonrelative, G.G. As noted, the statute grants the court the authority to award custody to the Department, on terms the court deems appropriate, and to designate the type of facility where the child is

to be placed. In this case, the court did not designate any "type of facility"[8] for placement of S.F., choosing instead to grant custody of S.F. to the Department on terms the court considered appropriate. As part of those terms, the court ordered that S.F. and T.R. be placed together and required the Department to ensure that certain other conditions were met; however, the court did not indicate with whom S.F. would be placed. At that point, the Department, having acquired "custody" of S.F., had the right to determine placement. *See* CJP § 3-801(k). The statute plainly empowers the court to grant custody to the Department, which, as S.F.'s custodian, was then permitted to determine her placement.

We likewise disagree with Mother's assertion that the juvenile court violated CJP § 3-819(b)(3) by "not making findings as to why [S.F.] should be placed with a non-relative when a relative was available." The statute provides that a court must give priority to a relative "when committing the child to the custody *of an individual* other than a parent." CJP § 819(b)(3) (emphasis added). Here, the court did not commit S.F. to the custody of an individual; the court committed S.F. to the custody of the Department. CJP § 3-819(b)(3) is therefore inapplicable.

In any event, the court expressed concerns about the sleeping arrangements at T.W.'s home and T.R.'s statements that T.W. no longer wanted the children to stay with her, which led the court to request that the Department investigate that placement. The court also noted the Department's recommendation that the children be placed with G.G. Thus, we conclude that the court provided an adequate basis for its decision to commit S.F.

[8] The statute does not define the term "type of facility."

to the Department and allow the Department to determine the appropriate placement.

II.

Mother next argues that the juvenile court erred "by allowing the Department [to] decide whether to terminate the children's voluntary placement without an investigation." Mother maintains that, prior to disposition, both children were voluntarily placed with their maternal aunt, T.W., and that, at disposition, the court ordered the Department to investigate that placement. According to Mother, that action by the court was erroneous because it was the court's duty "to review whether a continued voluntary placement was appropriate."

None of Mother's arguments are meritorious or supported by the record. The children were not "voluntarily placed" with T.W. prior to disposition.[9] A "voluntary placement" is a placement made in accordance with § 5-525(b) of the Family Law Article of the Maryland Code, which states, in pertinent part, that the Department must establish a program of out-of-home placement for former CINAs that meet certain criteria and for minor children that have been placed in the custody of the Department pursuant to a voluntary placement agreement. CJP § 3-801(dd); Md. Code (1984, 2012 Repl. Vol., 2018 Supp.), § 5-525(b) of the Family Law Article ("FL"). A "voluntary placement agreement"

[9] Mother erroneously relies on CJP § 3-819(b)(1)(ii)(1.), which states that a court must "[o]rder the local department to assess or reassess the family's and child's eligibility for placement of the child in accordance with a voluntary placement agreement under § 5-525(b)(1)(i) of the Family Law Article." That portion of the statute applies when the court, in making a disposition on a CINA petition, holds in abeyance a finding on whether a child with a developmental disability or a mental illness is a CINA. CJP § 3-819(b)(1)(ii). That did not happen here, as the court instead found that both children were in need of assistance and that it was in their best interest to be committed to the custody of the Department.

is a binding, written agreement that is entered into between the local department and a parent, legal guardian, or age-appropriate former CINA. FL § 5-501(m).

Here, the children were never placed with T.W. pursuant to a "voluntary placement" or "voluntary placement agreement." Rather, the children were removed from Mother's care pursuant to the court's granting of the Department's emergency shelter care petition. At that time, both children were placed with their aunt, K.H., in "shelter care," which is defined as "a temporary placement of a child outside of the home at any time before disposition." CJP § 3-801(aa).

To be sure, Mother did file an emergency motion to modify shelter care placement, asking that both children be placed with T.W. When the court granted that request, however, it did so not because Mother "volunteered" to have the children placed there, but because the court found that it was in the children's best interest for them to stay with T.W. Despite that change in placement, the court made clear that the children were to remain in "shelter care" and that placement with T.W. was to last no longer than "the next hearing." Then, at disposition and pursuant to its aforementioned statutory authority, the court found both children to be CINA and committed them to the custody of the Department. At that point, the children's prior placement with T.W. through "shelter care" expired. *See In re J.J.*, 231 Md. App. 304, 351 (2016) (citations omitted), *aff'd* 456 Md. 428 (2017) (noting that the propriety of the court's continuation of a child's placement in shelter care was "rendered moot by the court's subsequent order finding the children to be CINA and committing them to the care of the Department for placement"). In short, nothing in the

procedural history of this case suggests that the children were ever placed pursuant to a voluntary placement agreement.

III.

Finally, Mother asserts that she was deprived of her right "to have a voice in her children's placement." We disagree. The record shows that the juvenile court permitted Mother to testify at disposition regarding her preferences for the children's placement. The record also shows that the court considered Mother's wishes when making its ruling. The court specifically instructed the Department to inspect T.W.'s home despite the Department's recommendation that the children's placement be changed. Moreover, the court heard extensive argument from Mother's counsel prior to rendering its disposition decision. In the end, the court found that it was in the children's best interests that they be committed to the custody of the Department and that the Department determine the most appropriate placement. *See In re Adoption 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."). We soundly reject Mother's contention that the court deprived her of her "right to have a voice" in her children's placement.

In sum, the juvenile court's decision was founded upon sound legal principles and based upon factual findings that were not clearly erroneous. Accordingly, the court did not err or abuse its discretion in committing the children to the custody of the Department on terms the court considered appropriate.

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