

Circuit Court for Frederick County
Case No. 10-C-17-002250

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 404

September Term, 2018

IN RE: J. M.

Berger,
Leahy,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: March 20, 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.

On August 29, 2017, J.R. filed both a Complaint for Sole Legal and Physical Custody and a Motion for Approval of Factual Findings to Permit Child’s Application for Special Immigrant Juvenile Status in the Circuit Court for Frederick County.¹ J.R. sought: (1) an order granting custody of her son, J.M.; and (2) factual findings to be used in J.M.’s eventual Special Immigrant Juvenile (“SIJ”) status applications. Following a hearing, the circuit court denied J.R.’s petition for custody and declined to issue SIJ factual findings. J.R. filed a motion to alter or amend judgment and/or for a new trial, which the court denied.

J.R. noted an appeal and presents four questions² for our review which we have rephrased and consolidated as two questions as follows:

¹ We refer to the parties and other individuals by their initials in order to protect their privacy.

² The questions, as presented by J.R., are:

- I. Did the Trial Court commit harmful error in denying Appellant’s custody petition by applying an incorrect “best place for the person to be” standard rather than the proper best interest of the child analysis under Maryland Law?
- II. Did the Trial Court abuse its discretion by denying Appellant’s custody petition, failing to put any protections in place for Minor, despite the overwhelming and undisputed evidence that granting Appellant custody of Minor is in Minor’s best interest?
- III. Did the Trial Court abuse its discretion in failing to issue SIJS predicate findings despite the undisputed evidence in favor of the findings and the Trial Court’s proper jurisdiction?

1. Whether the circuit court erred and/or abused its discretion by denying J.R.'s custody petition.
2. Whether the circuit court erred by declining to issue SIJ factual findings.

For reasons we shall explain, we shall hold that the court erred by failing to grant J.R.'s custody petition and by failing to issue SIJ findings. We, therefore, shall vacate the judgment and remand for additional proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

J.M. was born in El Salvador on August 5, 1999 and is the biological son of J.R.³ J.R. is not listed as J.M.'s mother on his birth certificate. J.R. testified that J.M.'s grandparents' names appear as his parents on his birth certificate. J.R. explained that this was because she was very sick after J.M.'s birth and she was unable to go to register her son's birth. DNA testing confirmed that J.R. is J.M.'s biological mother. J.M.'s father abandoned him as an infant when he moved to the United States. J.M.'s father contacted J.R. one time after moving to the United States and once sent J.R. \$150.00 to support J.M. J.M.'s father has not tried to contact J.R. or J.M. since 2000, and J.M. has no memories of his father.⁴

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- IV. Did the Trial Court abuse its discretion in denying the Motion to Alter or Amend and/or for a New Trial without providing any basis for the denial?

³ The facts are drawn from the testimony presented before the circuit court as well as additional documentary evidence.

⁴ J.R. and her counsel were unable to locate J.M.'s father. The circuit court granted J.R.'s motion for alternative service and J.R.'s father was served by posting. J.R.'s father

In 2004, when J.M. was four years old, J.R. moved to the United States in order to better support J.M. and his siblings, leaving J.M. in the care of his maternal grandmother.⁵ J.R. lived apart from J.M. for four years before returning to El Salvador. During that time, J.R. would telephone J.M. weekly. J.R. supported J.M. economically by sending approximately \$250.00 every fifteen days. J.R. testified that her source of income at that time was her employment at a fast food restaurant.

J.R. testified that J.M. stopped attending school in El Salvador in 2014 “because of the violence that was happening at the school.” J.R. was concerned for J.M.’s safety in El Salvador. After moving to the United States, J.M. began studying English at Centro Hispano in Frederick. J.R. has helped J.M. pursue his education by registering J.M. for school and by providing transportation. J.R. is employed at a McDonald’s fast food restaurant in Frederick,⁶ and J.R.’s husband works in construction. J.R. did not identify the name of the company where her husband works.

J.M.’s testimony was consistent with that of his mother. J.M. testified that his life has been “very good” since he moved in with his mother in Maryland. He characterized his mother and stepfather as good parents, in contrast to his biological father who abandoned him. J.M. explained that his mother and stepfather provide him with food,

did not respond or enter an appearance, nor did he participate in any way before the circuit court or this Court.

⁵ The maternal grandmother is no longer living.

⁶ When asked which McDonald’s, J.R. responded, “McDonald’s, it’s not a company one, it’s the owner’s.”

clothes, and “everything [he] need[s].” J.M. feels supported and loved by his family. J.M. described the educational program he attends at Centro Hispano, explaining that the program is a “program of English classes” and that he also takes classes in “social studies, mathematics, science, [and] history.” J.M. testified that it was “a little” difficult to return to school after being out of school for approximately four years since the age of fourteen. J.M. testified that his mother encouraged him to return to school and registered him for the Centro Hispano program.

J.M. testified that he was threatened “by groups of gangs” while living in El Salvador. J.M. left school at age fourteen because he was afraid of the gangs. J.M. does not believe he would be able to attend school if he were required to return to El Salvador. J.M. testified that he wants his mother to have custody of him until he turns twenty-one years old. He explained that he wants his mother to be able to continue to support him and to make decisions regarding his education.

At the conclusion of the hearing, the circuit court judge issued his ruling from the bench. The court explained:

All right, the [c]ourt is here considering a petition for custody. The [c]ourt has to consider many factors in determining whether custody is appropriate in this case, or in all cases. The [c]ourt also has to weigh credibility of witnesses. And the issues the [c]ourt has in this particular case, there’s questions first of all about the birth certificate in this case. The witness says that, the witness is not the person listed on the 18-year-old’s birth certificate. The [c]ourt considered the age of the, I can’t call him a child. The individual is 18, so he’s not a minor, although the [c]ourt recognizes the law does allow it to go up to 21, but the age has to be considered, and the [c]ourt has considered that.

The [c]ourt also considered the person seeking custody does not specifically know where she works. She does not know where her husband works, does not know who the child's, or not the child but the individual's teachers are, what his grades are. These are things the [c]ourt has to consider, whether this is the best place for the person to be, and the [c]ourt does not feel in this instance that the petitioner has met the burden of proof, having considered all those things, and the petition for custody is denied.

Counsel for J.R. clarified that there was “DNA proof” of J.R.’s relationship to J.M., and the circuit court responded, “I will consider a modification request with that, but that was not my sole deciding factor.” J.R. filed a Motion to Alter or Amend Judgment and/or for a New Trial, which the circuit court denied without explanation. This appeal followed.

DISCUSSION

We review the circuit court’s factual determinations applying a clearly erroneous standard of review. Maryland Rule 8-131(c). When an order involves “an interpretation and application of Maryland constitutional, statutory or case law, our Court must determine whether the trial court’s conclusions are ‘legally correct’ under a *de novo* standard of review.” *Simbaina v. Bunay*, 221 Md. App. 440, 448 (2015) (citation omitted). Finally, we review the circuit court’s ultimate conclusions for an abuse of discretion. *In re Dany G.*, 223 Md. App. 707, 720 (2015).

SIJ status was created by the U. S. Congress to provide undocumented children who lack immigration status with a defense against deportation proceedings. *Dany G., supra*, 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, supra, 221 Md. App. at 448-49 (quoting *Yeboah v. U.S. Dep’t of Justice*, 345 F.3d 216, 221 (3d Cir. 2003)). The Act creates “a special circumstance where a State juvenile court is charged with addressing an issue relevant only to federal immigration law.” *Dany G., supra*, 223 Md. App. at 713 (quoting *Simbaina, supra*, 221 Md. App. at 449). The Act requires a state court to make specific factual findings regarding whether an individual has satisfied certain requirements for SIJ status. *Id.*

In this case, the circuit court denied J.R.’s custody petition and did not otherwise address the SIJ factual findings. The circuit court found that J.R. failed to prove that Maryland was “the best place for [J.M.] to be.” This is not the standard the court was required to apply. When evaluating whether it serves an individual’s best interest to remain in Maryland, “[t]he fact finder is called upon to evaluate the child’s life chances . . . and predict with whom the child will be better off in the future.” *Dany G., supra*, 222 Md. App. at 721 (quoting *Montgomery Cnty. v. Sanders*, 38 Md. App. 406, 419 (1977)). “In the context of a SIJ status predicate order, the inquiry is a straight-forward comparison.” *Id.*

In our view, the uncontroverted evidence overwhelmingly supports a conclusion that J.M.’s life chances are much better in Maryland than in El Salvador. In Maryland, J.M. would have the financial and emotional support of his mother and stepfather. In addition, J.M. has access to education in Maryland after having to leave school at age fourteen in El Salvador due to threats he received from gangs. Indeed, J.M. has been able to continue to pursue his education in Maryland despite the challenges of learning a new language and returning to school after having received no education during the prior four

years. Furthermore, J.M. testified that he would be unable to pursue an education if he returned to El Salvador because he would face renewed threats. J.M. would also benefit from the relationships with his siblings in Maryland.

Furthermore, although the circuit court judge commented that he “can’t call [J.M.] a child,” J.M. is nonetheless a minor under the law. *See* Md. Code (1984, 2012 Repl. Vol, 2018 Suppl.), § 201 of the Family Law Article. The circuit court failed to explain how J.M.’s age affected the custody determination in any way. The circuit court also commented on the level of specificity with which J.R. answered questions about her husband’s and her own places of employment.⁷ Again, the circuit court did not identify how the limited detail of Mother’s responses was in any way relevant to whether J.M.’s best interests would be served by remaining in Maryland.

Because the circuit court failed to consider the appropriate standard when evaluating J.R.’s custody petition, and because the evidence overwhelmingly supports a conclusion that J.M.’s life chances would be better in Maryland than in El Salvador, we hold that the circuit court erred by denying J.R.’s petition for custody.

II.

We next turn to the issue of whether the circuit court erred by declining to issue SIJ findings. An individual cannot obtain SIJ status absent specific findings from a state court. *Dany G.*, *supra*, 223 Md. App. at 713. In *Dany G.*, we explained the process by which an individual obtains SIJ status:

⁷ J.R. posits that the lack of specificity in her responses was caused by a combination of the witness’s discomfort in the courtroom as well as language barriers.

The process for applying for SIJ status consists of several steps. First, there must be a filing in state court, which is often in the form of a guardianship or custody complaint, *see Simbaina*, 221 Md. App. at 453–54, 109 A.3d 191, but which can also come through filings in orphans, probate, and delinquency courts, among others . . . In conjunction with the state court proceedings there must be a request for specific findings. These findings can be requested at the same time as the initial guardianship or custody complaint, or, as in Dany’s case, the motion for findings can come separately, after the guardianship or custody has been granted.

Once the state court has made the specific findings . . . , application is made to USCIS for SIJ status. If SIJ status is granted by USCIS, there is a third step of applying to adjust status to Legal Permanent Resident (green card application). As the last two steps are solely under the jurisdiction of USCIS, our analysis focuses on the first step, the filing in the state court and the related request for specific findings.

Dany G., *supra*, 223 Md. App. at 712-14. The required SIJ findings are:

- 1) The juvenile is under the age of 21 and is unmarried;⁸
- 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;
- 3) The juvenile court has jurisdiction under state law to make judicial determinations about the custody and care of juveniles;
- 4) That 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;
- 5) It is not in the best interest of the juvenile to be returned to his or her parents’ previous country of nationality or country of last habitual residence.

⁸ There is no dispute that J.M. is under the age of 21 and unmarried.

Id. at 714-15; *see also* 8 C.F.R. §204.11(a), (c) & (d); 8 U.S.C.A. §1101(a)(27)(J). The findings of fact by the state court are issued in a “predicate order” that must be included with the child’s application for SIJ status. *Id.* at 715.

When a motion for SIJ status findings is properly filed, “state courts are *required* to make [the requested] factual findings.” *Dany G.*, *supra*, 223 Md. App. at 715 (emphasis supplied). There is no ambiguity in the law. “Circuit courts are required to take evidence and make individual factual findings on each of these factors when they are petitioned by an immigrant applying for SIJ status.” *Romero v. Perez*, 236 Md. App. 503, 506 (2018), *rev’d on other grounds*, 462 Md. 600 (2018).⁹ On remand, the circuit court is required to address each of the SIJ findings. Furthermore, although we acknowledge the circuit court, as the finder of fact, is entitled to weigh the credibility of the witnesses, we emphasize that, in the context of SIJ cases, “[i]mposing insurmountable evidentiary burdens of production or persuasion is . . . inconsistent with the intent of the Congress.” *Dany G.*, *supra*, 223 Md. App. at 715.

J.R. filed the initial complaint in this case over one and one-half years ago on September 1, 2017. J.M. turns twenty-one years of age on August 22, 2020, and his Special Immigrant Juvenile Status application must be filed by that date. Given the time-sensitive

⁹ In *Romero v. Perez*, the Court of Special Appeals affirmed the circuit court’s finding that insufficient evidence was presented to support a finding of neglect, abandonment, or abuse. 236 Md. App. at 510. The Court of Appeals reversed via a per curiam order, remanding the case “to the Circuit Court to enter forthwith an amended order that includes the requisite Special Immigrant Juvenile Status (“SIJS”) finding that R.P.’s reunification with his mother is not viable due to the unrefuted evidence of neglect presented to the Circuit Court.” 462 Md. at 61. The per curiam order provided that reasons would be “stated later in an opinion to be filed.” *Id.*

nature of these proceedings, we direct that the Mandate in this case shall be issued without delay. Furthermore, on remand, the circuit court shall make all reasonable efforts to undertake further proceedings consistent with this opinion as expeditiously as possible.

**JUDGMENT OF THE CIRCUIT COURT
FOR FREDERICK COUNTY VACATED
AND REMANDED FOR PROCEEDINGS
CONSISTENT WITH THIS OPINION. ALL
COSTS ARE WAIVED. MANDATE TO
ISSUE FORTHWITH.**