

Circuit Court for Baltimore County  
Case No.: C-03-JV-22-000420

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND

No. 445

September Term, 2023

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IN RE: S.Y.

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Berger,  
Friedman,  
Wilner, Alan M. (Senior Judge),  
Specially Assigned,

JJ.

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Opinion by Wilner, J.

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Filed: October 11, 2023

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal, by V.R., the mother of S.Y., is from an order of the Circuit Court for Baltimore County that (1) sustained the allegations contained in the Third Amended Complaint filed by the county Department of Social Services (DSS), (2) held that S.Y., who was a subject of the Complaint, was a Child In Need Of Assistance (CINA), (3) awarded custody of S.Y. to DSS under a temporary limited guardianship, (4) directed that there be no contact between S.Y. and her parents, and (5) ordered S.Y.'s mother to submit to a psychiatric examination.

The case is a complex one, in part because of the number of people involved and who they are, in part because of the way it was presented, and in part because of criminal proceedings that were pending against S.Y.'s parents based in large part on their conduct with the three other minor children who were in the household - M.G., Z.G., and T.G. Those other children were born to V.R. (Mother) and a Mr. G., whose whereabouts were unknown for a period of time but who later was discovered to be living in Georgia, who claimed legal custody of those other children, and who was seeking full custody of them. (*See*

Appellant's brief p. 6, n.7). Also involved, for a period of time, were V.R's parents.<sup>1</sup>

### **Early Facts**

S.Y. was born in November 2018 to V.R and Shane Y. She lived with both parents and the other three children, who were her half-siblings, until April 2022 when, following an investigation of a report from the Baltimore City school system that M.G., Z.G., and T.G. had been absent from school, a Baltimore City DSS protective services worker discovered from physical observations and interviews with those children that they had been physically abused by their mother (V.R.) – choked, smacked, kicked, and beaten. One of those children informed the DSS worker that S.Y., who was only three years old at the time, also had been smacked and, on one occasion, left alone in the care of the older children but had not been injured to the extent of the older

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<sup>1</sup> We are informed in appellant's brief (p. 3 and Appx. 10) that S.Y.'s father (Shane Y.) is the "paternal uncle" of MG, ZG, and TG, which would seem to make him and Mr. G brothers.

children.<sup>2</sup>

Those children, along with S.Y., were removed from the home on April 5, 2022, and were placed in the care of V.R.'s father and stepmother. Because they lived in Baltimore County, the case was transferred to the county. In light of what the older children had told the Baltimore City protective services worker, criminal charges were brought against both V.R. and Shane Y. V.R. was charged with multiple counts of assault, felony child abuse, and criminal neglect. She was released pending trial but ordered to have no contact with any minor children.

Shane Y. was charged first with interfering with the making of a report of suspected abuse and later with child abuse and assault, and he too was ordered to have no contact with any minor child.

On June 16, 2022, DSS filed a petition for continued shelter care of S.Y. on

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<sup>2</sup> We are informed in Appellant's brief (p. 4) that the older children were only 9, 10, and 11 years old at the time, far too young to be responsible for babysitting the 3-year-old S.Y.

the ground that she was a Child in Need of Assistance (CINA) on account of having been abused and neglected or of having a developmental disability or mental disorder, and because her parents were unable or unwilling to give proper care and attention to her. In support of those allegations, the petition alleged that on June 6, 2022, two social workers arrived unannounced at the family's home and found it to be in a state of disarray, including lack of safe pathways, trash covering the floor, and items piled throughout the home. Shane Y. admitted that the home had been in that condition for about two weeks.

The five-page single spaced petition alleged further that when the parents are away from the home, the children are left with a relative recently discharged from a nursing/rehabilitation facility who is unable to sufficiently care for and supervise S.Y. and asked that the court place the child in shelter care pending an adjudicatory hearing. The next day, June 17, an amended petition was filed adding that S.Y had not been seen by a pediatrician since November 2018, shortly after her birth, and that continuation in that home was contrary to the welfare of the child.

The next day, June 17, 2022, the court, sitting as a Juvenile Court, granted shelter care and placed S.Y. and the other children in the custody of DSS, with a "no contact" order as to V.R. with respect to all of the children but with unsupervised visitation by Shane Y. with S.Y. Later, on July 11, 2022, the court returned S.Y. to the care of Shane Y. pending an adjudicatory hearing.

An adjudicatory hearing involving all four children occurred on August 18, 2022, at which the court sustained the allegations of the Second Amended Petition with respect to the other three children but postponed an adjudication with respect to S.Y. in light of Shane Y.'s, objection to the allegations made against him and the lack of any verdicts in his criminal case. In light of DSS's determination not to present any testimony regarding S.Y., but to proceed by a proffer, the court bifurcated the case regarding S.Y. from the case involving the other children and postponed S.Y.'s case for a contested hearing.

A hearing as to S.Y was scheduled for January 5, 2023, but was postponed again until February 16, 2023 because both parents still had pending criminal cases that needed to be resolved before the Juvenile case could proceed.

On February 16, the court held a continuing shelter care hearing with respect to S.Y. that proceeded by way of proffers. The day before that hearing, Shane Y. was ordered in a new criminal case not to have any contact with minor children. In light of that, DSS requested that the court grant shelter care and guardianship of S.Y. and that there be no contact between the child and her parents. Because there was then a "no contact" order of the Criminal Court applicable to both parents, none of the parties opposed that request. Counsel for S.Y. supported placing the child in shelter care in light of the allegations of abuse and neglect regarding the other children.

Both parents asked that the adjudicatory hearing be postponed. Shane Y. noted that the trial in his criminal case was not set to occur until June 2023 and that it would not make sense to determine his claim for custody of the child until that was resolved. He claimed as well that, because shelter care was proceeding by consent, the 30-day disposition requirement was inapplicable. V.R. joined his request that any further hearing be postponed until the following June.

DSS opposed the postponement request, contending that there were issues in the case other than those that may be affected by the criminal case. The court ultimately placed S.Y. in shelter care to DSS accompanied by a "no contact" order with respect to both parents, and the parents agreed to use a previously scheduled hearing on February 22, 2023 to determine an adjudication.

A hearing was held on February 22. The court was informed that the other children – M.G., Z.G., and T.G. – were with their father, Mr. G., in Georgia and the CINA case as to them had been closed but "the mother's case [was] still pending." (*See* TR 2/22/2023 at 8, 13). It was clear from the "no contact" orders issued in the criminal cases that S.Y could not be placed with her parents.

Apart from that, there was reluctance on the part of the parents to having the case set for trial prior to a resolution of the criminal cases because, to avoid a waiver of their right against self-incrimination, they would be limited in their testimony in the civil case. (*See* TR 2/22/23 at 17).

The court was concerned about postponing this case until June, however, which is when the criminal cases had been set for trial. Ultimately, it was

agreed to bifurcate the case and set an adjudicatory hearing on April 24, 2023  
(*See* TR 2/22/23 at 36).

### **Third Amended Petition**

On April 24, 2023 – the date of the next hearing – the Second Amended CINA Petition was replaced by a Third Amended CINA petition, which is the one currently before us. It began by averring that all facts alleged in that petition occurred in Baltimore County. It alleged that S.Y., then four years old, was a CINA because (1) she had been abused and neglected or had a developmental disability or a mental disorder, and (2) her parents were unable or unwilling to give proper care and attention to her needs.

The petition recited the history of the case, including the fact that the child's parents were both under an order of "no contact" with any minor children due to the criminal charges pending against them, the physical abuse inflicted on the other children, and the fact that S.Y. had not been seen by a pediatrician since shortly after her birth. It added as well the unsuccessful efforts DSS had made to eliminate the need for a CINA finding. (*See* Appendix

to Appellant's brief, p.6).

### **Hearing and Order**

The final chapter in this saga – adjudication and disposition – also occurred on April 24, 2023, based on the Third Amended Petition. At the outset, V.R. requested another postponement because she was then "in communication" with DSS. Shane Y. supported that request because he needed the pending criminal case to be resolved first. DSS and S.Y.'s attorney opposed postponing an adjudication. S.Y.'s attorney supported V.R.'s suggestion that the trial, which was to proceed on proffers, be bifurcated - that it proceed on adjudication but that disposition await the conclusion of the pending criminal cases. Although DSS opposed that approach, insisting that the recommended psychiatric evaluation of V.R. proceed, Shane Y. agreed with it. Understanding that the court could not force V.R. to undergo an immediate evaluation, it decided not to postpone that directive because, in light of the "no contact" order, she was not going to get visitation with the children anyway.

After much discussion, the court denied the requests for severance and

postponement and decided to proceed on both adjudication and disposition. It made that decision, for several reasons, including that, although the criminal cases may be set for June 6, a myriad of things could happen to delay that. It noted as well that, as a general rule, juvenile law requires the court to meet the timetables for adjudication and disposition. The court concluded, in the end, that "what happens in the future is going to happen and I can't really control that right now."

The case then proceeded on proffers. Shane Y. stated that he would agree with the Third Amended Petition because there was no determination of wrongdoing on his part. V.R. acknowledged that there would be a CINA finding but neither admitted nor denied any of the other allegations.

The court sustained all of the allegations in the Third Amended Petition. It found that S.Y.'s continuation in the home was contrary to her welfare because of her parents' criminal charges involving the other children, the "no contact" orders, evidence of neglect of S.Y., and the evidence of V.R.'s mental health and substance abuse issues. The court found that reasonable efforts had been made to

avoid the need for removal.

Upon those findings, the court ordered that (1) S.Y. be committed to the custody of DSS under a temporary limited guardianship, in light of the criminal court's orders, there be no contact between her and her parents, and that V.R. submit to random substance abuse screens and a comprehensive psychiatric evaluation, cooperate with all treatment and medication recommendations, and sign releases of information forms regarding her evaluation and treatment.

#### **V.R.'s Issues**

V.R. raises three complaints in this appeal: (1) the trial court erred in denying her request to bifurcate and postpone disposition of S.Y.'s case; (2) it erred in ordering her to submit to a psychiatric evaluation, and (3) it erred in sustaining allegations in the Third Amended Complaint without accepting evidence when certain allegations were in dispute.

#### **Request for Bifurcation and Postponement**

At the very beginning of the April 24, 2023 hearing, counsel for V.R. requested a postponement on the ground that she needed more time "to go

through discovery." (TR. 4/24/23 at 4). She acknowledged that there was "initial discovery" that had been sent to "mother's counsel" but that it was "inaccessible." *Id.* That initial discovery, she said, was sent to her through a Google drive that she was unable to open. *Id.* She added that, after a call to DSS, she received 800 pages of discovery three days earlier (April 21, 2023) that did not contain the "no contact" orders applicable to S.Y. (TR pp. 6-7).

DSS responded that V.R.'s counsel had received all of that discovery in February 2023 and that, when DSS received counsel's request on April 21, it was responded to within an hour (TR 9-10). It appears that some discovery part of DSS's extensive file had been supplied to V.R.'s former attorney back in February that current counsel was either unaware of or could not open, but that current counsel wanted the entire file – all 800 pages – which was not communicated to DSS until April 21.

The main thrust of appellant's complaint, however, is not the discovery issue but rather, as set forth on page 16 of her brief, that the court erred in denying a postponement based on the inability to specify "exactly when the

criminal trial would proceed" rather than the interests of the parties.

[Appellant's brief, pp. 16-22].

DSS responds that a ruling on a motion for postponement or continuance, when challenged, is reviewed for an abuse of discretion – whether the ruling is manifestly unreasonable, exercised on untenable grounds or for untenable reasons. *Touzeau v. Deffinbaugh*, 394 Md. 645, 669 (2006). In making that call, the Court has looked at whether a postponement is required by law, whether counsel was taken by surprise by an unforeseen event at trial, or, in the face of an unforeseen event, counsel acted with diligence to mitigate the effects of the surprise. *Id.*, at 669-70, citing earlier cases.

None of those situations were present here. The case, involving the welfare of a three-year-old/four-year-old-child, had dragged on for 22 months. Appellant had persuaded the court to postpone these proceedings on three prior occasions. The court accepted evidence that discovery had been provided two months earlier, but counsel did not start to prepare for trial and seek additional discovery until three days before trial was to begin. In light of the

fact that the "no contact" orders entered in the criminal cases were still extant, it was clear that there was no way appellant could receive custody or visitation with S.Y. until those orders were lifted by the criminal court.

### Psychiatric Evaluation

V.R.'s mental condition was first raised in the initial CINA petition filed on June 6, 2022, where it was alleged that the older siblings had described their mother as having "odd and confusing behavior" and that school professionals had informed the social worker that V.R. was not Hispanic but spoke with a Spanish accent. The requirement that V.R. be evaluated by a psychiatrist came two months later in the Court Report dated August 4, 2022, and appeared to be based on the following statement in that Report:

"There are reports that mother will speak with a Spanish accent and claim to be from El Salvador. There are also reports that mother sometimes adopts different personas and will use different names/voices. There are additional reports that mother has asked for transportation to areas in Baltimore City so that she can purchase pills."

There was no further description of those reports or where they came from or who made them. The request for a psychiatric evaluation does not appear in the Amended CINA petition filed on June 17, 2022. The only relief requested in that petition was to place S.Y. in shelter care pending an adjudicatory hearing and "make such findings and dispositions as the law provides."

The Second Amended CINA petition filed on February 16, 2023 repeated the aforementioned language from the initial CINA petition about V.R. speaking with a Spanish accent but added nothing more illuminating and did not repeat a request for a psychiatric evaluation. The Third Amended Petition, filed on April 24, 2023, said nothing whatsoever regarding V.R.'s medical/mental condition and did not include a request for a psychiatric examination.

Notwithstanding all of that, the parties and the court regarded the requirement included in the August 4, 2022 Court Report as extant and enforceable. Appellant complained that she was reluctant to undergo an evaluation while the criminal case was pending because of self-incrimination

concerns and was not likely to comply with that requirement. Shane Y.'s attorney suggested that the court's order specify that the evaluation be completed after the criminal matter was resolved, a suggestion that appears to have had considerable merit but, over DSS's objection, was ignored. As noted, in the end, the court declined to delete that requirement and, in its final order, directed V.R. to submit to a comprehensive psychiatric evaluation. (*See* Appellant's Appx., p.5).

In the circumstances of the case at the time, that order may have been erroneous. Unquestionably, the court has the right to order a parent to submit to a psychiatric evaluation for purposes of determining what is in a child's best interest. But the parent, V.R., had an equivalent right, of Constitutional dimension, not to incriminate herself, which could well happen if forced to undergo that evaluation while the criminal case was still pending, especially if she was not accompanied by an attorney at the interview with the psychiatrist.

The issue is now moot. Having heard nothing further from either parent (or from DSS), we requested an update regarding the criminal actions (which,

as noted, had been set for trial in June of 2023) and, on October 2, 2023, received one. On September 26, 2023, Shane Y. was convicted in the Circuit Court for Baltimore County of child neglect and sentenced to unsupervised probation before judgment (PBJ) for a period of one year, subject to two conditions – that he serve 40 hours of community service and have no contact "with victims," which would include S.Y.

V.R. fared less well. On September 27, 2023, she was convicted in the Circuit Court for Baltimore County on Counts 2 and 6 (abuse) and sentenced to concurrent terms of two years "SABTS," which we take to mean "suspend all but time served." She was placed on probation for one year, required to pay court costs to be determined and a supervision fee of \$50 per month, and, perhaps most relevant to the issue before us, required to "[s]ubmit to evaluation and attend and successfully complete mental health treatment as directed by [her] supervising agency." She was ordered to have no contact with MG, TG, and ZG, but nothing was said about contact with SY.

Given these results, we shall affirm the judgment of the Circuit Court in

the case before us. The reason for V.R.'s reluctance to undergo the psychiatric examination no longer exists, but the no-contact order with respect to S.Y. can remain in effect, subject to any further proceedings that may occur in this case.

**JUDGMENT OF CIRCUIT COURT  
AFFIRMED; COSTS TO BE PAID BY  
APPELLANT.**

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