

Circuit Court for Cecil County  
Case Nos. C-07-CR-20-000076 & C-07-CR-20-000077

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 514 & 517 (Consolidated)

September Term, 2021

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KRISTEN MICHELLE MENDARTE

v.

STATE OF MARYLAND

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JONATHAN ADRIAN MENDARTE

v.

STATE OF MARYLAND

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Fader, C.J.,  
Berger,  
Raker, J.,  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Raker, J.

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Filed: February 1, 2022

\*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.

In these consolidated appeals, appellants Kristen Mendarte and Jonathan Mendarte appeal the Circuit Court for Cecil County’s denial of their motion to dismiss criminal neglect charges brought against them. They were charged initially in the District Court, sitting in Cecil County, with neglect of a minor and contributing to conditions that render a child in need of supervision. They prayed a jury trial, and the cases were transferred to the Circuit Court for Cecil County. They present the following question, slightly rephrased, for our review:

Did the circuit court err in denying appellants’ motion to dismiss on double jeopardy grounds?

We shall affirm.

I.

This matter is an interlocutory appeal from the circuit court’s denial of appellants’ motion to dismiss, based upon the grounds of double jeopardy.<sup>1</sup> In June 2019, the Cecil County Department of Social Services (“DSS”) filed a petition to have appellants’ children declared Children in Need of Assistance (“CINA”). DSS alleged: (1) child neglect and (2) that the children have developmental disabilities that prevented their parents from properly caring for them. At the CINA hearing, on July 23, 2019, appellants and DSS reached an agreement as to disposition. DSS elected not to pursue the neglect claim, and appellants agreed not to contest the CINA charge on the developmental disabilities basis.

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<sup>1</sup> A party may note an immediate appeal from a pre-trial order denying a motion to dismiss on the ground of double jeopardy. *Bowling v. State*, 298 Md. 396, 401 n.4 (1984).

On July 10, 2019, the State filed applications for criminal charges against both appellants. Each appellant was charged with two counts of criminal neglect of a minor and two counts of criminal contributing to conditions that render a child in need of supervision. On January 17, 2020, appellants prayed a jury trial, and their cases were transferred to the Circuit Court for Cecil County. On February 26, 2020, appellants filed motions to dismiss, with prejudice, the criminal neglect of a minor charges. Appellants argued that those criminal charges were barred by the doctrine of collateral estoppel because the judge in the CINA proceedings made a finding of “no neglect.” The circuit court denied those motions, and appellants noted this appeal.

We set out the underlying facts. On June 21, 2019, Ms. Mendarte called 911 to report that her seven-year-old son, V,<sup>2</sup> who has severe autism, was missing from her home. The police arrived at that home and spoke with Ms. Mendarte, who told them that she had last seen her son around 11:00 a.m. She explained that she had been in her bedroom watching television with her other son, X,<sup>3</sup> who was ten years old at the time, and who has severe autism also. She believed her husband was watching V in the childrens’ room. Ms. Mendarte told officers that she walked out of her bedroom around 11:35 a.m. and saw the back door of the house was open. She found her husband alone in the kids’ room and asked where V was. Mr. Mendarte responded that he did not know and that he thought V had

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<sup>2</sup> Because this case involves minors, we will not use their actual names or initials. We refer to this minor as “V.”

<sup>3</sup> As discussed *supra*, in footnote two, because this case involves minors, we will not use their actual names or initials. We refer to this minor as “X.”

been with her. Ms. Mendarte went out and looked for V for approximately thirty minutes before calling 911.

The police called Child Protective Services (“CPS”) based on, what they described as, the “negligent circumstances” in the house. That afternoon, two CPS assessors arrived at the home and found X alone. They told Detective Ziegenfuss, who arrived ten minutes later, that, because no one responded when they knocked on the front door, they went around to the back of the house and saw X trying to leave through the back sliding door. Det. Ziegenfuss contacted officers at the command center to ask them where appellants were, and he was told that they were both out looking for V. Det. Ziegenfuss then looked for the child in the home. He described the home as deplorable, with very little furniture, and trash on the floor throughout the house. He saw very little food in the home, except frozen strawberries and potatoes in the freezer and several cans of beans in the pantry. There was little clothing or personal belongings in the childrens’ bedroom. He said there were multiple pairs of scissors, a box of X’s medication, and other broken items on the floor in various parts of the house.

Ms. Mendarte returned home to speak to the police and take care of X. According to police, Ms. Mendarte said that V had “escaped” previously from home and into the woods behind their house. She explained that they have an alarm on the doors as a safety precaution, but that the alarm had not been working.

As an explanation as to why X was unattended when the CPS workers arrived at the home, Ms. Mendarte explained that things were very hectic with V missing, and that she

was distracted by it all. She explained that the house was so dirty in part because caring for V had been exceptionally difficult the past few days, and that it was not possible to do anything else.

The police and local citizens assembled a search party to look for V. They found him at about 4:00 p.m. in a child-sized pool in a stranger's backyard about a mile and a half from home. They took him to the hospital, where the hospital staff found him to be dehydrated, scratched, and bitten by bugs, but otherwise in "good condition." He was not wearing shoes and he was wearing a t-shirt and shorts that were too big for him.

DSS removed the children from the home and placed them with their maternal grandfather. Several days later, the children were moved to a foster home. Shortly thereafter, DSS filed petitions alleging the children were CINA.<sup>4</sup>

On July 23, 2019, a disposition hearing was held before the Circuit Court for Cecil County, sitting as the Juvenile Court, on the CINA petitions filed by DSS. Prior to the hearing, DSS filed a proposed order indicating that the children were CINA for two

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<sup>4</sup> Md. Code (1974, 2013 Repl. Vol.), § 3-801(f) of the Courts & Judicial Proceedings (I) Article, provides as follows:

“(f) ‘Child in need of assistance’ means a child who requires court intervention because:

- (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and
- (2) The child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs.”

A CINA proceeding is neither a delinquency proceeding nor the equivalent of a Child in Need of Supervision (CINS) petition. The purpose of a CINA proceeding is to look at the child's environment and determine whether the child is receiving proper care from his or her parents, guardians, or custodians. *Bowling*, 298 Md. at 398 n.1.

reasons: (1) because they were neglected and (2) because they have developmental disabilities that prevent their parents from being able to care for them properly. At the hearing, counsel for DSS told the court that the parties had come to an agreement. He explained as follows:

“What we’re going to propose is that [V and X] be found CINA today based on developmental disabilities. I think I put—in the proposed order that I submitted I think I checked off neglect as well as the developmental disability or mental—

But I’m not going to pursue the neglect. I don’t see any point to it.”

Ms. Mendarte’s attorney stated to the court, in part, as follows:

“Furthermore, in this particular case I would state that I think the evidence would show that given that the children are presently placed where they are placed, that it is not the fault of either parent that the children are currently in the care of [DSS], but that they have tried to do their very best. They have just been overwhelmed and unable to do so.

Your Honor, the reason that I asked for there to be a shorter review hearing is to give the parents the opportunity to show any progress that they can make in the next three months and also to give the [DSS] the time to be able to figure out what services need to be placed—put in place so that these children can come home and be safe in the home.”

The court responded, “[t]he [c]ourt agrees with you, [counsel for Ms. Mendarte].”

The court then noted that the children were medically fragile and that the services the children needed were not available in Cecil County, adding, “[t]he parents did everything they could.”

The court said, “I find that—and I don’t find any neglect—so no neglect, no wrongdoing.” The court said also, “[b]ased on the childrens’ developmental disabilities, the court makes a finding of CINA as to both the children and will sign an order.” Later in the hearing, when the court was finalizing that written order, DSS’s attorney advised, “[y]ou need to change the grounds for CINA too, or otherwise we’ll be doing an amended order.” The court agreed and explained that it was adding language to that order to reflect that the children were medically fragile and in need of full-time care. The DSS attorney agreed with the addition and told the court, “I also think you should uncheck the box that says, ‘Neglect,’” which had been noted in the proposed order. The court agreed, saying, “I’m about to erase ‘Neglected.’” The hearing concluded and the court issued the Adjudication and Disposition Order.

On July 10, 2019, the State’s Attorney for Cecil County charged each appellant criminally, in the District Court of Maryland, with two counts of criminal neglect of a minor and two counts of criminal contributing to conditions that render a child in need of supervision. Those charges were based on the events of the day V was reported missing. On January 17, 2020, appellants each prayed a jury trial, and their cases were transferred to the Circuit Court for Cecil County.

On February 26, 2020, appellants each filed motions to dismiss based upon double jeopardy grounds. They argued that the criminal child neglect charges were precluded under the principles of double jeopardy, particularly collateral estoppel, because the CINA court had resolved the neglect allegations in appellants’ favor.

Appellants' cases were consolidated on March 14, 2021. Two months later, on May 14, 2021, the circuit court held a hearing on appellants' Consolidated Motion to Dismiss. The court directed the parties to address whether the resolution of the neglect issue at the CINA disposition was "unnecessary or mere *dicta*," or "an ingredient or basis of the decision."

Counsel for Mr. Mendarte responded by highlighting that the proposed order submitted by DSS's attorney had "checked off that the children should be found CINA because of neglect." He explained that after an out-of-court argument between DSS's attorney and the parties, on the issue of neglect, DSS's attorney decided not to pursue a neglect finding, but the proposed order still said "neglect" and had to be changed by the court. He argued that the transcript of the CINA court hearing reflected that the judge made a specific finding of fact that there was no neglect and no wrongdoing on the part of the parents. Counsel pointed out that, although the children were found CINA, that there was no neglect finding was consequential for other administrative purposes.

In response, the State argued that the CINA court's statement that there was no neglect was *dicta* because there was no contested hearing involving the presentation of evidence on that matter.

The court announced its ruling, stating as follows:

"Well, I understand the argument that counsel made in their motion to dismiss. And there is no question that [the CINA judge] said what she said. But I'm not persuaded that [the CINA judge] was presented with an issue that she had to decide at all. I think in effect counsel by agreement had withdrawn [the neglect] issue from her and she made those comments



perhaps to assuage whatever feelings the parents may have had about the whole incident. Perhaps. I don't know. I can't read her mind.

But regardless of why she said it or what she said, I think the record demonstrates that what was before her was a disability issue. And that's what she found. That the CINA was based on disability. And I don't believe she had to reach the other decision or that the record reflects that it was even an issue before her at the time she made the statements she did.”

The circuit court denied appellants' motion to dismiss. Appellants noted this interlocutory appeal.

## II.

Appellants raise one question for our review: did the circuit court err in denying their motion to dismiss based on double jeopardy grounds. Appellants' argument is that the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, and the common law, bar criminal prosecutions where collateral estoppel applies. Appellants argue collateral estoppel bars the State from prosecuting them for criminal child neglect arising out of the same incident that gave rise to the CINA proceeding because (1) at the CINA proceeding, the judge said on the record “I don't find any neglect—so no neglect, no wrongdoing,” and (2) at the CINA proceeding, the judge changed the proposed order to show no neglect.<sup>5</sup>

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<sup>5</sup> A related argument appellants' counsel made at oral argument is: to avoid the State being collaterally estopped from bringing a related criminal proceeding, DSS's lawyer needed to, at the CINA proceeding, make clear that DSS was dismissing the neglect claim and preserving it, against collateral estoppel, for a future (footnote continued . . . )

In response, the State maintains that double jeopardy and collateral estoppel do not apply in this case because the necessary legal elements of those principles are not satisfied. According to the State, DSS did not pursue neglect as a ground for finding the children to be CINA. Therefore, the CINA court was not required to, and did not, make factual findings concerning neglect or wrongdoing, a necessary requirement for collateral estoppel to apply in this case. Any statements the CINA court made at the CINA proceeding that were not related to the developmental disabilities claim, but were instead related to the neglect claim, were unnecessary to the outcome of the CINA case, and hence constituted *dicta*. DSS’s lawyer, at the CINA proceeding, stated on the record, before the judge ruled, that DSS was electing to not pursue the neglect claim as part of an agreement between the parties.

### III.

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides that no “person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb.” U.S. Const. amend. V. This constitutional guarantee applies to the states through the Fourteenth Amendment. *Benton v. Maryland*, 395 U.S. 784, 794 (1969).

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criminal charge. CINA proceedings are separate and apart from criminal proceedings. A DSS attorney has no duty, obligation, or responsibility to try the case with a view toward any potential impact on any pending or future criminal charge.

Collateral estoppel, an element of the Double Jeopardy Clause, is embodied in the Fifth Amendment guarantee against double jeopardy, as well as the common law, and is applicable to criminal prosecutions. *See Ashe v. Swenson*, 397 U.S. 436, 443 (1970); *Bowling v. State*, 298 Md. 396, 401 (1984). In *Ashe*, the Supreme Court described collateral estoppel as an “awkward phrase” that constitutes an “extremely important principle in our adversary system of justice.” *Ashe*, 397 Md. at 443.

In *Bowling*, Judge John C. Eldridge, writing for the Court of Appeals, set out the framework for Maryland courts to analyze the applicability of collateral estoppel in a particular case. He noted three requirements: (1) the earlier proceeding must have ended with a final judgment or final determination of the issue; (2) the defendant must have been a party in both proceedings; and (3) the resolution of the issue in the earlier proceeding must have been a basis of the decision, not “mere *dicta*,” and must have been an issue of ultimate fact. *Id.* at 402.

The defendant bears the burden of establishing that all of the above factors have been satisfied, and that the issue was actually and necessarily decided in the earlier proceeding. *See Dowling v. United States*, 493 U.S. 342, 350 (1990); *Odum v. State*, 412 Md. 593, 606-7 (2010). In the instant case, the first two *Bowling* factors—a final adjudication and mutuality of parties—were satisfied. The CINA proceeding ended in a final judgment and appellants were defendants in both proceedings. We agree with the State, however, that the third requirement—the decision of an issue of ultimate fact (neglect)—was not decided in the CINA proceeding. Accordingly, we hold that collateral

estoppel does not apply, and the State is neither barred by the Double Jeopardy Clause, nor the common law, from prosecuting appellants in this case.

Appellants point to several comments of the CINA judge to support their argument that that court found no neglect and that the State is, thus, barred from proceeding criminally against them on the criminal neglect charge. In particular, appellants point to the CINA judge's statement "I find that—and I don't find any neglect—so no neglect, no wrongdoing." The State characterizes these remarks as, at best, *dicta* because the neglect claim was not before that court. In addition, the State says that the remarks, instead of constituting actual findings, were the opposite of findings. Rather, they were a clarification by that court "of what [that] court was *not* doing." When a reviewing court undertakes a collateral estoppel analysis, the prior court's comments must be considered in context, and the substance must be examined, not just the procedural form. *Ford v. State*, 330 Md. 682, 720 (1993), *disapproved of on other grounds by Henry v. State*, 419 Md. 588 (2011). Here, the CINA court's comments must be considered in the context in which they were offered, namely, after the issue of neglect had been removed from its consideration.

At the CINA proceeding, DSS explicitly elected, on the record, not to pursue neglect. DSS's action was akin to a voluntary dismissal of the neglect claim. "A voluntary dismissal terminates the action prior to a decision on the merits." *Mitchell v. State*, 44 Md. App. 451, 459 (1979) (cleaned up). The parties reached an agreement that the court would find the children CINA based upon their developmental disabilities and, in essence, for DSS to not pursue the neglect claim. As the State notes, the court was never asked, nor

was it required (because DSS did not pursue the neglect claim), to make a ruling regarding neglect. A criminal neglect charge is not collaterally estopped. Contrary to appellants' argument, the CINA court's statement that it did not "find [any] neglect" was not an actual finding and was a comment not necessary to its ruling. The neglect claim was not before that court. That court obviously knew that and, hence, the comments were mere *dicta*. The State indicated that the parties had reached an agreement to find the children CINA *solely based on developmental disabilities*. The State did not present witnesses or other evidence to support any allegation of neglect. No determination regarding neglect was necessary to the outcome of the case, and, thus, the comments could neither have constituted an "ingredient or a basis of the decision" nor an "issue of ultimate fact," which is a necessary requirement for collateral estoppel to apply. *Bowling*, 298 Md. at 402.

Collateral estoppel does not bar the criminal child neglect charges that have been brought against appellants in this case.

**JUDGMENTS OF THE CIRCUIT  
COURT FOR CECIL COUNTY  
AFFIRMED; CASES REMANDED  
TO THAT COURT FOR TRIAL  
ON THE MERITS. COSTS TO BE  
PAID BY APPELLANTS.**