Circuit Court for Baltimore City
Case No. 816314002

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 0528

September Term, 2022

In Re: T.D.

Berger,
Leahy,
Zic,

JJ.

Opinion by Zic, J.

Filed: January 19, 2023

* 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.

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Father appeals the order of the Circuit Court for Baltimore City granting custody and guardianship of nine-year-old T.D. to her Godmother, A.W., with whom she has lived for the last six years. On November 9, 2016, T.D. was removed from Mother's care and placed with Father. T.D. was subsequently removed from Father's care on December 1, 2016 and placed with A.W. where she has remained. On July 2, 2021, after numerous days of testimony, the magistrate recommended that custody and guardianship of T.D. be awarded to A.W. Mother filed exceptions to the magistrate's recommendations on July 12, 2021, while Father filed no exceptions. On April 20, 2022, a de novo hearing was held on Mother's exceptions. The exceptions were denied on April 27, 2022 and the magistrate's order was affirmed. Father appealed the court's April 27, 2022 denial of Mother's exceptions.

Father presented three questions, which we have rephrased and recast as follows:[1]

1. Did Father waive his ability to challenge the factual findings of the magistrate by failing to file his own exceptions?

2. Did the circuit court err in finding that the Baltimore Department of Social Services ("Department") made reasonable efforts towards reunification?

3. Did the circuit court abuse its discretion in granting A.W. custody and guardianship of T.D. based on the magistrate's findings?

[1] Appellant phrased the issues as follows:

1) Did the trial court erroneously find evidence of reasonable efforts?

2) Did BCDSS skirt their legal obligations to assist T.D. and father with reunification?

3) Was the decision to change respondent's permanency plan unsupported by the evidence?

For the reasons that follow, we answer the first question in the affirmative and need not answer the remaining questions. We affirm the decision of the circuit court.

BACKGROUND

T.D. Enters Department Care and Is Placed with Father

This case comes to us with a lengthy procedural history spanning over six years. T.D. was born in February 2013 and was in Mother's care until 2016. The Department came into contact with T.D. for the first time after T.D. was taken to the hospital on November 3, 2016 by her uncle and November 8, 2016 by her Godmother, A.W. Both times, T.D. was diagnosed with ringworm. Mother had previous history with Child Protective Services due to neglect of her other children and her mental health needs. On November 8, 2016, the Department placed T.D. in shelter care. The following day, the Department filed a child in need of assistance ("CINA") petition requesting shelter care; however, the court denied the petition and placed T.D. with Father, who was ordered to supervise all of T.D.'s visits with Mother.

T.D. Is Removed from Father's Care

On December 1, 2016, an amended CINA petition was filed by the Department again requesting shelter care for T.D. The amended petition alleged that Father had left T.D. in the care of her maternal grandfather while he went to an interview, and T.D.'s grandfather allowed Mother to see T.D. Father was not aware Mother would visit but did not tell T.D.'s grandfather that Mother could not be with T.D. unsupervised. T.D. was removed from Father's care on the same day and placed in foster care. On December 9, 2016, T.D. was placed in A.W.'s care after counsel for Father indicated at T.D.'s initial

CINA adjudication hearing that T.D. was very comfortable with A.W. and Father supported this placement. At that time, A.W. agreed to supervise visits between T.D. and Mother and Father. On March 16, 2017, T.D. was found to be a CINA, and the court ordered that she remain with A.W., who was in the process of becoming a foster parent. The court awarded Father unsupervised visitation.

Changes to T.D.'s Permanency Plan

On November 1, 2017, T.D.'s initial permanency plan hearing was held before a magistrate, which neither Mother nor Father attended. The court changed T.D.'s permanency plan from reunification with a parent to placement with a relative for custody and guardianship. Exceptions were filed and denied after a de novo hearing was held January 24, 2018. At a January 31, 2019 hearing, the court learned that A.W. was not a relative of T.D. and changed T.D.'s permanency plan to concurrent plans of both custody and guardianship by a non-relative and reunification with a parent.

The Magistrate Review Hearing

On October 8, 2020, the Department asked the court to grant custody and guardianship to A.W. Father did not attend the hearing. The hearing was continued until March 5, 2021, and continued again until April 28, 2021 after it could not be completed. The hearing was again continued until June 29, 2021, when Mother appeared via telephone and Father did not appear. The court denied both parents' attorneys' requests for further continuance, and on July 2, 2021, the magistrate interviewed both T.D. and A.W. In the interview, A.W. again affirmed that she was willing and able to become T.D.'s guardian. After the July 2, 2021 interviews, the magistrate recommended that

custody and guardianship of T.D. be granted to A.W. On July 12, 2021, Mother filed "Mother's Exceptions to Change of Permanency Plan." Father did not file exceptions to the magistrate's proposed findings and recommendations.[2]

On April 20, 2022, an exception de novo hearing was held after several delays. T.D. was then nine years old and had been living with A.W. for over five years. After hearing testimony from A.W., Father, Mother, and a Department caseworker, the court issued an order on April 27, 2022, denying Mother's exceptions[3] and affirming the magistrate's July 2, 2021 order. This appeal followed.

DISCUSSION

I. FATHER FAILED TO FILE EXCEPTIONS TO THE MAGISTRATE'S FINDINGS OF FACT AND RECOMMENDATIONS.

First, we must address whether Father filed exceptions to the magistrate's July 2, 2021 recommendations. When a matter is before a magistrate, the magistrate must provide written recommendations including a statement of the magistrate's findings and a proposed order and must notify each party of the recommendations. Md. Rule 9-208(e)(1). A party may file exceptions to the magistrate's recommendations within ten days. Md. Rule 9-208(f). "[I]f exceptions are not timely filed, the court may direct the

[2] In his brief, Father repeatedly asserts that he is included in Mother's exceptions. The title of the exceptions, "Mother's Exceptions to Change of Permanency Plan," makes no reference to Father. The exceptions were signed by Mother's counsel only. While Father is mentioned four times in the exceptions, there is no indication that the exceptions were filed on his behalf. These exceptions were filed only on Mother's behalf.

[3] At the conclusion of the hearing, the court erroneously stated that "the exceptions de novo filed by father and mother" are denied.

entry of the order or judgment as recommended by the magistrate." Md. Rule 9-208(h)(1)(B). "[I]n all cases lacking timely exceptions, any claim that the [magistrate's] findings of fact were clearly erroneous is waived." *Miller v. Bosley*, 113 Md. App. 381, 393 (1997). If exceptions were not filed by Father, this failure to file proves fatal and Father has waived his claim that the findings were clearly erroneous. *Bosley*, 113 Md. App. at 393.

Throughout Father's brief, he references exceptions filed by both parents, or claims to have filed exceptions himself. Despite Father's statements otherwise, he has not filed exceptions. Mother filed exceptions, titled "Mother's Exceptions to Change of Permanency Plan" on July 12, 2021. This four-page document contained only one mention of Father's opposition to the change in custody and guardianship: "Mother (and Father) disagree with [the decision to change the permanency plan to custody and guardianship with A.W.]." As "Mother's Exceptions to Change of Permanency Plan" are signed only by Mother's counsel who represents Mother only, we reject Father's argument that they also serve as Father's exceptions.

Additionally, counsel for Father argued that by noting Mother's exceptions and holding a de novo hearing, this amounted to acquiescence of the exceptions on Father's behalf. Father provides no case law to support this theory, and we reject the assertion that holding a de novo hearing for a party who appropriately filed exceptions constitutes acceptance that the exceptions are also those of the party who failed to file. Therefore, because Father did not file exceptions, he has waived any ability to challenge the magistrate's factual findings and recommendations.

II. FATHER'S FAILURE TO FILE EXCEPTIONS PROHIBITS HIM FROM APPEALING THE COURT'S APRIL 27, 2022 DECISION.

Pursuant to Maryland Rule 8-131, "[o]rdinarily, the appellate court will not decide any other issue[4] unless it plainly appears by the record to have been raised in or decided by the trial court . . . ." Father's appeal is based on the April 27, 2022 circuit court decision denying Mother's exceptions and affirming the magistrate's recommendation to grant custody and guardianship of T.D. to A.W. Father's Notice of Appeal, filed May 24, 2022, states that Father "notes an Appeal of this Court's Order dated April 27, 2022, denying an Exception to the Recommendation of [the magistrate] granting custody of [T.D.] to [A.W.] to the [Appellate Court of Maryland]." Additionally, in his brief, Father states the "appeal arises from the April 27, 2022 decision by the [circuit court judge] denying father's exceptions to the permanency plan change[.]"

Father repeatedly asserts that he has filed exceptions to the magistrate's recommendations, however, as discussed above, he has not. Father cannot base his appeal on a denial of exceptions he did not file because by failing to file exceptions he did not raise that issue in the trial court and, as a consequence, the issue could not have been decided by the trial court, despite his appearance at the April 27, 2022 hearing.

We, therefore, dismiss his appeal.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

[4] Rule 8-131 also discusses the scope of review for jurisdictional issues, stating that: "[t]he issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2-322, over a person may be raised in and decided by the appellate court whether or not raised in and decided by the trial court."