Circuit Court for Wicomico County
Case Nos. 22-I-15-00008 and 22-I-15-00009

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 555 and 556

September Term, 2017

IN RE: T.S. and J.J.

Friedman,
Fader,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: July 27, 2018

*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 2015, the Wicomico County Department of Social Services (the "Department") filed, in the Circuit Court for Wicomico County, separate petitions seeking to have J.J. and T.S., minor children of E.B. ("Mother"), each declared a Child in Need of Assistance ("CINA"). Following a hearing, the court, acting as the juvenile court, granted the Department's petitions and entered orders dated January 29, 2016 declaring, among other things, T.S. and J.J. to be CINA. In 2017, Mother filed a motion to revise those orders, and following a hearing, the juvenile court denied Mother's motion. In this appeal, Mother presents two questions for our review, which we have rephrased and consolidated into a single question[1]:

Did the juvenile court err in denying Mother's motion to revise?

For reasons to follow, we dismiss Mother's appeal.

BACKGROUND

In December of 2013, the Department filed CINA petitions on behalf of J.J., T.S., and Mother's other two children, Tr. S. and N.R. Of those petitions, only the one concerning J.J. was included in the record before this Court.[2] In that petition, the

[1] Mother phrased the questions as:

1. Did the juvenile court err by denying Mother's Amended Motion to Revise CINA Judgment on procedural grounds that the issues of res judicata and collateral estoppel were not timely raised by Mother?

2. Did the juvenile court abuse its discretion by ruling that res judicata and collateral estoppel did not bar relitigating the same claims and issues from an earlier CINA case?

[2] Mother alleges that the allegations in each of the four petitions were "identical."

Department asked that J.J. be adjudicated CINA, citing, among other things: domestic violence between Mother and Mr. J.[3], the father of J.J. and T.S.; past abuse; mental health concerns of the parents; drug and alcohol use by the parents; and, a lack of stable housing. In April of 2014, the juvenile court held a hearing on the Department's petition regarding Tr. S. and found that the facts alleged in that petition had not been sustained. The court did not, however, make any findings regarding J.J.'s and T.S.'s petitions, as the hearings on those petitions were postponed until July of 2014. At those hearings, but before the court made any findings, the Department withdrew the CINA petitions "by agreement of the parties."

On August 31, 2015, the Department again filed CINA petitions regarding J.J. and T.S. On September 22, 2015, the Department amended those petitions. In both amended petitions, the Department made a number of factual allegations, including: that Mother had an extensive history of being unable to properly care for the children; that, in February and August of 2012, Mother was indicated for neglect; that, in September of 2012, Mother was indicated for abuse and was criminally convicted of abusing one of her children (N.S.); that Mother admitted to using alcohol and marijuana to relieve stress; that Mother and Mr. J. had a history of domestic violence; that Mother was, at the time of the petitions, incarcerated for violating her probation; and, that Mr. J. had sexually abused J.J. on multiple occasions.

[3] Mr. J is not a party to the instant appeal.

Following a hearing on the Department's amended petitions, the juvenile court sustained all of the aforementioned allegations, except the allegation concerning Mother's drug and alcohol abuse. The court ultimately determined both children to be CINA and committed them to the care and custody of the Department for placement. Mother thereafter noted an appeal of the court's CINA determinations to this Court. This Court affirmed via a published opinion, which was filed on December 21, 2016, and later affirmed by the Court of Appeals, on November 28, 2017. *In re J.J. and T.S.*, 231 Md. App. 304 (2016), *aff'd* 456 Md. 428 (2017).

Meanwhile, on January 10, 2017, Mother filed, in the juvenile court, a "Motion to Revise CINA Judgment," which she later amended and refiled on February 23, 2017. In that amended motion, Mother asked the juvenile court to revise its findings in which it sustained the Department's allegations that she could not properly care for the children, had been indicated for neglect and abuse, and had a history of domestic violence. Mother argued that those allegations contradicted the court's findings following the April 2014 hearing involving Tr. S., in which the court found that the Department's allegations had not been sustained. According to Mother, because those findings became final upon entry of a judgment, they should have been given "res judicata effect." Mother argued, therefore, that "the present cases' adjudicatory orders should be made consistent with [the court's] earlier findings."

On March 1, 2017, the juvenile court held a hearing on Mother's amended motion to revise. Following the hearing, the court denied Mother's motion by way of a written order entered on May 1, 2017. In that order, the court found that Mother's arguments

lacked merit because "the CINA findings in [J.J.'s and T.S.'s] cases were not predicated on the same facts as the facts relied upon in dismissing [Tr. S.'s] case" and because "there was ample evidence to sustain the allegations in the Amended Petition at the time of trial on the merits." The court also found that Mother's arguments were untimely because she "was present at, and aware of, the dismissal of [Tr. S.'s] case" and "could, therefore, have timely raised the *res judicata* argument at or prior to adjudication/disposition in these cases, and also on appeal."

On May 31, 2017, Mother noted the instant appeal, in which she challenged the juvenile court's May 2017 order denying her amended motion to revise judgment. While that appeal was pending, the court continued the CINA proceedings in both cases, which included review hearings held on October 18, 2017, and January 17, 2018. On January 18, 2018, the court entered judgments transferring custody of T.S. and J.J. to their maternal uncle and terminating the Department's CINA cases. As part of those judgments, the court found that Mother was not a "fit and proper parent[]" and that it was "contrary to the best interests of the [children] to be placed in [her] custody." Mother did not appeal any of those judgments.

DISCUSSION

Mother argues that the juvenile court erred in denying her motion to revise judgment on the grounds that her arguments were untimely and that "res judicata and collateral estoppel did not bar relitigating the same claims and issues from an earlier CINA case." The State has moved to dismiss Mother's appeal on the grounds that the court's order dated May 1, 2017, is not an appealable judgment and that the issues raised by Mother are moot.

We agree with the State.

The Court of Appeals has made clear "that the right to seek appellate review of a trial court's ruling ordinarily must await the entry of a final judgment[.]" *In re C.E.*, 456 Md. 209, 221 (2017) (citations omitted). "A ruling of the circuit court constitutes a final judgment when it either determines and concludes the rights of the parties involved or denies a party the means to prosecute or defend his or her rights and interests in the subject matter of the proceeding." *In re Katherine L.*, 220 Md. App. 426, 437 (2014) (citations and quotations omitted). In other words, the court's ruling "must be intended by the court as an unqualified, final disposition of the matter in controversy." *In re C.E.*, 456 Md. at 221. "In determining whether a particular order or ruling is appealable as a final judgment, we assess whether any further order was to be issued or whether any further action was to be taken in the case." *In re Katherine L.*, 220 Md. App. at 437-38. "An order that is not a final judgment is an interlocutory order and ordinarily is not appealable." *Nnoli v. Nnoli*, 389 Md. 315, 324 (2005).

That said, there are three exceptions to the requirement that an appeal may be taken from a final judgment only. *Salvagno v. Frew*, 388 Md. 605, 615 (2005). Those exceptions are: "appeals from interlocutory orders specifically allowed by statute; immediate appeals permitted under Maryland Rule 2-602; and appeals from interlocutory rulings allowed under the common law collateral order doctrine." *Id.* Under the first exception, a party may appeal an interlocutory order pursuant to one of the enumerated circumstances found in Section 12-303 of the Courts and Judicial Proceedings Article of the Maryland Code. *Schuele v. Case Handyman and Remodeling Services, LLC*, 412 Md. 555, 566-67 (2010).

Under the second exception, a party may appeal an order that has been certified as a final judgment by the circuit court pursuant to Maryland Rule 2-602(b). *Id.* at 567-68. Under the third exception, a party may appeal an interlocutory order when that order "(1) conclusively determines the disputed question, (2) resolves an important issue, (3) resolves an issue that is completely separate from the merits of the action, and (4) would be effectively unreviewable if the appeal had to await the entry of a final judgment." *Id.* at 572 (citations and quotations omitted) (emphasis removed).

Here, we hold that the juvenile court's May 2017 order denying Mother's motion to revise judgment was a non-appealable interlocutory order. That order was clearly not meant to be an unqualified, final disposition of the matter in controversy, as the court continued the proceedings in both cases and, on January 18, 2018, entered final judgments that transferred custody of J.J. and T.S. to their uncle and terminated the Department's CINA cases. Moreover, none of the exceptions to the final judgment rule apply. The order was not certified by the juvenile court as a final judgment, nor did the order resolve an issue that was completely separate from the merits of the action. And, although CJP § 12-303(3)(x) does permit an appeal of an interlocutory order when that order deprives a parent of the care and custody of his child or changes the terms of such an order, the court's May 2017 order did neither. *See, e.g., In re C.E.,* 456 Md. at 210-11, 224 (holding that the juvenile court's order waiving the government's obligation to provide reasonable reunification efforts to the parent was not an appealable interlocutory order because the child had "remained in the custody of relatives and the permanency plan [had] not changed"); *In re Samone H.*, 385 Md. 282, 315-16 (2005) (holding that the juvenile court's

denial of a parent's request for a "bonding" study was not immediately appealable pursuant to § 12-303(3)(x) because the permanency plan, which established the terms of the care and custody of the child, remained unchanged); *Compare to In re Andre J.*, 223 Md. App. 305, 308, 319-20 (2015) (holding that the juvenile court's order changing the child's permanency plan from reunification with the parent to another planned living arrangement was immediately appealable because the order "eliminated the goal of reunification, established that the Department would pursue a permanent adult guardianship for [the child] with [another entity], and drastically reduced [the parent's] visitation rights"). Accordingly, Mother's appeal must be dismissed.

Assuming, *arguendo*, that the juvenile court's order was immediately appealable, we would still dismiss Mother's appeal as moot. *See* Md. Rule 8-602(c)(8) ("The court may dismiss an appeal if…the case has become moot."). "'A case is moot when there is no longer an existing controversy between the parties at the time it is before the court so that the court cannot provide an effective remedy.'" *In re W.Y.*, 228 Md. App. 596, 609 (2016) (citations omitted). In other words, "[a] case is considered moot when 'past facts and occurrences have produced a situation in which, without any future action, any judgment or decree the court might enter would be without effect.'" *LaValle v. LaValle*, 432 Md. 343, 351 (2013) (citations omitted).

As noted, the juvenile court's January 2018 final judgments transferred custody of J.J. and T.S. to their uncle and terminated the Department's CINA cases. Mother did not appeal those judgments. Therefore, any "controversy" regarding the juvenile court's CINA determinations, as well as any question as to whether the court should have revised those

determinations, were effectively settled by way of those judgments. Moreover, even if we decided that the juvenile court erred in denying Mother's motion to revise, that determination would have no effect on the court's subsequent judgments. Accordingly, Mother's claims, even if properly before this Court, are dismissed as moot.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.