Circuit Court for Prince George's County
Case No. C-16-FM-23-001386

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 606

September Term, 2023

CONSUELO RACHEL VERA MONTECINO

v.

NELSON IGNACIO ORELLANA RAMOS,
et al.

Beachley,
Albright,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: October 23, 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).

On February 24, 2023, appellant Consuelo Rachel Vera Montecino filed both a Complaint for Custody and a Motion for Findings of Special Immigrant Juvenile Status Eligibility in the Circuit Court for Prince George's County. Appellant sought: (1) custody of A.[1] an unmarried 20-year-old[2] Honduran; and (2) factual findings to be used in A.'s eventual Special Immigration Juvenile ("SIJ") status application. The court denied appellant's request for custody and deemed appellant's request for findings for SIJ status moot. Appellant noted this timely appeal and presents the following question for our review:

> 1. Did the [t]rial [c]ourt err in denying the [a]ppellant's requests for custody of [A.] and findings for Special Immigrant Juvenile Status Eligibility?

For the reasons that follow, we hold that the court erred, vacate the judgment, and remand for additional proceedings consistent with this opinion.

FACTS AND PROCEEDINGS

As stated above, on February 24, 2023, appellant filed both a petition for custody of A., and a motion seeking factual findings regarding SIJ status. The Circuit Court for Prince George's County held a hearing to consider both issues on April 19, 2023.

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[1] Even though A. is 20 years old, we identify her in this manner to protect her confidentiality.

[2] An equity court is authorized to "direct who shall have the custody or guardianship of a child[.]" Md. Code (1984, 2019 Repl. Vol.), § 1-201 of the Family Law Article. In Maryland, "[t]he age of majority is 18 years." Md. Code (2014, 2019 Repl. Vol.), § 1-401 of the General Provisions Article. But for purposes of SIJ status, a "child" is defined as "an unmarried individual under the age of 21 years." Md. Code (1984, 2019 Repl. Vol.), § 1-201 of the Family Law Article. As we note in Part II of this opinion, even though A. is twenty years old, the circuit court still has the authority to grant appellant custody of A.

At the hearing, A. testified that she was born in Honduras in December 2002. A.'s father ("Father") "left [A.] when he found out that [her] mother was pregnant[.]" A. has had very little contact with Father and only met him in person once. A. lived with her mother ("Mother") in Honduras until she was fifteen. A. left her Mother's home and moved in with her aunt because Mother[3] "would abuse [her] verbally and physically." In September 2020, A. moved to the United States. She moved because she "didn't feel safe living with [her] aunt because the gang members were after [her]." She specifically testified that gang members would follow her and harass her, asking her to be their girlfriend, and threatened to kill her if she did not accept. After arriving in the United States, A. lived with her "distant relative" Wendy LaPage and her partner Alejandro LaPage. She moved out of their house because she did not feel "comfortable" in light of their frequent arguments. A. moved in with her "friend" (appellant) who she met at her job as an assistant cook. A. stated that appellant:

> provides a home for me. She helped me to get enrolled in school. She also provides food and clothing. If I get sick she is there for me. She also provides counseling, she helps me, she gives me advice so that I should stay in school and things like that so that I can be a better person.

Appellant testified that she is a thirty-one-year-old waitress who makes approximately $3,000 a month. She stated that she had known A. for "[a] year and a half" and that they "met at the restaurant and [they] became friends." After A. expressed that

[3] In 2018, Mother moved to the United States and currently lives in Virginia. A. has not lived with nor seen Mother and receives no financial support from her.

she was uncomfortable living with the LaPages, appellant offered A. the opportunity to live with her. Appellant lives in a two-bedroom apartment with her three minor children. Appellant testified that she receives public assistance for her children and child support for her youngest child.

Ultimately, the court concluded:

> This matter is before this [c]ourt on [appellant's] Complaint for Custody of the Minor Child, [A.]
>
> Her date of birth is 12/[xx]/2002. She is currently 20 years old. She will be 21 years old in approximately eight months. [Appellant] is an adult friend of the minor child.
>
> The testimony in this case is that the--The case is also before the [c]ourt on a Motion for the [c]ourt to make special immigrant juvenile status findings with respect to the minor child.
>
> The testimony in this case has been that [appellant] met the minor child approximately a year and half ago. They worked together at a restaurant and they became friends.
>
> [Appellant] eventually allowed the minor child to move in with her and they have been living together in [appellant's] home for six months. [Appellant] also has three children ages 14, 16, and 6.
>
> [Appellant] testified that she earns approximately $3,000 a month, or $36,000 a year. She testified she receives child support for just one of her three children, the youngest child, of approximately $400 a month.
>
> She also testified significantly that she is currently on public assistance. The minor child testified that she works, she works approximately 20 hours a week, or sometimes between 15 and 20 hours a week, and she makes about $14 an hour.
>
> The [c]ourt is going to deny [appellant's] Complaint for Custody of the minor child. The [c]ourt does not find that [appellant] has the ability to or is in a position to provide care for the minor child.

> Again, the [c]ourt notes that the minor child is 20 years old. She will be 21 in eight months. Of particular note is the fact that [appellant] is, she indicates that she is currently on public assistance to care for her three children, but she also is asking the [c]ourt to give her custody of the minor child to provide additional financial assistance to the minor child.
>
> In the [c]ourt's eyes that appears to be, both appear to be two things that are very inconsistent with one another, therefore, the [c]ourt is not satisfied that [appellant] is a fit and proper person to have sole physical and legal custody of the minor child in this case, so the Motion will be denied.
>
> The [c]ourt declines to make any findings that the minor child is eligible for relief under special immigrant juvenile status relief. Okay, that's the Order of the [c]ourt.

On May 23, 2023, the court issued a written order denying custody because "the record failed to establish that [appellant] provided financial and emotional support to the minor child." On the same day, the court issued a written order deeming appellant's request for findings on A.'s SIJ status moot because "the underlying petition for custody was denied." Appellant timely appealed.

DISCUSSION

I. SIJ STATUS

Appellant argues that the court "erred in denying the [a]ppellant's Motion for Findings for Special Immigrant Juvenile Status as 'moot.'" We agree.

We begin our analysis with a brief explanation of SIJ status to provide context to the issue on appeal. SIJ status "was created by the United States Congress to provide undocumented children who lack immigration status with a defense against deportation proceedings." *In re Dany G.*, 223 Md. App. 707, 712 (2015). "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 v. Bunay*, 221 Md. App. 440, 448–49 (2015) (quoting *Yeboah v. U.S. Dep't of Justice*, 345 F.3d 216, 221 (3d Cir. 2003)). The Act ("INA") creates "a special circumstance where a State juvenile court is charged with addressing an issue relevant only to federal immigration law." *Id.* at 449 (quoting *H.S.P. v. J.K.*, 87 A.3d 255, 259 (N.J. Super. Ct. App. Div. 2014)). The INA, codified at 8 U.S.C. § 1101(a)(27)(J), requires the state court to make specific factual findings regarding eligibility requirements to be later used during federal proceedings to determine whether to grant SIJ status. We have previously identified the required findings pursuant to the INA:

> (1) The juvenile is under the age of 21 and is unmarried; 8 C.F.R. § 204.11(c)(1)–(2);
>
> (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; 8 C.F.R. § 204.11(c)(3);
>
> (3) The "juvenile court" has jurisdiction under state law to make judicial determinations about the custody and care of juveniles; 8 U.S.C.A. § 1101(a)(27)(J)(i); 8 C.F.R. § 204.11(a), (c) [amended by the Trafficking Victims Protection Reauthorization Act ("TVPRA") 2008];
>
> (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; 8 U.S.C.A. § 1101(a)(27)(J) [amended by TVPRA 2008]; and
>
> (5) It is not in the "best interest" of the juvenile to be returned to his parents' previous country of nationality or country of last habitual residence within the meaning of 8 U.S.C.A. § 1101(a)(27)(J)(ii); 8 C.F.R. § 204.11(a), (d)(2)(iii) [amended by TVPRA 2008].

Dany G., 223 Md. App. at 714–15. Although state courts are tasked with making these

initial factual findings, the United States Citizenship and Immigration Services ("USCIS") ultimately decides whether to grant SIJ status. *Simbaina*, 221 Md. App. at 449–50.

Here, the circuit court erred by denying the request for SIJ factual findings without making any findings. When a motion for SIJ findings is properly filed, "state courts are required to make [the requested] factual findings." *Dany G.*, 223 Md. App. at 715 (citing *Simbaina*, 221 Md. App. at 455–56). Our appellate courts have been clear on this issue: "[W]hen a party requests SIJ status findings in his or her pleadings, the circuit court *must* undertake the fact-finding process (hear testimony and receive evidence) and issue 'independent factual findings regarding' the minor's eligibility for SIJ status." *Romero v. Perez*, 463 Md. 182, 190–91 (2019) (quoting *Simbaina*, 221 Md. App. at 458–59). Courts are obviously not required to find all of the facts in favor of the party seeking SIJ status, but courts are required to address every factual issue the INA contemplates. The court's characterization of the motion as "moot" constitutes clear error. We shall therefore remand for the court to make the fact findings required by law.

Because A. will attain the age of 21 in December 2023, we shall direct that the Mandate in this case be issued without delay. We urge the circuit court to expeditiously undertake further proceedings consistent with this opinion.

II. DENIAL OF CUSTODY

Appellant argues that "[t]he [t]rial [c]ourt erred in not granting custody of [A.] to the [a]ppellant because it failed to analyze the best interest of [A.] under Maryland law[.]"

In reviewing a child custody case, Maryland appellate courts apply three different levels of review:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard . . . applies. [Secondly,] if it appears that the [juvenile court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [juvenile court's] decision should be disturbed only if there has been a clear abuse of discretion.

In re Shirley B., 419 Md. 1, 18 (2011) (alterations in original) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). Regarding the custody determination, "[t]he appropriate standard for determining a contested custody case is the best interest of the child."[4] *McCready v. McCready*, 323 Md. 476, 481 (1991). Our Court has noted that,

> The best interest standard is an amorphous notion, varying with each individual case. . . . The fact finder is called upon to evaluate the child's life

[4] Appellant argues that the court erred by not making "a threshold finding of parental unfitness or exceptional circumstances before making its ultimate custody determination." Appellant is correct that "[o]nly if the third party showed unfitness or exceptional circumstances [sh]ould a trial court 'consider whether that third party should be awarded custody under the best interests of the child standard.'" *Caldwell v. Sutton*, 256 Md. App. 230, 266 (2022) (quoting *Basciano v. Foster*, 256 Md. App. 107, 132 (2022)). But "[i]t is well settled in Maryland that a judgment in a civil case will not be reversed in the absence of a showing of error *and* prejudice to the appealing party." *In re Ashley E.*, 158 Md. App. 144, 164 (2004) (citing *Muthukumarana v. Montgomery County*, 370 Md. 447, 477 n.20 (2002)), *aff'd*, 387 Md. 260 (2005). "In that context, prejudice means that it is likely that the outcome of the case was negatively affected by the court's error." *Id.* at 164–65 (citing *State Roads Comm'n v. Kuenne*, 240 Md. 232, 235 (1965)). Here, the court erred by not making the threshold finding of parental unfitness or exceptional circumstances before proceeding to analyze A.'s best interest. But appellant was not prejudiced on this point because it appears that the court presumed that A.'s parents were unfit for custody given their limited contact with A.

> chances in each of the homes competing for custody and then to predict with whom the child will be better off in the future.

Montgomery Cnty. Dep't of Soc. Servs. v. Sanders, 38 Md. App. 406, 419 (1977).

In *Sanders*, we explained how a circuit court should approach a custody case: "the court examines numerous factors and weighs the advantages and disadvantages of the alternative environments." *Id.* at 420. We provided a non-exhaustive list of factors for trial courts to consider when awarding custody:

> 1) fitness of the parents; 2) character and reputation of the parties; 3) desire of the natural parents and agreements between the parties; 4) potentiality of maintaining natural family relations; 5) preference of the child; 6) material opportunities affecting the future of the child; 7) age, health, and sex of the child; 8) residences of parents and opportunity for visitation; 9) length of separation from the natural parents; and 10) prior voluntary abandonment or surrender.

Id. We explained that while a trial court should consider all of these factors, it "should examine the totality of the situation in the alternative environments and avoid focusing on any single factor[.]" *Id.* at 420–21.[5]

The hearing in this case—spanning a mere thirty transcript pages including the court's bench opinion—confirms that the court did not adequately consider the *Sanders* factors. Instead, the court focused primarily on appellant's financial situation. The court stated in its written order that "the record failed to establish that [appellant] provided

[5] We acknowledge the significance of the *Taylor* factors in Maryland custody cases. *Taylor v. Taylor*, 306 Md. 290 (1986). However, those factors are primarily considered in joint custody cases and therefore are not relevant to this case. *See Baldwin v. Baynard*, 215 Md. App. 82, 109 (2013) (stating that the *Taylor* factors "are considered by a court when determining whether sole or joint legal custody is appropriate").

financial and emotional support to the minor child." In its bench ruling, the court repeatedly emphasized the appellant's financial situation and took "particular note" of the fact that appellant "is currently on public assistance[.]" In *Sanders*, this Court specifically stated that "[t]he [trial] court should examine the totality of the situation in the alternative environments and avoid focusing on any single factor such as the *financial situation*" of the parties. 38 Md. App. at 420–21 (emphasis added) (citing *Cockerham v. Children's Aid Soc'y of Cecil Cnty.*, 185 Md. 97 (1945)). Furthermore, in a custody case, the court "examines numerous factors and weighs the advantages and disadvantages of the alternative environments." *Sanders*, 38 Md. App. at 420. "To determine a child's best interest 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.*, 223 Md. App. at 721–22 (quoting *Sanders,* 38 Md. App. at 419).

We recognize that Md. Code (1984, 2019 Repl. Vol.), § 1-201 of the Family Law Article ("FL") puts circuit courts in the unusual, and often difficult, position of making custody decisions for individuals who are over 18 years of age. Nevertheless, the General Assembly expressly provided circuit courts jurisdictional authority to determine "custody or guardianship of an immigrant child" pursuant to FL § 1-201(b)(10), and defined a "child" for purposes of subsection (b)(10) as "an unmarried individual under the age of 21 years." § FL 1-201(a). The court here erred because it did not sufficiently consider the *Sanders* factors vis-à-vis appellant's request for custody. Although we recognize that A.

will be 21 years of age in December 2023, the law requires vacation of the judgment and a remand for further proceedings.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED. CASE REMANDED TO THAT COURT FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANT. MANDATE TO ISSUE FORTHWITH.