Circuit Court for Baltimore County
Case No. 03-I-18-000207, 208, 209, 210 & C-03-JV-19-000009

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 631

September Term, 2019

IN RE: K.S.-W., K.F.S.-W., P.S.-W., J.W., AND Z.W.

Leahy,
Friedman,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: November 12, 2019

The Baltimore County Department of Social Services (the "Department") filed, in the Circuit Court for Baltimore County, petitions on behalf of five children, alleging that they were children in need of assistance ("CINA").[1] Following an adjudicatory hearing, the circuit court, sitting as the juvenile court, sustained the allegations in the Department's petition and found all five children to be CINA. In so doing, the juvenile court ordered that the children should have no contact with their father, C.W. ("Father"). In this appeal, Father presents two questions for our review:

1. Did the juvenile court err in sustaining the allegations in the Department's petitions?

2. Did the juvenile court err in denying Father any contact with the children?

For reasons to follow, we answer both questions in the negative and affirm the judgment of the juvenile court.

BACKGROUND

K.S.-W., born, February 13, 2019, twins K.F.S.-W. and P.S.-W., born January 8, 2018, Z.W., born January 6, 2016, and J.W., born May 2, 2013 (collectively the "Children"), were born to Father and J.S. ("Mother"). In July of 2018, four of the Children[2] were removed from their parents' care after one of the Children, K.F.S.-W., who was five-months old at the time, presented at the hospital with a "critical brain injury caused by

[1] Section 3-801(f) of the Courts and Judicial Proceedings Article of the Maryland Code defines "child in need of assistance" as "a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs."

[2] At that time, the fifth child, K.S.-W., had yet to be born.

suspected physical abuse." Shortly thereafter, the Department filed CINA petitions on behalf of each of the four Children, all of which the Department later amended. In those amended petitions, the Department alleged, among other things, that, on July 7, 2018, K.F.S.-W. was admitted at Johns Hopkins Hospital "with a critical brain injury and head trauma requiring immediate surgery;" that K.F.S.-W. "had been sick" for some time before treatment was sought; that a subsequent skeletal survey of K.F.S.-W. revealed "multiple fractures of various ages;" that the "only explanation" for the injuries was physical abuse; that all four children, including K.F.S.-W., were in the care of Father and Mother at the time; that Father was "a convicted third-degree sex offender of a minor child, age 5;" that Father and Mother had "a history of domestic violence;" and that the family had "significant agency involvement" that included "indicated neglect."

An adjudication hearing on the Department's CINA petitions was held before a Magistrate on November 29, 2018. Both Father and Mother participated in the hearing. During the hearing, the Department informed the Magistrate that the parties had "reached an agreement as far as adjudicating the facts of the case" and that those facts were contained in the Department's amended petitions. Neither Mother nor Father objected to the Department's proffer regarding the facts of the case or offered any additions or exceptions to those facts. Rather, Mother stated that she "generally den[ied] the allegations contained in the petition." Father, who at the time was facing criminal charges related to the July 7th incident involving K.F.S.-W., similarly stated that he "wish[ed] to enter a general denial to the [allegations]." At the conclusion of the hearing, the Magistrate sustained the agreed-

upon facts and found all four Children to be CINA. The Magistrate also made several recommendations, including that visitation between the Children and their parents be supervised and that the parents submit to a "fitness to parent" evaluation.

Following the adjudication hearing, Mother filed exceptions to the Magistrate's recommendations, arguing that the Magistrate "erred" in proposing supervised visitation and in recommending that Mother submit to the "fitness to parent" evaluation. Father did not file any exceptions to the Magistrate's recommendations.

On February 13, 2019, the fifth child, K.S.-W., was born, and, shortly thereafter, the Department filed a CINA petition on her behalf. On March 5, 2019, Father pled guilty and was incarcerated on a charge of neglect stemming from the July 7th, 2018 incident involving K.F.S.-W.

On April 29, 2019, the juvenile court held a joint hearing on Mother's exceptions to the Magistrate's recommendation and the newly filed CINA petition concerning K.S.-W. Mother was present and represented by counsel, while Father, who was also represented by counsel, participated by telephone from prison. During that hearing, counsel for Mother informed the court that "all parties have come to an agreement." The Department echoed that sentiment, stating that the parties had "work[ed] out together amendments to the five petitions." The Department added that, although it was asking for "various orders" and that there may be "argument on some of those items," the allegations in the petitions had been "agreed upon." At no point did Father or Mother object or otherwise indicate that the Department's proffer was inaccurate.

The juvenile court then had the Department read the agreed-upon facts into the record so that Father could "hear [the allegations] as well since he [was] not [in court] to actually see [them]." The Department began by reading the allegations concerning the four older Children, which were that, on July 7, 2018, Johns Hopkins Hospital contacted the Department to report "suspected physical abuse and neglect" after K.F.S.-W. was admitted "with a critical brain injury and head trauma;" that, at the time, K.F.S.-W. had "multiple fractures of various ages;" that Father and Mother were responsible for the Children's care; that Mother called the doctor's office regarding K.F.S.-W.'s condition but did not take him for medical treatment until July 5, 2018, at which point K.F.S.-W. "had been sick for at least a week" and "had been vomiting for days and being fed with a syringe;" that, "based on the facts of this case," Father was convicted of neglect, sentenced to a term of five years' imprisonment, and ordered to have no contact with K.F.S.-W. until "therapeutically appropriate;" that Father had previously been convicted of "third-degree sexual offense of a minor child, age five;" that K.F.S.-W.'s twin brother, P.S.-W., had a "noticeably flat back of the head;" that J.W. and Z.W. "were both developmentally delayed with speech and language delays;" that Mother and Father "had at least one incident of domestic violence;" that the family "has had past agency involvement;" and that K.F.S.-W. "continue[d] to present with medical concerns related to his traumatic brain injury." At no point during the Department's recitation of those facts did Mother or Father object.

The Department then read a similar set of allegations with regard to the CINA petition of the youngest child, K.S.-W. Again, neither Father nor Mother objected. At the

conclusion of its recitation, the Department asked the court to sustain the allegations and adjudicate the Children CINA. The Department also asked the court to allow liberal and supervised visitation for Mother and to have Father "contact the [Department] upon his release."

In response, Father's attorney stated that Father's "intention was to move forward with the adjudicatory facts" and that the facts were "not substantially different from the facts . . . originally presented to [the Magistrate]." Father's counsel added that, at the adjudication hearing before the Magistrate, Father had "enter[ed] a general denial to all of the facts because he was pending [sic] charges." Father's counsel then stated that she would "continue to cite a general denial on his behalf." She stated that she understood that Father "is serving a sentence for facts related to this" and that she "just want[ed] to make sure that [she] protect[ed] his rights, since other things are alleged in the Petition."

Regarding visitation, Father's counsel asked that Father be able to have visitation with the Children, adding that she had spoken with Father's case manager, who informed her that it was feasible to do "professional visits with children" at the jail. Father's counsel also informed the court that Father had "participat[ed] in parenting classes" while in prison and that he had "full intention to make use of anger management if it's offered, domestic violence classes if they're offered," and "parenting classes . . . if they're offered."

Counsel for Mother then addressed the court, stating that Mother was "denying the allegations contained in the Petition." Mother's counsel then addressed other issues

pertaining to the Department's recommendations as to visitation, placement, and related services.

Following that, the Department informed the court that it "would like no contact between [Father] and the Children" given that Father was "incarcerated on a neglect conviction that is connected to serious facts regarding physical abuse and severe injury to an infant child." In response, Father's counsel stated that the Children, in particular the older children, had a "close" relationship with Father and "may not have specific understanding of what did nor did not happen to their sibling."

At the conclusion of the parties' arguments, the Department informed the court that it had "the Amended Petitions that we've agreed on" and that it was ready to submit those petitions to the court. The court then asked the Department to "go ahead and submit them." Neither Mother nor Father objected.

At the conclusion of the hearing, the juvenile court issued an oral ruling sustaining the facts "as to all [the] matters" and finding the Children to be in need of assistance. As to Father's request for visitation, the court stated:

> It's traumatic enough for kids coming to Court let alone going to visitation at a correctional facility and then on top of that, the allegations in this case, I'm not doing that. I'm sorry. You know, once these matters are resolved, then we can see where we're at. I would encourage [Father] to take all classes and things that can, you know, improve his situation and give him additional tools to be prepared to work with the Department when, you know, he's ultimately released. But I'm not going to order that with these young, young children at the present time.

The court thereafter issued a written order in which the court found the Children to be CINA and sustained the allegations "of the Amended CINA Petitions dated 4/29/19."

As to visitation, the court ordered that Father was to have "no contact" with the Children. In so doing, the court found that there was "no further likelihood that abuse or neglect would occur with custody and visitation rights granted as ordered."

STANDARD OF REVIEW

Appellate review of a juvenile court's decision regarding child custody involves three interrelated standards. First, any factual findings made by the juvenile court are reviewed for clear error. *In re Yve S.*, 373 Md. 551, 586 (2003). Second, any legal conclusions made by the juvenile court are reviewed *de novo*. *Id.* Finally, if the court's ultimate conclusion is "founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.'" *In re J.J.*, 231 Md. App. 304, 345 (2016) (citations omitted), *aff'd* 456 Md. 428 (2017). "A decision will be reversed for an abuse of discretion only if it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Id.* (citations and quotations omitted).

DISCUSSION

I.

Father first contends that the juvenile court erred because it sustained the allegations in the Department's petitions based on "conflicting proffers." Father concedes that, at the adjudication hearing before the juvenile court, the Department informed the court that the parties had reached an agreement to sustain the allegations in the Department's various

petitions. Father notes, however, that after the Department read those allegations into the record, he denied the allegations, which, according to Father, served "as a proffer contradicting the allegations." Father maintains, therefore, that the court was faced with "conflicting proffers" as to whether the allegations in the Department's petitions were true. Consequently, without additional evidence to support either proffer, the court's decision to accept the Department's proffer was, according to Father, arbitrary and must be reversed.

We hold that the issue was waived. At multiple points during the hearing before the juvenile court, various parties, including Mother's counsel, either referred to the submitted allegations as "an agreement" or stated that the parties had agreed to sustain the allegations in the Department's petitions. At no point did Father object or otherwise indicate that the parties' characterization of the allegations was improper. Likewise, Father did not object when, at the court's request, the Department read those allegations into the record, nor did Father state that the Department's recitation of the allegations was inaccurate. Finally, Father did not object when, at the conclusion of the hearing, the Department informed the court that it had in its possession "the Amended Petitions that we've agreed on," which the Department then submitted to the court, again without objection from Father. It is clear, therefore, that the allegations in the Department's petitions, which the juvenile court would later sustain, were consented to by Father. *See In re Nicole B.*, 410 Md. 33, 64 (2009) ("It is well-settled that a party in the trial court is not entitled to appeal from a judgment or order if that party consented to or acquiesced in that judgment or order.") (quotations omitted).

Moreover, the allegations sustained by the juvenile court were, as Father's counsel noted, not substantially different from the allegations presented at the hearing before the Magistrate. Those allegations, which the Magistrate sustained, were likewise presented to the Magistrate as an "agreement" between the parties and, importantly, were never challenged by Father.[3] Md. Rule 2-541(g)(1) ("Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise."); *See also Harryman v. State*, 359 Md. 492, 507 (2000) ("[A]lthough the judge is the ultimate trier of fact, the court presumes the master's findings of fact to be correct and the burden of proof to the contrary is on the objecting party.").

To be sure, Father did issue a general denial to the allegations at both hearings. Nevertheless, we do not consider those general denials to be a sufficient "proffer" such that the material evidence, *i.e.*, the Department's allegations, was in conflict. *See Shaffer v. Lohr*, 264 Md. 397, 404 (1972) ("[A] mere general denial of a plaintiff's claim is not enough to show that there is a genuine dispute as to a material fact[.]"); *Accord Remsburg v. Montgomery*, 376 Md. 568, 580 (2003). Aside from the fact that Father's actions at both hearings overwhelmingly show that he was in agreement with the allegations as presented in the Department's various petitions, Father presented no facts or evidence at the hearing before the juvenile court that could conceivably be considered a "conflicting proffer" necessitating a factual determination on the part of the court.

[3] Although Mother did file exceptions to the Magistrate's recommendations, none of those exceptions concerned the Magistrate's sustaining of the allegations in the Department's petitions.

On this point, *Barnes v. State*, 31 Md. App. 25 (1976), a case on which Father relies, is instructive. There, the defendant was charged with shoplifting after she was observed placing store merchandise in her purse without paying for it. *Id.* at 27. The defendant later pled not guilty to the charge and, in lieu of a jury trial, asked for a bench trial based on an agreed-upon "statement of facts." *Id.* at 26–27. When, at that bench trial, the prosecutor read the "facts" into the record, he did so not by stating what the facts were, but rather by indicating what the State's witnesses would have testified to had they been called to testify. *Id.* at 27. That statement tended to show, among other things, that the defendant had concealed the merchandise in her purse, which, under the facts of the case, was an essential element to the charged crime. *Id.* at 32–34. Following the State's recitation of the "facts," defense counsel moved for judgment of acquittal, arguing that the evidence was insufficient to prove the crime. *Id.* at 30-31. In so doing, defense counsel provided a detailed proffer of what the defendant would have testified to had she been called to testify, and the court accepted that proffer without objection from the State. *Id.* at 31–32. That proffer tended to show, among other things, that the defendant had not concealed the merchandise in her purse. *Id.* at 32. Nevertheless, the trial court denied defense counsel's motion, and the defendant was convicted. *Id.* at 33.

After the defendant noted an appeal, this Court reversed, holding that the trial court's "judgment on the evidence was clearly erroneous[.]" *Id.* at 34–35. We explained that, when defense counsel provided, without objection, his detailed proffer as to what the defendant would have said if she testified, the material facts were no longer undisputed

and, as a result, the court was faced with conflicting stipulations as to the evidence. *Id.* at 31–34. In that situation, we noted, it was improper for the trial court to resolve the conflict in favor of the State based solely on the stipulated evidence. *Id.* at 31–32, 36. We then explained the distinction between an "agreed statement of facts" and "stipulated facts" and, importantly, how that distinction affected the outcome of the case:

> Under an agreed statement of facts both [the] State and the defense agree as to the ultimate facts. Then the facts are not in dispute, and there can be, by definition, no factual conflict. The trier of fact is not called upon to determine the facts as the agreement is to the truth of the ultimate facts themselves. There is no fact-finding function left to perform. To render judgment, the court simply applies the law to the facts agreed upon.
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> On the other hand, when evidence is offered by way of stipulation, there is no agreement as to the facts which the evidence seeks to establish. Such a stipulation only goes to the content of the testimony of a particular witness if he were to appear and testify. The agreement is to what the evidence will be, not to what the facts are. Thus, the evidence adduced by such a stipulation may well be in conflict with other evidence received. For the trier of fact to determine the ultimate facts on such conflicting evidence, there must be some basis on which to judge the credibility of the witness whose testimony is the subject of the stipulation, or to ascertain the reliability of that testimony, to the end that the evidence obtained by stipulation may be weighed against other relevant evidence adduced.
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> Here, despite the original intention, evidence ultimately offered was actually conflicting in material part so that there was no agreement as to the facts, and no opportunity for the fact-finder either to judge the credibility of the witnesses through whom the conflicting evidence was offered by stipulation, or to ascertain the reliability of that evidence. Without such opportunity, there was no proper way to resolve the evidentiary conflicts in order to determine ultimate facts which would be sufficient in law to sustain a verdict of guilty.

Id. at 35–36.

In the present case, unlike in *Barnes*, the ultimate facts were presented to the juvenile court in such a way that there was no fact-finding function left to perform. That is, the facts were not "stipulated evidence;" they were, quite simply, the undisputed facts as agreed upon by the parties. Moreover, Father offered no evidence to refute those facts, despite being given ample opportunity to do so. For those reasons, Father's reliance on *Barnes v. State*, 31 Md. App. 25 (1976), and its progeny is misplaced. *See e.g. Taylor v. State*, 388 Md. 385, 399 (2005) (finding of guilt as to rape conviction was erroneous where agreed statement of facts included conflicting statements from the defendant and the victim as to whether sexual intercourse was consensual); *In re Damien F.*, 182 Md. App. 546, 580–81 (2008) (juvenile court erred in not allowing a parent to call witnesses at a shelter care hearing).

In sum, the parties' agreed-upon statement of facts was undisputed. Thus, the juvenile court's findings, which were based on that statement of facts, were not clearly erroneous.

II.

Father next contends that the juvenile court erred in denying him any contact with the Children. Father asserts that the court's decision was "overly sweeping" and "not supported by the evidence." Father also asserts that the court erred in not making a finding as to the likelihood of further abuse or neglect if he were to be allowed visitation with the Children.

Section 9-101 of the Family Law Article of the Maryland Code states that, "[i]n any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party." Md. Code, Fam. Law § 9-101(a). The statute further states, in pertinent part, that, "[u]nless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and . . . well-being of the child." Md. Code, Fam. Law § 9-101(b). Under the statute, "[t]he court is explicitly prohibited from granting custody or unsupervised visitation to a party who has abused or neglected a child unless the court specifically finds that there is no likelihood of further abuse or neglect." *Baldwin v. Baynard*, 215 Md. App. 82, 106 (2013). "Moreover, 'the burden is on the parent previously having been found to have abused or neglected his or her child to adduce evidence and persuade the court to make the requisite finding under § 9-101(b).'" *Id.* (quoting *In re Yve S.*, 373 Md. at 587).

Nevertheless, "the source of the court's authority to make custody and visitation determinations does not stem from § 9-101 alone." *Id.* at 108. Rather, "[t]he best interest of the child standard is the overarching consideration in all custody and visitation determinations." *Id.*; *See also In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 111 (2010) ("[W]hile the parental rights are recognized . . . the child's best interest standard trumps all other considerations.") (footnote omitted). In fact, "[i]n determining visitation,

the trial court is required to consider the best interests of the child, and therefore, visitation may be restricted or denied when the child's health or welfare is threatened." *In re J.J.*, 231 Md. App. at 347. "In assessing the best interests of the child, 'a trial court, acting under the State's *parens patriae* authority, is in the unique position to marshal the applicable facts, assess the situation, and determine the correct means of fulfilling a child's best interests.'" *Baldwin*, 215 Md. App. at 108 (quoting *In re Mark M.*, 365 Md. 687, 706 (2001)).

Here, we hold that the juvenile court did not err. At the time of the hearing, Father was incarcerated, having pleaded guilty to a charge of neglect stemming from the incident wherein one of the Children, K.F.S.-W., had been admitted to the hospital "with a critical brain injury and head trauma" from "suspected physical abuse and neglect." As a result of that conviction, Father was ordered to have no contact with K.F.S.-W. until "therapeutically appropriate." In addition, Father had previously been convicted of "third-degree sexual offense of a minor child, age five" and had been involved in "at least one incident of domestic violence" with Mother. As the juvenile court found, not only would it have been "traumatic" to have the "young, young children" visit with Father "at a correctional facility," but doing so would not have been in the Children's best interests given "the allegations in this case." Father further did not produce any evidence to persuade the court to make a § 9-101(b) finding. As such, we cannot say that the court abused its discretion in ordering that Father have no contact with the Children.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.