

Circuit Court for Worcester County
Case Nos.: C-23-JV-23-000028 &
C-23-JV-23-000029

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

Nos. 706 & 708

September Term, 2023

IN RE: E.W. AND G.W.

Reed,
Beachley,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: November 22, 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).

Appellant, R.W. (“Father”), appeals the Circuit Court for Worcester County’s order finding his two children, E.W. and G.W., children in need of assistance. On appeal, Father presents several questions for our review, which we consolidate and rephrase as follows: Did the court err in finding E.W. and G.W. children in need of assistance?¹ Finding no error or abuse of the court’s discretion, we shall affirm the judgment.

BACKGROUND

Father and L.W. (“Mother”)² share two minor sons, E.W. and G.W. G.W. has a rare

¹ Father, self-represented on appeal, presents the following questions in his brief:

1. Was the juvenile court’s decision that G.W. and E.W. are children in need of assistance incorrect when only one parent was found to [be] unable to give the children proper care and attention, and the other parent was available, able, and willing to care for the children?
2. Did the juvenile court fail to conduct a proper best interest analysis?
3. Did the juvenile court err[] in denying Father’s request for a continuance before disposition when a factual dispute existed with respect to material evidence necessary for consideration by the court in determining whether the children are CINA and making a custody determination?
4. Should this matter have been more properly handled as a custody proceeding and not a CINA case, and should the juvenile court have dismissed the CINA petition?
5. Is the juvenile court’s lack of knowledge of its authority under Md. Code Ann., Cts. Jud. Proc. § 3-819(e), a reason to vacate its orders?
6. Was the finding of neglect improper when the decision was based on mutual arguments between the parents with the children present, and consideration of a neglect finding on appeal?
7. Was the Department’s decision to shelter the children based on their disagreement with a consent custody agreement entered by a judge in a custody case two days earlier improper when the Department had less restrictive means to handle their concern, and was it improper to change a private custody agreement in this case?

² Mother does not appeal the court’s ruling.

genetic disorder, is nonverbal, and cannot walk unassisted. On May 5, 2023, the court found that both E.W. and G.W. were children in need of assistance (“CINA”) under Md. Code Ann., Courts and Judicial Proceedings (“CJP”) § 3-819, awarded custody to Mother under the protective supervision of the Department of Social Services (“DSS”), and granted supervised visitation to Father. The relevant facts before the court were as follows.

The family originally came to the attention of DSS in September of 2021, after Mother called 911 and reported that Father had strangled her and lifted her “off the floor by [her] neck” before fleeing the family home with G.W., then two years old. Police located Father and pulled him over after he ignored lawful orders to stop. Police approached the vehicle and noticed that G.W. was unrestrained in the back seat. Father was charged with several offenses, including first and second-degree assault and reckless endangerment. He pled guilty to the charge of attempting to elude a uniformed police officer by failing to stop and received probation before judgment, with one year of unsupervised probation.

Several months later, in March of 2022, a dispute occurred which resulted in a “loose board that was leaning against the wall” falling and hitting E.W. on his chest. Both Mother and Father sought and received protective orders as a result of the incident. Mother then reported that Father came to the home multiple times in violation of her temporary protective order. During one visit, an argument arose between Mother and Father while Mother’s mother, T.M., was present. After the children were taken upstairs in order to be

removed from the argument, Father reportedly pushed T.M. against a bathroom door before leaving the home with E.W.

In April of 2022, Mother called police after Father reportedly “dragged [Mother] out of the house into the front yard,” and “kicked her approximately four times.”

In December of 2022, Mother called police and reported that Father had “overdosed on Adderall.” When police arrived at the home, Mother claimed Father was “sitting in front of the bedroom door[,]” preventing her exit. Father let the officers inside and stated that he had a legal prescription for Adderall. Police attempted to deescalate the situation by asking Father to leave the home. Father declined, and Mother and the children left to stay in a hotel for the evening.

In January of 2023, a dispute arose where Father reported that Mother had stolen his phone, computer, and car keys. Mother reported that she was lying in bed with G.W. when Father dragged her out of bed and across the bedroom floor, causing a glass to fall from the nightstand and hit her on the head. Mother and Father again sought protective orders against each other.

On February 13, 2023, Mother returned home from a trip to Mexico and noticed that it looked like G.W.’s diaper had not “been changed all day.” Father reportedly became enraged about Mother “being late and lying to him.” Father flipped a coffee table over, “which almost hit” E.W., and broke a bowl.

The following day, while the children were at school, Mother and Father got into yet another argument, which resulted in Father reportedly throwing Mother on a bed and

sitting on her chest. Mother testified that Father held her face “sideways against the bed” for an “extended period of time[,]” and that she had “never been so scared for not being able to breathe.” That same day, E.W. reported the previous day’s incident to school personnel. At DSS’s request, Mother sought and received an additional protective order against Father.

On March 7, 2023, Mother reported that Father came to the home in violation of the protective order and “flipped over the dining room table and dishes went everywhere.” She stated that she took the children to a separate floor in the home, where Father thereafter “shoved everything off their in-home bar causing glass to shatter everywhere.” Shards of glass almost hit G.W.³

On March 10, 2023, Mother reported that Father again came to the home in violation of the protective order. Mother called the police, but Father left before they arrived.

On March 17, 2023, a dispute occurred between Mother and Father during an exchange of the children. Father filed for a protective order and, for reasons unclear from the record before us, was given custody of the children and possession of the home until March 24, 2023. Child Protective Services (“CPS”) investigator Leslie Valerio testified that during that time, E.W. reported that his Father was sleeping and could not be awakened, and that he and G.W. had not eaten and were hungry. On March 24, 2023, Ms.

³ In a March 17, 2023, interview with a Wicomico Child Protective Services worker, E.W. stated that there was an instance where Father threw glass plates and cups during an argument with Mother. E.W. showed a “little cut on his shin” that he said was caused by a piece of glass.

Valerio conducted a welfare check on E.W. and G.W. after receiving a referral with “concerns for [E.W.’s] and [G.W.’s] safety.” The house was described as “trashed” and smelling “of garbage and urine[,]” with a “moldy baby bottle on the counter” and “dirty diapers on the floor[.]”

That day, at the suggestion of CPS, Father agreed to a safety plan where the children would live with Father’s parents in Wicomico County. The children remained at Father’s parents’ home until March 31, 2023, when the court presiding over Father’s protective order case restored custody of the children to Mother, and granted Father supervised visitation.

On April 12, 2023, Mother and Father appeared before the court for matters relating to custody of the children. A representative from DSS was present at the hearing. The court issued an order granting primary custody of E.W. and G.W. to Mother, with visitation to Father, on the condition that he comply with the recommendations of DSS.⁴ Following

⁴ The record indicates that the judge who presided over the matter presently before us also presided over the matter determining custody on April 12, 2023. As the judge in this case noted:

As I recall at the custody case, I had the staff here call the Department of Social Services to ask them to be present after I had reviewed the file because I was concerned that the department maybe should be involved with this case. Turned out they already were involved, they may have been planning to come anyway, but they appeared.

And I thought I was really clear that what I was ordering was that both the parties had to, had to, cooperate with and abide by the recommendations of the Department of Social Services. And, yet, I come back here two days later, and there’s a CINA case because [Father] walked out of the courtroom,

(continued)

the hearing, a DSS representative approached Mother and Father with an updated safety plan providing, in part, supervised visitation for Father. Mother agreed to the safety plan, but Father refused, responding that “he was not going to be supervised for his visitation with his children.”

Accordingly, on April 13, 2023, DSS authorized emergency shelter care for both children and filed a petition for continued shelter care, initiating the matter presently before us. On April 17, 2023, the court held a shelter care hearing and granted shelter care for E.W. and G.W., with temporary custody to Mother and supervised visitation to Father.

On May 5, 2023, the court held a CINA adjudication and disposition hearing. The court heard from Ms. Valerio, Mother, Father, and Mother’s sister. Father disputed that the children were CINA and requested that the court instead amend the previously issued custody order “to whatever the [c]ourt deems is in the best interest of the kids.” Mother also disputed the children were CINA, but acknowledged that she and Father had both “made mistakes[,]” and expressed interest in relocating with E.W. and G.W. to Georgia to be closer to family. Mother’s sister testified that she lived with Mother and Father for over a year and that their relationship was “very abusive.” Mother’s sister also recounted an incident at their home where E.W. sought her help due to a physical altercation between Mother and Father where he saw Father “pushing on [Mother’s] neck.”

I guess, or if not shortly thereafter, then didn’t do the very thing I -- the only reason I signed the order and went along with the way the parties wanted to go was because he was going to cooperate with the department, and then he didn’t.

DSS maintained that both Mother and Father had been neglectful of the children and recommended that the court find the children CINA. In response to a question about the allegations against Mother, Ms. Valerio testified that the

concerns are that they can't leave each other alone, including [Mother]. They go -- continue to go back and forth in the text messages. She is guilty of that also. So my concern is that [Mother] can't properly protect the children from [Father] due to her own [domestic violence] cycle with him[.]

Counsel for E.W. and G.W. also maintained that Mother did not have the “ability to protect these children because of her own domestic situation, and, therefore, the children are neglected.”

The court found that Mother was “in need of trauma-based therapy, [and] that in the absence of trauma-based therapy, I don't think she can protect the children.” In particular, the court expressed concern that Mother did not prioritize her children's best interests when she withdrew her most recent temporary protective order from February 14, 2023, over concerns of its potential impact on Father's license to practice law.⁵ After the court determined that the children were CINA as a result of parental neglect, it granted custody to Mother under the protective supervision of DSS with supervised visitation to Father. Father timely filed this appeal.

STANDARD OF REVIEW

“There are ‘three distinct but interrelated standards of review’ applied to a juvenile court's findings in CINA proceedings.” *In re J.R.*, 246 Md. App. 707, 730 (2020) (quoting

⁵ Father is admitted to the Maryland Bar.

In re Adoption/Guardianship of H.W., 460 Md. 201, 214 (2018)). First, we review the court’s factual findings for clear error. *Id.* (citing *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 708 (2011)). Next, errors of law are reviewed “without deference[.]” meaning that, “if an error is found, we then assess whether the error was harmless or if further proceedings are required to correct the mistake in applying the relevant statute or regulation.” *Id.* at 730–31 (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). Lastly, “we give deference to the juvenile court’s ultimate decision in finding a child in need of assistance[.]” *Id.* at 731 (citing *In re J.J.*, 231 Md. App. 304, 345 (2016)). “[A] decision will be reversed for 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.* (quoting *In re J.J.*, 231 Md. App. at 345).

DISCUSSION

Father asserts the court abused its discretion in finding that he had neglected the children and that the children were CINA. In support, he maintains that he cannot be “neglectful solely because of the mutual arguments with the Mother while the children were present.” He further asserts that “the allegations were sustained against only one parent—Father—and another willing and able parent—Mother—existed to provide proper care for the children.” As previously noted, Mother has not appealed the CINA finding or any other aspect of the court’s judgment. The children’s counsel responds that the facts sufficiently indicate that neither Mother nor Father were able to care for the children, and that the court “properly exercised its discretion by protecting E.W. and G.W. from an

ongoing cycle of domestic violence by finding them to be children in need of assistance.” After an extensive review of the facts in its brief, the Department posits that “[t]he juvenile court properly exercised its discretion when it concluded that E.W. and G.W. were CINAs.” We agree.

A CINA is defined as a child needing intervention from the court 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.” CJP § 3-801(f). Neglect includes “leaving of a child unattended or other failure to give proper care and attention to a child . . . under circumstances that indicate: (i) [t]hat the child’s health or welfare is harmed or placed at substantial risk of harm; or (ii) [t]hat the child has suffered mental injury or been placed at substantial risk of mental injury.” CJP § 3-801(s)(1). In other words, a “child may be considered ‘neglected’ before actual harm occurs, as long as there is ‘fear of harm’ in the future based on ‘hard evidence’ and not merely a ‘gut reaction.’” *In re Nathaniel A.*, 160 Md. App. 581, 601 (2005) (quoting *In re William B.*, 73 Md. App. 68, 78 (1987)).

Here, the court found that the children were CINA due to neglect. In our view, that determination is amply supported by the record. The facts indicate several instances of both parties failing to provide proper care or attention to the children. Father failed to provide proper care or attention to one or both children several times, including when he placed G.W. unrestrained in the back seat of a vehicle before attempting to flee from police,

and when E.W. and G.W. were not fed or cared for while in Father’s sole custody in March of 2023. At that time, DSS found unsanitary conditions and general disarray in the home, including dirty diapers on the floor and a baby bottle filled with mold. These circumstances support the finding that one or both children were at a substantial risk of harm or mental injury.⁶

Further, Father had subjected Mother to repeated instances of domestic violence when one or both of the children were present, including: in September of 2021, “strangling” Mother and thereafter fleeing with G.W. unrestrained in the vehicle; in April of 2022, dragging Mother into the yard and kicking her in front of E.W.; in January of 2023, pulling Mother out of a bed where G.W. was also laying and dragging her across the floor; in February of 2023, throwing a table in the direction of Mother and E.W.; and in March of 2023, shoving glass off the in-home bar and causing it to “shatter everywhere” in the presence of the children. These facts also indicate a failure to give proper care and attention to the children in circumstances that indicate a substantial risk of harm. *See In re Adoption No. 12612 in Cir. Ct. for Montgomery Cnty.*, 353 Md. 209, 236 (1999) (noting a “deep concern over the effect on a child of being in the maelstrom of *any* domestic violence within the home, including the abuse of adults and other children”).

⁶ Father alleges that the court improperly considered a finding of neglect from Wicomico County because Wicomico County lacked jurisdiction to make such a finding. Because this contention is unpreserved for our review, and because Father cites no legal authority to support his assertion, we decline to reach this issue.

Father asserts that “[t]he bare fact that a parent has been indicated for an instance of neglect does not, by itself, automatically disqualify that parent from maintaining an existing custody agreement[,]” citing *In re T.K.*, 480 Md. 122, 158 (2022). What Father fails to acknowledge is that the facts of this case do not indicate only “an instance of neglect[,]” but more than a year of disputes involving verbal arguments, domestic violence, and failure to provide appropriate care for the children. Similarly unavailing is Father’s assertion that there was no neglect because “no child was left unattended, no child was injured, no positive drug screens for illegal drugs, no violations of safety plans, no convictions for assault, no final protective orders, and no mental illness supported by expert witness testimony.” Father’s argument ignores the evidence supporting the court’s finding of neglect related to some of these very issues as well as the statutory directive to protect children. *See In re William B.*, 73 Md. App. at 77–78 (recognizing that the “purpose of the [CINA statute] is to protect children—not to wait for their injury”).

Lastly, Father contends that the children were improperly declared CINA, citing to CJP § 3-819(e), which provides that, “[i]f the allegations in the petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child, the court may not find that the child is a child in need of assistance, but, before dismissing the case, the court may award custody to the other parent.” He maintains that there were no allegations against Mother in the CINA petition and that the circuit court only sustained allegations against him. Father therefore argues that the court abused its discretion in finding that the children were CINA. We disagree.

Although the factual history of this case centers primarily around allegations regarding Father, the court determined that the children were CINA after hearing about an ongoing “pattern” of domestic violence involving both Mother and Father. This pattern is sufficiently alleged in the CINA petition, which notes numerous instances of domestic violence between Mother and Father, as well as an instance where Father accused Mother of neglect and an instance where Father received a temporary protective order from Mother. The testimony supported the determination that Mother could not “properly protect the children” from Father “due to her own [domestic violence] cycle with him[.]” The court found that Mother was “in need of trauma-based therapy,” and that she was unable to protect the children in absence of that therapy. Finally, in addition to acknowledging that she made “mistakes,” Mother does not challenge the court’s CINA finding on appeal. We hold that the court properly found the children to be CINA, and appropriately placed them under continued DSS supervision.

As we have previously noted, “[i]t makes sense to think of ‘neglect’ as part of an overarching pattern of conduct[.]” *In re Priscilla B.*, 214 Md. App. 600, 625 (2013), and here, the overarching pattern of conduct, from at least September 2021 to May 2023, indicates a failure of both parents to provide adequate care and attention to the children.

Accordingly, we see no abuse of discretion⁷ and affirm.⁸

**JUDGMENT OF THE CIRCUIT COURT
FOR WORCESTER COUNTY IS
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

⁷ Father argues that the court erred because it denied his motion for continuance to receive reports on his progress for DSS mandated activities before disposition. “[T]he decision to grant a continuance lies within the sound discretion of the trial judge,” and therefore denials are reviewed for “abuse of discretion.” *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006). Although the court denied the request for a continuance, it allowed Father to testify about the contents of the reports in question. We see no abuse of discretion.

⁸ We note that Father also broadly asserts that “[t]he juvenile court should not have admitted E.W.’s and G.W.’s out of court statements without a finding of ‘particularized guarantees of trustworthiness’ as required by [Criminal Procedure] § 11-304.” However, because Father fails to provide any facts that support his contention, and specifically fails to identify the statements which he takes issue with on appeal, we do not reach this issue. *See* Md. Rule 8-504 (requiring parties to include “the facts material to a determination” of issues presented); *Rollins v. Cap. Plaza Assocs., L.P.*, 181 Md. App. 188, 201 (2008) (emphasizing that we “cannot be expected to delve through the record to unearth factual support favorable to [the] appellant.”) (quotation marks and citation omitted). Even had Father properly presented this issue for our review, he does not explain how any error was “likely to have affected” the outcome of the case. *Flanagan v. Flanagan*, 181 Md. App. 492, 515 (2008) (noting that “the burden is on the complaining party to show prejudice as well as error[,]” and that we will “not reverse a lower court judgment if the error is harm[less]” (quoting *Flores v. Bell*, 398 Md. 33–34 (2007))).

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