

Circuit Court for Baltimore County
Case No. C-03-JV-20-000516
Case No. C-03-JV-20-000517

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1160 & 1190

September Term, 2021

IN RE: J.W. & J.B.

Nazarian,
Reed,
Zic,

JJ.

Opinion by Reed, J.

Filed: May 5, 2022

*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.

This consolidated case arises from a child custody adjudication/disposition order of the Circuit Court for Baltimore County, sitting as a juvenile court (“circuit court”). On April 24, 2020, the Baltimore County Department of Social Services (“Department”) and Baltimore County Child Protective Services (“CPS”) began a joint physical abuse and neglect investigation with the Baltimore County Police Department (“BCPD”) concerning a mother, Ms. B (“Appellant”), and Appellant’s four children. The four children were in Appellant’s primary care and custody. The investigation began after a firefighter from the Baltimore City Fire Department (“BCFD”) observed the Appellant’s home – the children’s primary residence – in an unsanitary and unsafe condition. Concerns for the children’s well-being also arose after their infant sibling was brought to the emergency room after the infant reportedly fell and hurt himself. However, after the infant was evaluated by the Child Protection Team at Johns Hopkins Hospital, medical professionals suspected the infant sibling was being physically abused because subsequent evaluations strongly suggested the injuries sustained by the infant sibling were the result of non-accidental trauma. *Id.*

Department filed Child in Need of Assistance (“CINA”) petitions in the circuit court on behalf of J.B., J.W. (collectively, “the children”), and their two younger siblings. At a disposition hearing on September 24, 2021, the circuit court deemed the children not to be CINA because their fathers, Mr. E.P. (“J.B.’s Father”) and Mr. W. (“J.W.’s Father”) (collectively “the Fathers”) were willing and able to provide adequate care for their

children.¹ The circuit court awarded the Fathers sole physical and legal custody of their children. *Id.* The circuit court also granted Appellant weekly visitations with the children.

Appellant challenges the order, stating that the circuit court erred for not delaying the children’s disposition to allow her additional time to find adequate housing for herself and the children to live. Appellant presents the following question for appellate review, rephrased for clarity:²

- I. Did the circuit court abuse its discretion when, after an adjudication and disposition hearing, it proceeded to a disposition for J.B. and J.W.?

For the following reasons, this Court finds that the circuit court did not abuse its discretion and affirms the circuit court’s decision.

FACTUAL & PROCEDURAL BACKGROUND

Appellant had primary legal and physical custody of her four children. This appeal stems from the Appellant’s two older children’s consolidated cases, J.W. and J.B. The oldest child, J.B., was born to Appellant and J.B.’s Father on July 7, 2012. The second oldest child, J.W., was born to Appellant and J.W.’s Father on December 14, 2014. The children’s two younger siblings were born on June 1, 2017 (“J.B.2”) and July 10, 2019

¹ The circuit court postponed disposition for the two younger siblings. The two younger siblings were later deemed as CINA because neither Appellant nor the younger siblings’ father could assume care of the younger siblings. Appellant did not appeal the two younger siblings’ cases.

² Appellant posed the following question in her brief:

1. Did the trial court abuse its discretion in refusing to postpone disposition for J.B. and J.W. so that Appellant-Mother could obtain adequate housing?

(“infant sibling”) (collectively, “younger siblings”) to Appellant and a third father (“younger siblings’ father”). Appellant did not appeal the younger siblings’ cases.

A. First Responder Calls to Appellant’s Home

On April 24, 2020, the Department and CPS began a joint physical abuse and neglect investigation with BCPD following a string of reports from BCPD and BCFD regarding calls to the Appellant’s home (“home”).

The first call occurred on April 13, 2020, when Appellant experienced abdominal pain and called 911 for assistance. Emergency Medical Technicians (“EMT”) reported to the Appellant’s home and transported Appellant to the hospital. EMTs called BCPD to assist in watching the children while Appellant was transported to the hospital. A BCPD officer responded to the residence and testified that: the “home was filthy,” “the children were very dirty,” “their clothes were soiled,” “it did not appear that they had been bathed in awhile,” and “their hair was matted.”

The children told the BCPD officer that they were hungry, so he took them to the kitchen to feed them. The BCPD officer described the kitchen as filthy and dead mice remained in the mouse trap on the floor. The BCPD officer noted that there were also pieces of broken toys and trash on the floor that posed as a choking hazard to the children. The BCPD officer also testified that the living room was infested with cockroaches.

However, the BCPD officer did not independently report his observations to the Department because he had been informed that BCFD had already been in contact with the Department and CPS about getting help for the children. BCFD told the BCPD officer that BCFD had been there on numerous occasions and it was commonplace that they had to

change the infant sibling's diapers. BCFD also confirmed that the children were always dirty when they saw the children. BCFD stated they were documenting the concerns and incidents and were contacting the Department and CPS. In response to the incident, J.W.'s Father assumed care of J.W. and J.B. on that day.

Three days later, on April 16, 2020, three calls were made for assistance to the Appellant's home while the children's two younger siblings were present. The first call from the home was at or around 7:30 a.m. Appellant was having abdominal pain and was unable to take herself to the hospital, but later refused medical transport. The BCFD firefighter that responded to the home testified that they were concerned about the children's living conditions, stating that there was trash everywhere, mouse traps with mice in them, and a rodent infestation. The BCFD firefighter reported his observations to BCPD so BCPD could be of further assistance to the children.

The second call on April 16, 2020 was placed by the younger siblings' father, stating Appellant was trying to leave the home with the younger siblings in the car to go to the hospital. When the same responding BCFD firefighter arrived, there was an ongoing domestic dispute between the younger siblings' father and Appellant. The BCFD firefighter observed one of the children atop of the kitchen table, so he entered the residence to take the child from the table to prevent the child from injuring himself. He also moved a precariously placed large television to a safer location within the home. The BCFD firefighter described the home as "uninhabitable" and called BCPD to assist with the younger siblings. The BCFD firefighter changed the infant sibling's full diaper.

The last call for assistance to the home on April 16, 2020 was made when Appellant

initially reported that infant sibling fell off the bed, then later reported the infant sibling fell off the bed and onto a metal air conditioning unit on the floor. When EMTs arrived at the Appellant's home, the infant sibling's diaper had to be changed again because it was full. The BCFD firefighter arranged for CPS to meet Appellant and infant sibling at the hospital.

On April 24, 2020, the younger siblings' father called 911 for another reported injury to infant sibling. The same responding BCFD firefighter reported to the home. The younger siblings' father and Appellant had conflicting accounts of how the injury to the infant sibling occurred. The younger siblings' father stated that the infant sibling fell and Appellant stated that a bed fell on top of the infant sibling. Appellant first stated to the BCFD firefighter that the infant child had fallen off the bed, hit his head, and vomited, then Appellant later changed her story to state that the bed fell on the infant sibling. The BCFD firefighter reported to the Department that the home was still in the same unsafe and unsanitary condition it was in when he reported to the home days prior.

The infant sibling was transported to Johns Hopkins Hospital ("Hopkins") and evaluated by medical staff. During that time, a CPS worker was traveling to Appellant's home when Appellant notified her that she took infant sibling to the hospital. At Hopkins, medical staff requested a consultation with the Child Protection Team, citing concerns for non-accidental trauma. Sarah Perl, Nurse Practitioner of the Hopkins Child Protection Team testified that the Appellant's story regarding the specifics of the fall changed numerous times and Appellant denied that the child vomited.

Dr. Sara Eleoff, from the Child Protective Team at the Greater Baltimore Medical

Center also testified as an expert in the field of general pediatrics with a concentration in the diagnosis of suspected child abuse. Dr. Eleoff stated that based on the type of fractures found within the infant sibling's body, including chip fractures, and the inconsistent nature of the mother's explanation of how the injuries occurred, there was concern for both neglect and intentionally inflicted abuse and injury.

A. Investigation and Procedural History

On April 24, 2020, as a result of BCFD's reports and the Hopkin's Child Protection Team's observations, the Department and CPS began a joint physical abuse and neglect investigation with BCPD concerning the well-being of the children. The children were taken from Appellant on that day and placed with a relative under a safety plan.

On May 4, 2020, the Department filed a CINA Petition with an Emergency Request for Shelter for the four children. The following day, the children were sheltered pursuant to a Shelter Order issued by the circuit court. J.W. was sheltered to J.W.'s Father's custody with supervised visits with Appellant, and the three other children were sheltered to the Department. On July 22, 2020, J.B. was placed in J.B.'s Father's care. A review of the Department's Petition for Emergency Shelter was heard on December 14, 2020, and an Order continuing the shelter was entered the following day.

The Department filed an amended CINA Petition for the four children on March 16, 2021. In that petition, the Department made multiple allegations against Appellant, citing: (1) unsanitary and unsafe conditions of the home; (2) concerns about infant sibling's suspected physical abuse following the Hopkins medical team's evaluation of a skull fracture, older healing fractures in his extremities; (3) the Appellant's inability to give

consistent answers to explain the infant sibling’s medical issues; (4) an injury just days prior to the infant sibling, when the infant sibling reportedly fell off the bed and hit a metal air conditioner resulting in abrasions on his back; (5) Appellant’s substantial history of child welfare involvement; and, (6) Appellant’s refusal to cooperate with Department’s attempt to evaluate her living situation at Appellant’s mother’s house while Appellant was living with her mother.

The CINA adjudication was set for April 21-23, 2021 but postponed to August 10, 2021 after the circuit court found extraordinary good cause.³ The CINA adjudication was postponed again until September of 2021 based on the unavailability of a necessary expert witness.

The circuit court held an adjudication hearing from September 22-24, 2021 and disposition hearing on September 24, 2021. Appellant argued that the CINA proceedings were an extreme overreaction and that the state of her home was due to her recovery from surgery. Moreover, she stated that infant sibling’s x-rays showed normal variants, and arguendo, there was no way to know which caretaker injured him. She requested a non-CINA finding and that all four children be returned to her once she found appropriate housing.

During the hearing, Tracey Bosick, (“Ms. Bosick”) a licensed clinical social worker and supervisor with CPS, testified that Appellant was previously investigated by CPS on

³ On March 18, 2021, J.W.’s Father’s counsel filed an unopposed Motion to Postpone for medical reasons. The motion was granted by the Circuit Court for Baltimore County on March 19, 2021.

multiple occasions for neglect.⁴ Ms. Bosick also testified that it was “rather difficult to get a direct . . . story” from Appellant on how infant sibling was injured. Finally, Ms. Bosick testified that despite multiple attempts to see the Appellant’s home, the Department was never able to complete a home visit, attributing it to Appellant’s reluctance to have Ms. Bosick over. Notably, Appellant did not provide the Department with her address until September 13, 2021.

Ultimately, the circuit court sustained Department’s Amended CINA petition except for paragraphs three, four, and six, which included a medical report that the Appellant withdrew before the hearings.⁵ However, the circuit court did not deem J.W. and J.B. CINA

⁴ In 2010, Appellant was investigated for neglect of her niece when the niece burned herself on an iron. In 2015, there was an assessment involving J.B. and J.B.’s Father. In 2016 and 2019, Appellant was accused of using physical discipline, leaving her children unattended, and neglect, which were all found to be “unsubstantiated.” In May of 2019, CPS was concerned that Appellant was not following through with J.B.’s mental health treatment requested by the school.

⁵ The Department’s Amended CINA petition paragraphs three, four, and six read as follows:

3. A subsequent report filed by [Appellant’s] counsel and authored by radiologist, Dr. Levi Chazen, found that “there was no definitive evidence of traumatic injury to [infant sibling].” Dr. Chazen’s opinion is that the “irregularities noted in the imaging studies can be better explained by technical artifacts of the imaging acquisition and normal variants of skull fracture.” He opines that the repeat skeletal exam shows that there were no old healing fractures in the extremities. Although he points out that on the left femur (upper leg), the irregularity may correspond to the suspected metaphyseal fracture. But his opinion is that the leg did not show signs of healing, which means that the irregularities were not fractures. He also opines that the skull asymmetrical lucency (small bone gap) in the right occipital bone (back of the skull) was more consistent with an accessory suture (naturally occurring variant) than with a fracture. He states that “[t]his finding is nonspecific, meaning it can be a naturally

because Fathers could provide adequate care for the children. The circuit court granted Fathers sole legal and physical custody of their children with weekly visitation rights for Appellant.

Appellant timely appealed.

DISCUSSION

A. Standard of Review

In *In Re: Yve S.*, 373 Md. 551, 586, (2003), the Court of Appeals discussed the three interrelated standards that govern CINA cases:

When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Secondly,] if it appears that the [circuit court] erred as to matters of law, further proceedings in the [circuit] court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [circuit court] founded upon sound legal principles and based upon factual findings

occurring normal variant, otherwise known as an accessory occipital suture, or a nondisplaced skull fracture.” He states that the literature “suggests an accessory suture is most likely.”

4. Dr. Eleoff then reviewed Dr. Chazen’s report and, given the discrepant opinions from the radiologists, modified her opinion. It is her opinion that the injuries and medical reports are still concerning for child physical abuse and are also consistent with supervisory neglect.

...

In April of 2020, Ms. Dunlap interviewed [J.B.], with regard to the situation. [J.B.] reported that [the younger sibling’s father], comes to visit for a little while, but he and his mother did not get along. He reported that they yell at each other, argue and its “annoying.” He reported the police have been to the house a lot because of them. He denied they get physical. In reference to what happened to [infant sibling], he reported that his mom was putting the bed down, because she was cleaning for inspection when [infant sibling] was trying to stand by holding the wall and his mom accidentally let the bed fall down on top of him. He reported that [infant sibling] was crying and their mom called the ambulance and was yelling at them because she thought it was their fault.

Notably, on September 14, 2021, Appellant withdrew Dr. Chazen’s medical report before the adjudication and disposition hearings.

that are not clearly erroneous, the [circuit court’s] decision should be disturbed only if there has been a clear abuse of discretion.

See also In re Caya B., 153 Md. App. 63, 73-74 (2003) (citations omitted).

B. Analysis

This Court begins with a review of the relevant statutory framework. The procedures governing proceedings when a child is alleged to be a CINA are set forth in MD. CODE ANN., CTS. & JUD. PROC. § 3-801. *In re O.P.*, 470 Md. 225, 235 (2020). The circuit court has exclusive jurisdiction, *inter alia*, over proceedings arising from a petition alleging that a child is CINA. MD. CODE ANN., CTS. & JUD. PROC. § 3-803. A CINA is defined as:

(f) a child who requires court intervention because:

- (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and
- (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.

MD. CODE ANN., CTS. & JUD. PROC. § 3-801(f). Neglect is defined as:

the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or individual who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:

- (1) That the child’s health or welfare is harmed or placed at substantial risk of harm; or
- (2) That the child has suffered mental injury or been placed at substantial risk of mental injury.

MD. CODE ANN., CTS. & JUD. PROC. § 3-801(s). “Abuse” is defined as the:

“[p]hysical or mental injury of a child under circumstances that indicate that the child’s health or welfare is harmed or is at substantial risk of being harmed by ... a parent or other individual who has permanent or temporary care or custody or responsibility for supervision of the child[.]”

MD. CODE ANN., CTS. & JUD. PROC. § 3-801 (b)(2).

After a CINA petition is filed, the circuit court must hold an adjudicatory hearing.

MD. CODE ANN., CTS. & JUD. PROC. § 3-817 (a).

An adjudicatory hearing is defined as a hearing “to determine whether the allegations in the petition, other than the allegation that the child requires the court’s intervention, are true.” MD. CODE ANN., CTS. & JUD. PROC. § 3–801(c). After an adjudicatory hearing, a juvenile court shall hold a separate disposition hearing to determine whether a child is a CINA unless a petition is dismissed. MD. CODE ANN., CTS. & JUD. PROC. § 3–819(a). A disposition hearing is defined as a hearing to determine: “(1) Whether a child is in need of assistance; and (2) If so, the nature of the court’s intervention to protect the child's health, safety, and well-being.” MD. CODE ANN., CTS. & JUD. PROC. § 3–801(m).

In re Najasha B., 409 Md. 20, 23 (2009). “The disposition hearing shall be held on the same day as the adjudicatory hearing unless on its own motion or motion of a party, the court finds that there is good cause to delay the disposition hearing to a later day.” MD. CODE ANN., CTS. & JUD. PROC. § 3-819. With this statutory framework in mind, this Court will address the Appellant’s contentions below.

I. Disposition Hearing

Appellant alleges that the circuit court erred in not delaying the disposition for the children so that she may find adequate housing. However, Appellant’s argument fails on multiple levels. First, J.W.’s Father notes that Appellant did not preserve her argument for appeal. We agree with J.W.’s Father because while Appellant discussed that she is in the process of finding housing, the record is clear that Appellant did not request to delay disposition to allow for her to try to find adequate housing.

“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the [circuit] court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.” MD. RULE § 8-131(a); *see also Collins v. State*, 164 Md. App. 582, 602-603 (2005). However, this Court rarely exercises authority to decide an issue unless there is a compelling reason of public policy or an “extraordinary circumstance.” *Wynn v. State*, 351 Md. 307, 323 (1998) (quoting *Mazor v. State Dep’t of Correction*, 279 Md. 355, 370-371 n. 8 (1977)). This Court declines to find such a compelling reason of public policy or extraordinary circumstance that warrants circumventing MD. RULE § 8-131 in this case.

However, assuming *arguendo*, if Appellant had preserved her argument for appeal or such a compelling reason existed, Appellant faces another statutory issue under MD. CODE ANN., CTS. & JUD. PROC. § 3-819. The rule states that the disposition hearing for the children needed to be scheduled the same day as the adjudication hearing, unless by a motion from one of the parties or the circuit court, the circuit court finds good cause to delay the disposition hearing. MD. CODE ANN., CTS. & JUD. PROC. § 3-819. Here, the circuit court held the adjudication hearing from September 22-24, 2021 and disposition hearing on September 24, 2021, which aligns with MD. CODE ANN., CTS. & JUD. PROC. § 3-819.

However, Appellant did not file a motion to delay the disposition hearing for the children or object to moving forward with the disposition hearing as necessary under MD. CODE ANN., CTS. & JUD. PROC. § 3-819. Appellant instead agreed to move forward with

the disposition hearing. Moreover, the circuit court did not find other good cause to delay the disposition hearing for J.W. and J.B.

Finally, Appellant was given an additional five months to find a new home for herself and the children to live following a series of continuances that ultimately postponed the adjudication and disposition hearings from April to September of 2021. However, Appellant failed to utilize the additional time following the continuances to secure a new home. Thus, for the reasons set forth above, this Court holds that the circuit court did not abuse its discretion in moving forward with the disposition for J.W. and J.B.

II. Best Interest of the Children

Although outside the scope of the Appellant’s question presented, Appellant makes other contentions which this Court finds have no merit. Appellant contends that the circuit court erred in concluding that taking custody of the children from her was in the best interest of the children. Appellant refutes the notion that it is not in the best interest of the children to be removed from her care by citing the “lack of allegations of abuse or neglect” pertaining the children and the unknown nature of the injury to infant sibling. Further, Appellant states that the unlivable condition of Appellant’s home was only as a result of Appellant’s recovery for surgery. Finally, Appellant argues that reversal is required because the circuit court’s decision greatly prejudices her by making it more difficult for her to ever regain custody of J.B. and J.W.

The Fathers disagree with Appellant and assert that the circuit court made the right determinations regarding the children. This Court agrees with the Fathers. Where the circuit court’s decision was founded upon “sound legal principles and based upon factual

findings that are not clearly erroneous, the [circuit court’s] decision should be disturbed only if there has been a clear abuse of discretion.” *In Re: Yve S.*, 373 Md. 551, 586, (2003). Moreover, in evaluating whether a “substantial risk of harm” exists, “the court has ‘a right – and indeed a duty – to look at the track record, the past, of a parent in order to predict what her future treatment of the child may be.’” *In Re J.J.*, 231 Md. App. 304, 346 (2016) (citations omitted). As we have explained:

It makes sense to think of “neglect” as part of an overarching pattern of conduct. Although neglect might not involve *affirmative* conduct (as physical abuse does, for example), the court assesses neglect by assessing the *inaction* of a parent over time. To the extent that inaction repeats itself, courts can appropriately view that pattern of omission as a predictor of future behavior, active or passive: it has long been established that a parent’s past conduct is relevant to a consideration of the parent’s future conduct. Reliance upon past behavior as a basis for ascertaining the parent’s present and future actions directly serves the purpose of the CINA statute. Differently put, courts should be most reluctant to “gamble” with an infant’s future; there is no way to judge the future conduct of an adult excepting by his or her conduct in the past. And of course, we need not and will not wait for abuse to occur and a child to suffer concomitant injury before we can find neglect: “The purpose of [the CINA statute] is to protect children– not wait for their injury.”

In re Priscilla B., 214 Md. App. 600, 625-626 (2013) (emphasis in original) (internal citations and quotations omitted). For the following reasons, this Court holds that the circuit court did not abuse its discretion in removing the children from the Appellant’s care and placing them in the custody of the Fathers.

The circuit court, in its adjudication/disposition order, held that the evidence presented sustained the finding that continuation of the children in the Appellant’s home is contrary to the child’s welfare. The circuit court cited the “unsanitary and unsafe conditions” of the home that the children lived in, as observed by BCFD and BCPD. *Id.*

BCPD noted that: the “home was filthy,” “the children were very dirty,” “their clothes were soiled,” “it did not appear that they had been bathed in awhile,” and “their hair was matted.” BCPD described the kitchen as filthy, dead mice remained in the mouse trap on the floor, as well as pieces of broken toys and trash. BCPD also noted that the living room was infested with cockroaches. The children were clearly placed at risk of significant harm in the Appellant’s previous home under the Appellant’s neglectful care.

Additionally, despite multiple attempts to obtain the Appellant’s new address, it was not provided to the Department until just prior to the adjudication hearing.⁶ Appellant was living with her mother at the time of the hearing. Appellant also indicated to the Department that she was not interested in discussing the possibility of the children coming to live with her while she was living at her mother’s home. In evaluating Appellant’s past and present unsuitable living arrangements, the circuit court made a sound determination in finding that continuation of the children in the Appellant’s home is contrary to the children’s welfare.

This Court, in *In re Russell G.*, 108 Md. App. 366 (1996), held that to find a child to be a CINA, the circuit court must find: (1) that the child has been abused or neglected; and (2) if the first prong is met, *both* parents are unable or unwilling to provide the child proper care. *Id.* at 376–77 (emphasis added). Accordingly, J.W. and J.B. were found not CINA by the circuit court because the Fathers were willing to provide adequate care for their children. While J.W. and J.B. fulfill the first prong of the CINA analysis under *In re*

⁶ Appellant provided her address to the Department on September 13, 2021.

Russell G., the children – unlike their younger siblings – are not CINA because both of their fathers are willing and able to provide their child proper care.⁷

For the reasons stated above, we hold that the circuit court founded its disposition upon sound legal principles, based upon factual findings that are not clearly erroneous, and find no clear abuse of discretion.

CONCLUSION

This Court holds that the circuit court, sitting as a juvenile court, did not err in moving forward with disposition for J.W. and J.B. or abuse its discretion in the dispositions of the children. Accordingly, we affirm their judgment.

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

⁷ The two younger siblings were deemed as CINA because neither Appellant nor the younger siblings' father could assume care of the younger siblings. *In the Matter of: J.B., J.B.*, Nos. C-03-JV-20-000518, C-03-JV-20-000519 (Balt. County Cir. Ct. March 28, 2022).