

Circuit Court for Baltimore City
Case No. 821172002

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1185

September Term, 2021

IN RE: D.S.

Wells, C.J.,
Shaw,
Ripken,

JJ.

Opinion by Shaw, J.

Filed: April 19, 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.

In June 2021, the Baltimore City Department of Social Services filed a petition in the Circuit Court for Baltimore City, alleging that infant D.S.¹ was a child in need of assistance (“CINA”)² due to abuse or neglect by his parents, Mother, Ms. W., and Father, Mr. S. Following an adjudicatory and disposition hearing, the court found D.S. to be a CINA and ordered custody to Mother under an order of protective supervision. D.S. timely appealed and presents the following two questions for our review:

1. Did the court err in denying the Court Medical Evaluation of the parents?
2. Did the court err in placing the Child with [Mother] under an OPS?

Counsel for D.S. filed a Motion to Stay proceedings in the circuit court pending this appeal. The court granted the Motion to Stay and ordered that D.S. be placed in shelter care, despite previously ordering protective supervision. Mother timely appealed³ and presents a single question for our review:

1. Did the court err in finding D.S. to be a CINA when it had insufficient evidence that Mother neglected D.S., when Mother was willing and able to provide D.S. with proper care and attention, and when D.S. did not require the court’s intervention?

For reasons set forth below, we affirm the judgments of the juvenile court.

¹ To protect the child’s identity, we will refer to D.S. by his initials.

² A “CINA” is a child who requires court intervention because the child has been abused or neglected or whose parents cannot or will not give proper care or attention to the child and the child’s needs. Maryland Code (1974, 2021 Repl. Vol.), § 3-801(f) of the Courts & Judicial Proceedings Article (“CJP”).

³ Mother raises her own issues on appeal related to the court’s CINA determination and opposes the appeal by counsel for D.S. in all respects.

BACKGROUND

D.S. was born on May 12, 2021 and, thereafter, lived with Mother and Mother's godparent. Mother provided daily care for him. Mother and Father had been romantically involved at the time of D.S.'s birth, but ended their relationship, after he was born. Father would visit with D.S. and help with his care. Mother and D.S. would also visit with Father.

On the night of June 19, 2021, Mother and D.S. stayed with Father at his residence. While changing D.S. the next morning, Mother noticed bruising on his abdomen. She asked Father about the bruising, and he stated that it could have happened "from tickling," "me holding [the baby in] . . . one hand," or when "he literally almost fell out of my hands when I was making his bottle" Mother asked her god-sister and paternal grandmother about the bruising, and they both recommended that D.S. be taken to the hospital.

Mother took D.S. to Johns Hopkins Hospital for an examination, and it was determined that he suffered from "a non-accidental traumatic injury." Specifically, D.S. was diagnosed with having "closed fracture[s] of multiple ribs . . . [on] both sides" and a "closed fracture of [the] proximal end of [his] left tibia." Doctors expressed concern about the "lobular appearance" of his ribs, "callous formations," bruising to his abdomen, and the "periosteal reaction along" his tibia, which were "suggestive of healing fractures." At the time of the examination, neither Mother nor Father were able to provide an explanation for the healing fractures and bruising. A Child Protective Services and criminal investigation were immediately opened. CPS caseworker, Amanda Bingham, was informed that D.S. was in the care of both parents when the bruising was discovered by

Mother. Ms. Bingham also learned that Mother and Father have a history of domestic violence.

A CINA petition was filed, and an emergency shelter hearing was held on June 21, 2021. The court granted the Department’s shelter care request and awarded limited guardianship to the Department of Social Services to be shared with fictive kin,⁴ Mother’s god-sister. The adjudication and disposition hearings were scheduled for August 20, 2021 but shortly thereafter, Mother requested a continuance to obtain an independent expert medical evaluation. The matter was continued by the court, and the adjudication hearing was scheduled for September 10, 2021.

At the hearing, Mother, Father, and CPS worker Bingham testified. Mother testified as to her living situation, her daily care of D.S., her relationship with Father, identified individuals who had access to her son, and the events of June 20, 2021. Father testified similarly. Ms. Bingham testified regarding her investigation and conclusion that the neglect and physical abuse allegations were “unsubstantiated.” Following arguments by counsel, the court found:

The medical report is sufficient to show that the [child] has been the recipient of suspicious, non-accidental, traumatic injury. I don’t know how a child this young could even have been imagined to have committed those -- whatever was necessary to cause those fractures. I find that they were not self-induced

⁴ “Fictive kin means an individual who is not related by birth, adoption, or marriage to a child, but who has an emotionally significant relationship with the child.” *The Kinship Care and Fictive Kin Reform Act*, American Legislative Exchange Council, 2017. The Department placed D.S. in emergency shelter care with Mother’s god-sister, Ms. B.

The court further found no explanation had been provided by either Mother or Father as to how the injuries occurred. The court stated:

I do not know who caused them. There has not been sufficient identification of that

* * *

I don't need to find out who caused them; I only need to find out that while the child was in the care of his parents, he sustained those injuries.

* * *

. . . I am satisfied that the child was in the care of both, Mom and/or Dad, or both during this period, and that the degree of care and protection was insufficient in this case.

At the close of the adjudication hearing, the court found D.S. was a CINA and continued shelter care for D.S. until the disposition hearing.

On September 15, 2021, the Department filed a Motion for Reconsideration asserting that the court's order from September 10, 2021, did not include the sustained facts from the court's oral recitation and that the court erred in finding D.S. to be a CINA prior to a disposition hearing.

On September 30, 2021, the court granted the Department's Motion for Reconsideration and rescinded its premature finding. Child's counsel then asked that the matter be continued to allow for an evaluation of Mother and Father by the Circuit Court's Medical Services Office. Counsel asserted that the court needed expert testimony to conclude that D.S. would be safe in the care and custody of either parent given the serious injuries and lack of plausible explanation. Mother, Father, and the Department opposed this request. The court found that:

[B]ecause there is no allegation of the existence of a mental illness that led to the injuries that the child sustained, and

nobody has told me that either parent has a mental problem[,] . . . I don't think th[is] a proper basis for referring it. Under those circumstances, I will not ask for a mental evaluation.

The matter proceeded to disposition, and the Department, Mother, and Father requested that D.S. not be found a CINA and that he be placed back in the custody of Mother. On behalf of D.S., his counsel requested a CINA finding and commitment to the Department. Jae Curtis, the Department's out-of-home placement worker, who referred the parents to parenting and domestic violence classes, testified that both parents completed parenting classes and provided the Department with certificates of completion. Curtis stated that the Department performed a home health inspection at the godmother's home and found the house contained all the items needed for D.S.'s care; it was satisfactory and had no hazards. Mother testified that she sees D.S. every day while under the supervision of the fictive kin, her god sister, Ms. B., and she performs all the duties of a parent. She confirmed her participation in domestic violence therapy and the completion of parenting classes.

The court concluded that this was “not a case that arose... [from the] deficienc[ies] in care and parenting.” Rather, it was “a case that arose out of a deficiency in appropriate vigilance and seeing to it that the child was not harmed in any way.” “This is still a child who has received significant injuries while in the care of [his] parents.” The court then ordered the return of D.S. to the care of Mother under an order of protective supervision.

Along with a timely Notice of Appeal, counsel for D.S. filed a Motion to Stay the proceedings. The court on October 4, 2021, granted the stay. On October 5, 2021, the Department filed a Motion to Amend the Stay Order to include shelter care language. The court held a hearing on the motions on October 25, 2021 and ruled that its September 30

order of protective supervision would remain in place. Following the court’s decision, Mother appealed on October 27, 2021. On October 29, 2021, the court granted D.S.’s request to stay the order of protective supervision and ordered shelter care.

Mootness

Before examining the merits of this appeal, we address whether this matter is moot. The Department, in its brief, asserted that D.S.’s arguments are moot because his motion to stay pending this appeal was granted. On February 28, 2022, this Court received a letter from the Department abandoning its mootness argument as the court merely continued this matter until the conclusion of this appeal. That same day, we received a letter jointly signed by counsel for Mother, Child, and Father asking this Court to do the same. After a review of the record, we agree that the matter is not moot, and we turn to the merits of this appeal.

STANDARD OF REVIEW

When reviewing CINA proceedings, we apply the following “three distinct but interrelated standards of review.” *In re J.R.*, 246 Md. App. 707, 730 (quotation marks and citation omitted), *cert. denied*, 471 Md. 272 (2020).

When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Secondly,] [i]f it appears that the [juvenile court] erred as to matters of law, further proceedings in the [juvenile] 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 Yve S., 373 Md. 551, 586 (2003) (some alterations in original); *see also In re Caya B.*, 153 Md. App. 63, 73-74 (2003). An abuse of discretion exists when the court’s decision “is well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.” *In re Ashley S.*, 431 Md. 678, 704 (2013) (quotation marks and citations omitted).

DISCUSSION

CINA Finding

In Maryland, “the purpose of the CINA statute is to protect children and promote their best interest.” *In re Rachel T.*, 77 Md. App. 20, 28 (1988). Procedures governing the designation of a child as a CINA are set forth in Maryland Code, Courts & Judicial Proceedings Article (“CJP”), § 3-801 *et. seq.* “When a child suffers abuse or neglect . . . and lacks a caretaker to give proper attention to his or her needs, [the] . . . department of social services may petition the juvenile court for a determination that the child is a CINA.” Md. Code Ann., CJP §§ 3-801(f), 3-809(a); *see also In re Ashley S.*, 431 Md. at 685. Once a petition is received, “the court is required to hold an adjudicatory hearing to determine whether the department’s factual allegations are true.” *Id.*; Md. Code Ann., CJP §§ 3-801(c), 3-817(a). “If the court finds that the allegations are accurate, a disposition hearing is held to determine whether the child is, in fact, a CINA, and if so, what intervention is necessary to protect the child’s health, safety, and well-being.” *Id.*; Md. Code Ann., CJP §§ 3-801(m), 3-819(a).

“Once a court determines that the child is a CINA, it may leave the child in the child’s current custody; commit the child to the custody of a parent . . . or []other suitable

individual; or commit the child to the custody of the . . . department of social services.” Md. Code Ann., CJP § 3-819(b)(1)(iii); FL §§ 5-501(m), 5-525(b). To find a child in need of assistance, the court must find: (1) that the child requires the intervention of the court; (2) that the child has been abused or neglected; and (3) that the child’s parents are unwilling and unable to provide him with proper care and attention. *See* Md. Code Ann., CJP § 3-801(f). An allegation that a child is a CINA must be proven by a preponderance of the evidence, and the burden of proof is on the Department. *See* Md. Code Ann., CJP § 3-817(c).

Mother contends that the juvenile court’s finding that D.S. is a CINA was clearly erroneous because the court did not have sufficient evidence to determine that she had abused or neglected D.S. She states the court based its finding “entirely . . . [on] the fact that an injury of unknown cause existed while D.S. was largely in [her] care.” She contends that she, “in the company of Father and her godmother, cared for D.S. daily” and she was “observant about D.S. and . . . notice[d] that he never appeared in discomfort, even at the hospital.” Once she discovered the abdominal bruising, she asked a third party for advice and sought medical attention. She argues that because the “Department could not fully substantiate a finding of neglect against” her, “there was insufficient evidence for the Department to find that . . . [she] neglected D.S.”

Conversely, D.S. and the Department argue the juvenile court appropriately determined he was a CINA because both his parents had neglected him by failing to protect him from significant, non-accidental trauma while he was in their care, and were unable to

protect him from harm.⁵ They assert that D.S. “was not an active child who went to school, played sports, or engaged in marital arts, but an immobile five-week-old infant who had been solely in the care of his parents.” They cite *In re Mark M.*, stating that the juvenile court is afforded great deference when making a CINA determination, because it “is in the unique position to marshal the applicable facts, assess the situation, and determine the correct means of fulfilling a child’s best interest.” 365 Md. 687, 707 (2001). We agree.

The first prong of the CINA statute requires a finding that a child has been abused or neglected. Md. Code Ann., CJP § 3-801(f). Neglect is defined as the “failure to give proper care and attention to a child” such that the child’s “health or welfare is harmed or placed at a substantial risk of harm.” Md. Code Ann., CJP § 3-801(s)(1). The harm to the child “must be a real one predicated upon hard evidence; it may not be simply gut reaction or even a decision to err-if-at-all on the side of caution.” *In re William B.*, 73 Md. App. 68, 78 (1987) (quoting *In re Jertrude O.*, 56 Md. App. 83, 100 (1983)).

Mother argues the court’s ruling that the parents should have “see[n] to it that the child was not harmed in any way,” created an impossible standard for a parent to meet to avoid being neglectful. She contends “the court must find that both parents are unwilling

⁵ At the time of the disposition hearing, the Department did not support a CINA finding, however, it does not challenge the decision of the juvenile court in this appeal. The Department acknowledges that, as the Court of Appeals has recognized, its recommendation cannot “divest the court of jurisdiction” of its “clear and continuous supervisory role” in CINA proceedings. *In re Najasha B.*, 409 Md. 20, 36, 39 (2009). Additionally, it recognizes that the juvenile court in this case acted within its discretion and within its “*parens patriae*” duty when it heard and resolved the evidence before it in favor of a CINA finding. *Id.* at 33.

or unable to give the child proper care and attention to find” a CINA and the court did not explicitly make a finding that she “was unwilling or unable to care for D.S.” The Department argues that while Mother states that she “was willing and able to care for D.S. because she had appropriate housing and all the supplies necessary to have D.S. returned to her and had completed the Department’s requested tasks,” she had those things before and still failed to protect D.S. from injury. It cites *In re Joseph G.* to support its arguments.

In *In re Joseph G.*, the juvenile court found an infant to be a CINA after the baby suffered a non-accidental injury when left alone in a hospital room with his mother. 94 Md. App. 343, 345 (1993). The mother denied that she abused her child and the father testified that he did not believe the mother was responsible for the injuries. *Id.* at 345-46. During court hearings, there was testimony that the parents continued to be in a romantic relationship. *Id.* at 349. The court ultimately committed the child to the Department of Social Services. *Id.* at 345.

On appeal, this Court held that “[t]he trial judge did not abuse his discretion in disbelieving” the father’s “testimony that he would be able to protect the child from its mother.” *Id.* at 349. We further held the court did not err in its findings that father “was unwilling or unable to care properly for his son.” *Id.* at 350. We found the adjudication of CINA was proper. *Id.*

Here, there was conflicting testimony about the nature and extent of Father and Mother’s relationship. Mother testified that she had allowed Father frequent unsupervised access to their son and there was testimony that Father was the last person with the infant prior to the discovery of the injuries. When asked, Father told Mother that the injuries

could have occurred from his mishandling of D.S. by “holding [the baby in] . . . one hand,” “tickling” him, or when D.S. “literally almost fell out of [his] hands when [he] was making his bottle. . .” Mother testified that she believes that Father loves D.S. and stated “mistakes can occur. Like I don’t feel like the incident was done on purpose, I feel like it was more of a mistake.”

The medical evidence clearly established that there were multiple injuries in various stages of healing. As we see it, the court made a credibility determination that the parents failed to give proper care and attention to D.S. and could not protect the infant from harm. In its ruling, the court acknowledged that this is “a case . . . [about] appropriate vigilance.” The court concluded that, although the parents “may be willing, . . . they were unable to protect this child from the injuries he suffered.” The court stated that it did “not know how the child suffered these injuries” and the court acknowledged that such information would “make the decision easier, but . . . [t]his is still a child who received significant injuries while in the care of the parents.” On this record, we discern no error or abuse of discretion in the court’s ruling that D.S. was a CINA.

Court Medical Evaluation of Parents

Under Courts and Judicial Proceedings Article, § 3-816(b)(1), a court may order a study, but it is not required to mandate such an investigation based on the request of any party. It is within the discretion of the court to “order that . . . any parent . . . be examined at a suitable place by a physician, psychiatrist, psychologist, or [any] other professionally qualified person.” *Id.* Counsel for D.S. argues the court clearly erred when it denied his

request for a medical evaluation of the parents and counsel asserts that “[t]his is in clear contradiction of the CINA statute.” Father argues the court acted properly.

The initial request for a medical evaluation was made as a preliminary motion on the morning of the disposition hearing. The court denied the request and stated, there were “no allegation[s] [in this case] of the existence of a mental illness that led to the injuries that . . . [D.S.] sustained, . . . [or] that either parent has a mental health problem.” The court stated that it “would not be led by the impression that a medical expert feels that these are proper and fit parents when this child has, in their care, has experienced the trauma that he’s experienced.”

We hold the court did not abuse its discretion in denying the request for a court evaluation of the parents. The court articulated on several occasions, that an expert opinion would not be helpful. At the reconsideration hearing, the court emphasized that it did “not believe that the medical evaluation [expert] would be able to tell [the court] . . . whether . . . the parents [,] . . . in any way . . . [had been] negligent in protecting the child[.]” especially when the court “couldn’t accuse either” parent of the allegations. Under Md. Rule 5-702 when a court is considering whether to admit expert testimony in the form of an opinion or otherwise, the court must determine the “appropriateness of expert testimony on a particular subject” and “whether a sufficient factual basis exists to support the expert testimony.” Here, the court expressed that such testimony would not be helpful or appropriate. This decision by the court was not an abuse of discretion and was not “well removed from any center mark” or beyond the fringe of what is “minimally acceptable.”

Order of Protective Supervision

Counsel for D.S. argues the court’s decision to return him to the custody of his Mother was “in direct contradiction of the State’s interest in ensuring [the] health, safety, and well-being of its children.” Counsel contends “the court heard no evidence that the concerns” about the child’s injuries and the history of domestic violence “that brought the child before the court had been mitigated so that he could safely return home.” Father asserts the “court did not abuse its discretion in returning infant D.S. to his Mother with an order of protective supervision, where its findings were based on sound legal principles.”

“The statutory scheme [for CINA proceedings] presumes that, unless there are compelling circumstances to the contrary, [a] . . . plan should . . . work towards reunification [between the parent and child], as it is presumed that it is in the best interest of a child to be returned to his . . . natural parent.” CJP § 3-801 *et seq.*; see *In re Ashley S.*, 431 Md. at 686-87 (quotations omitted). In doing so, the court has wide discretion in making its decisions. “As a result of their broad discretionary powers, juvenile court judges have the opportunity . . . to order and enforce the delivery of specific services and treatment for children who have been adjudicated as CINA.” *Id.* at 623 (quoting *In re Danielle B.*, 78 Md. App. 41, 68 (1989)).

In the present case, the case worker testified that both Mother and Father were referred to parenting and domestic violence classes. Both Mother and Father completed parenting classes. With regards to the domestic violence classes, the case worker testified that Mother “continues to participate in her . . . classes[,]” while Father has only completed his “intake . . . appointment.” She also testified that she made home health visits to

Mother’s home, the residence that D.S. was currently living, and observed both Mother and Father’s interactions with infant. Mother testified that since D.S. was placed in his fictive relative’s care, she visited him every day and cared for him under supervision. The court found that it was “in the best interests of the child [and] for the benefit of the child” that D.S. be returned back to his Mother under protective supervision with conditions that included cooperation with the Department, announced and unannounced home visits, and access to infant D.S. We hold the court considered the totality of the circumstances and evidence in making its determination that the child could be returned. The mother had fully cooperated and had complied with all requests and orders, including completion of a parenting class. As such, the court did not abuse its discretion.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
COSTS TO BE SPLIT BETWEEN
APPELLANTS, 1/3 PAID BY MOTHER
AND 2/3 PAID BY COUNSEL FOR CHILD.**