

Circuit Court for Prince George's County
Case No. CINA180201 & 02

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1218

September Term, 2019

IN RE: C.H. AND J.H.

Beachley,
Gould,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Adkins, Sally D., J.

Filed: February 20, 2020

*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.

Whenever the placement of a minor is at issue, the guiding light of our analysis is the best interests of the child. In this appeal, we are asked to address a parent’s mental health issues, the best interests of two children, and the scope of a juvenile court’s jurisdiction in CINA¹ proceedings. We are mindful of the fundamental right to parent one’s child, and Maryland’s public policy goal of conserving family ties and separating a child from the child’s parents only when necessary for the child’s welfare.

FACTUAL OVERVIEW AND PROCEDURAL POSTURE

On October 15, 2018, the Department of Social Services for Prince George’s County (“DSS” or “Department”) received a neglect referral for five-year-old J.H. and ten-month-old C.H. (“Children”) regarding the mental health of their mother, appellant L.H. (“Mother”). Eleven days later, DSS placed the Children in shelter care² based on allegations that Mother posed a threat due to her untreated mental health issues, and that the Children’s father, D.H. (“Father”), could not prevent Mother from having unsupervised access to the Children. Three days after that, on October 29, the Department filed CINA petitions for the Children, and the Circuit Court for Prince George’s County, sitting as a

¹ A child in need of assistance, or “CINA,” is one 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 (2006, 2013 Repl. Vol., 2017 Supp.), § 3-801(f) of the Courts & Judicial Proceedings (“CJP”) Article.

² “‘Shelter care’ is a temporary placement of a child outside of the home at any time before disposition.” CJP § 3-801(bb).

juvenile court, held a shelter care hearing.³ The court ordered—as agreed upon by Mother, Father, and DSS—that the Children be placed in the temporary legal and physical custody of Father, with supervised visits by Mother.

CINA proceedings have two phases: an adjudicatory hearing to determine whether the allegations in the CINA petition are true; then, if needed, a disposition hearing to determine whether the child is in need of assistance, and if so, the nature of the court’s intervention. Md. Code (2006, 2013 Repl. Vol.), § 3-801 of the Courts & Judicial Proceedings (“CJP”) Article. The adjudicatory hearing began in the juvenile court on January 30, 2019, and went into a second day on February 5, which ended with the court ordering a continuance so Mother could undergo an independent psychological examination. The adjudicatory hearing continued on July 9, and ended with the court sustaining the allegations against Mother. The disposition hearing immediately followed, where the court concluded that “the [Children] [are] *not* Children in Need of Assistance pursuant to . . . § 3-819(e), because there are no allegations against the father and the father is able and willing to care for the [Children].” (Emphasis in original.) The court ordered that the Children be placed in the sole physical custody of Father, with Mother and Father sharing joint legal custody, and Father holding tie-breaking authority. Mother submits this timely appeal.

³ “‘Shelter care hearing’ is a hearing held before disposition to determine whether the temporary placement of the child outside of the home is warranted.” CJP § 3-801(cc).

Questions Presented

Mother presents us with the following questions:

1. Did the court err when it refused to dismiss the CINA petition prior to sustaining the facts against [Mother]?
2. Did the court commit error when it excluded relevant evidence and prohibited [Mother] from presenting evidence regarding her ability to parent the [C]hildren?

While we recognize a parent has a fundamental liberty interest in the care and custody of her children, the guiding light of our analysis is the best interests of the children. *In re: Adoption/Guardianship of Ta’Niya C.*, 417 Md. 90, 112 (2010) (“[T]he child’s best interest has always been the transcendent standard.”). Following that principle, and affording proper deference to the factual findings of the juvenile court, we answer in the negative to both questions, and affirm the court’s decision.

Facts and Legal Proceedings

Mother and Father have been married since 2009 and have two children: J.H., born in 2012, and C.H., born in 2018. Mother has a bachelor’s degree and master’s degree in social work. Father works full-time, and Mother is the Children’s main caretaker.

After J.H.’s birth, Father began observing Mother acting paranoid, and working herself into fits of rage at least once a month. Over the next few years, several incidents concerned him and ultimately led him to seek intervention. Father testified to those incidents (described below) at the adjudicatory hearing.

Around 2014, Father and J.H. were in the car, with Mother driving. Mother gunned the car up to “80 to 100 miles [per] hour,” and drove it along the shoulder of the highway

while calling Father “all kinds of names.” Father feared for his and J.H.’s lives; Mother denies the incident occurred.

In the fall of 2016, Mother began getting dressed and leaving the house after putting J.H. to sleep. She would leave the house for periods ranging from one hour to the entire night because she was afraid “that someone was trying to do something to her” in the house. She told Father that she was hearing voices, and at one point called the police to report that someone was “trying to do something to her.” These incidents stopped occurring by 2017, but the screaming fits of rage in the home continued.

On August 4, 2018, Mother and Father went to Dr. Adora Otiji for physicals; five-year-old J.H. and eight-month-old C.H. were with them. As Dr. Otiji examined Father, Mother began to act strangely: she threw baby wipes at Father, insulted Otiji, and accused Otiji of being involved in a prostitution ring. Mother then attempted to leave with C.H., but Father grabbed the baby carrier, and a tussle ensued. Father eventually secured C.H., and Mother left before the police arrived. When Mother arrived home, she called 911 to report that her husband was involved in “something inappropriate.”⁴

One morning, after the doctor’s office incident, Mother began berating the newscasters on television while getting J.H. ready for school. Father tried to record this incident, and Mother accused him of trying to make her commit suicide. Father called a

⁴ At trial, Mother was uncertain if she used the term “human trafficking” during this 911 call. When the 911 tape was played to refresh her recollection, she claimed she did not recognize the voice on the tape as hers. Father identified the voice on the 911 tape as Mother’s.

crisis hotline, and he was advised to file a petition for an emergency evaluation of Mother. He did, but a magistrate denied the petition.

Father called a crisis intervention service the following week, and two women from the service arrived at the family home at 10 p.m. Three police officers arrived soon after, and Mother was advised that she was going to be taken to the hospital for an assessment. While the officers were removing her from the home, Mother screamed that the officers were sexually assaulting her, and called Father “Brian”—the name of her older brother who, Mother had told Father, sexually assaulted her as a child. Mother was held at the hospital overnight; the hospital summarized her as agitated and exhibiting aggressive behavior. After being discharged, Mother moved out of the family home and began living with her parents.

On October 15, DSS received the neglect referral. The next day, DSS social worker Shakeisha Alexander met with Father and the Children in the family home while Mother remained hospitalized. Father stated that Mother was: suicidal, hallucinating, having random outbursts, and not in mental health treatment. Father also stated that he observed that Mother’s outbursts scared J.H. J.H. told Alexander that her mother was “hearing things.” The meeting ended with Alexander entering into a Safety Plan with Father, requiring him to supervise Mother’s contact with the children.

Alexander and Mother met a week later, where Mother became agitated and refused to provide Alexander with the names of any mental health providers who were allegedly

treating her. Mother stormed out of Alexander's office, and hours later called Alexander and said that she would see her children whenever she wanted.

On two separate occasions—after the Safety Plan implementation—Father alerted Alexander that Mother went to J.H.'s school and picked up J.H., and Father did not know where they were. Father sought a protective order, but was denied on October 25. The next day, DSS placed the Children in shelter care.

On October 29, DSS held a Family Involvement meeting with Mother, Father, Mother's parents, and Mother's brother, Brian. The parties agreed that Father would have temporary custody of the Children, and that Mother would have scheduled visits, supervised by Mother's parents. During this meeting, Mother provided a list of names of mental health providers from whom she allegedly received treatment. When Alexander followed up with these providers, they advised her that Mother had attended only an initial session, and then never returned.

The shelter care hearing took place later that day, where the court accepted the parties' plan from the Family Involvement meeting. The Children were placed in the temporary custody of Father. DSS filed CINA petitions for the Children on that same day.

The juvenile court began taking evidence in the CINA adjudicatory hearing on January 30, 2019, and February 5, before the court advised the parties that it wanted independent psychological evaluations of both parents. Mother's evaluation was done on February 28. The evaluator found that Mother did not follow directions on certain tests, and "tended to omit those items which assessed negative effect. She was evasive on some

items she did complete.” The evaluator concluded that Mother was “emotionally overwhelmed and appear[ed] to be experiencing symptoms of anxiety and depression,” and recommended therapy and a psychiatric consultation.

Throughout May and June, Mother also sent DSS a series of troubling emails alleging:

- Father is “involved in a gang/cult and they have him do things to me and the girls. They tell him to abuse me and be mean all the time.”
- Father “shows his private parts on the phone and I am not sure if he has done the same thing with the girls.”
- Father has a mental illness.
- Harassment by “some male CIA employees who are engaged in pedophilia, child/adult porn and human trafficking.”
- Neighbors, Father’s co-workers, and a vice principal participate in gangs and/or cults, and negatively affect the family.

On June 11, Mother advised DSS that she was no longer in therapy. A week later, J.H. told DSS social worker Jamika White that Mother had called her “trash” and was “mean” while J.H. was getting ready for bed. She also stated that Mother had squeezed her wrist so hard that it hurt.

On July 9, the court concluded the adjudicatory hearing and sustained the allegations against Mother, finding that the facts above had been proven by a preponderance of the evidence. The court conducted the disposition hearing immediately after close of the adjudicatory hearing, and issued its findings and order on July 18. Applying CJP § 3-819(e), the court concluded that the Children were not in need of assistance because Father was willing and able to care for them. Father was awarded sole physical custody.

Mother and Father were awarded joint legal custody, with Father holding tie-breaking authority. Mother was granted supervised visitation every other weekend.

STANDARD OF REVIEW

We apply three standards of review in CINA cases: (1) factual findings are left undisturbed unless they are clearly erroneous; (2) legal questions are reviewed without deference, and if the lower court erred we determine if the error was harmless; and (3) we evaluate the court’s final decision, “if it is founded upon sound legal principles and based upon factual findings that are not clearly erroneous,” for abuse of discretion. *In re: Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018) (cleaned up). We give “the greatest respect” to the juvenile court’s opportunity to view and assess the witnesses’ testimony. *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 719 (2011). We also bear in mind the “fundamental liberty interest of natural parents in the care, custody, and management of their child[ren]” *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

DISCUSSION

Dismissal After DSS Ruled Out Neglect And Abuse

Mother contends that the court erred when it refused to dismiss the CINA petition before sustaining the allegations against her. She asserts that after filing the CINA petition, but before the court hearing, DSS ruled out neglect, and so the Department was not asking for a CINA finding. Mother reasons that, because a CINA finding was not being requested, this was a private custody dispute to be properly settled in family court rather than juvenile court. The Children and DSS counter that once a CINA petition is filed, it is the court’s

duty to hold an adjudicatory hearing. They assert that an internal agency finding ruling out abuse or neglect does not preclude the court from making its own decision.

One of the main purposes of the Juvenile Causes Act⁵ is “to provide for the care, protection, safety, and mental and physical development of any child coming within the provisions” of the Act. CJP § 3-802(a)(1). CINA petitions help effectuate this goal:

On receipt of a complaint from a person or agency having knowledge of facts which may cause a child to be subject to the jurisdiction of the court under [the JCA], the local department *shall file* a petition under this subtitle if it concludes . . . that the filing of a petition is in the best interests of the child.

CJP § 3-809(a) (emphasis added). DSS followed the statutory requirements when it filed the petitions here. It had received a complaint that clearly showed the Children may be in need of assistance. The record shows that sufficient allegations had been made regarding Mother’s mental health, its potentially negative impact on the Children, and Mother’s refusal to address the issue. *See, e.g., In re: Adoption/Guardianship of C.E.*, 464 Md. 26, 42-43 (2019) (the mother’s pattern of “decompos[ing] into stress induced rage behaviors whenever a third party challenges the smallest aspect of her parenting conduct” was held to be damaging to the child). Specifically, Mother did not agree to supervised visits until the CINA petition was filed, she refused to give the names of her mental health treatment providers to her case worker, and she only went to initial treatment sessions, then stopped attending.

⁵ CINA petitions fall within the Juvenile Causes Act, which embodies all of Title 3, Subtitle 8 and Subtitle 8A of the Courts and Judicial Proceedings Article.

When DSS receives a report of abuse or neglect, it investigates and determines whether the abuse or neglect is ruled out, unsubstantiated, or indicated. Md. Code (1984, Repl. 2019), § 5-701 of the Family Law Article; COMAR 07.02.07.12. We are not persuaded by Mother’s argument that because DSS ruled out neglect or abuse, the court should have dismissed the case. When DSS filed the CINA petitions in October 2018, it had not completed its investigation. Although DSS ruled out neglect or abuse before the CINA hearing, the court was not obligated to dismiss the petition because of the Department’s findings, but could take them into account in its consideration. *See In re Najasha B.*, 409 Md. 20, 40 (2009) (DSS is not prohibited from maintaining a CINA petition “through the adjudicatory hearing stage of a case, despite changed circumstances that throw doubt on the facts that supported the original petition”). Once a CINA petition is filed, the juvenile court obtains exclusive original jurisdiction over the proceeding. CJP § 3-803(a)(2). *See also In re Najasha B.*, 409 Md. at 39 (“Ultimately, it is the court’s duty when a petition has been filed to determine the truth of abuse or neglect allegations”). It is the court’s duty to make the factual determinations once a CINA petition is filed, and here the court performed that duty.

Custody Award With No CINA Finding

Mother argues that the court erred in awarding sole physical custody to Father—a custodial parent—because the Children were found to not be in need of assistance. The Children and DSS disagree.

Mother claims CJP § 3-819(e) “contemplate[s] a trial court’s authority to order custody of a child to a nonoffending, *noncustodial* parent.” She relies primarily on our recent decision in *In re: E.R., T.R., J.R. & D.B.*, 239 Md. App. 334 (2018), to support her conclusion. To fully explain *In re: E.R.*, we first review *In re Russell G.*, 108 Md. App. 366 (1996). There, we held that the trial court erred in finding that Russell G. was a CINA because he had a parent, his noncustodial father, who was willing and able to properly care for him. *Id.* at 380. We stated that a child is a CINA only if both parents are “unable or unwilling to give proper care and attention to the child.” *Id.* at 376–77.

The General Assembly amended the CINA statute in response to that decision, and enacted CJP § 3-819(e)—allowing custody modification “if a child could not be declared a CINA because the allegations could only be sustained against one parent.” *In re: E.R.*, 239 Md. App. at 340 n.4. Section 3-819(e) states:

If 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.

In *In re: E.R.*, the children were not found to be CINA, and custody was awarded, pursuant to CJP § 3-819(e), to the children’s noncustodial fathers, respectively. *Id.* at 344. We said, “it is clear that the legislature intended to provide juvenile courts with the discretion to transfer custody from an unfit or abusive custodial parent to an appropriate, willing, and able noncustodial parent in a CINA proceeding” *Id.*

Mother interprets *In re: Russell G.*, the change in the CINA statute, and *In re: E.R.* to stand for the proposition that § 3-819(e) only applies when the able parent is *noncustodial*. We disagree, and fear Mother may have been led astray in her interpretation by that pied piper of statutory interpretation, the publisher’s caption. In West’s Annotated Code of Maryland, the header above CJP § 3-819(e) states “[n]oncustodial parents.”⁶ If the legislature intended for the statute to be so limited as the header suggests, Mother’s interpretation might carry the day. Section 1-208(2)(i) of the General Provisions Article, however, states that, “the caption or catchline of a section or subsection . . . is intended as a mere catchline . . . and may not be considered as a title of the section or subsection” As we have said before, “[s]uch headings are not the words of the legislature and cannot be read to inject an intent not expressed in the body of law.” *Montgomery Cty. v. Eli*, 20 Md. App. 269, 276 (1974). We have found no language, committee note, or other legislative history to suggest that the provision applies solely to noncustodial parents. In short, § 3-819(e) allowed for the Children to be placed with Father, a custodial parent, despite the court not finding the Children to be CINA.

Exclusion Of Evidence

Lastly, Mother argues that the court erred when it prevented her from introducing evidence regarding her parenting skills. Mother seems to allude to the juvenile court’s rulings during her testimony in the adjudicatory hearing. The following colloquy occurred

⁶ Strictly for comparison, the header in Michie/Lexis’s Annotated Code of Maryland for CJP § 3-819(e) is “[a]llegations sustained against only one parent.”

after a series of questions Mother's counsel posed regarding who takes the Children to their medical appointments:

[MOTHER'S COUNSEL] Q.: And do [J.H.] or [C.H.] have a dentist?

[MOTHER] A.: Yes. [J.H.] goes to — [the] last dentist she went to was Fenton Family Dental which is located in Clinton, Maryland.

Q.: And what's the name of the dentist?

[DSS COUNSEL]: Your Honor, I'm sorry. I'm going to object at this point. There's no allegations that there's medical or dental neglect and the Department — there's no indication that the children aren't routinely seen for dental and medical. So I don't know that — again, it's outside the scope of the petition.

[MOTHER'S COUNSEL]: Well, your Honor, the entire scope of the Department's petition is that sole and physical custody go to the father. So your Honor, we're laying the groundwork to determine that it is appropriate for my client to have custody as well and to share that custody with the father. So we believe it's very relevant to these proceedings [seeing] as there's no child in need of assistance finding being requested by the Department.

[DSS COUNSEL]: . . . As far as from the CINA perspective if the Court doesn't find the allegations in the petition to be proven or to be true, then that would really essentially end the CINA case right there and — you know, and result in dismissal because the allegations haven't been proven. I don't know if that answers the Court's question.

[THE COURT]: It does answer the question. So I'm going to sustain the objection.

[MOTHER'S COUNSEL]: Well, your Honor, if we may proffer to the Court there is essentially no CINA petition at this point.

[THE COURT]: There is one filed.

[MOTHER'S COUNSEL]: . . . Your Honor, we're laying the groundwork that my client is very much capable of caring for the children, has served as

a primary caretaker, and if we're not able to demonstrate that it is in the best interests then, your Honor, I mean, this is essentially a custody proceeding is what we're proceeding on right now.

[THE COURT]: It's not though. . . . This is a CINA petition that they're not seeking because there is a parent who is willing and able to take the children. Everybody agree with that?

Mother asserts that her “ability to care for the needs of the [C]hildren was relevant to whether the court should sustain the facts of the petition,” and that the court prevented her from providing evidence that she was capable of caring for the Children, “even with some degree of mental illness in her life.”

“[T]he admissibility of evidence, including rulings on its relevance, is left to the sound discretion of the trial court, and absent a showing of abuse of that discretion, its rulings will not be disturbed on appeal.” *Brown v. Daniel Realty Co.*, 409 Md. 565, 601 (2009) (cleaned up). An abuse of discretion is a decision “beyond the fringe of what that court deems minimally acceptable.” *In re Adoption of Cadence B.*, 417 Md. 146, 155–56 (2010). CINA adjudication hearings require strict application of the rules of evidence, while the rules are more discretionary in disposition hearings. CJP § 3-817(b); *In re Blessen H.*, 392 Md. 684, 690–91 (2006).

The court's duty here—as the finder of fact—was to determine whether the allegations in the petition were proven by a preponderance of the evidence. *See* CJP §§ 3-801(c), 3-817(c). The petition alleged that Mother: had mental health concerns that she was unwilling to address or sustain treatment for; exhibited angry/violent outbursts; terrified J.H. during those outbursts; made paranoid/hallucinatory accusations of sexual

assault; and refused to abide by DSS’s Safety Plan. The court decided that testimony regarding who brought the Children to doctors, and the Children’s medical and dental history, was not relevant to a factual finding of whether these allegations were true. Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Md. Rule 5-401.

Although we do not disagree with Mother’s contention that “reliance upon past behavior as a basis for ascertaining the parent’s present and future actions directly serves the purpose of the CINA statute,” *In re Adriana T.*, 208 Md. App. 545, 570 (2012), the court’s job at this point in the hearing was to determine whether the allegations regarding Mother were proven.⁷ The excluded testimony did not address those allegations—which all relate to Mother’s frequent mental health episodes and lack of treatment for those episodes. We hold that the court did not abuse its discretion in excluding testimony regarding the Children’s medical and dental appointments.

CONCLUSION

The juvenile court’s interpretation of law was sound, and it did not abuse its discretion in excluding irrelevant evidence. We therefore affirm its final decision. *See In re Adoption/Guardianship of H.W.*, 460 Md. at 214. The decision balances “Maryland’s strong preference that children be placed with a parent rather than in shelter care,” *In re:*

⁷ The court gave Mother opportunities to establish her mental fitness, including stopping the hearing and directing Mother to re-take a psychological exam to establish said mental fitness.

E.R., 239 Md. App. at 340, with the children's best interests, which are transcendent. *See In re Adoption of Ta'Niya C.*, 417 Md. at 111.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**