

Circuit Court for Frederick County  
Case No. C-10-JV-22-000058

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1281

September Term, 2022

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IN RE: A.S.

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Wells, C.J.,  
Graeff,  
Berger,

JJ.

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Opinion by Berger, J.

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Filed: February 17, 2023

\*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 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.

Ms. M. (“Mother”) and Mr. S. (“Father”), appellants, appeal an order of the Circuit Court for Frederick County, sitting as a juvenile court, denying their motions requesting to file untimely objections to a guardianship petition filed by the Frederick County Department of Social Services (the “Department”). The guardianship petition pertained to the appellants’ three-year-old daughter, A.S. The juvenile court determined that Mother’s and Father’s failure to file timely objections to the guardianship petition constituted, by operation of law, an irrevocable deemed consent to the termination of their parental rights. Mother and Father assert that the juvenile court erred by finding no good cause to deem their belated filings timely. Perceiving no error, we shall affirm.

### **FACTS AND PROCEEDINGS**

The facts underlying A.S.’s removal from Mother’s and Father’s custody are irrelevant to the narrow issue before us on appeal. We set forth the facts necessary for our determination of the issue at hand, as well as additional limited facts to provide appropriate context. Accordingly, we do not endeavor to fully set forth all of the details surrounding A.S.’s removal and progress in the custody of the Department.

A.S. was born substance-exposed on September 24, 2019 in Frederick, Maryland. She was in the custody of Mother and Father from birth until September 8, 2021, when she was removed by the Department and placed in shelter care.<sup>1</sup> On October 21, 2021, A.S.

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<sup>1</sup> “Shelter care” is “a temporary placement of a child outside of the home at any time before disposition” as a Child in Need of Assistance. Md. Code (1974, 2020 Repl. Vol.), § 3-801(bb) of the Courts and Judicial Proceedings Article (“CJP”).

was found to be a Child in Need of Assistance (“CINA”)<sup>2</sup> and was placed in the custody of the Department. The juvenile court found A.S. to be a CINA due to the parents’ active abuse of illegal substances, as well as due to A.S.’s siblings having been abused or neglected in the past. The court further found that A.S. had been neglected and that neither parent was an appropriate caregiver for A.S. “due to substance use and lack of engagement in services.”

A.S. initially was placed in a licensed foster home but was moved to her current placement with her paternal grandmother on January 21, 2022. The Department offered reunification services to the parents, including but not limited to mental health evaluations, substance use evaluations and treatment services and referrals, drug testing referrals, parenting education referrals, visitation, and transportation assistance.

On June 10, 2022, the Department filed a Petition for Guardianship with the Right to Consent to Adoption. The Department alleged that neither parent had adjusted their circumstances, condition, or conduct to make it in A.S.’s best interests to be returned to their care. The Department further alleged that despite the Department’s efforts, the parents had made minimal progress toward reunification and there were no additional services that would be likely to bring about a lasting parental adjustment so that A.S. could be returned to her parents in the foreseeable future.

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<sup>2</sup> A “CINA,” or “child in need of assistance,” is “a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” CJP § 3-801(f)(1)-(2).

The juvenile court issued a show cause order to the parents notifying them of the filing of the guardianship petition. The show cause order included bolded text at the top of the first page providing:

**IMPORTANT**

**THIS IS A COURT ORDER. IF YOU DO NOT UNDERSTAND WHAT THE ORDER SAYS, HAVE SOMEONE EXPLAIN IT TO YOU. YOUR RIGHT TO AN ATTORNEY IS EXPLAINED IN PARAGRAPH 3 OF THIS ORDER. IF YOU DO NOT MAKE SURE THAT THE COURT RECEIVES YOUR NOTICE OF OBJECTION ON OR BEFORE THE DEADLINE STATED IN PARAGRAPH 2 OF THIS ORDER, YOU HAVE AGREED TO A TERMINATION OF YOUR PARENTAL RIGHTS.**

The show cause order further directed the parents that “[i]f you wish to object to the guardianship, you must file a notice of objection with the Clerk of the Circuit Court, Frederick County Court House, 100 West Patrick Street, Frederick, Maryland 21701 within 30 days after this Order is served on you.” A form notice of objection was attached to the letter. The show cause order further provided in capitalized text as follows:

**WHETHER THE PETITION REQUESTS ADOPTION OR GUARDIANSHIP, IF YOU DO NOT MAKE SURE THAT THE COURT RECEIVES YOUR NOTICE OF OBJECTION ON OR BEFORE THE DEADLINE STATED ABOVE, YOU HAVE AGREED TO A TERMINATION OF YOUR PARENTAL RIGHTS.**

On June 16, 2022, the show cause order was served by the Frederick County Sheriff’s Office on Father at Mother’s and Father’s residence. The return of service provided that the show cause order “was served on [Father,] co-respondent, [who] lives with [Mother]. The service location was [the parents’ residence].”

On August 12, 2022, Mother filed a Motion Requesting Good Cause Finding. Mother asked the circuit court to find good cause to allow Mother to participate in the termination of parental rights proceeding despite her failure to file a timely objection pursuant to Md. Rule 11-307(b)(3) (“In the event of a late-filed objection, the court may deem the filing timely for good cause shown.”). In her motion, Mother asserted that she was not personally served and that she received the objection filed by A.S.’s counsel and “believed that it noted her objection as well.” Father filed an untimely objection on August 15, 2022. Father requested that the juvenile court grant him leave to file a belated objection on the grounds that he had received the objection by A.S.’s counsel and believed that the objection would encompass his own. Both the Department and A.S. opposed Mother’s and Father’s motions.

After a hearing, the juvenile court denied the motions for leave to file belated objections. The juvenile court found that service on the parents “was appropriate” and both parents were “properly served.” The juvenile court reasoned that a failure to timely object to a guardianship petition is a statutory deemed consent. The court considered the parties’ good cause arguments and determined that “[t]he issue here is what’s in the best interest of [A.S.], a timely permanence for her is in her best interest. I really heard no arguments as to what good cause would excuse the parents’ untimely failure to object.” The juvenile court, therefore, found that “[b]oth of [the parents’] failures to object by July 16th, by operation of law, are consent, irrevocable consent.”

This appeal followed.

## STANDARD OF REVIEW

In CINA and termination of parental rights cases, this court utilizes three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). The Supreme Court of Maryland (at the time named the Court of Appeals of Maryland)<sup>3</sup> has described the three interrelated standards as follows:

We point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Second,] if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

*Id.* at 586. “The question of whether good cause exists . . . is clearly within the discretion of the trial court.” *Rios v. Montgomery Cnty.*, 386 Md. 104, 121 (2005).<sup>4</sup>

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<sup>3</sup> At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) (“From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . .”).

<sup>4</sup> To our knowledge, the appellate courts of Maryland have not yet addressed the applicable standard of review for a good cause finding in the context of an untimely objection to a guardianship proceeding. In the Standard of Review section of her brief, Mother cites *Rios* for the principle that the good cause determination is within the discretion of the trial court. We agree with Mother regarding the applicable standard of review.

## DISCUSSION

Mother and Father both assert that the juvenile court abused its discretion by finding that no good cause existed to allow the parents to file belated objections to the Department's guardianship petition. Mother and Father reiterate the arguments that they made before the circuit court, including that they both believed that A.S.'s objection served to note their objections as well, that Mother was not personally served, and that allowing Mother and Father to participate in the termination of parental rights matter would benefit A.S.

Pursuant to Maryland Rule 11-307(b), an objection to a guardianship petition shall be filed within 30 days after service.<sup>5</sup> “[I]f a notice of objection is not filed within the time specified in this section, the party will be deemed to have consented to the guardianship.” Md. Rule 11-307(b)(2). “In the event of a late-filed objection, the court may deem the filing timely for good cause shown.” Md. Rule 11-307(b)(3). A parent's failure to file a notice of objection within the time specified generally constitutes an irrevocable deemed consent to the termination of parental rights. See Md. Code (1984, 2019 Repl. Vol.), § 5-320(a)(1)(iii)(C); *In re Adoption/Guardianship of Audrey B.*, 186 Md. App. 454, 465 (2009); *Adoption/Guardianship of Chaden M.*, 189 Md. App. 411, 436-37 (2009), *aff'd sub nom. In re Adoption of Chaden M.*, 422 Md. 498 (2011). See also *In re Adoption/Guardianship No. 93321055*, 344 Md. 458, 486 (1997) (concluding that there is

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<sup>5</sup> Other deadlines not relevant here apply if the show cause order was served outside Maryland or outside the United States.

no right to revoke a deemed consent under former statute because that consent arises by operation of law). The statutory scheme of regarding the failure to file a timely objection as an irrevocable deemed consent does not facially offend any due process or equal protection rights of the parent. *Id.* at 494-96.

Prior to 2022, there was no good cause exception to the thirty-day time period for filing an objection to a guardianship petition. On November 9, 2021, Maryland Rule 11-307 was adopted. Maryland Rule 11-307 was derived from Maryland Rule 9-107 but included a good cause provision. The new Rule was effective as of January 1, 2022, and provided, in pertinent part, that “[i]n the event of a late-filed objection, the court may deem the filing timely for good cause shown.” Md. Rule 11-307(b)(3). Both parents assert that the circuit court abused its discretion by declining to find good cause to deem their belated filings timely.<sup>6</sup>

Father asserts that his delay in filing an objection to the petition was caused by excusable neglect or mistake because he mistakenly believed that the objection filed by A.S. would encompass his own. Father further emphasizes that he was unrepresented by counsel in the guardianship matter until after the time for filing an objection had passed. For these reasons, Father asserts that the juvenile court abused its discretion by failing to find good cause and denying Father’s request to file an untimely objection.

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<sup>6</sup> The juvenile court referred to Maryland Rule 9-107, which contains no good cause provision. The court, however, specifically addressed the good cause standard. Although the juvenile court referred to the wrong Maryland Rule, the record reflects that the court applied the correct standard.



Similarly, Mother asserts that the court should have found that Mother’s delay in filing an objection was caused by excusable neglect or mistake because she had not been personally served with the show cause order, because Mother held the mistaken belief that the objection filed by A.S. would encompass her own, and because there was “little reason to prevent [Mother] from participating.”

The juvenile court heard and considered the parents’ good cause arguments, but ultimately the court was not persuaded. Indeed, the juvenile court expressly rejected Mother’s argument that she had not been properly served. The court observed that the address listed for both parents in the case files in both the CINA and termination of parental rights matters was the address at which the parties were served.<sup>7</sup> The court further emphasized that the parents’ last attorneys of record in the CINA case had been provided with copies of the show cause order, recognizing that “counsel [is] in an awkward situation because they cannot enter their appearance [in the termination of parental rights matter] without the parents’ consent, but at least their attorneys [in the CINA] matter were given notice by way of a show cause order” in the termination of parental rights case. In finding that the parents had failed to establish good cause, the juvenile court emphasized that the pertinent issue before the court was “what’s in the best interest of [A.S.],” concluding that “a timely permanence for her is in her best interest.” The juvenile court “really heard no arguments as to what good cause would excuse the parents’ untimely failure to object.”

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<sup>7</sup> Mother did not testify or offer an affidavit providing that she did not, in fact, reside at the address where she was served.

Although the term “good cause” has not yet been interpreted in the context of deemed consents to guardianship petitions, it has been construed in other contexts that are helpful to our analysis in this case. Specifically, the term “good cause” has often been interpreted in the context of the notice requirement of the Local Government Tort Claims Act (“LGTC”), CJP § 5-304. In the context of the LGTC when considering whether good cause to excuse compliance with the notice requirement has been demonstrated, courts consider factors including whether there was excusable neglect or mistake, whether there was serious physical or mental injury, whether a party was located out of state, whether a party is unable to retain counsel in cases involving complex litigation, ignorance of the statutory requirement, or misleading representations made by a local government representative. *Mayor & City Council of Baltimore v. Stokes*, 217 Md. App. 471, 486-87 (2014).

In our view, the circuit court reasonably rejected the parents’ good cause arguments. Mother asserts that good cause exists because she claimed that she had not personally been served. Nevertheless, the record reflects that Mother and Father both shared an address according to court records – the same address where service occurred. Furthermore, in her brief, Mother did not deny that she actually resides with Father. We reject Mother’s contention that service of process in compliance with the Maryland Rules amounts to good cause simply because she was not directly handed the show cause order.

Nor are we persuaded that the parents’ mistaken beliefs that the objection filed by A.S. served as their objection as well amount to good cause. The show cause order clearly

advised the parents in capitalized letters that “IF YOU DO NOT MAKE SURE THAT THE COURT RECEIVES YOUR NOTICE OF OBJECTION ON OR BEFORE THE DEADLINE STATED ABOVE, YOU HAVE AGREED TO A TERMINATION OF YOUR PARENTAL RIGHTS.” In our view, the parents’ mistaken beliefs regarding the effect of A.S.’s objection do not amount to excusable neglect and mistake.

Nor are we persuaded by Father’s assertion that he should have been permitted to file an objection because he did not have an attorney at the time he was served in the guardianship case. The show cause order and accompanying fill-in-the-blank form clearly explained the need to file a timely objection. Indeed, the Supreme Court of Maryland has explained that “a show cause order [ ] explains, in plain, simple language, the right to object, how, where, and when to file a notice of objection, and the consequence of not filing one within the time allowed. A form notice of objection is attached to the order, and all that the parent need do is to sign it, print on it his or her name, address, and telephone number, and mail or deliver it to the address shown in the order.” *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 493 (1997) (holding that “the statutory scheme of regarding the failure to file a timely objection as an irrevocable deemed consent to the petition does not facially offend any due process right of the parent.”).

The juvenile court was entitled to weigh the reasons presented by the parents regarding their untimely objections when assessing whether they had established good cause to excuse their delays. The juvenile court’s discretionary ruling was not so “well removed from any center mark imagined by the reviewing court beyond the fringe of what

that court deems minimally acceptable” as to constitute an abuse of discretion. *Cent. Truck Ctr., Inc. v. Cent. GMC, Inc.*, 194 Md. App. 375, 398 (2010) (internal quotation marks and citation omitted). “An abuse of discretion . . . should only be found in the extraordinary, exceptional, or most egregious case. Given that the abuse of discretion standard makes generous allowances for the trial court's reasoning, we grant great deference to that court's conclusion and uphold it unless it is apparent a serious error has occurred.” *Id.* We perceive no such serious error in the present case, nor would it be appropriate for this Court to substitute our judgment for that of the trial court when determining whether good cause existed to excuse the parents’ untimely objections.

**JUDGMENT OF THE CIRCUIT COURT  
FOR FREDERICK COUNTY, SITTING AS  
A JUVENILE COURT, AFFIRMED.  
COSTS TO BE PAID BY APPELLANTS.**