

Circuit Court for Montgomery County
Case Nos. 06-I-20-128, 06-I-20-129,
06-I-20-130 & 06-I-20-131

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1423

September Term, 2020

IN RE: J.W., N.H., A.S., AND T.H.

Leahy,
Friedman,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: October 20, 2021

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The Montgomery County Department of Health and Human Services (the Department) filed petitions arguing that four children: J.W., N.H., A.S., and T.H. were children in need of assistance (CINA). The Circuit Court for Montgomery County, sitting as a juvenile court, found that the Department had failed to prove by a preponderance of the evidence that the children were CINA. The Department appeals.

FACTS

Ms. W. (Mother) is a 28-year-old mother of six. On December 5, 2020, Mother and two of her children, J.W. (boy, age 3) and A.S. (girl, age 9),¹ went to a birthday party at her friend, Ms. B.'s, apartment. After arriving at the apartment, Mother observed that Ms. B. was high on drugs. Mother immediately contacted Uber, a ridesharing service, to arrange a ride so that she could leave with the children. After arranging to leave, Mother went to the bathroom. As she was coming out of the bathroom, she heard a loud “bang” and found that her three-year-old son, J.W., had been shot in the foot. She did not see who shot him or where the gun came from. Mother ran out of the apartment with J.W. and called 9-1-1 but then flagged down a passing car. The passing driver took Mother and J.W. to the hospital where he received treatment for the gunshot wound. Mother left her nine-year-old daughter, A.S., with a couple at the party. A.S. was subsequently delivered to her maternal grandmother's home.

¹ Mother has two more children in her custody, N.H. (girl, age 1) and T.H. (boy, age 6), but they were with their paternal grandfather that day and not present at the party. Nevertheless, the Department seeks to have N.H. and T.H. declared CINA. Two additional children are not in Mother's custody and they reside with their respective fathers. The Department doesn't allege that they are CINA and they are not involved in this case.

PROCEDURAL HISTORY

The Department was alerted to J.W.’s shooting. In response, it arranged for the four children to be placed in temporary shelter care with various family members.² Thereafter, the Department filed four identical CINA petitions, one for each of the four children in Mother’s custody. The petitions alleged that each child was being neglected and was in need of assistance. We paraphrase the critical allegations of the petitions:

- 2a.** On December 5th, 2020, Mother, J.W., and A.S. attended a party at Ms. B.’s home. Mother asserts Ms. B. was high and called an Uber to leave. At some point, J.W. and A.S. were in another room when a gun discharged, and Mother found J.W. shot in the foot. Mother denies being under the influence.
- 3a.** In 2013, A.S. swallowed several objects, including a battery that had to be surgically removed.
- 3b.** In 2015, Mother tested positive for PCP and heroin. T.H. was negative for drugs at birth.
- 3c.** In 2016, A.S. wandered from her home and was found unsupervised in the community. Mother was unaware A.S. had left until her other children told her. Days after, Mother had still not installed a dead-bolt lock on the front door, as instructed.
- 3d.** In 2017, J.W. tested positive for PCP at birth and Mother tested positive for PCP and marijuana.
- 3e.** In 2019, N.H. and Mother tested positive for marijuana and PCP at birth. Mother did not complete substance use treatment.
- 4.** After the children were removed, Mother exhibited behaviors indicative of ongoing drug use such as failing to schedule or appear for drug testing. Mother’s drug screen was positive for PCP on January 26, 2021.

² Shelter care is “a temporary placement of a child outside of the home at any time before disposition.” MD. CODE, CTS. & JUD. PROC. (CJ) § 3-801(bb).

A hearing was held on the Department’s petitions on February 3 and 5, 2021. At the hearing, the Department’s principal contention was that Mother placed her children in a dangerous environment by attending the December 5th party; by failing to leave immediately upon realizing the danger that the party presented; and then by failing to properly supervise the children, which allowed J.W. to get shot. The Department argued that Mother knew she was bringing her children into a dangerous environment and that “[i]t’s ludicrous for the mother to say that this wasn’t a dangerous situation.” The Department then questioned why Mother did not “[throw] both of those kids under her arms and run out of the house” the instant she knew the apartment was unsafe, arguing “she doesn’t get a pass because she called an Uber.” In stating that Mother “went about her business in the house” after smelling drugs on Ms. B., the Department argued that Mother should not have gone to the bathroom and left her children unsupervised in that moment. In making its case, the Department also introduced testimony from expert witnesses who testified to their opinions that bringing the children to the December 5th party and then not leaving immediately placed the children at a substantial risk of harm.

In addition to evidence of Mother’s conduct at the December 5th party, the Department also introduced evidence from its pre-existing file, which it asserted further demonstrated a pattern of neglect:

- In 2013, A.S., then a toddler, swallowed several objects, including a battery and a penny, which required surgery.
- In 2016, Mother was indicated for neglect after A.S. wandered from the home and was found unsupervised in the neighborhood. Moreover, the Department alleged that even after this incident Mother

failed to install a sliding lock to keep A.S. from roaming. Mother, however, later installed a lock.

- In 2015, 2017, and 2019, after the births of T.H., J.W., and N.H., respectively, Mother tested positive for drugs. Some of the children also tested positive for drugs at birth. In addition, the Department presented some evidence of Mother’s continued drug use.

In response, Mother introduced evidence from the Department’s prior involvement with the children, including the Department’s recent letter stating its case concerning N.H. was closed, which Mother argued indicated that the Department no longer considered N.H. to be in a dangerous situation. Mother emphasized the Department’s contact notes from various visits over the years, which stated that the children appeared to be well cared for and that Mother acted appropriately. Mother also offered the testimony of A.S.’s father, who stated that he had a good relationship with Mother and believed her to be a good mother.

In closing, the Department argued that Mother’s conduct at the December 5th party, her past failures to supervise, and her drug use together demonstrated that the children were at substantial risk of harm. The juvenile court sustained many of the factual allegations in the petitions, however, it held that the facts did not establish neglect and, as a result, it dismissed the CINA petitions.

CINA OVERVIEW

A CINA is a child that (1) has been neglected; and (2) their parents are unable and unwilling to give them proper care and attention. CJ § 3-801(f); *see also* CJ §3-819(e) (a child may only be CINA if neither parent is able and willing to care for the child). If a local department determines that, in its opinion, a child is CINA, the department files a petition

alleging facts that support the determination that the child is CINA. CJ §3-811. The juvenile court then holds an adjudicatory hearing to determine if the allegations in the petition are true and the child is being neglected. CJ § 3-801(c). At the adjudicatory hearing, the normal rules of evidence apply, CJ § 3-817(b), and the department must prove its allegations by a preponderance of the evidence. CJ § 3-817(c). If the juvenile court finds that the child is being neglected, it then holds a separate dispositional hearing (under relaxed rules of evidence) to determine whether the child is a CINA and to determine an appropriate placement. CJ § 3-819(a).

ANALYSIS

As noted above, the juvenile court entered a brief written order at the conclusion of the adjudicatory hearing denying the Department's CINA petitions. The juvenile court also made an oral ruling that covers several pages of the hearing transcript. Despite the length, we quote the oral ruling in full because it demonstrates the juvenile court's mastery of the facts, legal standard, and its ultimate conclusion:

[T]his very difficult case involving four children -- [A.S.], who's almost 9; [T.H.], 5; [J.W.], 3; and [N.H.], 1 -- was before the Court for an adjudication hearing on the second amended CINA petition. Prior to sheltering, all four children were in the physical and legal custody of their mother ... [in] Montgomery Village. There's no question that [Mother] has had some issues.

...

[Mother] came to the attention of the Department most recently following an incident on December [5th] of 2020. The evidence showed that [J.W.] accompanied his mother ... to what was to be a birthday party at the residence of a close friend/relative/godmother -- godsister, [Ms. B.]. [A.S.'s] father

... dropped [A.S.] off to [Mother] at that address, and [A.S.] was also present.

Within minutes of arriving, [Mother] took [J.W.] to the bathroom. [J.W.] then went to another room while [Mother] was apparently in the bathroom. [A.S.] and some other child or children were apparently in another room.... [Mother] was ... on the way from the bathroom. There was a loud bang. Meanwhile, [Mother] testified that she had already called an Uber. She [called the Uber] shortly upon arriving at the party.

The loud bang was from a gunshot that resulted in [J.W.] being shot in the foot. The weapon was not recovered. Apparently, the weapon belonged to someone who was at the party and was discovered by [J.W.] or another child there, or someone else shot the weapon, but in any event, [J.W.] was shot in the foot.

The mother ... immediately did what any responsible parent would do. She grabbed the child and sought immediate assistance. [J.W.] was rushed to a local hospital, Holy Cross Germantown. He and [Mother] and [Ms. B.] were driven by a Good Samaritan. [Mother] was on the phone during the trip there, which took approximately between 10 and 15 minutes. She was on the phone with the 9-1-1 dispatcher. I listened to that 9-1-1 recording that was received in evidence. [J.W.] was then transferred to Children's National Medical Center. Child Welfare Services was notified, and an investigation commenced.

According to Michelle Sears, a child welfare supervisor who testified, she became involved in the case, talked to the mother and talked to the police. She testified that the mother was cooperative, Ms. B. ... meanwhile, was apparently under the influence and could not be interviewed. [Mother] ... answered all of her questions, provided the information requested. She identified the children's pediatricians and the locations of those offices, according to the records.

Ms. Sears learned that the police recovered ammunition ... from the apartment, as well as marijuana. This was from the apartment of the shooting -- at [Ms. B.'s] residence, not from [Mother's] residence.

When Ms. Sears reached [Mother] that evening, ... [Mother] was with [J.W.] at Children's Hospital. Ms. Sears testified that she formed an opinion, she used the phrase early on, that because the 3-year-old was shot at the party where people were using illegal substances, that all the children who were in [Mother's] care, the four children involved here, should be sheltered. [J.W.] was sheltered on December 6. The other children were sheltered on December 7th.

According to Ms. Sears, the Department was dealing with a, quote, imminent safety risk. It was noted with respect to [A.S.], however -- there was a note in the records that [A.S.] was appropriately dressed, clean, and appeared developmentally on target with a good attitude. The H. children were placed with the paternal grandparents; [A.S.] and [J.W.], with their fathers.

Ms. Sears acknowledged that the Department was aware of Mother's prior PCP use. Indeed, the Department had recently closed the case in July of 2020, a risk of harm case, at which time a safety and risk assessment would have been performed. She conceded that the case would not have been closed if there had been safety or risk concerns. Again, at that time the Department was aware that Mother not only had some history with PCP but also that there had been other earlier instances of reported neglect, which I'll get to here in a moment. It should be noted that, while the Department had prior involvement with [Mother], that ... no prior CINA case had been opened.

Ms. Lemus testified and offered her opinion, which was essentially that she would have safety concerns about [J.W.] being placed back with the mother because of someone being high and someone having a gun. She testified that [Mother's] ... friend being high and [having] access to a gun were safety concerns. Again, as we know, [Mother], on this occasion involving the shooting incident, [Mother] was not high; the gun was not at her residence.

Mr. DuBois offered his opinion of safety also based on [J.W.] being shot at a property where drugs were used and Mother's pattern of PCP use and pattern of neglect, including her last drug screen.

Now is probably a good time to digress to discuss the history upon which the Department placed fairly heavy reliance and which, according to the Department, puts the issues in perspective. The case law does indeed confirm that a prior history is important in evaluating these cases, the need to look at the totality of the circumstances.

Those incidents started in 2013 when [A.S.], at 17 months, had two incidents of swallowing things -- a small battery and a button or a coin. As related to one of the incidents, while the child was with the mother, ... a small battery apparently fell out of either a remote control, which is, I think, what was in the, in one of the reports, or some other device. [Mother] testified today that it ... came out of a watch. In any event, [A.S.] swallowed it. [Mother] immediately, upon seeing that, immediately called 9-1-1. A few days later there was another incident where [A.S.] was with a babysitter or with some other family member. She put a button or coin in her mouth and swallowed that, which resulted in surgery.

In 2016[,] there were two incidents of [A.S.] wandering off, once while in the care of a babysitter who was of appropriate age. These incidents were, in my view, adequately explained at the time based on the records. Like the incidents of toddlers putting things in their mouths, these were not terribly unusual types of experiences with respect to toddlers.

It's noteworthy, however, that the records of these prior incidents, the contemporaneous records show that on an unannounced visit to [Mother's] home, [Mother's] home at that time, in 2016, she was found to be well-groomed, the home clean, she was cooperative, she explained the circumstances to the social worker and also indicated that she had purchased a new lock to be installed on the door, which was at some point thereafter installed. [A.S.] and [T.H.] were at that time found to be happy and healthy. [Mother] also indicated to the social worker in 2016, according to the records, that she had called [A.S.'s] pediatrician to be sure that [A.S.] was not sleepwalking. The social worker confirmed the children's sleeping arrangements, found them to be appropriate.

On August 1st of 2016, the social worker's notes indicate that [A.S.] and [T.H.] were clean, happy, and healthy. There was

also a note from October of 2016, the incident where [Mother] appears to have had an issue with one of the fathers of another of her children, [N.H.]. Here, again, the notes reflect that [N.H.] was found to be well-groomed, appropriately dressed, and physically healthy.

There are notes from 2018[,] ... [which show that] [J.W.] appeared well cared for, appropriate sleeping arrangements for all children, home clean and well organized, nicely decorated, Mother working on GED, no child welfare concerns evident.

In my view, there's nothing about these incidents that suggest there was neglect by the mother, to the contrary. The history of these incidents showed the mother acted responsibly in dealing with situations that are typical of the types of incidents that parents encounter in raising young children. Some children wander off; some children have a tendency to put things in their mouths. These were, in my view random incidents, not the pattern of egregious conduct that they were made out to be. More important to me is what the social workers found at the time about the condition of the home and the children, the cleanliness of the children and the like. Contrary to showing neglect, the record shows the children were being appropriately cared for by [Mother].

That takes us to 2017 and 2019 and the indications of Mother's PCP use. Any time there is PCP involved it is, of course, a concern, and it is a concern I have. There were three pregnancies where Mother and [two] children tested positive for PCP [at birth]. At the same time, while the Department was involved with these incidents, the Department apparently did not view the issue as serious enough to warrant removal or to open a CINA case. ... I'm not being critical of the Department. I simply think that the Department's response at the time indicates how the Department viewed those incidents and the seriousness of that at the time.

In the case of *In Re: Priscilla B.* at 214 Md. App. 600 (2013), the Court of Special Appeals reviewed the statutory framework under which the Court operates in a CINA case. There the [C]ourt stated, starting at page 621, "When a caregiver can't tend properly to a child's needs, child may be deemed a CINA in ... several different contexts: 'Child in need of assistance'

means a child who requires court intervention because the child has been abused, has been neglected, has a developmental disability, or a mental disorder and 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."

The statute provides a more specific definition for neglect, ... [which is the] theory upon which the Department proceeds. Neglect means 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 that the child's health or welfare is harmed or placed at substantial risk of harm, or that the child has suffered mental injury or been placed at substantial risk of mental injury.

The purpose of CINA proceedings is to protect children and promote their best interest. The burden of proof is a preponderance of the evidence.

Here the Department alleges that the totality of the circumstances show neglect. The Court disagrees. I've reviewed the totality of the evidence and weighed that evidence in reaching my decision, which, as I indicated earlier, is a difficult one. First, the shooting incident, that occurred at the home of [Ms. B.] within minutes of Mother's arrival at the home. There's nothing to indicate to me that, that the mother had any inkling whatsoever that a weapon might be there. This incident does not, in my view, rise to the level required to show under the statute that the child was ... unattended or not given proper care and attention.

This all happened very quickly, and while like all incidents like this, it shouldn't have happened. [J.W.] being shot was tragic. It's fortunate ... that he wasn't more severely injured or killed, but he was in the very same apartment as the mother. The mother was there with him in another part of the apartment, with other children, including his older sibling. The fact that he was the victim of a gunshot is not by itself enough. What did the mother do? She acted quickly and responsibly in getting [J.W.] medical treatment.

Moreover, with respect to Mother's drug use, it is, as I mentioned, troubling, and PCP is, as I think everyone recognizes, a dangerous drug. I don't minimize in any way the seriousness of the children being born with detectable levels of this substance, but unlike in many of the cases that come to this court involving parents with substance abuse issues, here there's no other evidence that ... the mother's drug use has contributed to the neglect of the children or that, as a result of her drug use, they've been placed at substantial risk of harm, and the statute uses the phrase substantial.

I do not find that her drug use, while it is concerning, I do not find that ... [it rises] to the chronic level that has been suggested. I do find the testimony of [A.S.'s father] persuasive. He's known [Mother] for 10 years. He's not seen her to have a drug issue, she is a good mother, and there's no question that she has used drugs. However, as [A.S.'s father] testified, she's a good mother, he would never want to see the children taken from her, she puts the children first.

The preponderance of the evidence in this case, in my view, shows that the children are, despite the flaws of the mother, well cared for. Every time the Department has investigated the children[,] they have found that they were well-groomed, happy, appropriately attired, and the like. Every time the Department has visited [Mother's] home, again, unlike so many of these cases that we see and quite unlike the facts of *Priscilla B.*, the house is neat and tidy....

Finally, I do note, again, that on the issue of [Mother's] drug use, that the Department did know about that and, as recently as last summer, it closed its case at a time when, if there were safety and risk concerns, it would not have.

So accordingly, I do not find that the Department has met its burden of showing neglect, and I will dismiss the petition[s].

The Department makes several complaints about the way in which the juvenile court conducted the hearing and the ruling it reached.

First, at the hearing and on appeal the Department complains that the juvenile court’s factfinding did not proceed in the same order as the facts were alleged in the Department’s petitions. In essence, the Department argues that the juvenile court was required to read out a line of the petition, state whether the allegation was proven or not proven, and then go to the next line of the Department’s petition. Although some juvenile courts may use this line-by-line method, the Department has not directed us to any law that compels that method, nor have we found any in our independent inquiry. Moreover, the Department has failed to identify what, if any, specific allegations in its petitions that the juvenile court failed to address in its oral ruling.³ As we have quoted extensively above, the juvenile court’s oral ruling found facts, drew inferences, and reached conclusions regarding Mother’s conduct at the December 5th party and in its aftermath, about her prior instances of alleged failure to supervise her children, and about her prior and current drug use. We find no merit to the allegation that the court didn’t find facts or found the facts in an inconvenient order.⁴

³ The Department also makes a curious argument that the juvenile court erred by refusing to amend its petitions after the adjudicatory hearing to conform to the evidence adduced. At the conclusion of the adjudicatory hearing, the Department moved to amend the petitions to conform to the evidence offered regarding Mother’s current drug use. Such a post-hearing amendment is permitted under Rule 11-108(a). We understand the juvenile court as having declined to do so, however, because it found the Department’s evidence was inadmissible hearsay. At that point, the juvenile court found that no amendment of the petition was necessary, and we do not find that decision to have been an abuse of discretion.

⁴ We caution the Department not to confuse judicial modesty with confession of error. The juvenile court noted that it hadn’t sat in juvenile court for a long time and that it would summarize rather than “mention every fact” in its ruling. Neither comment is cause for the alarm with which the Department reacts.

Second, the Department asserted at oral argument in this Court that the juvenile court failed to find as facts that Mother abandoned A.S. by leaving her at the December 5th party (at which drugs were being used and at which her brother had been shot) when she took J.W. to the hospital. We note that the Department didn't include this allegation in its petitions, didn't include it in its post-hearing request to amend the petitions, *see supra* note 3, didn't raise it with the juvenile court, and didn't mention it in its briefing in this Court. Thus, it was not preserved for our review. MD. R. 8-131. Nonetheless, we think the suggestion that the juvenile court didn't consider this allegation is just wrong. The juvenile court found that in the aftermath of the shooting, Mother "immediately did what any responsible parent would do," and that she acted "quickly and responsibly in getting [J.W.] medical treatment." Implicit in this finding is that the juvenile court felt that getting J.W. medical treatment immediately was the highest priority and that mother made the best arrangements possible for A.S. We reject the Department's suggestion that this constituted an abuse of the juvenile court's discretion.

Third, the Department complains that the juvenile court confused the adjudicatory hearing with the dispositional hearing that might have followed and that that confusion caused the court to consider irrelevant facts or not to consider relevant facts. While it is true, as described above, that the adjudicatory hearing and dispositional hearing are separate and involve different evidentiary standards, we disagree that the juvenile court made any such error. In this regard, we note that the juvenile court correctly described the purpose and standards of an adjudicatory hearing. The Department's key argument with regard to this point is that the juvenile court repeatedly noted that the children were "clean"

and “well-groomed.” While it seems true that this finding impressed the juvenile court, it is wrong that evidence of cleanliness and grooming is only relevant at a dispositional hearing. In fact, the legal standards overlap. Evidence that a parent keeps a child clean and well-groomed supports a finding of “proper care and attention,” which is specifically admissible at both the adjudicatory and dispositional phases of a CINA case. *Compare* CJ §3-801(s) (failure to give “proper care and attention” is an aspect of “neglect,” which pursuant to CJ §3-801(c), is a key issue at an adjudicatory hearing) *with* CJ §3-801(f) (failure to give “proper care and attention” is an aspect of the CINA determination, which pursuant to CJ §3-801(m), is an issue at the dispositional hearing). As evidence of cleanliness and grooming can be relevant at an adjudicatory hearing, admission of such evidence is not error. Although we review legal decisions, like the appropriate separation between the adjudicatory and dispositional hearings, without deference, *In re J.R.*, 246 Md. App. 707, 730-31, 756 (2020), we conclude there was no error.

Fourth, the Department disagrees with the juvenile court’s ultimate conclusion, that the facts proven by the Department and found by the juvenile court at the adjudicatory hearing do not satisfy the standard for neglect. We apply a deferential standard of review and will only reverse a juvenile court’s determination if it abused its discretion. *See In re Shirley B.*, 419 Md. 1, 18-19 (2011) (quoting *In re Yve S.*, 373 Md. 551, 583-84 (2003)). The Department’s brief on this point is over the top, asserting that the juvenile court weighed cleanliness over safety and substituted the Department’s past decisions regarding Mother’s drug use and supervisory failures for its own analysis. A perusal of the juvenile court’s oral ruling, above, disproves these outsized claims. More critically, we don’t think,

even finding the facts that the Department produced at the adjudicatory hearing as true, that the juvenile court abused its discretion in finding that they didn't add up to neglect.

CONCLUSION

The juvenile court's factual findings were supported by evidence in the record. Moreover, the findings regarding the children's appearance and the condition of their home were properly considered at the adjudicatory hearing. Based on the facts sustained, the juvenile court did not abuse its discretion in declining to find neglect and dismissing the CINA petitions. We affirm.

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