Circuit Court for Frederick County
Case No. 10-C-17-000785

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1442

September Term, 2017

IN THE MATTER OF: W. E-R.

Meredith,
Kehoe,
Berger,

JJ.

Opinion by Berger, J.

Filed: December 21, 2018

Appellant, Heiman Gudiel Pacheco-Gutierrez ("Brother"), appeals from the ruling of the Circuit Court for Frederick County denying his (1) Petition for Guardianship of his sister, W. E-R.; and (2) Motion for the Court to make specific findings of fact regarding his sister's eligibility for Special Immigrant Juvenile ("SIJ") status.

On appeal, Brother poses one question, which we set forth *verbatim*.

> Whether the circuit court erred in refusing to exercise jurisdiction over a petition for guardianship filed pursuant to Md. Family Code Ann. § 1-201(a) and (b)(10).

For the reasons explained herein, we shall affirm.

FACTS AND PROCEEDINGS [1]

W. E-R. was born in San Alejo, El Salvador on October 12, 1998. W. E-R.'s father abandoned W. E-R. when W. E-R.'s mother was pregnant. As a result, W. E-R.'s father is not listed on her birth certificate.

W. E-R. began experiencing parental abuse when she was thirteen years old. Her mother often used sticks or kitchenware to inflict physical pain when she failed to comply with her mother's instructions. W. E-R. testified that on one occasion, her mother beat her with a ceramic plate, which caused bleeding and left a permanent scar. In addition, W. E-R.'s mother frequently failed to provide W. E-R. with a consistent source of food. W. E-R. called her relationship with her mother "strained" as a result of the physical abuse and constant food insecurity.

[1] There was no appellee brief filed with this Court so our factual discussion was gathered from Brother's brief and the information contained in the record.

After turning seventeen, W. E-R. obtained full-time employment. This required her to work during the days, leaving her to attend school in the evenings. W. E-R. testified that members of the Mara 18 gang approached her one night as she was leaving school. The gang members threatened W. E-R. with weapons and attempted to steal her motorcycle. While W. E-R. was able to leave unharmed that night, W. E-R. dropped out of school due to the fear caused by the gang.

In April 2016, W. E-R. fled El Salvador to live with Brother in the United States. Upon entering the United States, W. E-R. was apprehended by immigration authorities. The authorities released W. E-R. into the custody of Brother, whom she continues to live with in Frederick, Maryland.

On March 22, 2017, Brother filed a petition in the Circuit Court for Frederick County to become W. E-R.'s legal guardian. In his petition, Brother requested guardianship over W. E-R. and asked the court to make a predicate finding that W. E-R. was eligible for SIJ status. On April 26, 2017, the court denied the petition holding that it did not have jurisdiction to appoint a guardian because W. E-R.'s mother was still alive. Thereafter, Brother filed a motion to alter or amend the judgment arguing that the court did have jurisdiction. On August 24, 2017, after holding a hearing and reviewing Brother's supplemental written argument, the court denied the motion.

STANDARD OF REVIEW

"[W]here an order involves an interpretation and application of Maryland constitutional, statutory or case law, our Court must determine whether the trial court's

conclusions are 'legally correct' under a *de novo* standard of review." *Simbaina v. Bunay*, 221 Md. App. 440, 448 (2015) (quoting *Schisler v. State*, 394 Md. 519, 535 (2006)). Brother challenges the circuit court's interpretation of Maryland law in its refusal to exercise jurisdiction. As such, we "must decide if the circuit court's decision denying the request for SIJ factual findings was 'legally correct.'" *Simbaina*, *supra*, 221 Md. App at 448 (citation omitted).

DISCUSSION

The United States Congress created SIJ status "to provide undocumented children who lack immigration status with a defense against deportation proceedings." *In re Dany G.*, 223 Md. App. 707, 712 (2015). "The Immigration and Nationality Act of 1990, which established the initial eligibility requirements for SIJ status, was enacted 'to protect abused, neglected or abandoned children, who with their families, illegally entered the United States.'" *Simbaina*, 221 Md. App. at 448-49 (quoting *Yeboah v. U.S. Dep't of Justice*, 345 F.3d 216, 221 (3d Cir. 2003)).

To apply for SIJ status, there must first be a "filing in state court, which is often in the form of a guardianship or custody complaint." *In re Dany G.*, 223 Md. App. at 713. The petitioner must also request that the court make specific findings of fact regarding the child's eligibility for SIJ status. *Id.* To be deemed eligible for SIJ status, the court must make the following findings:

1) [T]hat the juvenile is under the age of 21 and is unmarried;

> 2) that the juvenile is either dependent upon the juvenile court, or has been placed in the custody of a state agency or an individual or entity by the court;
>
> 3) that the state court has jurisdiction over the custody and care of the juvenile;
>
> 4) that reunification of the juvenile with one or both of his or her parents is not viable due to abuse, neglect, abandonment, or similar bases under state law; and
>
> 5) that it is not in the best interest of the juvenile to be returned to his or her parents' previous country of nationality.

Martinez v. Sanchez, 235 Md. App. 639, 645 (2018) (footnote omitted).

Under Md. Code (1984, 2012 Repl. Vol., 2018 Suppl.), § 1-201(b)(10), of the Family Law Article ("FL"), circuit courts have jurisdiction over:

> [C]ustody or guardianship of an immigrant child pursuant to a motion for Special Immigrant Juvenile factual findings requesting a determination that the child was abused, neglected, or abandoned before the age of 18 years for purposes of § 101(a)(27)(J) of the federal Immigration and Nationality Act.

FL § 1-201(a) defines a "child" as "an unmarried individual under the age of 21 years." Thus, "circuit courts that have jurisdiction over custody and guardianship are able to make the necessary predicate order findings [for SIJ status] until the child reaches the age of 21 based upon events occurring before the child was 18 years old." *In re Dany G.*, 223 Md. App. at 716.

In this proceeding, the circuit court denied Brother's petition for guardianship over W. E-R. In its order, the circuit court relied on our holding in *In re Guardianship of Zealand W.*, 220 Md. App. 66 (2014) in finding that it did not have the authority to appoint

a guardian because W. E-R.'s mother was alive. In our view, the circuit court's basis for denying the petition is in accordance with our holding in *In re Zealand*.

In *In re Zealand*, 220 Md. App. at 69, a child's cousin filed a guardianship petition in the Circuit Court for Montgomery County. The petition was filed pursuant to Md. Code (1974, 2011 Repl. Vol.), § 13-702, of the Estates & Trusts Article ("ET"). *Id.* The circuit court exercised jurisdiction over the petition and the mother filed an interlocutory appeal challenging the court's right to review the petition. *Id.* at 78-79. On appeal, we observed that ET § 13-702(a) "does not allow a circuit court judge to appoint a guardian of the person of a minor child where … (1) the mother of the child is still living; and (2) the mother's rights have never been terminated in the state pursuant to Title 5 of the [FL]; and (3) parental rights have not been terminated by any other court." *Id.* at 82.

We, therefore, held that the circuit court "was not authorized" to review the guardianship petition because the child's mother was alive and her parental rights had not been terminated. *Id.* at 85-86. In reaching this holding, we further recognized that circuit courts may only terminate parental rights under limited circumstances. *Id.* at 85 ("[T]he only 'express statutory authorization for a court to terminate parental rights and obligations short of adoption is contained in' sections 5-313 and 5-317 of the [FL.]") (quoting *Carroll Cnty. Dep't of Soc. Servs. v. Edelmann*, 320 Md. 150, 176 (1990)).

In this case, W. E-R.'s mother is alive and her parental rights have not been terminated. As such, the circuit court correctly determined that it did not have authority to appoint Brother as W. E-R.'s guardian.

Brother contends that our holding in *In re Zealand* does not apply because FL § 1-201(b)(10) -- which was enacted 28 days before *In re Zealand* was reported -- explicitly grants courts authority to make guardianship determinations. We disagree. While the circuit court may have had "jurisdiction" over guardianships proceedings generally, the circuit court did not have the authority to appoint a new guardian for the reasons explained, *supra*.

As we discussed in *In re Zealand*, "the important question … is not whether subject matter jurisdiction existed" but is instead, "(1) 'under what circumstances the court may appropriately exercise' that jurisdiction; and (2) is the court's action 'authorized by some provision of law or by some inherent authority to exercise it in this kind of case[.]'" 220 Md. App. at 84-85 (quoting *Edelmann*, 320 Md. at 170). In *In re Zealand*, we recognized that "[t]echnically, the circuit court did have subject matter jurisdiction" to review the guardianship petition. *Id.* at 83. Indeed, ET § 13-105(a)(1) explicitly provides circuit courts with jurisdiction "over guardians of the person of a minor and over protective proceedings for minors." Nonetheless, despite the circuit court having jurisdiction in a general sense, we held that the court "did not, however, have authority" to exercise its jurisdiction in appointing a guardian because the child's mother was still alive and her parental rights had not been terminated. *Id.*

FL § 1-201(b)(10) provides circuit courts with jurisdiction over "guardianship of an immigrant child pursuant to a motion for" SIJ status. In our view, this statute is similar to ET § 13-105(a)(1) because both statutes technically provide circuit courts with subject

matter jurisdiction over guardianships. Moreover, neither statute provides circuit courts with any authority to make guardianship appointments. Guardianship petitioners must comply with other sections of the Family Law Article or the Estates & Trusts Article to obtain that type of relief. We, therefore, affirm the circuit court's order because the circuit court had no authority to appoint a guardian under these circumstances. *See In re Zealand, supra,* 220 Md. App. at 82.

Brother further maintains that W. E-R's mother's parental rights automatically terminated when W. E-R. turned eighteen.[2] Brother argues that because W. E-R. reached the age of majority at the time the guardianship petition was filed, our holding in *In re Zealand* does not apply. *See In re Zealand, supra,* 220 Md. App. at 82 (holding that the circuit court would have had the authority to appoint a guardian if "the mother's rights [had] been terminated … pursuant to Title 5 of the [FL]"). We disagree. Indeed, Brother has presented no authority to support this proposition.

To be sure, Brother cites to Md. Code (2014), § 1-103(b), of the General Provisions Article ("GP") to support this theory. That provision defines a minor as "an individual [that is] under the age of 18 years[,]" except as provided in GP § 1-401(b). GP § 1-401(b) provides that eighteen-year-old individuals may continue to "receive support and maintenance" from their parents under certain circumstances. Brother has not explained how parental rights automatically terminate when a child reaches the age of eighteen

[2] W. E-R. is nineteen years old as of the date Brother filed this appeal.

notwithstanding the fact that those same parents may be obligated to continue to support their adult children.

Finally, Brother urges us to conclude that the circuit court had the authority to appoint Brother as W. E-R.'s guardian under the "*parens patriae*" doctrine. In essence, Brother asks us to reconsider our opinion in *In re Zealand*, which we decline to do.

For the sake of clarification, we do not hold that circuit courts lack authority to review a child's petition for SIJ status whenever the child's parent is alive. Rather, in affirming our decision in *In re Zealand*, which was specific to guardianship proceedings, we hold that circuit courts lack authority to appoint a guardian for a child when the child's parent is alive. Our holding has no effect on a child's ability to seek SIJ status through a custody proceeding. Indeed, the circuit court made this crucial distinction in the hearing on Brother's motion for reconsideration.

> [The Court]: Why not file it as a custody case? You don't even get into Zealand if you file it as a custody case.
>
> [Counsel for Brother]: If you file it as a custody -- case, yes, you don't have to deal with Zealand.

* * *

To conclude, *In re Zealand* does not foreclose a child's ability to seek SIJ status through the filing of a custody proceeding. We, therefore, hold that the circuit court did not err in denying Brother's petition for guardianship.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.