Circuit Court for Prince George's County
Case No. CAE16-30344

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1521

September Term, 2017

IN RE B.M.

Wright,
Reed,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: November 28, 2018

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In the Circuit Court for Prince George's County, CL, the uncle of BM, filed a petition for guardianship of the person of BM and for approval of factual findings that would permit BM to apply for special immigrant juvenile ("SIJ") status. After an evidentiary hearing, the court issued an order denying the guardianship request, while at the same time refusing to make findings that would allow an application for SIJ status. CL filed a motion to alter or amend judgment and to accept additional evidence. After the court denied that motion, CL noted this appeal. We shall set forth the issues raised on appeal after we recite the facts and proceedings.

FACTS AND PROCEEDINGS

BM was born in Guatemala on April 24, 1999. He came to the United States in October 2014, at age fifteen. Soon after arriving he moved in with CL, his mother's brother, in Maryland.

In 2016, when BM was seventeen years old, CL filed the petition in this case. He sought guardianship of BM and findings by the court that would permit BM to apply for SIJ status with the federal immigration authorities. Specifically, CL sought findings that BM's reunification with his mother, who still lived in Guatemala, was not viable due to neglect; that BM's reunification with his father, who also still lived in Guatemala, was not viable due to neglect; and that BM's return to Guatemala would not be in his best interest. BM's parents were properly served with process. They and BM signed written consents for CL to be granted guardianship of BM.

The court held an evidentiary hearing on May 25, 2017. Counsel for BM called two witnesses – BM and CL – and moved several documents into evidence, which we shall discuss, as relevant, below.

BM testified that he was eighteen years old, was born in Guatemala, and had never been married. BM explained that he moved to the United States in 2014 and that he began living with CL soon after.

BM identified his parents by name and testified that they still lived in the village in Guatemala from which he came. He further testified that, although he had reached the ninth grade while living in Guatemala, from the time he was thirteen years old, his parents had required him to pay for his own school tuition and for his food and clothing. Because his parents would not support him, BM began working on farms in the area to earn money to pay for school, food, and clothing. BM testified that, from the age of thirteen on, he worked five days a week, from 5:00 a.m. to 2:00 p.m., and that he attended school on Saturdays only. According to BM, the work he performed was hard manual labor, requiring him to use a machete to cut vines, a tiller to till the soil, and a pump to fumigate crops in the fields. On one occasion, BM injured himself when the machete he was using slipped, cutting his thumb to the bone.[1] BM also testified that his work required him to fumigate the fields twice a week and that he was not given any protective gear to wear when he was spraying chemicals, which caused symptoms such as burning

[1] Counsel moved into evidence a photograph of the scar on BM's thumb from that accident.

eyes. BM explained that his parents knew about his work conditions but did not express any concern. BM further explained that he kept working under those conditions because that was the only way he could earn money for school, clothes, and food.

BM testified that, because there were no stores in his village in Guatemala, he had to walk to a nearby small town to buy food and clothing for himself. One evening when he was returning home from the town, he was accosted by four men wearing gang-identifying clothing and wielding knives. The men held him at knife-point for about 20 minutes, robbed him of all his belongings, and then threatened to do the same if he walked that path again. After that incident, BM was afraid to go to the town, only doing so during the day or with a friend. Not long after the attack, BM moved to the United States. BM testified that if he returned to Guatemala he would be in danger of being injured or killed by gang members; that he would have no place to live, as his parents would not furnish him with shelter; that he would not be able to continue in school; and, that he would not have any means to support himself.

BM testified that, as of the time of the hearing in May 2017, he was in the eleventh grade at High Point High School in Prince George's County. BM stated that he had attended school since moving in with CL, except for a six-month period in 2016, during which his father was ill and could not work and his parents demanded that he earn money to send home to them. BM returned to school when his father was well enough to resume work. BM testified that school was important to him, that he liked school, and that math was his favorite subject. BM's school progress reports for 2015 and 2017,

which were moved into evidence, showed the courses he took, the grades he received, the comments by his teachers, and the number of times he was absent or late for school.

BM stated that he planned to graduate from high school, go to college, and eventually become a teacher, and that CL supported those goals. BM also stated that CL provided him shelter, food, and clothing and that he felt safe living with CL. BM testified that he wanted CL to be his guardian until he reached twenty-one years old.

CL testified that he came to the United States in or about 2001, that he had lived in Maryland since that time, and that he was employed as a construction worker in Virginia. CL explained that he opened his home to BM because BM needed help, that he paid for all of BM's necessaries, and that BM's parents had not provided any financial assistance for BM. CL also stated that he did not agree with BM's decision to drop out of school for six months but that he knew BM's parents had pressured him. CL testified that BM was back in school, that he supported BM's goals of finishing high school and going to college, and that he was willing to support BM financially until age twenty-one.

At the conclusion of CL's testimony, the hearing judge announced that he was going to "reset this matter for the 27th of June for disposition." Counsel for BM stated that she had another witness to call, but the judge did not permit that witness to testify.[2] The judge then informed counsel that she need not appear on June 27th, as he was just going to "make certain the order is signed." The judge then stated:

[2] The identity of the witness was not given.

> I will say this. I have no idea what the Court is going to do with the order, but I will say unequivocally the Court has some serious concerns regarding the education. The statements are that you and everybody's concerned about his education, but this school year [referring to the 2017 school progress report] you have been tardy 84 days. And in addition to that, you have been absent 31 days. This is almost a complete quarter of absences. Let me also say that there are apparently behavior or conduct issues, disruptive (sic) the class, conduct needs improvement, excessive absences throughout. Just letting you know my concerns. Nevertheless, whatever the Court may do with this case has nothing to do with you getting your act together academically because if your education is your future, you need to be more serious and concerned about it.

In response, and with the court's permission, BM's counsel asked BM if he had an explanation for why he had been absent so many days during the 2016-2017 school year. BM responded that he had fractured his foot and had not been able to attend school for that reason. The hearing judge then interjected, saying that, when he was a student, he had broken his foot on a Friday and was back in school the following Monday wearing a cast. The judge also stated that a broken foot "only takes about four weeks . . . to heal" and that BM's injury could not account for 31 days of absences from school. When BM's counsel sought to have BM's medical records introduced into evidence, the judge refused stating, "don't use that as an excuse." The judge went on to state that

> [a broken foot] might be a reason why you may have missed a couple of days but when you break a foot you go to the hospital, they set the matter, they put it in a cast or a boot nowadays and they go on. You might have a couple of other days where you do physical therapy, but you don't have full days of physical therapy because physical therapy is 45 minutes to an hour. I'm just – you can make – you can give the Court a reason but don't make an excuse, and it has nothing to do with 84 days of tardies. Have a good day.

The hearing judge then concluded the hearing and stated that the proceedings were "reset for the 27th"; however, no further proceedings were held in the matter. Rather, on July 18, 2017, the clerk's office entered into the docket an order entitled, "Petition for Guardianship and Order Regarding Minor's Eligibility for Special Immigrant Juvenile Status." That document, which was signed by the court on June 6, 2017, stated, in pertinent part:

> **THE COURT FINDS** and concludes there are major concerns regarding the credibility of the witnesses in this matter.
>
> **THE COURT FINDS** that it has jurisdiction under Maryland Law to make judicial determination about the custody and care of juveniles within the meaning of Section 101(a)(27)(J) of the Immigration and Nationality Act, 8 U.S.C. §204.11(a)(c). [sic]
>
> **THE COURT FURTHER FINDS** that the minor Child is not legally committed to, nor placed in the custody of an individual or entity appointed by a State of Juvenile Court located in the United States within the meaning of INA Section 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).
>
> **THE COURT CANNOT FIND** that reunification of the Minor Child with his biological mother is not viable because of abuse, neglect, abandonment, or some similar basis under Maryland's Law.
>
> **THE COURT FURTHER FINDS** that upon testimony, it was determined that though the child testified to making his education a priority, he has been recorded as having a [sic] numerous tardies and absences throughout the school year.
>
> **THE COURT FURTHER FINDS** that although the child did injure his foot, it is not convinced that the child's absences are directly the result of him breaking his foot.
>
> **LASTLY, THE COURT CANNOT FIND** that it is not in the best interest of the Minor Child to be returned to his previous Country of Nationality within the meaning of Section 101(a)(27)(J) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(27)(J)(i), and 8 C.F.R. § 204.11(a), (d)(2)(iii).
>
> Accordingly, it is the 6th day of June 2017 that the Petitioner's request for Guardianship of [BM] is DENIED.
>
> **ORDERED**, that the request for Guardianship of [BM] be and hereby is DENIED, and it is further,

> **ORDERED,** that the request for Special Immigrant Juvenile Status for [BM] be and hereby is DENIED.

On July 27, 2017, CL filed a motion to alter or amend judgment and to receive additional evidence. Specifically, he sought to supplement the record to include the following documents explaining BM's absences and tardies during the 2016-2017 school year:

- Affidavit of BM about his foot surgery and other problems regarding his school bus schedule, which accounted for his absences from October 7 to November 19, 2016, and his tardies throughout the school year.
- Copy of an email dated July 26, 2017, from Miguel Chacon, Vice Principal of High Point High School, stating that for the entire 2016-2017 school year, BM only had a total of four unexcused absences and six unexcused tardies.
- Copy of a letter from The R. Adams Cowley Shock Trauma Center in Baltimore, stating that BM was admitted there as a patient from October 31, 2016 to November 1, 2016, and was directed by his physicians not to return to school until November 19, 2016.
- Printout of the school's calendar for October and November 2016, showing the days for which BM was excused from school for medical reasons.
- Medical records for BM's doctor's appointment of November 16, 2016, documenting his surgical follow up visit for a "Bimalleolar ankle fracture and closed intra-articular fracture of the distal tibia."
- Medical records for BM's doctor's appointment of March 29, 2017, documenting an additional surgical follow up visit.
- BM's Student Profile, showing his enrollment at High Point High School for twelfth grade for the 2017-2018 school year.

In the motion to alter or amend judgment, counsel argued that the documents being offered explained that the overwhelming number of absences and tardies the hearing judge had commented upon during the hearing, and had referenced in his order, were, in fact, excused. Counsel maintained that those absences and tardies, which the judge considered as if they were unexcused, appeared to be the sole basis for his discrediting BM's and CL's testimony. Counsel further maintained that, without those

alleged credibility problems, the evidence clearly supported the granting of a guardianship and findings necessary for BM to apply for SIJ status.

In an order entered on August 31, 2017, the court denied the motion to alter and amend and to receive additional evidence. In so doing, the court, citing Maryland Rule 2-534, ruled that the motion was untimely because it was filed "50 days after the order was mailed." The court also found, without further explanation, that there was no "justiciable basis to Alter or Amend the findings and the involved order."

Following that denial, CL noted the instant appeal, setting forth four issues, which we have combined, reordered, and reworded:

I. Did the circuit court abuse its discretion by denying BM's motion to alter or amend on the ground that it was untimely filed?

II. Did the circuit court err or abuse its discretion by denying CL's petition for guardianship of BM; by making no findings on whether reunification with BM's father was not viable due to neglect; by refusing to find that reunification with BM's mother was not viable due to neglect; and by refusing to find that it was not in BM's best interest to be returned to Guatemala?

For the following reasons, we shall vacate the judgment of the circuit court and remand for further proceedings not inconsistent with this opinion.

DISCUSSION

I.

CL first contends the circuit court erred in denying his motion to alter or amend judgment. He maintains that the court applied an incorrect legal standard in determining that his motion was untimely filed pursuant to Maryland Rule 2-534.

Ordinarily, the decision to deny a motion to alter or amend under Maryland Rule 2-534 is reviewed for abuse of discretion. *Rose v. Rose*, 236 Md. App. 117, 129 (2018), *cert. denied*, 459 Md. 417. Decisions on matters of law, however, including those involving the interpretation of the Maryland Rules, are reviewed *de novo*. *Renbaum v. Custom Holding, Inc.*, 386 Md. 28, 43 (2005). Moreover, "a 'court's discretion is always tempered by the requirement that the court correctly apply the law applicable to the case.'" *Rose*, 236 Md. App. at 129 (quoting *Arrington v. State*, 411 Md. 524, 552 (2009)). In other words, "trial judges do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature." *Miller v. Mathias*, 428 Md. 419, 438 (2012) (citations and quotations omitted).

As noted, the circuit court denied the motion to alter or amend judgment in part because it was not timely filed under Maryland Rule 2-534. That rule provides, in relevant part:

> In an action decided by the court, *on motion of any party filed within ten days after entry of judgment*, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment.

(Emphasis added).

Here, the docket entries show that the court's order was entered on July 18, 2017. Therefore, to be timely under Rule 2-534, the motion to alter or amend had to be filed no later than July 28, 2017. *See Green v. Brooks*, 125 Md. App. 349, 362 (1999) ("[T]he ten-day period in which to file a post-trial motion is triggered by the day the judgment was

'entered' on the court's docket, not the day the trial judge actually signed the order."). The motion was filed on July 27, 2017, within the time frame provided by Rule 2-534. Accordingly, the court erred in ruling that the motion to alter or amend was untimely filed. And, because the court based its decision to deny the motion to alter or amend on a legally erroneous interpretation of the timing provision of Rule 2-534, the court abused its discretion in denying the motion.[3]

II.

CL contends the circuit court erred in denying the petition for guardianship. Specifically, he maintains that the court erred by making no findings as to whether reunification of BM with his father was not viable due to neglect. He also maintains that the court erred by refusing to find that reunification of BM with his mother was not viable due to neglect and by refusing to find that it was not in BM's best interest to be returned to Guatemala.

A. Applicable Law.

"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.'"

[3] As noted, the court did not explain its statement that there was no "justiciable basis to Alter or Amend the findings and the involved order." We assume that this statement was related to its incorrect finding of lateness, as there seems to be no other basis for it.

Simbaina v. Bunay, 221 Md. App. 440, 448-49 (2015) (quoting *Yeboah v. U.S. Dep't of Justice*, 345 F.3d 216, 221 (3rd Cir. 2003)). With respect to SIJ status, the Act "creates 'a special circumstance where a State juvenile court is charged with addressing an issue relevant only to federal immigration law.'" *Id.* at 449 (quoting *H.S.P. v. J.K.*, 435 N.J. Super. 147, 1552014), *rev'd on other grounds by H.S.P. v. J.K.*, 223 N.J. 196 (2015)). The decision whether to grant SIJ status rests with the United States Citizenship and Immigration Services bureau ("USCIS"), not with the state court. However, before a child may apply to the USCIS for SIJ status, he or she first must obtain an acceptable "predicate order" from a state court. *Id.* at 449-50.

For the predicate order to be acceptable to the USCIS, the state court must make certain findings, including:

1) That the juvenile is under the age of 21 and 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.

See C.F.R. § 204.11(a), (c), & (d). After obtaining such a predicate order, the child attaches it to his petition to the USCIS, and that agency adjudicates the petition using the findings in the order. *See Simbaina*, 221 Md. App. at 452 (explaining that the state court does not make an immigration status determination; it merely makes factual findings that

may form the predicate for that determination by federal authorities). If the child is granted SIJ status by the USCIS, he or she then may apply for an "adjustment to lawful permanent resident status[.]" *Id*. at 450.

A state court's predicate order in an SIJ matter must include specific factual findings, not just conclusory statements. *Martinez v. Sanchez*, 235 Md. App. 639, 646 (2018). The findings are to be made by a preponderance of the evidence standard. *Romero v. Perez*, 236 Md. App. 503, 509 (2018), *cert. granted*, 460 Md. 2 (July 12, 2018).

In Maryland, with respect to the second finding required by the court presented with an SIJ case, a child who is made a ward of an adult guardian has been placed by the court in the guardian's custody. In relevant part, Section 13-702(a) of the Estates and Trusts Article ("ET") of the Maryland Code provides:

> *General Rule*. --- (1) If neither parent [of the child in question] is serving as guardian of the person and no testamentary appointment has been made, on petition by any person interested in the welfare of the minor, and after notice and hearing, the court may appoint a guardian of the person of the unmarried minor.
>
> (2) If the minor has attained his 14th birthday, and if the person otherwise is qualified, the court shall appoint a person designated by the minor, unless the decision is not in the best interest of the minor.

Section 1-201(a)(10) of the Family Law Article ("FL") of the Maryland Code states that the equity jurisdiction of the circuit court extends to

> custody 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 for purposes of § 101(a)(27)(J) of the federal Immigration and Naturalization Act.

Federal immigration law defines a "child" as an unmarried person under twenty-one years of age. 8 C.F.R. § 204.11(c)(1). Therefore, a Maryland circuit court has jurisdiction to grant a guardianship of the person of a minor under ET section 13-702(a) for children who are over eighteen years old but under twenty-one years old.

In reviewing a court's decision in an SIJ case, we assess the court's factual findings under a clearly erroneous standard, asking whether those findings "are marked by … competent and material evidence in the record to support the decision." *In re Dany G.*, 223 Md. App. 707, 719 (2015). The court's legal conclusions, however, are reviewed *de novo*. *Id.* at 720. Finally, "[u]ltimate conclusions are reviewed under the abuse of discretion standard[,] which asks whether the decision is off the center mark and beyond the fringe of what is deemed minimally acceptable." *Id.*; *See also Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006) ("We have defined abuse of discretion as 'discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'") (citations omitted).

B. Analysis

In the present case, the circuit court made three findings related to credibility: 1) that "there are major concerns regarding the credibility of the witnesses in this matter"; 2) that "it was determined that though [BM] testified to making his education a priority, he has been recorded as having a [sic] numerous tardies and absences throughout the school year"; and 3) that "although the child did injure his foot, [the court] is not convinced that the child's absences are directly the result of him breaking his foot." The record

discloses that the court's general negative credibility assessments of the witnesses were based entirely upon its conclusion that BM testified falsely about the importance of school to him, and that the falsity of that testimony was shown by the fact that BM had had numerous absences and instances of being late to school in the 2016-2017 school year that were unexcused and, in particular, could not be accounted for by the injury he sustained to his foot.

The school progress report for the 2016-2017 school year recorded that BM was late to school 84 times and that he was absent from school 31 times. The report did not state whether those tardies and absences were excused or unexcused. Nevertheless, the hearing judge considered them ***all*** to have been unexcused, and, as the colloquy at the close of the hearing makes plain, did so based largely upon his own personal experience with having broken his foot when he was a student and upon his assumptions about the time necessary for a broken foot to heal. None of that was evidence presented in the case. Moreover, immediately before bringing the hearing to a close, the judge refused to consider BM's medical records, which were offered by counsel in response to the judge's comments and showed the extent of BM's foot injury. Rather, the judge simply dismissed BM's testimony about his broken foot as "an excuse."

To make matters worse, the hearing judge incorrectly denied BM's motion to alter or amend and receive additional evidence on the ground that it was untimely filed. Not only was the motion timely filed, as previously discussed, but also it provided the court with documentation showing that almost all of the absences and tardies that the judge had

erroneously deemed unexcused were in fact excused. Specifically, the documents showed that BM had been directed by his treating physicians to take far more time off from school than what the judge had assumed was necessary and that all but four of his 31 absences during the school year were excused. The documents further showed that BM was late for school primarily due to problems caused by a new bus schedule and that all but six of his 84 tardy arrivals at school had been excused. In addition to being directly responsive to the court's concerns regarding BM's credibility, the evidence refuted the judge's erroneous assumption that BM had had 31 unexcused absences and 84 unexcused tardies. Again, the court refused to consider that evidence only after it had committed legal error by incorrectly calculating the time by which the motion to alter or amend had to be filed.

The court's negative credibility findings, which were based on unsupported assumptions and non-evidence, appear to have infected its decision-making on the issues it was supposed to address in this SIJ case. The court denied the petition for guardianship without making any factual findings or stating any reasons even though it had been provided signed consents to guardianship by both of BM's parents and by BM himself. Furthermore, it was undisputed that BM's parents were not serving as his guardians; that they had agreed to CL – BM's uncle – serving as his guardian; that BM was over the age of fourteen and was unmarried; and that BM was asking the court to appoint CL as his guardian. Under ET section 13-702(a)(2), then, so long as it was in BM's best interest for CL to be appointed his guardian, the court was required to make the appointment, *i.e.*,

"shall appoint," as the language of the statute states. Apparently because of its credibility concerns, which, as we have explained, had no basis in the evidence, the court did not make any findings of fact as to whether it would be in BM's best interest for CL to be appointed as his guardian; instead, the court simply denied the guardianship petition.

Also without making any factual findings, the court concluded that it could not find that reunification of BM with his mother, in Guatemala, was not viable due to neglect, as BM was claiming, nor could it find that it was not in BM's best interest to be returned to Guatemala. The court did not address at all whether reunification of BM with his father in Guatemala was not viable due to neglect. The Maryland cases on SIJ status make clear that the court must make factual findings – not bald conclusions – on the issues of parental reunification and the child's best interest. *See Martinez*, 235 Md. App. at 636; *In re Dany G.*, 223 Md. App. at 721-22. On those points, the facts in evidence about the circumstances under which BM was living in Guatemala (where both parents failed to provide BM with basic necessities and required him to work full time in a dangerous job performing hard labor to feed and clothe himself) were clearly sufficient to support both a finding of neglect by each parent and a finding that it was not in BM's best interest to return to his country of origin. *See In re Dany G.,* 223 Md. App. at 711, 720-22 (holding that the circuit court erred by refusing to find that a juvenile was neglected and that returning the juvenile to his country of origin was not in his best interest, where evidence showed that the juvenile's parents allowed him, at age 12, to quit school and "work in the fields … with herbicides[.]")

In sum, the circuit court erred when, following the hearing on CL's petition for guardianship, it refused to render factual findings on the issues that are required to be decided in an SIJ case, including whether BM had been neglected by his parents and whether it was in his best interest to return to Guatemala, and instead refused to make certain findings and made findings that were not supported by the evidence. The court also erred by denying the motion to alter or amend judgment on the ground that it was untimely filed. Finally, given that the concerns raised by the court during the hearing on CL's petition stemmed almost exclusively from the issue of BM's absences and tardies from school, the court abused its discretion by not considering BM's newly offered evidence, which directly addressed those concerns and were included in the motion to alter or amend judgment.

For all these reasons, we shall vacate the circuit court's judgment and remand this matter for the court to consider the evidence presented in the motion to alter or amend and make detailed factual findings on the guardianship and SIJ issues that were before it.

JUDGMENT VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.