Circuit Court for Prince George's County
Case No. CINA-19-0127

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1647

September Term, 2021

IN RE: P.N.

Graeff,
Nazarian,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: June 23, 2022

On May 3, 2021, a magistrate in the Circuit Court for Prince George's County issued a proposed order recommending that the permanency plan for P.N., a child in need of assistance ("CINA"),[1] be changed from reunification with her parents, O.C. ("Mother") and D.L. ("Father"), appellants, to termination of parental rights/adoption. On May 13, 2021, Mother filed a notice of exceptions to the magistrate's recommendation. P.N. moved to dismiss Mother's exceptions as untimely. The circuit court granted P.N.'s motion to dismiss.

On September 13, 2021, after a permanency plan hearing, the court noted that nothing had changed from the recommendation that the plan become adoption, and it ordered that the permanency plan would be adoption. Despite this order, Mother filed a motion for reconsideration of the earlier order dismissing Mother's exceptions to the magistrate's recommendation that the permanency plan be changed to adoption. On November 21, 2021, the court denied Mother's motion for reconsideration.

On appeal, appellants present the following questions for this Court's review, which we have consolidated and rephrased slightly, as follows:

1. Did the circuit court err in denying Mother's motion for reconsideration of the dismissal of her notice of exceptions?

2. If the circuit court did not err in denying Mother's motion for reconsideration, should this Court permit Mother to pursue a belated

[1] "CINA" is an acronym for "child in need of assistance." Md. Code Ann., Cts. & Jud. Proc. Art. ("CJ") § 3-801(g) (2020 Repl. Vol.). A CINA is "a child who requires court intervention" because he or she "has been abused, has been neglected, has a developmental disability, or has a mental disorder" and his or her "parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." CJ § 3-801(f)(1)-(2).

appeal on grounds of ineffective assistance of counsel?

For the reasons set forth below, we shall dismiss this appeal.

FACTUAL AND PROCEDURAL BACKGROUND

I.

CINA Petition and Shelter Care

On June 19, 2019, the Department filed a CINA petition on behalf of P.N., who was born on June 12, 2016. The petition alleged that, on June 10, 2019, the Department received a report regarding alleged physical abuse of P.N. The report indicated that P.N. was in Father's custody from May 13–June 9, 2019. P.N. returned to Mother on June 9 at approximately 11:00 a.m. At that time, Mother suspected that there was something wrong with P.N. because "she did not want any birthday cake," and she was lethargic and nauseous. P.N. was brought to Children's National Hospital that same day at approximately 3:00 p.m.

At the hospital, P.N. underwent a physical examination and was admitted to the pediatric intensive care unit for further evaluation. A CT scan showed that P.N. had sustained the following injuries: an adrenal hematoma; three liver lacerations; a small brain bleed and swelling; an acute right subdural hematoma; and a right frontal parietal subdural hematoma with generalized edema. P.N. also had three posterior healing rib fractures.

Two days later, on June 11, 2019, P.N. was examined at the Child and Adolescent Protection Center. The examination revealed that P.N. had sustained multiple injuries, including trauma to her face and neck, thigh bruises, retinal hemorrhage, and injuries to

her liver, pancreas, and right adrenal gland. P.N. also had healing abrasions and "healing burns below her left eye and left earlobe." P.N.'s injuries "were consistent with physical abuse." Neither Mother nor Father provided "a clear and credible explanation for the child's extensive injuries." The Department placed P.N. in shelter care on June 18, 2019.

On the same day that the Department filed the CINA petition, June 19, 2019, the parties appeared before a magistrate for a shelter care hearing. The Department argued that the magistrate should grant continued shelter care based on the allegations in the petition. P.N., through counsel, did not object to shelter care. Mother and Father also did not object to shelter care, but they did not "necessarily agree with all the allegations in the petition."

The magistrate recommended continued shelter care, placing P.N. in the "temporary care and custody" of the Department, pending an adjudicatory hearing, with supervised visitation for Mother and Father. The circuit court issued an order adopting the magistrate's factual findings and recommendation on June 24, 2019.

II.

Adjudication and Disposition

On September 20, 2019, the parties appeared before the circuit court for an adjudicatory hearing. The Department presented an amended CINA petition, which the parties worked on jointly, to avoid a contested hearing. It advised, however, that in the event of a contested hearing, the Department would present evidence and request the court to sustain the allegations in the amended petition. P.N. and Mother, through their

respective counsel, represented that they were not contesting the allegations. Father did not admit or deny the allegations, but his counsel stated: "We are not asking for a contested hearing." The court stated that, because of "the parent's decision not to contest the allegations," it would sustain the allegations in the amended petition and proceed to disposition.

After hearing evidence and argument on disposition, the court found P.N. to be a CINA. P.N. was placed in the care and custody of the Department. Visitation between P.N., Mother, and Father was to remain supervised. The court ordered Mother to participate in individual therapy, undergo a psychological assessment and follow any recommendations, and participate in parenting classes.

III.

Permanency Plan

On November 4, 2019, the parties appeared before a magistrate for a permanency plan hearing. Counsel for the Department recommended that the permanency plan for P.N. be reunification with either Mother or Father. The Department had made efforts to achieve the recommended plan of reunification. P.N., Mother, and Father all agreed with the Department's recommended permanency plan, but Mother and Father sought a move to unsupervised visits.

The magistrate recommended a permanency plan of reunification with Mother, finding that "[t]here has been progress toward the plan of reunification as both Mother and Father have been visiting [P.N.], have attended parenting classes, and attended

psychological evaluations. Father and Mother both say they have housing for [P.N.]" The magistrate recommended that visitation between P.N., Mother, and Father remain supervised, but such visits "may become unsupervised by agreement of [the Department] and [P.N.'s] counsel prior to the next hearing." The magistrate also recommended that P.N. "be placed with Mother or Father on a trial home visit[] prior to the next hearing by agreement of [the Department] and [P.N.'s] counsel with a visitation plan with the other parent in place." The circuit court adopted the magistrate's factual findings and recommendation in an order signed on November 21, 2019.

Subsequent hearings occurred to review the permanency plan. The permanency plan for P.N. remained reunification through 2020.

IV.

Recommendation for a Change in Permanency Plan

In permanency plan review hearings held before a magistrate in April 2021, the Department requested a change in P.N.'s permanency plan from reunification to a plan of "termination of parental rights/adoption." The Department sought the requested change because, in March 2021, while P.N. was in the care and custody of Father, she suffered "severe traumatic injuries," including "fractured ribs, subdural hematoma, internal injuries, and ended up in the hospital for quite a period of time." P.N. agreed with the Department's requested change in the permanency plan from reunification to "an adoption, plus TPR plan." Mother and Father objected to the requested change and requested that reunification remain the permanency plan.

On May 3, 2021, after hearing evidence and argument, the magistrate recommended that P.N.'s permanency plan be changed from reunification to a plan of "TPR/Adoption." The magistrate's findings included the following:

> [I]t is in [P.N.'s] best interest to have her plan change to TPR/Adoption . . . reunification for [P.N.] with a parent is not possible. [P.N.] has been in care for almost 2 years. She was injured while in Mother's care in 2018 and treated at [Children's National Hospital] for a fractured left tibia and facial trauma while in the care of . . . [M]other that was investigated by [the District of Columbia Child and Family Services Agency] wherein Mother provided multiple different accounts of how [P.N.] sustained the injuries. It was also reported that there was an unsubstantiated sexual abuse case involving [P.N.] and her uncle while she was in . . . [M]other's care. In June 2019, [P.N.] was once again treated at [Children's National Hospital] for injuries, including facial and neck trauma, retinal hemorrhage, injuries to the liver, pancreas, and right adrenal, bilateral thigh bruising, healing abrasions, and healing burns below her left eye and left ear lobe. Neither . . . [M]other nor [F]ather provided a clear and credible explanation for [P.N.'s] extensive injuries. In March 2021, [P.N.] was once again treated at [Children's National Hospital] for injuries, including subdural hematoma, fractured ribs, and internal injuries. Again, there is no clear explanation for [P.N.'s] injuries. Mother asserts [that] on the [March 12, 2021] occasion, she had not seen . . . [P.N.] since [February 8, 2021] and she was not responsible. However, Mother was with [P.N.] during the prior incidents and says she observed injuries to [P.N.] that she did not report around December 2020. There is clearly a[] safety issue to [P.N.] concerning her being injured and a failure to protect her from injury. On three separate occasion, while being cared for by Mother and/or Father, [P.N.] sustained severe injuries. Reunification will never safely be possible for [P.N.] with either parent. Therefore, the most appropriate plan to achieve permanence for [P.N.] and to ensure her safety is TPR/Adoption.

The magistrate's proposed order stated that exceptions needed to be filed by May 13, 2021. It further provided that it was served on the parties by delivery via email or by first-class mail on May 3, 2021.

On May 13, 2021, Mother filed exceptions to the magistrate's recommendations. She argued that the Department failed to show that the "drastic measure" of TPR was

warranted, and TPR was "not supported by a legal or factual basis" but was "punitive and not appropriate in this case." Mother requested that the circuit court review the magistrate's report and recommendations de novo.

On May 20, 2021, P.N. filed a motion to dismiss Mother's exceptions as untimely. She argued that, pursuant to Maryland Rule 11-111(c), Mother's exceptions should have been filed within five days of service of the magistrate's report and recommendations, i.e., by May 8, 2021. Mother's exceptions, filed on May 13, 2021, more than five days after the parties were served with the report and recommendations, were untimely, and dismissal of the exceptions was "the appropriate remedy." P.N. requested that the court dismiss Mother's exceptions and adopt the magistrate's report and recommendations. Neither Mother nor Father responded to P.N.'s motion to dismiss.

On September 2, 2021, the circuit court, without a hearing, issued an order granting P.N.'s motion to dismiss Mother's exceptions to the magistrate's report and recommendations. The court did not, however, issue any order adopting or rejecting the magistrate's recommendations.

On September 9, 2021, the circuit court held a virtual permanency plan review hearing. Although there had been no court order adopting the magistrate's report and recommended change in P.N.'s permanency plan, the parties and the court proceeded as if there had been such an order. Mother argued that the change to the permanency plan for P.N. from reunification to adoption/TPR was "premature," and she asked the court to change the plan back to reunification. Father also objected to the change in the permanency

plan from reunification to adoption/TPR.

The Department argued that the issue regarding the permanency plan "has been settled." Counsel stated that Mother's "former attorney did file exceptions in an untimely fashion," and "once those exceptions have [run], you can't have a second bite at the apple." The court stated that it was "not concerned . . . [with] the merits of what led to the exceptions." Rather, it was "concerned in this review . . . with what's occurred since the last review and this review."

On September 13, 2021, the court issued an order finding that there was no "information or proffer that there has been any change in the facts or circumstances that caused it to be recommended that [P.N.'s] plan become [a]doption." It found that "the appropriate permanency plan for [P.N.] continues to be [a]doption . . . with projected achievement by June 30, 2022."

V.

Mother's Motion for Reconsideration

Despite the September 13, 2021 court order providing that the permanency plan was adoption, not reunification, on September 17, 2021, Mother filed a motion for reconsideration of the court's September 2, 2021 order dismissing Mother's exceptions to the magistrate's May 2021 recommendation to change the permanency plan from reunification to adoption. She argued that her exceptions were timely filed because, when service is made by mail, three additional days are added to the filing period. As the magistrate computed in her order, the last day to file the exceptions was May 13, 2021, the

date that she filed the exceptions.

On September 24, 2021, P.N. filed a response, requesting that the court deny the motion. P.N. argued that the "three-day mail extension" rule of Md. Rule 1-203(c) did not apply because,

> [e]ven though the [m]agistrate also indicated that a copy of the order would be mailed, this was not the only form of service that was provided. The rule for time calculation does not address calculation of time when multiple forms of service are instituted, but the rule for the time to file exceptions is clear that the time starts running once service is effectuated and this should be strictly followed. . . . Mother in this case had an attorney and the clock for filing exceptions started once her attorney . . . was served.

P.N. asserted that, because the exceptions that Mother filed on May 13, 2021 were untimely, "[d]ismissal was the appropriate remedy for Mother's exceptions."[2]

On November 22, 2021, the court issued an order denying Mother's motion for reconsideration. It stated: "The court has reviewed all motions and oppositions. Please disregard any other orders signed in error."[3]

This appeal followed.

[2] On October 6, 2021, Father filed a response in support of Mother's motion for reconsideration and in opposition to P.N.'s response. The arguments in Father's response are substantially similar to those set forth in Mother's motion for reconsideration.

[3] It is unclear from the record what the court was referencing with respect to "other orders" that were "signed in error."

DISCUSSION

I.

Denial of Motion for Reconsideration

The court's November 22, 2021 order denying Mother's motion for reconsideration is the only ruling at issue in this appeal. Neither Mother nor Father filed a notice of appeal of the September 13, 2021 order providing that P.N.'s permanency plan was adoption.

The Department contends that this appeal should be dismissed because the November 22, 2021 order denying Mother's motion for reconsideration is not a final judgment or an appealable interlocutory order. It argues that the order is not a final judgment because it "did not terminate P.N.'s CINA case or effectuate a new permanency plan." The order "merely declined to reconsider the court's dismissal of [Mother's] exceptions to a *proposed* plan change," and therefore, the order "infused no finality into this case." The Department further argues that the November 22, 2021 order does not satisfy the requirements for an appealable interlocutory order.

Mother contends that the appeal should not be dismissed. She asserts that the November 22, 2021 order is immediately appealable under the collateral order doctrine.

Pursuant to Md. Code Ann., Cts. & Jud. Proc. Art. ("CJ") § 12-301 (2020 Repl. Vol.), appeals generally "may be taken only from 'a final judgment entered in a civil or criminal case by a circuit court.'" *In re K.L.*, 252 Md. App. 148, 178 (2021) (quoting CJ § 12-301). Mother appropriately does not argue that the November 22, 2021 order was a final judgment. "A ruling of the circuit court constitutes a final judgment when it either

determines and concludes the rights of the parties involved or denies a party the means to 'prosecut[e] or defend[] his or her rights and interests in the subject matter of the proceeding.'" *In re Katerine L.*, 220 Md. App. 426, 437 (2014) (quoting *In re Samone H.*, 385 Md. 282, 297–98 (2005)). "In determining whether a particular court order or ruling is appealable as a final judgment, we assess whether any further order was to be issued or whether any further action was to be taken in the case." *Id.* at 437–38.

Mother's motion for reconsideration addressed the court's dismissal of her exceptions to the magistrate's May 3, 2021 recommendation that P.N's permanency plan be changed from reunification to adoption. That recommendation was not binding until the court approved it. *See Doser v. Doser*, 106 Md. App. 329, 343 (1995) ("A [magistrate's] findings of fact are merely tentative and do not bind the parties until approved by the court."). The court did not issue an order approving or rejecting the magistrate's May 3, 2021 recommendation. Instead, it held another hearing, and on September 13, 2021, the court issued an order, consistent with the magistrate's recommendation, that P.N.'s permanency plan was adoption. Because P.N.'s CINA case remains open and ongoing, there is no final judgment in this case.

There are, however, several exceptions to the final judgment rule: (1) appeals from interlocutory orders allowed by statute; (2) immediate appeals allowed under Md. Rule 2-602; and (3) appeals allowed under the collateral order doctrine. *In re O.P.*, 470 Md. 225, 250 (2020). "The purpose of these exceptions is to 'allow appeals from orders other than final judgments when they have a final irreparable effect on the rights of the parties.'"

Pattison v. Pattison, 254 Md. App. 294, 307 (2022) (quoting *Milburn v. Milburn*, 142 Md. App. 518, 524 (2002)) (cleaned up).

An appeal of the September 13, 2021 order would have been permitted under CJ § 12-303(3)(x), which provides that a party may appeal from an order "[d]epriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order . . . ." CJ § 12-303(3)(x). "In view of § 12-303(3)(x), many 'orders of court regarding permanency plans are immediately appealable' 'despite their interlocutory nature.'" *In re Andre J.*, 223 Md. App. 305, 315 (2015) (quoting *In re Yve S.*, 373 Md. 551, 583 (2003)). To be appealable under CJ § 12-303(3)(x), an order must operate to deprive a parent of the care and custody of his or her child or change the terms of the parent's care and custody of the child to the parent's detriment. *Samone H.*, 385 Md. at 299.

Pursuant to this statute, the court's September 13, 2021 order changing P.N.'s permanency plan from reunification to adoption was appealable. *See In re Damon M.*, 362 Md. 429, 437–38 (2001) (Order amending permanency plan from reunification to adoption or foster care is appealable under CJ § 12-303(3)(x).). Neither Mother nor Father, however, filed a notice of appeal regarding the September 13, 2021 order.

The court's November 22, 2021 order denying the motion for reconsideration was merely an order upholding the dismissal of Mother's exceptions to a *proposed* change in P.N.'s permanency plan. Mother recognizes that the November 22, 2021 order is not immediately appealable pursuant to CJ § 12-303(3)(x).

Mother argues, however, that the November 22, 2021 order is appealable under the collateral order doctrine. We disagree.

"The 'collateral order doctrine treats as final and appealable a limited class of orders which do not terminate the litigation in the trial court.'" *In re Foley*, 373 Md. 627, 633 (quoting *Bunting v. State*, 312 Md. 472, 476 (1988)), *cert. denied sub nom. Foley v. Berg*, 540 U.S. 948 (2003). "For the collateral order doctrine to apply, four conditions must be satisfied: (1) it must conclusively determine the disputed question; (2) it must resolve an important issue; (3) it must resolve an issue that is completely separate from the merits of the action; and (4) it must involve an issue that would be effectively unreviewable on appeal from a final judgment." *Pattison*, 254 Md. App. at 307. These four requirements "are very strictly applied, and appeals under the doctrine may be entertained only in extraordinary circumstances." *Foley*, 373 Md. at 634.

Here, Mother cannot meet the third requirement of the collateral order doctrine, i.e., that the order resolve an issue completely separate from the merits of the action. The dispute at issue was the appropriate permanency plan for P.N. pending disposition of the CINA proceeding. The court's November 22, 2021 order denying Mother's motion for reconsideration of the denial of exceptions to the magistrate's recommendation that the permanency plan should be changed from reunification to adoption was a "step toward the final disposition" of the CINA proceeding. *See Samone H.*, 385 Md. at 316 n.13 (Order denying motion for a bonding study is not completely separate from the merits of the case because such studies are a factor in assessing the child's placement, and therefore, it is not

appealable under the collateral order doctrine.). The court's November 22, 2021 order is not immediately appealable under the collateral order doctrine.

II.

Ineffective Assistance of Counsel

Mother contends, for the first time in this appeal, that she should be allowed to file a belated appeal of "either the May 3, 2021, or the September 9, 2021, permanency plan changes because she did not receive effective assistance of counsel." Mother, however, did not appeal from the May or September rulings. She appealed only the November 22, 2021 order. Accordingly, the issue whether she received ineffective assistance of counsel with respect to the May 3 and September 9, 2021 proceedings is not properly before us.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANTS.