Circuit Court for Prince George's County
Case No. CAD17-21204

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1809

September Term, 2017

BOANERGES ENRIQUE QUINTANILLA RAMOS

v.

ROSA MARITZA PENATE PATRIZ

Kehoe,
Berger,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: June 13, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On August 31, 2017, appellant Boanerges Ramos filed both a Petition for Custody of Minor Children and a Motion for Special Immigrant Juvenile Status in the Circuit Court for Prince George's County. Appellant sought: (1) custody of his two children, M. and J. (the "children"); and (2) factual findings to be used in the children's eventual Special Immigrant Juvenile ("SIJ") status applications. Following a hearing, the circuit court granted appellant custody but "denied" the motion for SIJ status findings.[1] Appellant moved for a new trial and/or to alter or amend the SIJ status findings, which the court denied.

Appellant noted an appeal and presents two questions for our review which we have condensed as follows[2]: Did the trial court err by failing to make the requisite findings of fact for SIJ status purposes? We hold that the court erred, vacate the judgment, and remand for additional proceedings consistent with this opinion.

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[1] As we explain in the Discussion section of this opinion, a state court cannot "deny" SIJ status; state courts are merely tasked with making factual findings related to SIJ applications.

[2] Appellant's two questions for our review are:

1. Did the trial court err in determining that the children had not been abandoned, abused or neglected or similar basis [sic] under Maryland Law?

2. Did the trial court err in not finding that it would be in the children's best interest not to be returned to El Salvador?

(continued)

FACTS AND PROCEEDINGS

As stated above, on August 31, 2017, appellant filed both a petition for custody of his children, and a motion seeking factual findings regarding SIJ status. The Circuit Court for Prince George's County held a hearing on both of these issues on October 13, 2017.

At the hearing, appellant explained his family's background. He testified that his two children: M. and J., were born in El Salvador.[3] M was born in July 1997, and J. was born in February 1999. Neither child had ever been married. Appellant explained that, for approximately four to five years, he and Rosa Penate, the children's biological mother and appellee[4], lived with the children's grandmother in Sonsonate City, El Salvador. In 2001, appellant moved to the United States to provide better financial support for his family. According to appellant, within approximately nine months after he moved to the United States, Rosa "met another person" and moved out of the family's home, leaving the children in the care of their grandmother. Appellant testified that after Rosa left, the children would visit with her once or twice a month, but that Rosa had never provided any financial support to the children since leaving them. On April 21, 2009, the children traveled to the United States to live with appellant. Since that time, the children have lived with appellant and his new wife.

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[3] We use the children's initials in order to protect their privacy.

[4] Rosa Penate did not file an appellate brief in this case. Instead, in the proceedings before the circuit court, she filed a consent to appellant's petition for custody and SIJ status.

M. testified at the hearing and corroborated his father's testimony. M. told the court that he was not married, did not have any children, and came to the United States shortly before turning twelve years old. He verified that he lived with his grandmother starting when he was approximately four-and-a-half years old because his mother "met another guy and she married and had another kid and she moved out." M. felt that he no longer had a mother after she left him. He stated that she never asked him to live with her in her new home, but admitted that he would visit with her one-to-three times a month.

M. told the court that although he attended school in El Salvador, it was not safe due to threats from gang members. Instead, he explained that he wished to obtain a college degree and then join the police academy, eventually aspiring to work as an FBI agent.

Finally, J. testified at the hearing, and confirmed the veracity of appellant's and M.'s testimony.

At the conclusion of the hearing, the court granted appellant's petition for custody, but "denied" the request for SIJ status as to both children by finding that they were not neglected or abandoned. Three days after the court issued its ruling from the bench, appellant filed a motion for a new trial and/or to alter or amend the court's SIJ determination. The court stamped this motion "Denied" on October 22, 2017. Appellant timely appealed.

DISCUSSION

We begin our analysis with a brief explanation of SIJ status in order to place the issue on appeal into context. SIJ status "was created by the United States Congress 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 v. Bunay*, 221 Md. App. 440, 448-49 (2015) (quoting *Yeboah v. U.S. Dep't of Justice*, 345 F.3d 216, 221 (3d Cir. 2003)). The Act ("INA") 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.*, 87 A.3d 255, 259 (N.J. Super. Ct. App. Div. 2014)). INA, codified at 8 U.S.C. § 1101(a)(27)(j), requires the state court to make specific factual findings regarding eligibility requirements to be later used during federal proceedings to determine whether to grant SIJ status. Our Court has listed the required findings as follows:

> (1) The juvenile is under the age of 21 and is unmarried; 8 C.F.R. § 204.11(c)(1)–(2);
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> (2) The juvenile is dependent on the court or has been placed under the custody of an agency or an individual appointed by the court; 8 C.F.R. § 204.11(c)(3);
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> (3) The "juvenile court" has jurisdiction under state law to make judicial determinations about the custody and care of juveniles; 8 U.S.C.A. § 1101(a)(27)(J)(i); 8 C.F.R. § 204.11(a), (c) [amended by the Trafficking Victims Protection Reauthorization Act ("TVPRA") 2008];
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> (4) That reunification with one or both of the juvenile's parents is not viable due to abuse, neglect, or abandonment or a similar basis under State law; 8 U.S.C.A. § 1101(a)(27)(J) [amended by TVPRA 2008]; and
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> (5) It is not in the "best interest" of the juvenile to be returned to his parents' previous country of nationality or country of last habitual residence

> within the meaning of 8 U.S.C.A. § 1101(a)(27)(J)(ii); 8 C.F.R. § 204.11(a), (d)(2)(iii) [amended by TVPRA 2008].

Dany G., 223 Md. App. at 714-15. Although state courts are tasked with making these initial factual findings, the United States Citizenship and Immigration Services bureau (USCIS) ultimately decides whether to grant SIJ status. *Simbaina*, 221 Md. App. at 449-50. "[I]t is important to note that *the State court is not rendering an immigration determination, because the ultimate decision regarding the child's immigration status rests with the federal government*." *Id*. at 452 (emphasis added) (internal citations and quotation marks omitted).

In rendering its decision "denying" SIJ status, the circuit court erred in two ways. First, the court failed to make the requisite first-level factual findings the INA requires. Second, the court failed to make all of the findings required by the INA, namely: whether the children were under age twenty-one, and whether it was in the best interests of the children to be returned to their previous country of nationality. We explain.

<u>First-Level Fact Finding</u>

In issuing its ruling regarding SIJ status, the trial court made the following factual findings:

> And the Court, recognizing its duty today, I have had an opportunity to listen to the testimony, to assess the credibility of the witnesses. I've read the petition. I've taken notes, and the Court notes in granting an order regarding the minors' eligibility for special immigrant juvenile status, there are a couple of things the Court has to find. One, obviously, that in this case, that the two appear before me . . . .
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> That they are unmarried, which I have determined that they're both citizens, in this case, of El Salvador, that this Court has jurisdiction to make

> judicial matters about the care and custody of juveniles pursuant to Maryland family law, that I must find they're dependent on the Court as they've been placed in the custody of the father, but I don't find based on the testimony that you've demonstrated evidence and testimony which I can find reliable and supports the position that they've been abandoned, neglected by either one or both of their parents and I've listened to the testimony clearly and I don't find that that is what's been demonstrated and the request for an order regarding minors' eligibility for special immigrant juvenile status as it relates to the two that I've just awarded custody, it's denied.

In determining that the evidence did not demonstrate that the children had been abused, neglected, or abandoned, however, the trial court failed to make any first-level factual findings. Instead, it simply stated that the evidence introduced did not support the assertion that the children were abandoned or neglected. A recent opinion from this Court, *Martinez v. Sanchez*, 235 Md. App. 639 (2018), has made clear that in issuing factual findings for purposes of SIJ status, the court *must* make specific first-level factual findings.

In *Martinez*, Martinez appealed from a circuit court order containing favorable factual findings for his daughter's SIJ status. *Id*. at 640. The court signed the order Martinez provided, but crossed out specific factual findings, including the proposed finding that Martinez's daughter was abandoned by her mother at age three. *Id*. at 643-44. Although the order made favorable findings regarding Martinez's daughter, Martinez contended that "the trial court erred by not including in its order findings to support its conclusions that [Martinez's daughter] was abandoned by her mother in El Salvador and that it [was] not in her best interest to return to El Salvador." *Id*. at 645.

In agreeing with Martinez that the circuit court erred, we explained the state court's fact-finding role in the SIJ status process. Although state courts make initial factual

findings, "[t]he ultimate decision on immigration is made by the federal agency[.]" *Id.* at 646. We held that "The federal regulatory scheme governing the SIJ status process supports a conclusion that *the state court predicate order must include specific factual findings and not just general conclusory statements*." *Id.* (emphasis added). We noted that, "The fact that a revocation decision could be made based on a finding that information in the state's order conflicts with other information before the USCIS implies that the information in the order must be specific, not general, to begin with." *Id.* at 647. Accordingly, we vacated and remanded for the court to enter a new order setting forth all necessary first-level factual findings. *Id.* at 647-48.

Here, it is evident that the court failed to make any first-level factual findings regarding whether reunification would not be viable due to abandonment or neglect. Instead, the court provided only general conclusory statements when it stated "I don't find based on the testimony that you've demonstrated evidence and testimony which I can find reliable and supports the position that they've been abandoned, neglected by either one or both of their parents[.]" Additionally, the court made no findings, let alone first-level factual findings, regarding the children's best interests. Accordingly, "we shall vacate the court's order and remand the matter for the court to enter a new order that sets forth first-level factual findings" consistent with our case law. *Id.*

Finally, although it is not this Court's task to make factual findings, we note that the uncontroverted evidence at the hearing indicated that the children's mother abandoned them when the children were approximately two and four years old. As explained in *Dany*

G., a court may find that reunification is not viable with *one or both* of the parents due to neglect or abandonment. 223 Md. App. at 715. Regarding the weight of the evidence, we caution the court that "Imposing insurmountable evidentiary burdens of production or persuasion is . . . inconsistent with the intent of the Congress." *Id.* Indeed, in *Martinez*, a case with facts strikingly similar to those in the instant appeal, this Court inferentially acknowledged that one parent's abandonment or neglect could satisfy the fourth requisite finding. 235 Md. App. at 647. Because we remand the case, the court may hold another hearing if it deems that necessary. *Id.* at 648 n.4.

Making All Required Findings

In addition to failing to make first-level factual findings, the court erred by failing to make all of the required findings in an SIJ status case. As we explained above, a trial court cannot "deny" a motion for SIJ factual findings; "the State court is not rendering an immigration determination, because the ultimate decision regarding the child's immigration status rests with the federal government." *Simbaina*, 221 Md. App. at 452 (internal citations and quotation marks omitted). Instead, the trial court must make factual findings regarding all of the issues contemplated by the INA.

Our Court has made clear that, "Circuit courts are required to take evidence and make individual factual findings on each of these factors when they are petitioned by an immigrant applying for SIJ status." *Romero v. Perez*, ___ Md. App. ___, No. 2477, Sept. Term, 2016, Slip Op. at 2 (Ct. of Spec. App. April 4, 2018). In *Dany G.*, we stated that, when a motion for SIJ findings is properly filed, "state courts are *required* to make [the

requested] factual findings." 223 Md. App. at 715 (emphasis added). Courts are obviously not required to find all of the facts in favor of the party seeking SIJ status, but courts are required to address every factual issue the INA contemplates.

Here, the circuit court found that: 1) the children were both unmarried; 2) the children were dependent on the court, having been placed in appellant's custody; 3) the court possessed jurisdiction to make judicial determinations about the custody and care of the children; and 4) the evidence did not support the assertion that the children had been abused, neglected, or abandoned, rendering reunification unviable.[5] The court did not, however, make any findings regarding whether the children were under the age of 21, a requisite finding under 8 C.F.R. § 204.11(c)(1)–(2). Additionally, the court did not determine whether or not it was in the children's best interest to be returned to their previous country of nationality or last habitual residence pursuant to 8 U.S.C. § 1101(a)(27)(J)(ii) and 8 C.F.R. § 204.11(a), (d)(2)(iii).

Because the court's order did not contain all necessary findings, we remand. On remand, the court should issue an order in which it makes first-level factual findings, and thoroughly addresses all requisite findings contemplated by the INA.

[5] As stated above, although the court found no evidence to support that reunification would not be viable due to abuse, neglect, or abandonment, that finding lacked the specificity of a first-level factual finding and was therefore deficient.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED AND REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANT.