

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1844

September Term, 2014

IN RE: N.D.

Meredith,
Berger,
Kenney, James A., III
(Retired, Specially Assigned)

JJ.

Opinion by Berger, J.

Filed: July 8, 2015

*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 November 6, 2014 the Circuit Court for Montgomery County, sitting as a juvenile court, found N. to be a child in need of assistance (“CINA”)¹ and committed him to the care of the Montgomery County Department of Health and Human Services (“the Department”). As part of its order, the juvenile court suspended all visitation and contact between N. and his father, Nechvet D. (“Father”). Father subsequently moved to alter or amend the order regarding visitation. The juvenile court granted the motion, in part, permitting supervised visitation for one hour per month. Father separately appealed both the CINA finding and the order modifying visitation. The two appeals were consolidated before this Court. On appeal, Father presents two issues for our review, which we have rephrased as follows:

¹ Sections 3-801(f) and (g) of the Courts Article respectively define “Child in Need of Assistance” and “CINA”:

§ 3-801.

(a) In this subtitle the following words have the meanings indicated.

* * *

(f) “Child in Need of Assistance” means a child who requires court intervention because:

(1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and

(2) 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.

(g) “CINA” means a child in need of assistance.

Md. Code (1974, 2006 Repl. Vol., 2013 Supp.), § 3-801(f) of the Courts and Judicial Proceedings (“C.J.”) Article. *See also Dept. Of Human Res. v. Cosby*, 200 Md. App. 54, 57 n. 2 (2012), *aff’d* 425 Md. 629 (2012).

1. Whether the juvenile court erred in finding N. to be a child in need of assistance (CINA).
2. Whether the juvenile court acted within its discretion in permitting one-hour per month supervised visitation between N. and Father.

For the reasons set forth below, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Family Background

Father was born in Romania and met Olga P., N.'s mother ("Mother"), while studying in Moscow. Mother currently lives in Tomsk, Russia and did not participate in these proceedings. N. was born in Moscow, Russia in October of 1997. He lived in Russia for the first five years of his life before relocating to the Washington, DC area to attend elementary school. During that time, N. lived with Father. Mother was unable to join them in the United States because she was unable to obtain a visa. From ages 5-11, N. attended the Merch school in Northwest Washington, DC. At age 11, N. and Father moved to Beijing, China for three months, and then to Tomsk where N. lived for three years. During this time, N. resided at different times with Mother only, Father only, and both parents at once. In 2012, N. and Father drove from Russia to Turkey, traveling through Ukraine, Moldova, Romania, and Bulgaria. During this time, N. kept up his studies but did not formally attend school. During this time, Father began subjecting N. to extended lectures of a geopolitical nature which only made partial sense, gradually becoming more obsessed with the subject. In addition, there were physical altercations between Father and N. at that time.

In the summer of 2013, N. and Father returned to the United States so that N. could attend an American high school. They stayed with a friend of Father's in Reston, VA. Initially, the two were only supposed to stay for one week while Father found housing, but he failed to do so, extending their stay in Reston to one month. With assistance from N., the two arranged to stay with friends in the District of Columbia. N. stayed in the friends' house for a month, while Father lived in a tennis shed on the property. After a month, N. joined Father in the shed and lived there for approximately one week. From there, N. and Father stayed with friends in Takoma Park, DC for approximately three weeks.

Because of his one year of informal schooling while traveling through Eastern Europe, N. would have had to start school one year behind if he had attended school at Bethesda-Chevy Chase High School (BCC), as Father had planned. A friend of Father's suggested N. look into Prep² as an alternative to BCC. Prep would not require N. to repeat a year. N. applied and was admitted. A friend located educational sponsors ("the S. Family") who agreed to pay for N.'s tuition, room, and board at the school. N. began attending Prep in fall 2013 and began residing in the on-campus dormitory. He plays tennis and maintains a weighted GPA of 4.2-4.3.

² N. currently attends a preparatory school in Montgomery County, which we will simply refer to as "Prep" in order to maintain N.'s anonymity.

2013 CINA Case

As N. began attending Prep, he had less time to contact Father, both because of the demands of his studies as well as because he did not have a device with which to communicate. Father expressed that he did not like Prep. At approximately 9:30 p.m. one evening in mid-September, Father arrive unannounced at the school's campus. Father went to the dorm and began to engage in disruptive behavior. Father loudly asked where N. was, threatened the dorm parent, and said that he had a right to remove N. from the school if he were not able to see him. N. came down and spoke with Father, attempting to calm him. N. and Father met with school officials that night. After N. agreed to communicate more frequently with Father, Father agreed to leave.

A few days later, Father returned to the school late at night and again demanded to see N. N. went down and spoke with him. In that conversation, Father told N. to pack his things because he was going back to live with Mother in Russia. This concerned and demoralized N. because he had worked hard to get into Prep. N. additionally had concerns about Mother's mental health. N. did not pack his things, and did not take his passport, but he did get into Father's van. Father began driving to the airport but then changed his mind. The two spent the night in the van, parked in Northwest Washington, DC. In the morning, Father permitted N. to go back to school. Because of these incidents, N. was not able to return to live in the dormitory but was allowed to continue attending class. N. then went to live with

the S. Family, his educational sponsors. Based on these events, the Department filed a CINA petition. That case was eventually dismissed after Father agreed not to visit school property.

2014 CINA Case

On July 3, 2014, in response to a call, Department social worker Kim Rowan met N. and Father in a Safeway parking lot in Bethesda. N. had been staying with Father in the van for two nights. At that time, Father was speaking incoherently and appeared “more stressed out than he had ever been before” to N. The van was filled to a depth of one foot with garbage, including cans, jars, and old pizza boxes. Ms. Rowan interviewed N. and Father for four-and-a-half hours, spending most of her time with Father. Father exuded a very strong body odor and bad breath during the visit. During the interview, Father avoided conversation about N.’s welfare, preferring to engage in lengthy, geopolitically-themed, illogical monologues. Father also claimed to have several residences available through friends for shelter, but refused to identify them. He was dismissive when talking about N.’s needs. In addition, Father asserted that N., Father, and Mother would be killed if N. were removed from his care.

In his interview that day, N. stated that he had been attending tennis camp over the summer, and that two days prior, Father had come and taken him, and the two had stayed in the van since. The two had eaten nothing but beans and bread during that time. N. said that his tennis coach (“Coach M.”) had offered to be a housing resource if N. ever needed it. Father agreed to let N. go with Coach M. and a meeting with Ms. Rowan was scheduled for

July 7, 2014 in order to further discuss N.'s welfare. Father cancelled the July 7 meeting and attempted to cancel a re-scheduled meeting on July 10, explaining that N. could figure out his living arrangements on his own. Ms. Rowan eventually convinced him to meet her in the Bethesda Safeway parking lot on July 10. At that meeting, Father had the same odor as the previous week and engaged in the same geopolitical ranting. Father did not present any plan for N.'s welfare at that meeting.

On July 14, 2014, N. appeared at the Department's Crisis Center and informed the Department that he could no longer stay with Coach M. because he had family coming in to town for an extended period. N. also said that Father was living in his van and was homeless. He also expressed that he never wanted to speak to Father again. N. was very tense, nervous, and withdrawn at this time. The Department held a family involvement meeting that day with N., Father, Coach M., and Mr. and Mrs. S., which produced no resolution, other than N. being permitted to stay at Coach M.'s house one more night. Father offered no resources for N.'s housing at the meeting, or subsequently. N. has resided with friends since July 14, 2014 and desires stability in his life.

On August 5, 2014, after a contested shelter hearing, the juvenile court awarded temporary care and custody to the Department. The Department also ordered N. and Father to undergo psychological evaluations prior to awarding visitation.

Psychological Diagnoses

Dr. Alicia Meyer conducted a clinical interview on July 29, 2014 and a complete psychological evaluation of N. on August 24, 2014. Dr. Meyer diagnosed him as having “Adjustment Disorder with Mixed Anxiety and Depressed Mood.”³ During his interview, N. expressed some suicidal ideations and homicidal ideations toward Father. Dr. Meyer believed that N.’s coping resources were depleted. As a result of her evaluation, Dr. Meyer believed N. was on the precipice of full-blown depression or anxiety disorder, and that any further stress would put him at serious risk of developing those conditions.

On August 25, 2014, Dr. Meyer conducted a Parenting Capacity Evaluation of Father. She conducted that evaluation in a culturally competent manner, taking into account Father’s background. In the interview, Father admitted to being “officially homeless,” and referred to his living out of his van as “camping.” He also claimed to work in “intelligence” as an independent contractor. In addition, he asserted that he was not worried about N. in the short-term, and that N. was old enough to make his own decisions. Overall, Father’s evaluation took ten hours to complete, when it should have taken seven-and-a-half. Dr. Meyer concluded that Father met the criteria for schizophrenia, characterized by delusions of grandeur. In addition, he presented clinically significant levels of disorganized thinking.

³ Adjustment Disorder is a relatively mild mental disorder, not rising to the level of a full-blown anxiety or depressive disorder.

Dr. Meyer recommended Father receive treatment for schizophrenia, consult a therapist about medication management, and attend family therapy.

CINA Hearings

Following an adjudicatory hearing on August 26-28, 2014, the juvenile court sustained the majority of facts contained in the Department's second amended CINA petition. A disposition hearing was held on October 6, 2014.

N. was found to be CINA following the disposition hearing in which the juvenile court took documentary evidence and heard testimony from Dr. Meyer, Dr. Pavel Snejnevski, and N. Dr. Snejnevski was an expert retained by Father. The juvenile court also found that Dr. Snejnevski's report was a rebuttal of Dr. Meyer's. Dr. Snejnevski did not reach a diagnosis, nor did he address Axes I, II, III, or IV, as is standard in a psychological evaluation.

The juvenile court found Dr. Meyer's testimony and reports to be "well-supported" and "very persuasive." Further, the juvenile court found that Dr. Meyer had specifically taken cultural differences into account during her evaluation of Father. The juvenile court accepted Dr. Meyer's report as credible and in line with the rest of the evidence presented. Conversely, the juvenile court found Dr. Snejnevski's report unpersuasive. It noted that Dr. Snejnevski was not a specialist in forensic evaluation. Further, the juvenile court found that Dr. Snejnevski's report failed to consider the larger context and minimized some issues.

The juvenile court found N. to be CINA. In announcing its finding, the juvenile court noted that:

In terms of whether there is neglect then, which is the bottom line, in looking at the evidence as a whole it is apparent to me that [Father], because of his tangential thinking, because of his disorganized thinking, and because of his failure, even until now from what I know to make living arrangements for [N.], which I think is a part of his mental health issues, I do think he has allowed himself to slip into a place where he is unable, because of his own mental health to properly address his son's needs.

Because of his mental health, because of his tangential thinking, whether it's because of schizophrenia or something else, because of his disorganized and tangential thinking, he has been unable to provide the basic things that his son needs, and that is a CINA case.

And, so, I will find that [N.] is a child in need of assistance. He will be committed to the Department of Health and Human Services to remain and committed to the Court's jurisdiction for ongoing placement at [Prep] in the dormitory there.

The juvenile court further ordered no contact between N. and Father, and ordered Father to stay away from Prep. Both N. and Father were ordered to attend individual therapy, and Father was further ordered to consult with a psychiatrist regarding medication to manage his symptoms.

Following disposition, Father filed a motion to alter or amend the CINA order, requesting visitation with N. and access to information about N.'s education. Following a

hearing, the court granted the motion in part and denied it in part, permitting one hour of supervised visitation per month.

DISCUSSION

STANDARD OF REVIEW

We utilize three interrelated standard of review in CINA cases:

Namely, [w]hen the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8–131(c)] applies. [Second,] [i]f it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

In re Adoption/Guardianship of Jasmine D., 217 Md. App. 718, 733 (2014) (quoting *In re Adriana T.*, 208 Md. App. 545, 553–54 (2012)). An abuse of discretion has been described:

“Abuse of discretion” is one of those very general, amorphous terms that appellate courts use and apply with great frequency but which they have defined in many different ways. It has been said to occur “where no reasonable person would take the view adopted by the [trial] court,” or when the court acts “without reference to any guiding rules or principles.”

* * *

The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.

Sumpter v. Sumpter, 436 Md. 74, 85 (2013). The issues presented in this appeal are: (1) whether the juvenile court abused its discretion in finding N. to be CINA, and (2) whether the juvenile court acted within its discretion by limiting visitation between N. and Father to one hour of supervised visitation per month. We shall examine each issue in turn.

I.

Father first contends that the juvenile court erred in declaring N. CINA. He specifically asserts that the juvenile court did not find that N. was deprived of the basic necessities of life. He characterizes Dr. Meyer’s conclusion that N. was on the precipice of full-blown depression as “speculative” and asserts that the distress N. felt was “not the sort that should warrant an intrusion into the Constitutionally-protected right to a parent one’s child[.]” Both the Department and N. respond that the juvenile court did not abuse its discretion in finding N. CINA.

“The purpose of CINA proceedings is to protect children and promote their best interests.” *In re Katerine L.*, 220 Md. App. 426, 438 (2014) (citations and internal quotations omitted). In order to determine that a child is CINA, the juvenile court must find that “[t]he child has been abused, [or] has been neglected” and that the parents are “unable or unwilling to give proper care and attention to the child and the child's needs.” Md. Code (1974, 2006 Repl. Vol., 2013 Supp.), § 3-801(f) of the Courts and Judicial Proceedings Article (“CJP”).

Neglect is defined as:

“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:

(1) That the child's health or welfare is harmed or placed at substantial risk of harm; or

(2) That the child has suffered mental injury or been placed at substantial risk of mental injury.

CJP § 3-801(s); *see also Tabassi v. Carroll Cnty. Dep't of Soc. Servs.*, 182 Md. App. 80, 92 (2008). “[T]here may be neglect of a child without actual harm to the child. A ‘substantial risk of harm’ constitutes ‘neglect.’” *In re Andrew A.*, 149 Md. App. 412, 418 (2003). A “child who is the subject of the CINA proceeding need not have suffered actual harm. The child may be CINA if placed at substantial risk of harm.” *Id.* (internal quotation omitted).

Here, the juvenile court found N. was neglected based upon Father’s failure to provide the basic care for the child, and, in particular, Father’s failure to provide living arrangements for his son. Housing is a basic necessity of life, and the juvenile court noted that this inability to provide housing was likely caused by disorganized and tangential thinking and schizophrenia. Dr. Meyer’s psychological evaluations of N. and Father were thorough, arrived at logical conclusions based on evidence, and were culturally sensitive. Furthermore, a review of the record persuades us that the juvenile court did not abuse its discretion in finding N. to be CINA.

The record in this case demonstrates that Father has difficulty functioning in society due to mental health issues, particularly a disorganized and tangential way of thinking and

communicating, which rises to the level of schizophrenia. Father's mental issues have manifested in his being "officially homeless" since his return to the United States in 2013. Father's inability to maintain housing for himself has negatively affected N. While N. was housed for a short time in Prep's dormitory, Father's continual disruptions deprived N. of that stability. N. has since been forced to cope with moving from house to house, depending on the generosity of friends and coaches. Not only has Father been unable to secure housing for N., he is also unwilling to do so, having explained that N. is old enough to fend for himself. When pressed to deal with N.'s housing issues, Father tends to ruminate on geopolitical issues, completely unrelated to his son's well-being.

In this case, Father's failure to secure housing is coupled with a negative effect on N.'s mental health. The weight of unstable housing and a schizophrenic Father have depleted N.'s coping resources, and caused him to have adjustment disorder, as well as suicidal and homicidal ideations. Dr. Meyer's concerns about further stress forcing N. off the precipice into full-blow anxiety or depression, coupled with a lack of stable housing, were certainly sufficient to support a finding of neglect in this case. We are not persuaded that Dr. Meyer's diagnosis was "speculative," as Father contends. Rather, a review of her testimony and report indicate that the diagnosis was based on a full psychological evaluation of N. and a culturally sensitive Parenting Capacity Evaluation of Father. The juvenile court's discounting much of Dr. Snejevski's report as unpersuasive was not clearly erroneous. In

sum, the juvenile court did not abuse its discretion in finding that the situation presented in this case rose to the level of neglect, and in finding N. to be CINA.

II.

Next, Father asserts that there was insufficient justification for the juvenile court's limiting visitation between N. and Father to one hour of supervised visitation per month. Specifically, Father contends that permitting such limited visitation does not advance the purpose of strengthening N.'s family ties, an expressed purpose of the CINA statute.⁴ N. disputes Father's ability to appeal this issue, asserting that the grant of visitation is a non-appealable interlocutory order. He contends that the November 24, 2014 order granting one hour of supervised visitation per month is an interlocutory order that changed the terms of the care and custody of N. to Father's benefit, and thus Father is precluded from appeal. In the alternative, both N. and the Department respond that the court acted within its discretion in permitting one hour of supervised visitation per month.

We begin our analysis by addressing whether this order is appealable. On October 14, 2014, following the disposition hearing, Father filed a motion to alter or amend the court's order of no contact between Father and son. In this motion, Father requested that the juvenile court provide for visitation and allow Father access to information about N.'s education. A hearing on this matter was held on November 19, 2014. At that hearing, the

⁴ CJP § 3-802(a)(3) provides that one purpose of the CINA statute is: “[t]o conserve and strengthen the child's family ties and to separate a child from the child's parents only when necessary for the child's welfare.”

juvenile court found that N. had attended four one-hour counseling sessions and was making progress, but emphasized that additional counseling was needed. The juvenile court also found that these counseling sessions had improved N.’s capacity to cope with visitation with Father. In addition, the court noted that Father had not been treated for his mental health issues. Further, Father demonstrated “troubling” behavior at the hearing, including not answering questions directly while on the stand and appearing generally agitated. The juvenile court granted one hour of supervised visitation per month between N. and Father, but denied the motion in all other respects, ordering that Father have no contact with N. via electronic means or at extracurricular events.

“An order that is not a final judgment is considered to be an interlocutory order and ordinarily is not appealable unless it falls within one of the statutory exceptions set forth in Md. Code (1974, 2002 Repl. Vol.), § 12–303 of the Court and Judicial Proceedings Article.” *In re Samone H.*, 385 Md. 282, 298 (2005) (citation omitted). That portion of the Code provides, in pertinent part:

A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case:

(3) An order:

(x) Depriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order.

CJP § 12-303(3)(x). In order for an interlocutory order to be appealable, it must “operate to either deprive the parent of the care and custody of his or her children or change the terms of the care and custody of the children to the parent's detriment.” *In re Billy W.*, 387 Md. 405, 425 (2005) (citation omitted).

Father disputes that the change in visitation was not a material change to the November 6, 2014 order prohibiting all contact. He contends that, if we were to dismiss this as a non-appealable issue, we would, in effect, be precluding the denial of contact between Father and N. from appellate review.

Father asserts that visitation one hour per month is hardly better than no visitation at all. While Father may not be pleased with the extent of visitation granted by the juvenile court, the fact remains that the juvenile court's decision inured to Father's benefit. Accordingly, the juvenile court's order granting appellant visitation did not *deprive* Father from contact with N.; rather, it *granted* contact. This issue does not fall within the exceptions outlined in CJP § 12-303(3)(x) or *In re Billy W.*

Furthermore, assuming *arguendo*, we were to address the substantive issue Father presents, he would still be afforded no relief. The Court of Appeals has explained that the following standard of review applies to a trial court's visitation determination:

Decisions concerning visitation generally are within the sound discretion of the trial court, and are not to be disturbed unless there has been a clear abuse of discretion. The court must decide and set forth the minimal amount of visitation that is appropriate and that DSS must provide, as well as any basic conditions that it believes, as a minimum, should be imposed.

Because the trial court is required to make such determinations in the best interests of the child, visitation may be restricted or even denied when the child's health or welfare is threatened. Where the child has been declared a child in need of assistance because of abuse or neglect, the trial court is constrained further by the requirements of Section 9–101 of the Family Law Article when setting the conditions of visitation.

In re Billy W., 387 Md. 405, 447 (2005) (internal citations and quotations omitted).

Section 9-101 of the Family Law Article provides that, in cases such as this where a juvenile court has determined that a parent has neglected his child, visitation may be ordered in very limited circumstances. Md. Code (1984, 2012 Repl. Vol.), § 9-101 of the Family Law Article (“FL”). In such cases, a juvenile court must make the following findings:

(a) In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.

(b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, *the court shall deny* custody or visitation rights to that party, *except that the court may approve a supervised visitation arrangement* that assures the safety and the physiological, psychological, and emotional well-being of the child.

FL § 9-101 (emphasis added).

Here, the juvenile court granted Father supervised visitation, in accordance with the requirements of FL § 9-101(b). As detailed above, the juvenile court continued to find Father’s mental health issues troubling, particularly his in-court demeanor and his failure to

seek and obtain mental health care. The juvenile court granted limited supervised visitation because N. had attended counseling and was improving his coping mechanisms. In formulating its decision, the juvenile court balanced Father’s right to parent with N.’s well-being and arrived at a decision that was in the best interest of N., particularly emphasizing that the visits were to be closely supervised and the conversation steered by a member of the Department. *See In re Adoption of Jayden G.*, 433 Md. 50, 68 (2013) (quoting *In re Ashley S.*, 431 Md. 678, 719 (2013)) (“Importantly, ‘[i]n balancing fairness to the parent and fulfilling the needs of the child, the child prevails.’”). Accordingly, the juvenile court did not abuse its discretion in granting Father one hour of supervised visitation per month.

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