

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0827

September Term, 2015

IN RE: A. B.

Woodward,
Friedman,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: January 19, 2016

*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.

This case arises out of a determination by the Circuit Court for Prince George’s County, sitting as a juvenile court, that A. B. was a Child in Need of Assistance (“CINA”).¹ On February 3, 2015, the Prince George’s County Department of Social Services (“the Department”) filed a petition asking the juvenile court to find A. B. a CINA. Prior to the hearing, an amended CINA petition was filed. At the April 20, 2015 adjudicatory and disposition hearing, the petition was amended orally. In a written order dated May 18, 2015, the court sustained the allegations in the Department’s second amended petition, found A. B. to be a CINA, and committed her to the Department for placement in foster care. This timely appeal by A. B.’s mother, Atynna B., followed.² Atynna B. presents the following questions for our consideration, which we have slightly rephrased:

- I. Did the juvenile court err in finding that A. B. was a CINA where there was insufficient evidence that she had been “abused”?
- II. Did the juvenile court err in finding A. B. to be a CINA where the Department failed to present any evidence that both parents were unwilling or unable to provide proper care for A. B.?

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

FACTUAL BACKGROUND

¹ A Child in Need of Assistance is a child who requires court intervention because the child has been abused or neglected, or has a developmental disability or mental disorder, and whose parents, guardian or custodian cannot or will not give proper care and attention to the child and the child’s needs. See Md. Code (2013 Repl. Vol.) §3-801(f) of the Courts and Judicial Proceedings Article (“CJ”).

² A. B.’s father, Santana R., did not appeal from the lower court’s decision.

A. B., born on March 10, 1999, is the biological child of Atynna B. and Santana R. On January 20, 2015, Felicia L. contacted the Department and advised that A. B. had been living with her for about a year and a half, that she was moving out of the area, and that she could not take A. B. with her. Kierra Holiday, a social worker and child protective services investigator for the Department, went to A. B.'s high school and met with A. B. and her older brother, Amonte B. Thereafter, Holiday and her supervisor, Thomas Wymer, met with Atynna B. and explained that the Department would like to make arrangements for her to have limited custody of A. B. Atynna B. refused to accept limited custody, became upset, and left the meeting. Holiday left messages for Santana R. but never heard back from him. Neither parent attended a family involvement meeting that the Department scheduled. As previously indicated, on February 3, 2015, the Department filed a CINA petition regarding A. B.

At the adjudicatory hearing on April 20, 2015, A. B. testified that she last lived with her mother in 2013. At that time, her family was homeless and living in her mother's car. One day in the summer of 2013, A. B. and her mother got into an altercation that involved Atynna B. hitting her, spitting on her, and pulling her hair. Atynna B. also yelled, cursed, and "said a lot of hurtful things." A. B. called one of her brothers for help. That brother and another brother arrived at the family car, but police would not let A. B. leave with them because they were not her legal guardians. Thereafter, Atynna B., her boyfriend Walter V., A. B., and A. B.'s little brother and sister, drove around in the family car. According to A. B., her mother was hitting her and her younger siblings were hitting her with hangers

and belts while Walter V. drove the car. At one point, A. B. asked to stop at a McDonald's restaurant to use the bathroom. When she exited the car at the McDonald's, Walter V. drove off.

A. B. spent that night in the home of a woman she did not know. The following day, she went to the home of her father's sister, Shawna P., where she lived for about six months. She then went to stay at the home of her older sister, where her mother, Atynna B., was also staying. A. B. stayed there for about a month. About two weeks after A. B. arrived at her sister's house, her mother moved out, but A. B. did not know where she went. At about the end of August 2014, A. B. went to live with Felicia L. From the time she was left at the McDonald's until the time she was taken into care by the Department, A. B. spoke with her mother approximately three times -- once when Atynna B. made a dentist appointment for her and two times after that. According to A. B., her mother does not answer her phone.

A. B. testified that she became "really close" to her father after he got out of prison in October 2013. Prior to that time, she had no contact with him. Santana R. explained that he served ten years in a federal prison, was released for eight months, which he spent in a halfway house, and was then incarcerated again until he was released on October 7, 2013.

A. B.'s sister, Angel B., who was nineteen years old at the time of the hearing, testified that the day after the incident in the McDonald's parking lot, her mother, Atynna B., told her that she had hit and beat A. B., "whipped her A-," and "put her out" because

A. B. had cursed at her and hit her. When asked if she believed what her mother told her, Angel B. said that she did because her mother had beaten her in the past.

Atynna B. offered a different version of what occurred in the summer of 2013. She testified that she and A. B. “got into a heated conversation” about her curfew and her whereabouts after school. The police were called and told A. B. that, because there was no evidence of an assault or abuse, she would have to remain with her mother. Later, when the family was in their car, A. B. made a scene by kicking the window, yelling, and screaming as police drove past. The police pulled the car over but eventually let the family go. Before the family got home, A. B. jumped out of the car and left. Atynna B. called the police who took a report for a missing child. Thereafter, A. B. came and went from her mother’s home, but Atynna B. did not know where she went when she left. Atynna B. made “several attempts” to have A. B. return home, but A. B. refused.

During cross-examination by Santana R., Atynna B. testified that, “I’ve never seen you in 10, 11, 12 years, I mean, when you were incarcerated where were you when they were running away?” She also stated that she had never contacted Santana R. “because him and I have never spoken as far as about our children.”

The juvenile court took judicial notice of two CINA cases involving A. B.’s siblings, Angel B. and Amonte B., both of whom were in the care of the Department.

At the conclusion of the hearing, the juvenile court found A. B. to be a credible witness and sustained the allegations in the second amended petition. During a discussion on disposition, counsel for Atynna B. argued that there was no reason for a limited

guardianship as both parents were “available to make decisions.” Santana R. questioned the court about what was preventing A. B. from “coming to stay” with him, and the court responded that

there may be nothing wrong, but you just got a stable place, you’re still trying to get yourself together, she’s trying to get herself together, so just get a little help, not saying it’s not going to happen, but, you know, there’s no shame in taking some help, getting your stuff set, you know, on cruise control . . . and then bringing her.

Santana R. replied, “I know. I know. . . . I understand. Yes.”

In a written order dated May 18, 2015, the juvenile court found A. B. to be a CINA, that both abuse and neglect had been established by a preponderance of the evidence, and that the child’s parents were “unable/unwilling to give proper care and attention to the child and the child’s needs.” The court placed A. B. in the custody of the Department. The court also granted limited guardianship to the Department, supervised visitation with Atynna B., and unsupervised visitation with Santana R.

DISCUSSION

I.

A. Motion to Dismiss

Both the Department and A. B. argue that Atynna B. waived her right to appeal the CINA determination because on several occasions at the adjudicatory and disposition hearings she stated, through counsel, that she was not contesting that A. B. was a CINA. Atynna B. denies that she acquiesced or consented to the determination that A. B. was a CINA due to abuse or neglect. Rather, she agreed that A. B. “was a CINA due to A. B.’s

behaviors and the mother’s inability to manage those behaviors.” In other words, her position at the hearing was that A. B. was a CINA, but for reasons other than abuse or neglect as the Department alleged. According to Atyнна B., her “entire defense was that she did not abuse or neglect A. B. but that A. B. was incorrigible and kept running away.” Our review of the record reveals that Atyнна B. waived her right to appeal the determination that A. B. was a CINA due to abuse and neglect.

Throughout the hearing, Atyнна B., through counsel, repeatedly advised the juvenile court that she was not contesting the fact that A. B. was a CINA. During closing argument, counsel for Atyнна B. stated: “I want to start by saying that Ms. B. does not dispute the fact that A. B. is a child in need of assistance” He later stated that, “all of this is really to just argue over a line in the sand as to whether, you know, really what the facts are that the Court will sustain for something that we actually agree to, which is that [A. B.] is a child in need of assistance. There’s no dispute to that fact.” Subsequently, in a discussion about disposition, counsel for Atyнна B. stated that, “we don’t disagree with the child in need of assistance finding.”

A child in need of assistance is defined in Md. Code (2013 Repl. Vol.) § 3-801(f) of the Courts and Judicial Proceedings Article (“CJ”) as follows:

“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.

(Emphasis added).

Although Atynna B. contends that A. B. was a CINA on the grounds of something other than abuse or neglect, she does not specify what that other ground might be. Atynna B. does not argue in this Court, nor did she argue below, that A. B. suffered from a developmental disability or mental disorder. Indeed, counsel for Atynna B. told the juvenile court that there was no evidence to support a finding of developmental disability. Here, Atynna B. argues only that A. B. “was incorrigible and kept running away.” Incorrigibility is not, however, a ground upon which a CINA determination can be based.³ *See* CJ § 3-801(f).

It is well established that issues raised for the first time on appeal are not preserved for our consideration. Md. Rule 8-131(a); *Burch v. United Cable*, 391 Md. 687, 695 (2006); *Faith v. Keefer*, 127 Md. App. 706, 737, *cert. denied*, 357 Md. 191 (1991). Moreover, a party is not entitled to appeal from a judgment or order if that party consented to or acquiesced in that judgment or order. *In re Nicole B.*, 410 Md. 33, 64 (2009). Because Atynna B. conceded that A. B. was a CINA, and did not argue below that the CINA determination should be based on a statutory ground other than abuse or neglect, she expressly waived any argument that she might have had against the lower court’s finding

³Atynna B.’s trial counsel may have been referring to a “child in need of supervision,” which is defined as “a child who requires guidance, treatment, or rehabilitation and: ... (2) Is habitually disobedient, ungovernable and beyond the control of the person having custody of him [.]” CJ § 3-8A-01(e). A child in need of supervision is governed by subtitle 8A, which carries the title of “Juvenile Causes – Children Other Than CINAs and Adults”. Thus a child in need of supervision is not a CINA.

of abuse and neglect. As a result, the issue of whether the juvenile court erred in finding A. B. a CINA because there was insufficient evidence that she had been abused and neglected is not properly before us.

B. Findings of Abuse and Neglect

Even if the issue of the juvenile court’s determination of A. B. as a CINA had been preserved properly for our consideration, Atyнна B.’s argument would not prevail. For purposes of a CINA petition, abuse is defined as follows:

- (1) Sexual abuse of a child, whether a physical injury is sustained or not; or
- (2) Physical or mental injury of a child under circumstances that indicate that the child’s health or welfare is harmed or is at substantial risk of being harmed by:
 - (i) A parent or other individual who has permanent or temporary care or custody or responsibility for supervision of the child; or
 - (ii) A household or family member.

CJ §3-801(b).

A juvenile court’s CINA adjudication will not be set aside unless it is clearly erroneous. *See* Md. Rule 8-131(c); *In re Nathaniel A.*, 160 Md. App. 581, 595 (2005). In determining whether a lower court’s decision was clearly erroneous, we apply “three different but interrelated standards of review,” as follows:

“When the appellate court scrutinizes factual findings, the clearly erroneous standard . . . applies. [Secondly,] if it appears that the [juvenile 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 [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [juvenile court’s] decision should be disturbed only if there has been a clear abuse of discretion.”

In re Adoption/Guardianship of Cadence B., 417 Md. 146, 155 (2010) (quoting *In re Yve S.*, 373 Md. 551,586 (2003)).

Contrary to Atynna B.’s contention, there is ample evidence in the record of her abuse of A. B. A. B. testified that in July 2013 her mother hit her, spit on her, and pulled her hair, and that her mother, brother, and sister hit her with hangers and belts and punched her hard. A. B. also testified about mental suffering, including that her mother cursed at her, said she wished she had never had her children, threatened to have her committed to a psychiatric ward, and “said a lot of hurtful things.” In addition, A. B. lived away from her family in the care of Felicia L. for more than a year.

A. B.’s testimony was corroborated by her sister, Angel B., who testified that the day after the July 2013 incident, Atynna B. told her that she had beaten A. B. and whipped “her A-.” In their testimony, neither Atynna B. nor Walter V. denied the abuse that A. B. described. Nor did either argue that Atynna B.’s actions constituted acceptable corporal punishment. The juvenile court found A. B.’s testimony to be credible and the testimony of Atynna B. and Walter V. to be “not as consistent.” In making that determination, the court took judicial notice of the CINA dispositions for A. B.’s older siblings and noted that A. B. was not “a discipline issue in school or anything like that, she wasn’t stealing anything, she’s not in juvenile court, but she had had enough.” For all of these reasons, if the issue had been preserved, we would hold that the juvenile court did not err in finding that A. B. had been abused.

Nor did the juvenile court err in determining that A. B. had been neglected. Neglect is defined as follows:

“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.

CJ §3-801(s).

With respect to neglect, the evidence established that, when A. B. was fourteen years old, she was left at a McDonald’s restaurant, spent the night in the home of a stranger, and over the next year and a half Atyнна B. had “no idea” where her daughter was staying, except for a short time when A. B. and her mother were living in the same house. Moreover, A. B. testified that her mother usually did not answer her telephone calls, threatened to put her in a psychiatric ward, and hid her clothes. There was also evidence about A. B.’s inability to get a prescription from her mother for medicine that had been prescribed for strep throat. Thus, even if Atyнна B.’s challenge to the juvenile court’s finding that A. B. was a CINA based on neglect was properly before us, we would hold that the above evidence supports the juvenile court’s determination that A. B. was neglected by Atyнна B.

III.

Finally, Atyнна B. contends that the juvenile court erred in determining that A. B.

was a CINA because there was no evidence that Santana R. was unwilling or unable to provide care for her. Again, because Atyнна B. acquiesced or consented to the determination that A. B. was a CINA, this argument is not properly before us. Even if it was preserved, the record reveals sufficient evidence that Santana R. was unable to provide proper care for A. B.

It is well established that a CINA finding can only be made if both parents “are unable or unwilling to give proper care and attention to the child and the child’s needs.” CJ §3-801(f)(2); *In re Russell G.*, 108 Md. App. 366, 377 (1996). In acknowledging that A. B. was a CINA, Atyнна B. acknowledged that Santana R. was unable to provide proper care for her. Even without that acknowledgement, there was sufficient evidence to support the juvenile court’s determination that Santana R. was unable to provide proper care for A. B. Santana R. had been incarcerated for the vast majority of A. B.’s life. He acknowledged that he had “just got into a stable place maybe three months” prior to the hearing. There was no evidence about whether Santana R.’s housing was suitable for A. B., about his employment, or about his ability to provide daily care for his daughter. Moreover, even after Santana R. had been released from prison, A. B. did not live with him, and two of his other children, Amonte B. and Angel B., remained in the custody of the Department as CINAs. For all of these reasons, if the issue was properly before us, we would hold that the evidence supported the juvenile court’s determination that A. B.’s father was unable to provide proper care for her.

**APPEAL DISMISSED; COSTS TO BE PAID
BY APPELLANT.**