

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2682

September Term, 2015

In Re: L.B. and W.B.

Meredith,
Wright,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: October 18, 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.

Appellant, Robert B. (“Father”), and appellee, Krystin M. (“Mother”), are the parents of two minor children. In February 2015, Mother was living with the children in Maryland when Child Protective Services (“CPS”) removed them from her care after allegations of child abuse. The alleged abuser was Mother’s live-in boyfriend, Joseph B. The children were first placed with their maternal grandfather and step-grandmother, and then later sent to a foster home. In August 2015, the Circuit Court for Baltimore County, sitting as the juvenile court, upheld allegations against Mother that her two sons were each a Child in Need of Assistance (“CINA”). In the months that followed, however, Mother displayed an impressive turnaround in behavior and in cooperation with social services. At the same time, Father began to express an interest in taking custody of the children. The juvenile court held subsequent hearings on the matter in November 2015 and January 2016. At the conclusion of the January 2016 hearing, the court, citing Mother’s unexpected improvement, found that the children were no longer in danger of further abuse and dismissed the case. As a result, the children were returned to Mother’s care.

Father appealed, and now presents three questions for our review:

1. Did the trial court err in dismissing the case without granting custody to father where the juvenile court had adjudicated the facts in the petition against mother, no allegations had been made against father, and a few months later, without hearing evidence, the juvenile court found that mother’s problems had been resolved?
2. Did the juvenile court commit legal error in delegating its decision as to mother’s fitness to BCDSS and children’s counsel?

3. Did the juvenile court err in adding surplusage to the order?

For the following reasons, we answer no to each question and affirm the judgment of the juvenile court.

BACKGROUND

Father and Mother have two minor children together. Their first child, W.B., was born on October 5, 2011. Their second child, L.B., was born a year later on October 22, 2012. L.B. was born with his esophagus attached to his windpipe, and required a feeding tube after he received surgery. Relatives noted that Mother was attentive to L.B.’s medical needs. Prior to the events of this case, Father and Mother lived together with the children and Father’s mother in Florida. In September 2014, Mother sent the children to Baltimore to live with her father and stepmother, Mr. and Ms. C. Mother told Mr. and Ms. C. that she needed to “get her life together” in Florida. At some point in either late September or early October 2014, Mother returned to Maryland to retrieve W.B. and L.B. Mother and the two boys then moved in with her mother. Father remained in Florida living with his mother, maintaining only sporadic contact with his children through Skype. On December 14, 2014, Mother and the children moved back in with Mr. and Ms. C. In January 2015, Mother and the children moved in with her friend, Leah, Leah’s boyfriend, and Mother’s boyfriend, Joseph B. Joseph would watch the children while Mother worked evenings at a restaurant.

Mother’s sister, Katrina, began noticing bruises and injuries on the children when she would visit them. Around this time, L.B. also suffered a broken collarbone. Mother

told Katrina that she did not know the cause of the injuries, but that Joseph claimed the boys had been playing roughly and fighting. Mother did not seek medical care for their injuries. At the same time, Mother told her grandmother, Ms. S., that she was concerned that Joseph had harmed the children. Mother arranged to move with the children to Florida to live near Ms. S.

On February 8, 2015, before moving to Florida, Mother brought the children to stay with Mr. and Ms. C. When they arrived at their house, L.B. had “a sling, bruised face, bloody, dried up bloody nose,” and W.B. had “a bite mark on his hand.” W.B. told Ms. C. that Joseph had caused the injuries. Ms. C. told Mother to contact the police, but Mother said she did not know who caused the injuries. Mother informed Ms. C. that she planned to move to Florida without contacting the police. Ms. C. responded by calling the police the next morning, who arrived and took L.B. to the hospital.

The injuries observed on the children raised serious issues regarding possible child abuse. L.B. had abrasions on his nose, as well as bruises on his cheek, ear, abdomen, and feet. He also had a fractured collarbone and older fractures in his left leg that had partially healed. W.B. exhibited bruises on his face, torso, back, shoulder, arms, and feet. There was also evidence of bite marks on W.B.’s back.

On February 9, 2015, CPS Investigator Taylor Mast was assigned to this case along with Detective Frank Adamski. Mast met with the children at the hospital, and in addition to their injuries, observed that they were dirty and unhygienic. Mother told Mast that she did not know the cause of the injuries, but that she observed the marks on the

children after Joseph had watched them. Joseph had denied responsibility when Mother asked him what happened. Mother was uncooperative with Mast, and left the hospital as Mast was finishing the interview and explaining CPS’s involvement to her. Detective Adamski interviewed Joseph, who admitted to being a drug addict and to using marijuana with Mother around the children.¹ Mother admitted that she used marijuana.

On February 10, 2015, the Baltimore County Department of Social Services (“the Department”) sought a shelter care order for L.B. and W.B. The children were placed with Mr. and Ms. C. In late February 2015, Father was notified by mail about the children’s injuries and their removal from Mother’s home. He called the Department and spoke with them about the situation. On April 27, 2015, Social Worker Tricia Curran visited with the children. On April 30, 2015, Curran met with Mother at a court hearing, and found her to be angry and reluctant to work with the Department. During this time period, Mother briefly lived with her sister before leaving. Afterwards, Mother either refused to answer Curran’s inquiries about where she lived or gave vague answers. Mr. and Ms. C. could not continue caring for the children indefinitely, and on May 29, 2015 they were placed in foster care.

Around that same time, during a phone conversation with Curran, Father expressed an interest in caring for his children. The Department requested a home study be conducted for Father, although with some reservation, because Father was on probation for a criminal offense at the time. Father also admitted that L.B.’s broken leg

¹ Joseph was criminally charged for injuring L.B. and W.B.

occurred when L.B. visited him in Florida, but claimed that it happened when he fell off of a bed. On June 23, 2015, Father came up to Maryland to visit with the children and meet with Curran. Father admitted to Curran that he and Mother had a history of domestic violence.

A two-day adjudicatory hearing was held on August 4-5, 2015. During the course of the proceedings, the juvenile court heard testimony describing the facts detailed *supra*. Medical expert testimony at the hearing explained that the injuries found on L.B. and W.B. indicated that they had likely been subjected to child physical abuse. At the conclusion of the hearing, the court upheld the CINA allegations regarding L.B. and W.B., given that Mother had allowed Joseph to continue watching the children despite suspecting him of abuse. The court also noted that it had “grave concerns” regarding Father, because the severity of the leg injury suffered by L.B. in his presence was inconsistent with Father’s claim that L.B. had fallen off a bed. The court decided to defer its finding regarding Father until it could review additional information and allow the home study of Father to be completed.

The parties reconvened on November 2, 2015 for another hearing. The Department conceded to the court that it had no allegations supporting a CINA finding related to Father. The home study of Father’s home came back as favorable, however, the Department was concerned over Father’s lack of effort to maintain contact with the children since they had been in Maryland. The Department also expressed concerns with Father’s financial situation. Furthermore, the Department proffered to the court that

Mother had improved greatly over the three months since the previous hearing. Mother was now cooperating with the Department, visiting with the boys regularly, and communicating with the foster mother. The children’s attorney also proffered to the court that the children were very bonded with Mother. The court expressed its satisfaction with the posture of the case, and then chose to continue the matter while it took time to review the extensive reports in the case.

Due to her improvement, L.B. and W.B. were returned to Mother’s care on December 21, 2015. A final hearing was held on January 4, 2016. The Department asked the court to find that the children were not CINA and to close the juvenile proceedings. In support of this recommendation, the Department submitted a report that detailed the progress made by Mother. The report provided that Mother had obtained more stable employment, stable housing, a new boyfriend who was cleared by CPS, attended the children’s medical appointments, started therapy, and was much more cooperative with the Department. The Department asserted that as a result of these positive changes on the part of Mother, the children were no longer “in danger of further abuse or neglect.” The children’s counsel agreed with the request to dismiss the CINA petition. Mother’s counsel asked the court to dismiss the case and allow Mother and Father to work out visitation and custody on their own. Conversely, Father’s counsel requested that the court dismiss the CINA petition and grant custody to Father. At the conclusion of the hearing, the court stated that it would dismiss the matter “[i]n light of this surprising turnaround.” The court subsequently issued a written order finding that

L.B. and W.B. were not CINA for the following reasons: “There are no allegations against the father; [s]ince the allegations against the mother were sustained in August 2015, sufficient remedial efforts have been made by her causing the children to no longer be in danger of further abuse or neglect arising from the sustained facts of this case.” The order provided for a general dismissal of the case in which custody was not awarded to either parent. Father appealed the court’s ruling, arguing that the court erred by dismissing the case without awarding him custody of the children. Mother moved to dismiss Father’s appeal.

DISCUSSION

I. Mother’s Motion to Dismiss

Before addressing the juvenile court’s decision to dismiss the case, we must first address Mother’s motion to dismiss the appeal. Mother argues that this appeal should be dismissed pursuant to Md. Rule 8-602(a)(1), because the court’s order did not change the terms of Father’s custody. Given the lack of change in circumstance, Mother claims Father was not aggrieved by the court’s decision. We disagree that a return to the status quo means that Father was not “aggrieved.” At the final hearing before the juvenile court, Father’s counsel asked the court to award custody of the minor children to Father. The court decided to dismiss the case without awarding custody to either parent. The practical effect of this ruling was to allow the children to remain with their Mother. Thus, Father was denied custody of his children. It is from this denial that Father was “aggrieved.” As Father contends, “the juvenile court’s general dismissal certainly had

[the] potential to facilitate custody to [Mother] rather than to [Father] because it implicitly recognized her as able to care for the children.” Father’s request for custody was denied; therefore, he was sufficiently aggrieved to allow the appeal to proceed. Accordingly, we deny Mother’s motion to dismiss the instant appeal and address the merits of the juvenile court’s ruling.

II. Dismissal of Case

Maryland appellate courts simultaneously apply three different levels of review to child custody disputes:

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 Shirley B., 419 Md. 1, 18 (2011) (Quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

“There is an abuse of discretion 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.” *Yve S.*, 373 Md. at 583 (Citations and internal quotation marks omitted).

In the instant case, the juvenile court had two choices: (1) dismiss the case, or (2) dismiss the case and award custody to one of the parents. The court chose to dismiss the case without awarding custody; therefore, the children remained with Mother.

Father contends that this dismissal was in error, and that the court should have awarded custody to him instead. According to Father, the court had no evidence that indicated Mother had remedied her problems. Father asserts that no evidence provided to the court showed that Mother had improved upon the poor judgment she exhibited that led to the children being removed from her care in the first place. Father claims that the only change made by Mother was her beginning to cooperate with the Department.

The Department counters that the juvenile court properly exercised its discretion to dismiss the CINA petition. The Department points specifically to the reports provided to the court at the November and January hearings. The Department asserts that these reports show that Mother remedied the circumstances that had originally required court intervention. Furthermore, the Department points out that all of the evidence put forth of Mother's progress remained uncontroverted by Father at the hearing. Mother joins in the Department's argument that the juvenile court acted correctly in dismissing the case. Mother contends that Father's argument focuses solely on her status at the beginning of the case. Mother argues that Father's appeal ignores the evidence of Mother's improvement presented at the later hearing, which supported the court's ultimate decision.²

² Counsel for the remaining appellees, the minor children, argues that the case should be remanded for further testimony, because the juvenile court should have taken testimony on Mother's remedial efforts. This argument is addressed separately in Section IV.

We agree with the appellees that there was ample evidence to support the juvenile court’s decision. At the January 4, 2016 hearing, the Department proffered to the court that Mother had made sufficient remedial efforts, and there was no longer “any likelihood of abuse or neglect if the children” were returned to their home. Counsel for the children concurred with the Department’s assessment of the situation, and added that the foster mother spoke highly of Mother, stating that Mother had “completely turned around,” was “doing a very good job,” and that “the children were very bonded with her.”

Father’s primary contention is that the court relied only on proffers from counsel, but this is inaccurate. In addition to the proffers from counsel regarding Mother’s impressive progress, the Department also submitted reports of evidentiary value that detailed the current situation of the case. “The statutory scheme governing dispositional and review hearings in CINA cases envisions that the juvenile court will rely on reports submitted by the Department and other entities.” *In re Faith H.*, 409 Md. 625, 641-42 (2009). When reports are admitted into evidence, they become available for consideration for any purpose and can be accorded any weight by the court. *Id.* at 646. The report detailed substantial improvement on the part of Mother over the eleven months since the Department first got involved in the case. Mother had procured a new job that provided her with more consistent pay and hours. She obtained a new home that she shared with her new boyfriend. CPS had run a background check on the new boyfriend and cleared him. Mother also began seeking mental health treatment with a therapist. The report further detailed how Mother had changed her approach with the

social workers. According to the report, Mother “opened herself up to the assistance and guidance that both the worker and [foster mother] have offered her, and it has proven to benefit the children and her relationship with each of them greatly.” Furthermore, although Mother did have criminal neglect charges, they were marked as STET on the condition that she follow through with the Department’s recommendations. The foster mother reported that Mother’s visits with the children went very well, and she did not observe any behavior from Mother that would put the children at risk. The report also noted that Mother had a thorough knowledge of her children’s medical history and needs. The report found that “[r]easonable efforts were made to prevent the need for a CINA finding on behalf of the children.” The report then concluded that “since the allegations were sustained in August 2015, sufficient remedial efforts have occurred causing the children to no longer be in danger of further abuse or neglect arising from the sustained facts of this case.” The report as a whole clearly displays that Mother performed an impressive turnaround during the eleven months since this case had opened. She not only achieved more stability personally, with a more stable job and housing, but also began cooperating and working with the Department.

Moreover, Father presented absolutely zero contradictory evidence at the hearing. Instead, Father’s counsel simply argued that the report was insufficient to show Mother had improved enough recently to warrant a dismissal without awarding Father custody. In asking the court to grant him custody, Father pointed to the language of Courts & Judicial Proceedings Section 3-819(e), which provides that:

If the allegations in the petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child, the court may not find that the child is a child in need of assistance, but, before dismissing the case, the court may award custody to the other parent.

Md. Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article (“CJP”), § 3-819(e). The parties agreed that, under the statute, the court had two options: grant a general dismissal or dismiss the case and award custody. The language of the statute is clearly discretionary. It states that the court “may” award custody to the non-offending parent. Thus, even if Mother had not improved her circumstances, it was never mandatory for the court to award custody to Father. Nevertheless, the court clearly determined that Mother had made significant progress and that the children were not CINA. Accordingly, this was not a situation where there was one offending parent and one non-offending parent that would necessitate an award of custody to one parent.

The court chose to grant a general dismissal without awarding custody to either parent; therefore, the children stayed with Mother. We agree with the court’s decision based on the evidence that was presented. Father contends that the report offered was too vague, but it specifically detailed all the changes Mother had made. Changes that included her job, housing, interactions with the children, and cooperation with the Department. With no contradictory evidence from Father, it was reasonable for the court to rely on this information and dismiss the case. We hold that there was no abuse of discretion in the juvenile court’s decision.

III. Delegating of the Court’s Decision

Father argues that the juvenile court committed legal error by delegating its decision to the Department and the children’s counsel. Father claims that no evidence was presented to the court at the November 2 or January 4 hearings. Father contends that the court instead relied entirely on proffers from counsel for the Department and the children in reaching its decision.

As detailed *supra*, the court relied primarily on the reports that had been submitted to it describing in detail Mother’s substantial progress. These reports were properly considered as evidence by the court and supported its decision to dismiss the case. *See Faith H.*, 409 Md. at 641-42. The court did not delegate its decision to the Department or the children’s counsel.

IV. Surplusage

Father also contends that the juvenile court erred by adding surplusage to its dismissal order. Specifically, Father argues that the court should not have included language in the order explaining its reason for dismissing the case without awarding custody to one of the parents. Although Father disagreed with the court’s decision, he makes no argument as to how the inclusion of such language prejudiced him. With no apparent prejudice, we find no error in the court’s order.

V. Remand for Further Testimony

On appeal, counsel for the children argues that the juvenile court erred by not taking testimony on the issue of Mother’s remedial efforts. Children’s counsel points to

the factual dispute between Father and the various appellees over whether Mother truly made such a quick turnaround. Children’s counsel contends that the case should be remanded to allow the court to hear testimony on Mother’s alleged improvements. This argument was not made by children’s counsel before the juvenile court, and thus is not preserved for appellate review. *See* Md. Rule 8-131. Accordingly, we will not consider it on appeal.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**