Circuit Court for Baltimore City
Case No. 815252001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 239

September Term, 2017

IN RE: K.J.

Berger
Nazarian,
Arthur,

JJ.

Opinion by Nazarian, J.

Filed: November 20, 2017

Kimberly T.B. ("Mother") appeals an order by the Circuit Court for Baltimore City granting a motion by the Baltimore City Department of Social Services ("Department") to waive further reasonable efforts to reunite Mother with her infant daughter, K.J. ("K"). The Department had removed K from Mother's care at birth, placed her in the care of her father ("Father"), and allowed Mother to have supervised visits. When the parents failed to comply with the Department's safety plan, K was deemed a Child in Need of Assistance.[1] After fourteen months of failed reunification efforts, the Department moved under MD. CODE ANN., CTS. & JUD. PROC. § 3-812 (b) (3) to waive continued reasonable efforts to reunite K with Mother. The circuit court granted the Department's motion based on a finding that Mother's parental rights had been terminated involuntarily as to four of K's older siblings. Mother asks us to reverse the circuit court's decision to grant the waiver, but that order is not appealable, and we dismiss the appeal.

I. BACKGROUND

K was born in August 2015. All of her older siblings have been declared CINA, and Mother's parental rights have been terminated involuntarily as to four of them.[2] At the time of K's birth, Mother tested positive for methadone, which had been prescribed for her as

[1] A Child in Need of Assistance ("CINA") is a child "who requires court intervention because… [she] has been abused, has been neglected, has a developmental disability, or has a mental disorder; and [her] parents, guardian, or custodian are unable or unwilling to give proper care and attention to [her] and [her] needs." MD. CODE ANN., CTS. & JUD. PROC. § 3-801(f).

[2] The oldest child was declared a CINA in 1999. Of the four children as to whom Mother's parental rights were terminated, two had been sexually abused and one suffered a life-altering brain injury. In late 2016, Mother's youngest child was declared a CINA at birth when Mother tested positive for cocaine. This younger sister currently lives in the same foster home as K.

she struggled with addiction.[3] The hospital immediately contacted the Department to arrange a safety plan for K, and the parties agreed that K would stay with Father,[4] who lived with his mother, and that Mother would not live in the same house with K or have unsupervised visits.

The Department made an unannounced visit to the Father's home and found that he and Mother were violating the safety plan. The Department convened a Family Involvement Meeting ("FIM") with Mother and Father to arrange a new safety plan for K, during which Mother was "at best difficult" and Father kept "nodding off." Within a week of starting the new safety plan, the Department discovered that Father and Mother were not following it. So on September 9, 2015, the Department moved to have K declared a CINA, removed from Father's custody, and placed in shelter care with her paternal grandmother, Ms. W. The circuit court granted the motion and K was placed with Ms. W. K was removed from Ms. W's home several times over the months that followed due to safety plan compliance concerns, but each time she was returned to Ms. W's care.

In October 2015, Mother and Father were referred to the Family Recovery Program to address their drug addictions. This program required them to report their progress to the circuit court and the Department weekly. Mother nevertheless continued to test positive for various drugs. As of November 11, 2015, she had stopped reporting altogether, and was discharged from the program as unsuccessful and non-compliant on October 28, 2016. K

[3] Mother had been on methadone maintenance for approximately ten-and-a-half years at the time of K's birth. She also had tested positive for cocaine in four out of the eight months before K was born.

[4] Father is not a party to this appeal.

continued in Ms. W's care until December 2015, when the Department discovered that Ms. W was not complying with court orders[5] and was allowing Mother to live in the home with K and have unsupervised visitation. K was then removed from Ms. W and placed in foster care.

Over the course of 2016, the court conducted several CINA disposition hearings regarding K's foster care. At these hearings, the Department submitted progress reports to the court and Mother's counsel about K's well-being. Mother also reported on her efforts at reunification. Mother was required to take steps to facilitate reunification, and in the meantime was permitted two supervised and two unsupervised visits twice a month. Mother entered into a service agreement with the Department that required her to: (1) continue drug treatment; (2) take parenting classes; (3) attend anger management classes; (4) provide certification of income or work; (5) attend mental health counseling; (6) submit to urinalysis; (7) attend a psychiatric evaluation; (8) sign any consent forms to release records relating to her ongoing drug treatment and mental health evaluations; and (9) obtain housing and income. Of those conditions, Mother completed the parenting classes, purportedly participated in drug treatment,[6] signed a temporary consent form that was not renewed, and began some anger management and mental health counseling. Mother's

[5] Among other concerns, Ms. W: had allowed K to sleep in adults' beds; had not required an un-fingerprinted male relative to move out of the house; had suffered verbal abuse and threatened physical abuse at the hands of Mother; had permitted Mother and Father to take K to doctors' appointments unsupervised; and had not required Father to move out when ordered by the court.

[6] However, K's younger sibling was born drug-exposed during the term of this service agreement.

reporting on these conditions was intermittent at best, and she failed to complete or participate in most of the programs required by the service agreement.

After fourteen months of failed reunification efforts, the Department filed a motion to waive further reunification efforts. The Department grounded its motion in CJP § 3-812(b)(3), which permits the Department to request a waiver of reasonable efforts when a parent's parental rights to a sibling of the involved child have been involuntarily terminated. The court granted the motion after a hearing on January 19, 2017. The court took judicial notice of the fact that Mother had previously had her parental rights involuntarily terminated for four of K's siblings, found that the prior dispositions satisfied the statute, and that the waiver was mandatory under the circumstances.

Mother filed a Notice of Exception and requested a *de novo* hearing. The court held a hearing on March 6, 2017 at which Mother solely challenged the constitutionality of CJP § 3-812. The Department responded that a waiver of reasonable efforts would not prohibit further efforts to reunify or compel a termination of parental rights:

> COUNSEL FOR DEPARTMENT: Even if the Court grants a waiver of reasonable efforts, the Court continuously holds hearings in which it considers whether the parents have made actions to alleviate or mitigate the issues that have been brought to the Court. The Court still has to consider whether the permanency plan is in place, is the appropriate permanency plan for the children. The Court at every six-month hearing or any hearing in between has to consider the child's health and safety. All of those things are still considered minus whether a waiver of reasonable efforts takes place….The parents' rights are still protected because they still have the opportunity to present evidence to the Court to show the Court that their circumstances have changed and that the child should eventually be reunited and put in their care.

K's counsel noted the many efforts the Department took to reunify her with Mother and asked the court to affirm the waiver:

> COUNSEL FOR K.J.: And there was 14 months. And Your Honor, quite frankly, I have to tell you that there were reasonable efforts. There was at least a service agreement that was entered into. There was at least referrals made to mental health treatment centers. There was discussions about treatment – what treatment they were doing and what they were doing then. There were always visits that were in this place…. So this was not – I don't believe that this was arbitrary and capricious in this case.
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> So at this point, having gone through that, I believe that with 14 months of things not happening, that somebody has to understand that at some point you're pushing the limits and having the Department go ahead and ask for that waiver of reasonable effort.
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> [T]he Court should not have our – my client, children in this Court, hanging out there waiting for a parent to do what needs to be done in order to get that. It's not fair to a child, and especially, Your Honor, it's not – it's probably not fair to a small child because that's at the time that they bond.

The court agreed with the Department and K and affirmed the waiver, and left K's foster care placement and permanency plan otherwise unchanged:[7]

> THE COURT: I will say that regardless of the outcome of this hearing, the CINA case is ongoing. Everything I saw about FRP and the availability of case managers and referrals for inpatient treatment and all of the things I saw remain true…. And all I can do is encourage folks to reexamine the opportunities, the possibilities that those resources present.

[7] At a later hearing, Mother's parental rights were terminated involuntarily as to K and her younger sister, L. That decision has been appealed separately. The Department contends that this decision rendered the waiver order moot, a question we do not address in light of our decision to dismiss the appeal.

Mother filed a notice of appeal within thirty days.

II. DISCUSSION

Mother seeks to appeal the waiver pursuant to MD. CODE ANN., CTS. & JUD. PROC. § 12-303(3)(x), which permits a party to appeal an interlocutory order that "depriv[es] 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). She raises a single question: whether "CJP § 3-812 violates parents' rights, including the rights of [Mother] afforded by Article 24 of the Maryland Declaration of Rights and [t]he Fifth and Fourteenth Amendments to the United States Constitution because the statute is facially unconstitutional, unconstitutional as applied, and deprives a parent of their due process right to judicial review." The Department asks us to dismiss the appeal on the ground that the waiver order is not an appealable interlocutory order. To the extent appealability was in dispute at the time the briefs were filed it isn't any more: the Court of Appeals held on October 20, 2017 that there is no right to an immediate appeal of a circuit court's order granting a waiver of the Department's obligation to provide reasonable reunification efforts when the custody order and permanency plan is left unchanged. *In re C.E.*, __ Md. __, No. 2, September Term 2017 (filed Oct. 20, 2017), slip op. at *10. That decision compels us to dismiss this appeal.

To appeal an adverse judgment, a party generally must have a final judgment to appeal. A final judgment is "a judgment, decree, sentence, order, determination, decision or other action by a court, including an orphans' court, from which an appeal, application for leave to appeal, or petition for certiorari may be taken." MD. CODE ANN., CTS. & JUD. PROC. § 12-101. Generally speaking, a final judgment "disposes

of all claims against all parties and concludes the case," *Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. 650, 660 (2014), or determines "whether any further order is to be issued or whether any further action is to be taken in the case." *In re Billy W*, 386 Md. 675, 689 (2005). That said, there are exceptions to the final judgment rule, and the one potentially relevant here appears in CJP § 12-303(3)(x), which permits a party to appeal an order that "depriv[es] a parent, grandparent, or natural guardian of the care and custody of his child, or chang[es] the terms of such an order."

The statute authorizing the waiver, and that Mother seeks to challenge, authorizes the Department to ask the court "to find that reasonable efforts to reunify a child with the child's parent or guardian are not required if the local department concludes that a parent or guardian has … ; involuntarily lost parental rights of a sibling of the child." CJP § 3-812 (b)(3). "If the local department determines after the initial petition is filed that any of the circumstances specified in subsection (b) of this section exists, the local department may immediately request the court to find that reasonable efforts to reunify the child with the child's parent or guardian are not required." CJP § 3-812 (c). And "[i]f the court finds by clear and convincing evidence that any of the circumstances specified in subsection (b) of this section exists, the court shall waive the requirement that reasonable efforts be made to reunify the child with the child's parent or guardian." CJP § 3-812 (d). This statute was designed "to expedite the movement of Maryland's children from foster care to a permanent living, and hopefully family arrangement," *In re Damon M.*, 362 Md. 429, 436 (2001), and bring to an end a Department's "efforts to repair hopelessly dysfunctional families," Kathleen S. Bean, *Reasonable Efforts: What State Courts Think*, 36 U. TOL.

L.REV. 321, 326 (2004–2005), that resulted in children "lingering in foster homes for too long…." *In re Joy D.*, 216 Md. App. 58, 80 (2014), *abrogated by In re C.E.*, __ Md. __, No. 2, September Term 2017 (filed Oct. 20, 2017).

The appealability question turns on whether a reasonable efforts waiver deprives a parent of care or custody, and we previously have treated these orders as immediately appealable. *Id.* at 73 n.10. The Court of Appeals now has held otherwise, in a case that raises the identical scenario. *In re C.E.*, __ Md. __, No. 2, September Term 2017 (filed Oct. 20, 2017). The mother in *In re C.E* suffered from mental illnesses and, as here, had had her parental rights to other children terminated involuntarily. *Id.*, slip op. at *1–2. C.E. herself was declared a CINA before she left the hospital, and was placed in Department custody about two weeks after she was born. *Id.* at 3. After approximately fourteen months of reunification efforts, the Department moved for a waiver of reasonable efforts, relying, as here on CJP § 3-812(b)(3). The circuit court granted the waiver motion and, as here, left the child's permanency plan otherwise unchanged. *Id.* The mother appealed the waiver and a panel of this Court, in an unreported decision, dismissed the appeal because "the order regarding reunification services did not change any other order in the case, alter a permanency plan, or deprive C.E. of the care or custody of her child." *Id.* at 6. The Court of Appeals agreed: after reviewing its earlier decisions on the appealability of orders in CINA and termination cases, the Court held a waiver of reasonable efforts does not deprive a parent of care or custody of his child, or change the terms of a care or custody order. *Id.* at 17. The Court agreed with the Department as well that allowing interlocutory appeals of these orders was inconsistent with the CINA statute's overarching desire to achieve timely,

permanent placements for children in the Department's care and custody. *Id.* at 18–19.

In re C.E. is beyond on point with this case—it's on fleek. As in *C.E.*, Mother has been unable to properly care for any of her children for years; the CINA findings as to her children date back to the 1990s, and Mother's parental rights to four of K's siblings have been terminated involuntarily. K was removed from Mother's care and custody before she left the hospital. Mother failed to cooperate with the Department and was unable, over more than a year, to show that continuing efforts at reunification would bear fruit. The reasonable efforts waiver order in this case did not alter K's custody or care arrangements or amend her permanency plan—it ended the Department's ongoing obligation to continue providing services that demonstrably weren't working. Accordingly, the waiver order was not an appealable interlocutory order, and the merits of that decision are not before us.

APPEAL DISMISSED. APPELLANT TO PAY COSTS.