UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2142

September Term, 2016

NICOLAS VENTURA CHACH

v.

PAULINA GARCIA

Berger,
Reed,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: August 2, 2017

This case involves Nicolas Ventura Chach (the appellant), Paulina Garcia (the appellee), and their child, E.V., who was born on February 13, 1998, in the Guatemalan department of Quiche and is currently residing in the United States with the appellant without legal immigration status. On June 13, 2016, the appellant filed a Complaint for Custody and Approval of Factual Findings to Permit Minor's Application for Special Immigrant Juvenile Status with the Circuit Court for Prince George's County. The appellant's desire is for E.V. to remain with him in the United States rather than return to Guatemala to live with Ms. Garcia. Following a hearing, the circuit court denied both of the appellant's requests.

On appeal, the appellant presents two questions for our review, which we have reduced to two and rephrased:[1]

[1] The appellant presents the following questions:

1. Was the trial court's denial of Appellant's Motion for Special Immigrant Juvenile Factual Findings inconsistent with Congressional intent?

2. Was the trial court's denial of the Appellant's request for custody of the minor child because the minor was already 18 years old at the time of the filing and reached the age of majority, legally correct when Maryland Family Law § 1-201(b)(1) grants the trial court with jurisdiction over unmarried individuals under the age of 21 years, who are considered children, in custody or guardianship proceedings of an immigrant child pursuant to a motion for Special Immigrant Juvenile factual findings requesting a determination that the child was abused, neglected, or abandoned before the age of 18 years for purposes of § 101(a)(27)(j) of the Federal Immigration and Nationality Act?

1. Did the circuit court err in denying the appellant's request for custody and Special Immigrant Juvenile status factual findings?

2. Did the circuit court abuse its discretion in denying the appellant's post-judgment motion, titled Motion to Alter or Amend Judgment and/or Motion for a New Trial?

Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The appellant was born in the department of Quiche, Guatemala on December 8, 1973. As indicated above, the appellant had a son, E.V., with Ms. Garcia in February of 1998. E.V. was also born in Quiche, where he lived with both of his parents following his birth. Then, in 2006, the appellant moved to the United States, and E.V. continued to live with Ms. Garcia in Guatemala.

In April of 2014, E.V. joined the appellant in the United States. Since arriving in this country, he has been living with and receiving support from the appellant. He is currently in the 10th grade at High Point High School in Beltsville, Maryland.

3. Was the trial court's denial of the Appellant's request for custody of a minor child and request for Special Immigrant Juvenile Status factual findings, legally correct when Maryland Family Law requires the trial court in child custody determinations to make decisions based on the best interest of the child and when the minor child testified to being physically abused and forced into physical labor by his mother?

4. Whether the trial court abused its discretion in denying the Motion to Alter or Amend Judgment and/or Motion for a New Trial without providing any basis for the denial?

On June 13, 2016, the appellant filed a Complaint in the Circuit Court for Prince George's County, requesting custody of and Special Immigrant Juvenile ("SIJ") status[2] factual findings for E.V. The granting of the appellant's requests would mean that E.V. would not have to return to Guatemala to live with his mother. The court held a hearing on the requests on November 9, 2016. At the hearing, E.V. testified that, while he was living in Guatemala, he dropped out of school in the 5th grade because his mother forced him to work in the corn fields from 6:00 a.m. to 3:00 p.m. each day. He also testified that he would either give his earnings to his mother or use them to buy himself clothes, that his mother would hit him with a tree branch if he refused to go to work, and that he was threatened with knives and guns by a gang that wanted him to join approximately 3 years ago, just before he came to the United States. E.V.'s testimony was contradicted by the appellant, however, who testified that E.V. was able to attend school up until he left Guatemala for the United States and that he (the appellant) had been sending money back to Guatemala to buy clothes and other supplies for E.V.

By Order dated December 1, 2016, and entered December 14, 2016, the circuit court denied the appellant's requests for custody and SIJ factual findings. The appellant noted an appeal to this Court on December 16, 2016, and, thereafter, on December 22, 2016, filed a post-judgment motion with the circuit court entitled Motion to Alter or Amend Judgment

[2] As we shall explain *supra*, 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). It "is an immigration classification that may allow . . . children [who are in need of humanitarian protection from their homeland] to immediately apply for lawful permanent resident status." *Id.* (internal quotation and citation omitted).

and/or Motion for New Trial. On January 13, 2017, the circuit court issued an Order denying the appellant's post-judgment motion.

DISCUSSION

1. Request for Custody and Special Immigrant Juvenile Status Factual Findings

A. Parties' Contentions

The appellant argues that "[t]he trial court's denial of . . . [the] Motion for Special Immigrant Juvenile Factual Findings is inconsistent with the congressional intent of the [federal Immigration and Nationality Act of 1990 ("INA"),] . . . [which] is to protect vulnerable children like [E.V.]" The appellant asserts that the court, in stating that it had a "problem" with the fact that E.V. had turned 18 before this matter was filed, misapplied Md. Code Ann., Fam. Law ("FL") § 1-201(b)(10), which gives Maryland courts jurisdiction over the custody and guardianship of immigrant children until they reach the age of 21, in some cases. Therefore, the appellant contends that "[t]he trial court's ruling is not legally correct and is inconsistent with . . . FL § 1-201(b)(10)."

Additionally, the appellant argues that the circuit court "incorrectly reasoned that because [E.V.] had not committed a delinquent act, he is not dependent on the court." The appellant asserts that, "[f]or purposes of seeking SIJ factual findings, a minor child does not have to commit a delinquent act in order to be within the purview or jurisdiction of the circuit court as the trial court's December 1, 2016 order incorrectly infers."

Furthermore, the appellant contends that the circuit court erred in its interpretation and application of the standards for abuse and neglect. The appellant points out that, "in

making SIJ status predicate findings, trial judges are to determine whether the child would be considered abused, neglected, or abandoned under Maryland law without regard to where the child lived at the time the events occurred." (Quoting *In re Dany G.*, 223 Md. App. 707, 718 (2015)). The application of this standard, the appellant argues, should have led the circuit court to conclude that E.V. was abused and neglected because E.V. testified that he was forced to drop out of school in the 5th grade in order to work and was physically abused by his mother in Guatemala. The appellant asserts that, because "[i]t is not uncommon for Maryland schools to insert older children, particularly children from abroad, into the 9th grade in high school despite their incompletion of middle school," the circuit court should not have discredited E.V.'s testimony regarding the last grade he completed in Guatemala. "In totality," the appellant contends, "the trial court's inability to find that [E.V.] was neglected in Guatemala or, at the very least, its failure to inquire into his testimony, warrants reversal of the court's finding."

B. Standard of Review

In *In re Dany G.*, 223 Md. App. at 719–20, we explained that, in cases involving a child's eligibility for SIJ status under the INA,

> [w]e review the trial court's factual determinations under a clearly erroneous standard. Under Maryland Rule 8–131(c):
>
> > When an action has been tried without a jury, the appellate court will review the case on both the law and evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

> Findings of fact that are clearly erroneous are marked by a lack of competent and material evidence in the record to support the decision. *Anderson v. Joseph,* 200 Md. App. 240, 249, 26 A.3d 1050 (2011) (citing *Hillsmere Shores Improvement Ass'n, Inc. v. Singleton,* 182 Md. App. 667, 690, 959 A.2d 130 (2008)); *see also Della Ratta v. Dyas,* 414 Md. 556, 996 A.2d 382 (2010) (explaining that factual findings are not clearly erroneous if there is *any* competent and material evidence to support them). Conclusions of law, on the other hand, receive no deference and are reviewed *de novo*. *Elderkin v. Carroll,* 403 Md. 343, 353, 941 A.2d 1127 (2008). Ultimate conclusions are reviewed under the abuse of discretion standard which asks whether the decision is off the center mark and beyond the fringe of what is deemed minimally acceptable. *North v. North,* 102 Md. App. 1, 14, 648 A.2d 1025 (1994). Finally, Maryland Courts have said that "abuse may be found when the court acts without reference to any guiding rules or principles [.]" *Wilson–X v. Dep't of Human Res.,* 403 Md. 667, 677, 944 A.2d 509 (2008) (quoting *Touzeau v. Deffinbaugh,* 394 Md. 654, 669, 907 A.2d 807 (2006)). Even with respect to a discretionary matter, a trial court must exercise its discretion in accordance with correct legal standards. *Aventis Pasteur, Inc. v. Skevofilax,* 396 Md. 405, 433, 914 A.2d 113 (2001) (citations omitted).

(Emphasis and second alteration in original).

C. Analysis

As we noted in *In re Dany G.*, "[SIJ] status was created by the United States Congress to provide undocumented children who lack immigration status with a defense against deportation proceedings." 223 Md. App. at 712. "Children eligible for SIJ status may be in the United States with only one parent, or they may have fled to the United States without either parent." *Id.* at 713. Because "SIJ status requires a specific finding from a state juvenile court[,] . . . '[t]he [INA] creates a special circumstance where a State juvenile court is charged with addressing an issue relevant only to federal immigration law.'" *Id.*

(quoting *Simbaina v. Bunay*, 221 Md. App. 440, 449 (2015)). "The purpose of the [SIJ status provisions] is to permit abused, neglected, or abandoned children to remain in this country." *In re Dany G.*, 223 Md. App. at 715 (citing *In re Y.M.*, 207 Cal. App. 4th 892, 9101 (2012)).

The process of applying for SIJ status involves several steps:

> First, there must be a filing in state court, which is often in the form of a guardianship or custody complaint, *see Simbaina,* 221 Md. App. at 453–54, 109 A.3d 191, but which can also come through filings in orphans, probate, and delinquency courts, among others. ["Special Immigrant Juvenile Status: Information for Juvenile Courts," U.S. Citizen and Immigration Services ("USCIS"), available at http://perma.cc/W5W3–MGGC (last visited March 9, 2015)]. In conjunction with the state court proceedings there must be a request for specific findings. These findings can be requested at the same time as the initial guardianship or custody complaint, or . . . the motion for findings can come separately, after the guardianship or custody has been granted.
>
> Once the state court has made the specific findings . . ., application is made to USCIS for SIJ status. If SIJ status is granted by USCIS, there is a third step of applying to adjust status to Legal Permanent Resident (green card application).

In re Dany G., 223 Md. App. at 713–14. As we noted in *Dany G.*, "the last two steps are solely under the jurisdiction of USCIS." *Id.* at 714. Therefore, "our analysis focuses on the first step, the filing in the state court and the related request for specific findings." *Id.*

FL § 1-201 provides:

> (b) An equity court has jurisdiction over:
>
> * * *

> (10) custody or guardianship of an immigrant child pursuant to a motion for Special Immigrant Juvenile factual findings requesting a determination that the child was abused, neglected, or abandoned before the age of 18 years for purposes of § 101(a)(27)(J) of the federal Immigration and Nationality Act.

It further provides that, "[f]or purposes of subsection (b)(10) of this section, 'child' means an unmarried individual under the age of 21 years." FL § 1-201(a).

INA § 101(a)(27)(J), which FL § 1-201(b)(10) references, defines the term "special immigrant" to mean:

> (J) an immigrant who is present in the United States—
>
> > (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
> >
> > (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; . . .

As we explained in *Dany G.*,

> [i]t is important to remember that the juvenile court is not granting SIJ status. Rather, the juvenile court is making factual findings that the child meets certain eligibility requirements. The required findings are:
>
> > (1) The juvenile is under the age of 21 and is unmarried; 8 C.F.R. § 204.11(c)(1)-(2);

> (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);
>
> (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];
>
> (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
>
> (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].

In re Dany G., 223 Md. App. at 714–15 (some citations omitted).

Clearly, in light of all the relevant statutory provisions, both state and federal, "Maryland[] circuit courts that have jurisdiction over custody and guardianship are able to make the necessary predicate order findings until the child reaches the age of 21 based upon events occurring before the child was 18 years old." *Id.* at 716. In making such

findings, "the trial court must apply the state law definitions of 'abuse,'[3] 'neglect,'[4] abandonment,' . . . and 'best interest of the child' as we would in Maryland, without taking into account where the child lived at the time the abuse, neglect, or abandonment occurred." *Id.* at 717.

In the case at bar, the appellant is arguing that the judgment of the circuit court should be reversed because it was grounded, in part, upon the fact that E.V. has reached the age of majority. In order to analyze whether the appellant is correct in this regard, we must consider all of the findings that the circuit court made in support of its decision to deny the appellant's request for an SIJ status finding with respect to E.V. In its December

[3] FL § 5-701(b) defines "abuse" as

> (1) the physical or mental injury of a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member, under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed; or
>
> (2) sexual abuse of a child, whether physical injuries are sustained or not.

[4] FL § 5-701(s) defines "neglect" as

> the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or other person 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) mental injury to the child or a substantial risk of mental injury.

1, 2016, Order Regarding Custody and Eligibility for Special Immigrant Juvenile Status, the circuit court found as follows:

> THE COURT FINDS that the minor child, [E.V.], was born on February 13, 1998 in Guatemala, is unmarried, a citizen and national of Guatemala, and has reached the age majority [sic].
>
> THE COURT FURTHER FINDS that this Court has jurisdiction under Maryland law "to make judicial determinations about the custody and care of juveniles" within the meaning of Section 101(a)(27)(J) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101(a)(27)(J) , and 8 C.F.R. § 204.11(a).
>
> THE COURT FURTHER FINDS that [E.V.] is not dependent on this juvenile court, nor is he legally committed to, or placed under the custody of a State or an individual or entity appointed by the State or Juvenile court located in the United States, because he has not committed a delinquent act, which would therefore place him under the dependency of the court.
>
> THE COURT FINDS that this child testified that he was able to attend school when he resided with his mother and only work when school was not in.
>
> THE COURT FURTHER FINDS there are substantial issues regarding the credibility of the witnesses presented to this court.
>
> THE COURT cannot conclude that it is not in the best interest of [E.V.] to be reunited with his mother.

We note that, while it was actually the appellant who testified that E.V. was able to attend school until he left Guatemala and was only forced by his mother to work when school was not in session, the court's written order credits that testimony to E.V. We are convinced that this mistake was clerical in nature because, during the issuance of its oral

ruling at the conclusion of the November 9, 2016, hearing, the court said that it was the appellant who testified that E.V. never dropped out of school in Guatemala:

> THE COURT: Let me just say I have some serious questions regarding the credibility. The father testified that the child was able to and did, in fact, attend school up until he left to come here and the only time he would not be in school was a holiday or something and he would only work on those days.

The court went on to describe how E.V. testified that his mother made him drop out of school in the 5th grade. Therefore, we are convinced that the misattribution of testimony in the December 1, 2016, Order amounts to nothing more than a clerical mistake.

The testimony of the appellant that seemingly contradicts E.V.'s account of his former life in his mother's care in Guatemala is as follows:

> [APPELLANT'S COUNSEL]: How long has [E.V.] been living with you?
>
> [APPELLANT]: Three years.
>
> [APPELLANT'S COUNSEL]: Okay. And prior to that where did he live?
>
> [APPELLANT]: In Guatemala.
>
> [APPELLANT'S COUNSEL]: And who did he live with in Guatemala?
>
> [APPELLANT]: With his mother.
>
> [APPELLANT's COUNSEL]: Okay. Was there ever a time that you lived with him in Guatemala?
>
> [APPELLANT]: Yes, but I would only come in the afternoon because early I have to go to work.

[APPELLANT'S COUNSEL]: I think you misunderstood the question. I am just going to rephrase it, okay? Was there ever a time that you lived in Guatemala with E[.V.], your son?

[APPELLANT]: Yes, what I am saying is I was only there in the afternoon.

[APPELLANT'S COUNSEL]: Yes or no? No, no. All right. Let me ask you the question again because I think you are not understanding the question. Did you ever live with E[.V.] in Guatemala?

[APPELLANT]: Yes.

[APPELLANT'S COUNSEL]: Okay. When did you leave Guatemala?

[APPELLANT]: In 2006.

[APPELLANT'S COUNSEL]: Okay. And then after that E[.V.] lived with his mother, is that correct?

[APPELLANT]: Yes.

[APPELLANT'S COUNSEL]: Okay. To your knowledge did E[.V.] attend school in Guatemala?

[APPELLANT]: Yes.

[APPELLANT'S COUNSEL]: Okay. Was there ever a time that he stopped attending school in Guatemala?

[APPELLANT]: Yes, when he came here.

[APPELLANT'S COUNSEL]: Okay. Prior to that though, he was in school the entire time?

[APPELLANT]: Yes.

[APPELLANT'S COUNSEL]: Okay. To your knowledge did E[.V.] work in Guatemala?

> [APPELLANT]: Yes, but only on those holidays when there is no school, his mother put him to work.
>
> [APPELLANT'S COUNSEL]: Okay. So is it your testimony – well, let me ask a different question in a different way. Did E[.V.] ever work at an early age in Guatemala?
>
> THE COURT: He said only on days when school was not in. Next question, counsel.
>
> * * *
>
> [APPELLANT'S COUNSEL]: How often were you in touch with E[.V.] when he was in Guatemala, when he lived in Guatemala?
>
> [APPELLANT]: Every eight days I would call him on the phone.
>
> [APPELLANT'S COUNSEL]: Okay. And who supported him when he lived in Guatemala?
>
> [APPELLANT]: He was living with his mother, she works and I was sending money over there.

The court stated in its oral ruling that it had "serious questions regarding the credibility [of the witnesses]" in this case. The court reiterated this sentiment in its written Order, noting "there are substantial issues regarding the credibility of the witnesses presented to this court." These credibility concerns stemmed from the fact that the appellant and E.V. gave conflicting testimony as to whether E.V. dropped out of school prior to coming to the United States, whether his mother prevented him from attending school by forcing him to work, and whether he had to provide for himself financially while living in Guatemala.

"Where . . . no jury is involved, we will not set aside a trial court's factual finding unless it is clearly erroneous and we give due regard to the trial court's ability to assess the credibility of witnesses." *Washington v. State*, 191 Md. App. 48, 78 (2010) (citing Md. Rule 8-131(c)). As we explained in *Morris v. State*, 153 Md. App. 480 (2003):

> The most basic rule of appellate review of fact-finding is that of extending great deference to the fact finder, be it judge or jury. Appellate judges do not see or hear the witnesses or have the benefit of any sort of non-verbal communication. They are relatively far less able to assess credibility than are the fact finders on the scene. Appellate judges, moreover, are not immersed in the local context and do not get the sometimes inexpressible "feel" of the case. They are relatively far less able to weigh the evidence than are the fact finders on the scene. The basic rule of fact-finding review, therefore, is that the appellate court will defer to the fact-findings of trial judge or jury whenever there is some competent evidence which, if believed and given maximum weight, could support such findings of fact. That is the prime directive.

Id. at 489.

In light of this standard of review, we cannot say that the circuit court's findings of fact were clearly erroneous in the instant case. The appellant testified that E.V. was never forced to drop out of school in Guatemala, was only put to work by his mother on days when school was not in, and was provided for financially by money he (the appellant) sent back to Guatemala from the United States. This testimony was in direct conflict with the testimony given by E.V., and, therefore, the circuit court was in a better position than we are now to determine which version of events is more likely to be accurate.

The appellant argues that the circuit court committed reversible error in basing its decision partly on the fact that E.V. was 18 years old at the time of the hearing. Although

the appellant is correct that the circuit court, pursuant to FL § 1-201(b)(10), has jurisdiction over immigrant children who are unmarried and under the age of 21, we do not believe that the circuit court misapplied the law in this case. While it is true that the circuit court stated during the issuance of its oral ruling that it had a "problem" with the fact that E.V. was 18 years of age, the court went on to state that it could not conclude that it was not in E.V.'s best interest to return to Guatemala and be reunited with his mother. Even if we were to remand this case on the basis of the circuit court's statements regarding E.V.'s age, we would be doing so in order to have the court determine whether it is in E.V.'s best interest to remain in the United States. It is clear, however, that the circuit court already made that determination. After weighing all of the evidence, the circuit court found that it could not determine that it is not in E.V.'s best interest to return to Guatemala. Therefore, any error that might have been committed with regards to the application of the law to E.V.'s age was harmless.

2. Post-Judgment Motion

The appellant argues, simply, that the circuit court violated Maryland Rule 2-311 where it "did not grant a hearing [on the Motion to Alter or Amend Judgment and/or Motion for New Trial] and, instead, denied the motion without providing any basis for the denial."

Maryland Rule 2-311 provides:

> **(e) Hearing--Motions for Judgment Notwithstanding the Verdict, for New Trial, or to Amend the Judgment.** When a motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the court shall determine in each case whether a hearing will be held, but it may not grant the motion without a hearing.

The appellant asserts that his "Motion to Alter or Amend Judgment and/or for a New Trial . . . in effect was a request for [a] hearing before the court." That is simply not true. The appellant's Motion constituted a joint motion pursuant to Rules 2-533 and 2-534. Maryland Rule 2-311(e) clearly states that, when motions like these are filed, "the court shall determine in each case whether a hearing will be held, but it may not grant the motion without a hearing." In this case, the circuit court did not grant the motion, and we do not believe it abused its discretion in disposing of the motion without a hearing.

Finally, we are not persuaded that the circuit court's judgment requires reversal on the grounds that the court interpreter spoke in Spanish rather than Quiche, the appellant and E.V.'s native language. A review of the trial transcript indicates that both the appellant and E.V. fully understood the questions that were being asked of them and gave answers that were coherent, comprehensive, and on point. Simply put, there is no indication that the contradictions between the testimony of E.V. and the appellant had anything to do with the fact that the court interpreter was using Spanish. Moreover, we find it problematic this concern was not brought to the court's attention by anyone during the hearing, but, instead, was raised for the first time in the post-judgment motion.

For the aforementioned reasons, we hold that the circuit court did not err in denying the appellant's Motion to Alter or Amend Judgment and/or Motion for New Trial.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.