Circuit Court for Montgomery County
Case No. 06-I-16-000028

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2537

September Term, 2016

IN RE: C.W.

Woodward, C.J.,
Kehoe,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 28, 2017

*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 appeal arises from a decision of the Circuit Court for Montgomery County, sitting as a juvenile court, to change the permanency plan for C.W.,[1] from a plan of reunification with a parent to a plan of custody and guardianship with his paternal grandparents. Ms. B, appellant, who is C.W.'s mother, filed a timely notice of appeal of the juvenile court's order.[2] On appeal, Ms. B contends that the circuit court erred (1) in not requiring appellee, the Montgomery County Department of Health and Human Services ("the Department"), to offer services to her husband, Mr. A, a registered sex offender,[3] to evaluate whether he posed a safety risk to C.W.; and (2) in changing the permanency plan. For the reasons that follow, we affirm.

Appellate review of a juvenile court's decision regarding child custody involves three interrelated standards. First, any factual findings made by the juvenile court are reviewed for clear error. *In re Yve S.*, 373 Md. 551, 586 (2003). Second, any legal conclusions made by the juvenile court are reviewed de novo. *Id*. "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 [court's] decision should be disturbed only if there has been a clear abuse of discretion." *Davis v. Davis*, 280 Md. 119, 234 (1977).

[1] The circuit court declared C.W. to be a Child in Need of Assistance on March 31, 2016.

[2] Mr. W, C.W.'s father, is not a party to this appeal.

[3] Mr. A pleaded guilty to one count of sexual abuse of a minor and one count of second-degree sexual offense in January 2012. At the plea hearing, Mr. A agreed that he had twice performed oral sex on his nine-year-old niece.

Ms. B first contends that the juvenile court erred "by failing to require the Department to work with Mr. A in an attempt to determine whether C.W. could safely reside" in her home while Mr. A was living there. Specifically, she claims that the Department could have required Mr. A to undergo a sex offender assessment and take a Penile Plethysmograph (PPG) test, which measures a person's physiological response when viewing pictures of children.

When the permanency plan is reunification with a parent, Maryland law dictates that the Department "make 'reasonable efforts' in support of a permanency plan of parental reunification[.]" *In re James G.*, 178 Md. App. 543, 570 (2008). In determining whether the Department has made "reasonable efforts" in facilitating reunification, the juvenile court must consider "the timeliness, nature, and extent of the services offered by [the Department] or other support agencies[.]" *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 500 (2007). The court must also consider any agreements between the Department and the parent, as well as "the extent to which both parties have fulfilled their obligations under those agreements[.]" *Id*. Finally, the court must determine "whether additional services would be likely to bring about a sufficient and lasting parental adjustment that would allow the child to be returned to the parent." *Id*.

As an initial matter, appellant cites no authority to support her claim that the Department is required to provide and pay for services to a non-parent as part of its reasonable efforts to support a permanency plan of reunification. However, even assuming that the Department had such a responsibility, we are persuaded that the circuit court's refusal to order the Department to undertake additional assessments of Mr. A was not error.

Viewed in a light most favorable to the Department, the evidence established that Mr. A had already undergone sex offender treatment as part of his probation and that, during that treatment, he had never verbally taken responsibility for his crimes or expressed any empathy toward his victim, and instead had claimed that he did not remember the incidents because he was intoxicated. Then, after he completed that treatment, he told Ms. B and Ms. B's social worker that he had not committed the crimes at all, which his therapist testified was a "serious concern." Moreover, several months after C.W. was removed from Ms. B's home, Mr. A's therapist suggested that Mr. A take the PPG test, which Ms. B now claims the Department should have provided, yet Mr. A refused to do so. Finally, Mr. A's therapist opined that there was no assessment that could accurately rule out the possibility that Mr. A would abuse someone else in the future. Based on this evidence, the juvenile court could reasonably conclude that ordering additional evaluations of Mr. A would "not bring about a sufficient and lasting parental adjustment that would allow the child to be returned to the parent." Consequently, the court did not err in finding that the Department made reasonable efforts to support the goal of reunification.

Outside of challenging the juvenile court's finding that the Department had made reasonable efforts to finalize the permanency plan of reunification, Ms. B does not otherwise contend that the court's factual findings were clearly erroneous, that it made any legal errors, or that it failed to consider any of the relevant statutory factors. Instead, she only asserts that the permanency plan should not have been changed because there is a presumption that reunification is in a child's best interests and the "record demonstrated that C.W. was bonded to [her], loved her, and wanted to return to her."

We recognize that there was evidence demonstrating that Ms. B and C.W. had a strong emotional bond and that Ms. B was an attentive and caring parent. However, in deciding whether changing the permanency plan would be in C.W.'s best interest, the juvenile court was also required to weigh other factors, including whether C.W. would be safe in Ms. B's home. *See In re: Samone H.*, 385 Md. 282, 291 (2004). And, in doing so, the court determined that C.W. would not be safe in Ms. B's home so long as Mr. A was living there.[4] That finding was supported by evidence presented at the permanency planning hearing demonstrating that: (1) Mr. A pleaded guilty to twice sexually abusing a minor child with whom he was living; (2) Mr. A later told conflicting stories about what had occurred; (3) Mr. A was previously found to have violated his probation by lying to his probation officer; (4) Mr. A failed to verbally express remorse for his actions during therapy; (5) Ms. B's therapist believed that Ms. B was in denial regarding Mr. A's previous actions; (6) Ms. B's therapist believed that, based on Ms. B's background, it would be difficult for her to protect C.W. from Mr. A; and (7) Ms. B previously allowed Mr. A to have unsupervised contact with C.W, in violation of a safety plan that she and the Department had agreed to. Based on this evidence, we cannot say that the juvenile court abused its discretion in finding that C.W. would not be safe in Ms. B's home and, therefore, did not abuse its discretion in deciding that it was in C.W.'s best interests to change the

[4] Contrary to appellant's contention, the court did not find that Mr. A's status as a sex offender constituted *per se* neglect or that the presence of a sex offender in a home would be an automatic bar to reunification. Instead, the court clearly indicated that its finding regarding C.W.'s safety in the home was based on the facts of C.W.'s case.

permanency plan from reunification with a parent to custody and guardianship with C.W.'s paternal grandparents.

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