Circuit Court for Prince George's County
Case No. CINA 17-0104

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2331

September Term, 2017

IN RE: J.C.

Friedman,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: October 15, 2018

*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.

On October 3, 2017, a magistrate in the Circuit Court for Prince George's County recommended that J.C. be found a child in need of assistance ("CINA")[1] and recommended J.C's commitment to the custody of the Prince George's County Department of Social Services ("DSS"). C.C., J.C.'s maternal grandmother and the appellant in this case, filed exceptions to the magistrate's CINA determination. Following a hearing on January 25, 2018, the juvenile court denied C.C.'s exceptions, and sustained the magistrate's findings. C.C. timely appealed the denial of her exceptions, and presents the following two questions for our review:

1. Was it improper for a factfinder to rely on an untimely-filed report and an attorney's description of a phone call with an out-of-court declarant in making a CINA determination?

2. Was it improper to find a child CINA where there was a guardian ready[,] willing[,] and able to take custody and there were no allegations of wrongdoing against that guardian?

We perceive no error and affirm the juvenile court's decision.

FACTS AND PROCEEDINGS

On May 16, 2017, B.W. contacted DSS to report safety concerns regarding his eleven-year-old son, J.C. DSS performed a forensic interview of J.C. and learned that J.C. had a history of both sexual and violent behavior. Apparently, while living with his

[1] Pursuant to Md. Code (1973, 2013 Repl. Vol., 2017 Supp.), § 3-801(f) of the Courts and Judicial Proceedings Article, a "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."

biological father B.W. and his step-mother M.W., J.C. had choked his two-year-old brother on several occasions, touched his brother's buttocks, and attempted to insert objects including a battery and Legos into his brother's buttocks. Additionally, J.C. once attempted to remove his paternal grandfather's clothes and kiss his mouth. J.C. told DSS that he was simply repeating behaviors that his biological mother, M.C., had performed on him when he was five. According to DSS reports, J.C. lived with M.C. until he was seven.

Regarding his violent behavior, J.C. was suspended from school many times for fighting and misbehaving. On two occasions, J.C. brought a BB gun and 500 pellets to school. J.C. admitted to hitting himself or other objects when upset, and that he kicked the family cat on one occasion. At one point, J.C. hid a knife in his room because he was angry with B.W. and M.W. and wanted to kill them. On May 24, 2017, in response to B.W.'s reported concerns, DSS filed a non-emergency CINA petition detailing J.C.'s troubling behavior.

On August 1, 2017, a magistrate in the Circuit Court for Prince George's County held an adjudication hearing on the allegations contained in the CINA petition.[2] With the exception of J.C. himself, none of the parties expressly disputed the allegations in the petition. Through counsel, appellant informed the magistrate that although she did not wish to contest the allegations contained in the petition, she did not have sufficient knowledge to state whether the allegations were true or false. M.C., who was incarcerated

[2] At the hearing, the parties established that appellant and B.W. shared joint legal custody of J.C. based on a Virginia custody order.

at the time of the hearing, requested, through counsel, that DSS slightly amend the petition to show that she denied sexually abusing J.C., but otherwise accepted the allegations regarding J.C.'s behaviors. B.W. and M.W. stated that the petition accurately summarized the facts that they had provided to DSS when seeking DSS's assistance.

At the conclusion of the August 1 hearing, the magistrate sustained the allegations in the petition and scheduled a separate disposition hearing for August 31. All of the parties, with the exception of M.C., agreed that J.C. required treatment. The magistrate found it contrary to J.C.'s well-being for him to return home, and instead placed him in the temporary care and custody of DSS. [3] DSS then submitted a referral to Arrow Child & Family Ministries ("Arrow") for inpatient mental health services. Following J.C.'s intake on August 3, Arrow planned to provide treatment for at least ninety days.

On August 31, the parties convened for the disposition hearing. The magistrate admitted into evidence several Arrow reports detailing observations and progress updates. The most recent report indicated that J.C. had difficulty controlling his anger, and that J.C. was "still dealing with a lot of trauma related to his family, particularly to his mother, [M.C.]" B.W.'s weekly visits with J.C., however, went well.

Appellant did not attend the August 31 hearing, and the magistrate noted that she would need to determine if appellant could meet J.C.'s needs. Appellant's counsel told the

[3] M.C. did not participate in the August 1 hearing because the facility where she was incarcerated was on "lockdown." Despite numerous calls to the facility, M.C.'s attorney, who was present for the hearing, could not reach her.

magistrate that appellant was "kind of standing back" and that appellant had "been put in . . . the back seat." Rather than make a CINA determination that day, the magistrate continued the disposition hearing to allow appellant the opportunity to involve herself in J.C.'s treatment plan, for DSS to explore voluntary placement options, and for Arrow to continue its battery of tests in order to precisely diagnose J.C.

On October 3, the magistrate resumed the disposition hearing. According to counsel for DSS, following both a Family Involvement Meeting and a Treatment Team Meeting, Arrow recommended that J.C. be discharged on November 1. Arrow also recommended that J.C. be placed in a therapeutic foster home because J.C.'s family members were not "viable options" until he received necessary treatment. DSS requested that J.C. be found a CINA and that he be committed to its care and custody.

With the exception of appellant, none of the parties opposed DSS's request that J.C. be declared CINA and committed to DSS's custody. J.C., through counsel, agreed that he should be found a CINA and committed to DSS's custody, but expressed a desire to eventually reunify with B.W.[4] B.W. noted J.C.'s progress at Arrow, and supported the CINA finding as well as placement in a therapeutic foster home. M.C.'s counsel told the magistrate that she would not be disputing a CINA finding because she had recently been released from incarceration, and admitted she was not in a position to take care of J.C. M.C. continued to adamantly deny that she had sexually abused J.C.

[4] We note that in J.C.'s appellate brief he now argues that the evidence does not support a CINA finding.

Appellant opposed the CINA finding. Appellant claimed that she had only agreed to shelter care placement so that J.C. could receive necessary treatment from Arrow, but that she never intended to relinquish her guardianship or custody of J.C. Appellant acknowledged her lack of involvement with Arrow, and explained that, "if she had been asked and if she had known that [Arrow was] looking for her to participate, she would have done so." According to appellant, Arrow never specifically contacted her to participate in therapy with J.C. Appellant claimed that this was why she had still failed to participate in J.C.'s therapy at Arrow. Finally, appellant indicated that she loved J.C., and that she was ready, willing, and able to take J.C. into her home upon his release.

Relying on the findings made at the adjudication hearing and evidence introduced at the disposition hearing, the magistrate recommended that J.C. be found a CINA, and further recommended that he be committed to the care and custody of DSS for placement.

Appellant filed exceptions to the magistrate's CINA finding and requested a hearing "on the record." On January 25, 2018, the circuit court, sitting as a juvenile court, held the exceptions hearing. At that hearing, appellant argued, among other things, that the magistrate improperly considered inadmissible evidence. The juvenile court ultimately denied the exceptions, finding that the magistrate's recommendation that J.C. be declared a CINA was "well thought out and [was] based on what [had] been presented." As stated above, appellant timely appealed the juvenile court's decision. We shall provide additional facts as necessary.

STANDARD OF REVIEW

We review CINA proceedings pursuant to three different, yet inter-related standards:

> In CINA cases, factual findings by the juvenile court are reviewed for clear error. An erroneous legal determination by the juvenile court will require further proceedings in the trial court unless the error is deemed to be harmless. The final conclusion of the juvenile court, when based on proper factual findings and correct legal principles, will stand unless the decision is a clear abuse of discretion.

In re Ashley S., 431 Md. 678, 704 (2013) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)).

DISCUSSION

I. EVIDENTIARY ISSUES

Maryland Rule 11-111 governs the role of magistrates in the context of juvenile cases. That Rule explains that a magistrate may authorize detention or shelter care, but that the "findings, conclusions and recommendations of a magistrate do not constitute orders or final action of the court." Md. Rule 11-111(a)(2). A party excepting to the magistrate's findings, conclusions, and recommendations must "specify those items to which the party excepts, and whether the hearing is to be de novo or on the record." Md. Rule 11-111(c). Here, appellant filed exceptions and requested a hearing "on the record." Relevant to this appeal, appellant raised two evidentiary issues at the exceptions hearing before the juvenile court: 1) that the magistrate improperly admitted an untimely "60-day treatment plan update" at the disposition hearing, and 2) that the magistrate improperly considered inadmissible hearsay statements from J.C's therapist at Arrow. As we will show, because appellant failed to raise these issues during proceedings before the

magistrate, appellant failed to preserve these arguments for the exceptions hearing. Accordingly, the juvenile court did not err in denying the exceptions.

In Maryland, a "general objection to the admission of evidence ordinarily preserves for appellate review all grounds which may exist for the inadmissibility of evidence." *Stewart-Bey v. State*, 218 Md. App. 101, 127 (2014) (quoting *Boyd v. State*, 399 Md. 457, 476 (2007)). But "when [specific] grounds [for an objection] are articulated, appellate review 'is limited to the ground assigned.'" *Id.* (quoting *Addison v. State*, 188 Md. App. 165, 176 (2009)). Because appellant raised specific grounds in her objections at the disposition hearing, and because appellant chose to proceed with an "on the record" exceptions hearing, she preserved only her specific objections. We explain. [5]

A. The Treatment Plan

At the beginning of the disposition hearing before the magistrate on October 3, DSS introduced into evidence a "60-day treatment plan update" which detailed J.C.'s most recent psychiatric evaluation.

Appellant objected to the admission of the report, specifically arguing:

> As for this particular report that's been presented to the [c]ourt, I do know that [J.C.] has been in Arrow but it's been in the vacuum of not having any participation from his maternal side of the family. *So for that reason*, I would ask that this particular report not be admitted.

(Emphasis added).

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[5] We note that, had appellant requested a "de novo" hearing under Rule 11-111(c), it would have been immaterial whether appellant preserved her evidentiary objections before the magistrate.

The magistrate never expressly ruled on appellant's objection, but inferentially relied on the report in finding J.C. a CINA.

It was only when appellant filed her exceptions to the magistrate's recommendation that she claimed, for the first time, that the treatment plan was inadmissible because it was not produced five days prior to the disposition hearing pursuant to Md. Code (1973, 2013 Repl. Vol.) § 3-816 of the Courts and Judicial Proceedings Article ("CJP"). That statute states that all parties have the right to receive, at least five days before presentation to the court, a court-ordered study concerning the child, family, environment, and other matters relevant to disposition. When appellant raised this argument at the exceptions hearing on January 25, 2018, DSS objected, noting that appellant was proceeding "on the record" and that appellant had not raised this specific evidentiary issue at the disposition hearing. The exceptions court agreed with DSS and held that appellant had failed to preserve the issue.

On appeal, appellant again challenges the admissibility of the treatment plan based on the unpreserved argument that DSS failed to comply with CJP § 3-816. Nowhere in appellant's brief does she address how she preserved this argument for determination at the exceptions hearing, let alone for this appeal. Instead, appellant simply contends, "A review of the record does not indicate that the court made any finding justifying the admission of the report or even a ruling admitting the report over [a]ppellant's objection." The juvenile court, however, ruled on the issue presented by appellant at the exceptions hearing—insufficient notice of the report—and found that appellant failed to preserve her argument

by not raising it at the disposition hearing. We discern no error in the exceptions court's determination that appellant failed to preserve her objection concerning DSS's failure to produce the report in accordance with CJP § 3-816.

B. Counsel's Description of a Phone Call with J.C.'s Therapist

Appellant next argues that the exceptions court erred in rejecting her argument that the substance of a phone call between DSS's attorney and J.C's therapist constituted inadmissible hearsay. We conclude that appellant failed to preserve this argument. Assuming, *arguendo*, that appellant had preserved this argument, we would still find no error.

At the disposition hearing, before finding J.C. a CINA, the magistrate asked DSS about J.C.'s need for additional therapeutic care upon release from Arrow. The DSS attorney responded that she had spoken with J.C.'s therapist at Arrow the previous day, and had learned that J.C. required intensive outpatient therapy three to four times a week. DSS told the magistrate that the therapist expressed "really grave concerns, particularly in terms of [appellant's] immunization[6] [sic] and understanding the seriousness" of J.C.'s situation. Apparently, appellant disputed that any sexual abuse had ever occurred, and during a phone call instructed J.C. to tell his therapists at Arrow that he wanted to speak to M.C.

[6] We believe the word "minimization" was likely used here.

Appellant objected to DSS relaying the therapist's concerns, arguing that DSS was "trying to adjudicate this case again." The magistrate disagreed, stating that DSS was "explaining why [J.C.'s] therapist [was] making a recommendation." Appellant persisted, claiming that "this whole case got off on the wrong foot because there were no charges against [her]." The magistrate, without expressly ruling on appellant's objection, apparently considered this evidence in finding J.C. a CINA.

At the exceptions hearing, appellant, for the first time, claimed that the therapist's statements, as relayed to the court by DSS's counsel, were inadmissible hearsay. Like the objection to the treatment plan, appellant did not raise her hearsay objection before the magistrate. Accordingly, appellant failed to preserve this issue for review by either the exceptions court or this Court.

Although the exceptions court noted that appellant failed to preserve her hearsay argument, it did not expressly dismiss the issue for lack of preservation. Instead, at the conclusion of the hearing, the exceptions court stated that it did not find the statements at issue to be hearsay, and also noted in the alternative that a court could rely on hearsay at a disposition hearing. Maryland Rule 5-101(c)(6) provides that a court may, "in the interest of justice . . . decline to require strict application of the rules" of evidence in "[d]isposition hearings under Rule 11-115, including permanency planning hearings under [CJP] § 3-823[.]" *See also In re Adoption of Jayden G.*, 433 Md. 50, 77 (2013) (stating that "in a permanency plan review hearing, strict application of the Maryland Rules of Evidence is not required"). In her reply brief, appellant concedes that "it cannot be disputed that a

'relaxed' application of the rules of evidence is mandated at a dispositional hearing[.]" Because a relaxed evidentiary standard applied at the disposition hearing, the magistrate was permitted to consider evidence that possibly constituted hearsay. Indeed, J.C.'s therapist's concerns that appellant minimized the significance of J.C.'s behavior and the necessity for treatment were indispensable to fashioning a disposition commensurate with J.C.'s best interests. In our view, the exceptions court did not err in rejecting appellant's hearsay argument.

II. THE CINA FINDING

Appellant's final argument on appeal is that the magistrate erred in finding J.C. to be a CINA when appellant was ready, willing, and able to provide proper care and attention to J.C. According to appellant, the record does not indicate that the magistrate ever expressly found that she was not ready, willing, or able to care for J.C.

We review appellant's challenge to the court's CINA determination for an abuse of discretion. The Court of Appeals has noted:

> [q]uestions within the discretion of the trial court are much better decided by the trial judges than by appellate courts, and the decisions of such judges should only be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred. In sum, to be reversed the decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.

In re Adoption of Cadence B., 417 Md. 146, 155-56 (2010) (quoting *Yve S.*, 373 Md. at 583-84). The juvenile court is vested with such broad discretion because "only [the trial judge] sees the witnesses and the parties, [and] hears the testimony . . . ; [the court] is in a

far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor." *Baldwin v. Baynard*, 215 Md. App. 82, 105 (2013) (quoting *Yve S.*, 373 Md. at 586); *see also In re Priscilla B.*, 214 Md. App. 600, 623 (2013) (quoting *In re Danielle B.*, 78 Md. App. 41, 69 (1989) (noting that "[t]he duties of a juvenile court judge are very broad and pervasive")).

A CINA is 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." CJP § 3-801(f). A "mental disorder" is "a behavioral or emotional illness that results from a psychiatric or neurological disorder" and includes "mental illness that so substantially impairs the mental or emotional functioning of an individual as to make care or treatment necessary or advisable for the welfare of the individual or for the safety of the person or property of another." CJP § 3-801(q).

Here, there was ample evidence to support the court's determination that J.C. was a CINA. First, the undisputed evidence at the disposition hearing showed that J.C. was diagnosed with an "Unspecified Trauma and Stressor Related Disorder." While living with B.W., J.C. exhibited disturbing violent and sexual behaviors. While at Arrow, J.C. continued to demonstrate troubling behaviors, including "an extremely low frustration tolerance. [J.C.] often [slammed] doors, [kicked] walls, or [became] verbally aggressive

when upset." The record clearly showed that, due to unspecified trauma, care or treatment was necessary and advisable to protect J.C.'s welfare.

Furthermore, the record indicated that appellant was not ready, willing, or able to care for J.C. The evidence showed that appellant was unaware of some of J.C.'s more troubling behaviors. Additionally, appellant failed to adequately participate in J.C.'s treatment at Arrow despite numerous opportunities to do so. At the August 31 hearing, appellant conceded to taking a "back seat" to J.C.'s treatment, and claimed that DSS needed to specifically instruct her to become involved. Yet at the October 3 hearing, the magistrate learned that appellant had only visited J.C. at Arrow once. Appellant again conceded her lack of involvement with Arrow, but insisted that she had never been given an opportunity to participate. Finally, the magistrate was permitted to doubt appellant's ability to meet J.C.'s therapeutic needs because of transportation issues. In light of these facts, the court did not err in finding that appellant was unable to give proper care and attention to J.C.'s needs.

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