

Circuit Court for Calvert County
Case No. C-04-JV-18-102

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2353

September Term, 2018

IN RE: R.V. JR.

Graeff,
Nazarian,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: March 19, 2019

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— Unreported Opinion —

On September 18, 2018, the Circuit Court for Calvert County, sitting as a juvenile court, found that R.V. Jr. (“Child”) was a child in need of assistance (“CINA”)¹ and put him in the care and custody of the Calvert County Department of Social Services. Child’s mother (“Mother”) does not dispute the decision, but his father (“Father”) does. That dispute is the subject of his timely appeal.

QUESTION PRESENTED

Father presents one question: Did the trial court err in finding [Child] to be a CINA?

For the reasons set forth below, we affirm the trial court’s rulings.

BACKGROUND

Child is the biological child of Father and Mother. He was born on April 8, 2016. Father and Mother were married to one another at the time of Child’s birth, but separated shortly thereafter.

Father and Mother have both suffered from substance-abuse disorders. Father has abused alcohol and marijuana. Mother has abused heroin and cocaine, as well as marijuana and alcohol. Child had marijuana in his system when he was born.

Father has been involved in a number of incidents of domestic violence, both with Mother and with the mothers of his four other children. His conduct has resulted in

¹ A “Child in Need of Assistance” is a child who requires court intervention because he or she has been abused or neglected, or has a developmental disability or mental disorder; and his or her parents, guardian, or custodian are either unwilling or unable to provide proper care and attention to the child and the child’s needs. Md. Code (1974, 2013 Repl. Vol., 2018 Supp.), § 3-801(f) of the Courts and Judicial Proceedings Article.

multiple protective orders. He has little to no contact with two of his older children, and the degree of his contact with the other older children is unknown.

After Child’s birth in April 2016, while he resided with Father, Father continued to abuse alcohol. At some point during that period, Father was charged with driving under the influence (“DUI”) of alcohol.

On April 30, 2017, a few weeks after Child’s first birthday, Father was involved in a motorcycle accident while he was under the influence of alcohol and marijuana. As a result of his accident, Father is a paraplegic and has other permanent physical disabilities.

A few months after Father returned home from the hospital, Mother asked that he leave their home. He moved to Florida, where he stayed with a family friend until he found a two-bedroom apartment. Child remained in Maryland.

After Father moved to Florida, a Maryland court issued a bench warrant for his arrest because he had failed to appear for proceedings relating to a DUI charge that preceded his motorcycle accident. Father resolved the charges by paying a fine and agreeing to participate in a drug and alcohol treatment program. He eventually attended only two of the 12 required classes in the program.

In Florida, Father experienced what he described as “severe mood swings,” was “unable to sleep” or “focus,” and felt “helpless” and “hopeless.” He went to Legacy Behavioral Health Center in Port St. Lucie, Florida, for mental-health and substance-abuse services on February 6, 2018. Legacy Behavioral Health diagnosed Father with major depressive disorder, moderate alcohol-use disorder, and moderate cannabis-use disorder, and mentioned a suspected history of domestic violence.

After Father's initial treatment and diagnoses, Legacy Behavioral Health recommended that he receive a psychiatric evaluation and individual therapy. It offered access to rehabilitation services, such as Alcoholics Anonymous, Narcotics Anonymous, and other support groups and recreational services. Father has an in-house session with a therapist once a week, but he has never reported attending any of the recommended support groups for his anxiety, depression, and substance-abuse disorders. Instead, he appears to have obtained a prescription for Prozac, a type of antidepressant, and used marijuana to treat his pain and anxiety.

On April 12, 2018, Father began medical and therapeutic treatment with Ricardo Leano, M.D., in Fort Pierce, Florida. At his initial visit with Dr. Leano, Father tested positive for THC, the principal psychoactive constituent in marijuana, and for opioids. Dr. Leano gave Father prescriptions for Oxycodone, an opioid; Baclofen, a muscle relaxant; Mirtazapine, an antidepressant; and Lamictal, an anti-convulsant that is used to treat acute mood swings in persons who suffer from bipolar disorder. Dr. Leano's records do not indicate that Father informed him of the prescription for Prozac.²

In April 2018 Mother and Child traveled to Florida to visit Father. While in Florida, Mother relapsed on cocaine and drank alcohol with Father.

On one occasion during her Florida visit, Father allowed Mother to drive Child to a doctor's appointment even though she had been "acting erratically" and seemed to be

² When the hearing took place in August 2018, Father testified that he had prescriptions for Oxycodone, Baclofen, Lamictal, and Propranolol, a drug that is used to treat high blood pressure, chest pain, and migraine headaches, among other things. He did not include Mirtazapine in the list of drugs for which he had prescriptions.

“out of control.” While they were on the way to the appointment, however, Father did call his sister to ask her to call the police. The police cited Mother for driving under the influence of alcohol, but the charge was later dropped.

Mother returned to Maryland in May 2018, leaving Child with Father. Before her departure, Father had obtained a protective order, the nature and terms of which are unclear from the record. The protective order was in place for approximately three months, during which Child remained in Florida with Father. Mother had no contact with Child during the time when the protective order was in effect.

After Mother’s DUI charge, while Child was in Florida with Father, an employee of the Florida Department of Children and Families visited Father’s residence, apparently because of allegations of inadequate care. Although the employee determined that the allegations were unsubstantiated, she observed that Father would need “significant” support to provide long-term care.

After Mother had returned to Maryland, Father obtained a medical marijuana identification card from the State of Florida. Although Father claimed to have a prescription for medical marijuana, his medical records contain nothing to indicate that Dr. Leano or any other physician has prescribed it for him. To the contrary, Dr. Leano’s notes describe Father’s use of marijuana as recreational. Father believes that marijuana takes his mind off of his pain, but his medical records show that his opioid prescriptions remained at the same dosage from April through August of 2018.

In a visit to Dr. Leano on July 16, 2018, while Child was living with Father in Florida, Father’s urine tested positive for THC and for benzodiazepines, which are

sedatives that may be abused to enhance the euphoric effects of opioids. Father had not received a prescription for benzodiazepines, and he had no cogent explanation for why he tested positive for them.³ Dr. Leano was unable to conduct a urine test at Father’s next visit on August 13, 2018, because Father did not bring a catheter.

Meanwhile, on August 3, 2018, the Circuit Court for Calvert County conducted a hearing on Mother’s emergency request for custody pending the outcome of a divorce proceeding. Father participated via a video-link from Florida. Although the record does not contain a written order that embodies the rulings that resulted from that hearing, the circuit court apparently determined that Maryland was the appropriate venue for any disputes about custody, awarded custody to Mother, and ordered that Child be returned to Maryland. In addition, the court reportedly ordered that Mother’s mother (“Grandmother”) should assist Mother by staying with her to ensure her compliance with court orders, including an order to submit to random urinalysis.⁴ At a later hearing, the court explained that its ruling had been motivated by concerns about Father’s ability to care for Child and about how Father had obtained custody of the Child (which may have been a reference to the Florida protective order).

Mother and Grandmother brought Child back to Maryland on August 6, 2018.

³ Father seemed to say that the positive test for benzodiazepines was somehow attributable to the ingestion of one of the other prescription drugs that he was taking.

⁴ The record suggests that Mother tested positive for cocaine on the day of the hearing.

Between August 10, 2018, and August 11, 2018, the Department received three separate reports of neglect of Child by Mother. In summary, the reports alleged that Mother was actively abusing alcohol and cocaine. Most notably, Mother was arrested and charged with DUI and other traffic violations late in the evening of August 10, 2018, while Child was in the car with her.⁵

On August 14, 2018, Mother tested positive for buprenorphine, an opioid that is used to treat opioid addiction; benzodiazepines; and possibly alcohol. On that same day, the Department conducted a home visit of Mother's residence and implemented a safety plan. Under the safety plan, Child was left in Grandmother's care, and Mother was required to leave the residence immediately and to have no face-to-face contact with Child.

On the following day, August 15, 2018, the Department conducted a family involvement meeting. At the conclusion of the meeting, the Department removed Child from his parents' custody and placed him into foster care, apparently with his maternal grandparents.

On August 16, 2018, the Department filed a petition for shelter care and for a finding of CINA in the Circuit Court for Calvert County. The court deemed Child to be a CINA because he had been neglected. In reaching its decision, the court held that Mother was not able to provide appropriate care to Child because of her substance abuse. The

⁵ On the day on which she was arrested, Mother had “convinced” Grandmother to leave the State for a wedding and to leave Child with her (Mother). Despite the court order, Grandmother left Child in Mother’s care.

court also held that Father was not able to provide appropriate care to Child because of his physical condition and problems related to substance abuse.

On September 18, 2018, the court conducted an adjudication and disposition hearing. At that hearing, Father challenged the August 16, 2018, finding that he was not able to provide appropriate care for Child by testifying that he was “ready, willing, and able” to care for Child. Father claimed that although he cannot walk he is “perfectly capable” of taking care of Child. Father also claimed that “everybody who observe[d] [him] says [he] can take care of [Child]” and that he does not work, so he can give Child his “full time and attention.” Father denied that he took the full dosage of his prescribed medications, and he called his cousin to testify that the accident had saved Father’s life and turned him into a different person.

On the basis of the evidence outlined above, the court sustained the Department’s assertion that Child is a CINA and that his care and custody should remain with the Department. In explaining its decision, the court began by citing Father’s motorcycle accident as a basis to reject his denial that drugs and alcohol played a role in his medical history. The court went on to express concern about Father’s medical diagnoses, which included diagnoses of major depressive disorder, alcohol-use disorder, and cannabis-use disorder, as well as a history of domestic violence. The court expressed additional concerns about Father’s continued use of an extensive variety of prescription drugs and medical marijuana, as well as his unexplained positive test for benzodiazepines. The court also expressed concern about Father’s medical records, particularly those of Dr. Leano, who “cut and pasted conclusions over and over again with each treatment,” but

did not “say anything about what’s really going on with [Father].” While recognizing that Father may experience pain as a result of his injuries, the court had serious questions about whether Father was “abusing his medication.” The court reasoned that if Father was abusing his medication, he could not “fully take care of a two year old child, especially [with] limited mobility.” As a result of the decision, Child remained in the custody of Mother’s parents.

Father appealed, as he is entitled to do under Maryland Code (1974, 2013 Repl. Vol.), § 12-303(3)(x) of the Courts and Judicial Proceedings Article.

STANDARD OF REVIEW

When appellate courts review a CINA finding, “we assess whether the circuit court’s factual findings are clearly erroneous and whether the court applied the correct legal standards.” *In re J.J.*, 231 Md. App. 304, 345 (2016) (citing *In re Shirley B.*, 419 Md. 1, 18 (2011)), *aff’d*, 456 Md. 428 (2017). If the circuit court’s ultimate conclusion was founded upon “sound legal principles and based upon factual findings that are not clearly erroneous, the [circuit court’s] decision should be disturbed only if there has been a clear abuse of discretion.” *Id.* (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). In general, a decision will be reversed for an abuse of discretion only if it is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Id.* (quoting *In re Yve S.*, 373 Md. at 583-84).

DISCUSSION

A child is a CINA if he or she “requires court intervention because: (1) [t]he child has been … neglected … and (2) [t]he child’s parents, guardian, or custodian are unable

or unwilling to give proper care and attention to the child and the child’s needs.” *See* § 3-801(f) of the Courts and Judicial Proceedings Article. “Neglect” includes the “failure to give proper care and attention to a child by any parent . . . under circumstances that indicate . . . (1) [t]hat the child’s health or welfare is harmed or placed at substantial risk of harm[.]” *Id.* § 3-801(s).

Neglect may occur “without actual harm to the child” (*In re Andrew A.*, 149 Md. App. 412, 418 (2003); *accord In re Priscilla B.*, 214 Md. App. 600, 625 (2013)), because the statute states that a “substantial risk of harm” alone support a finding of neglect. *Id.*; *see* § 3-801(s)(1) of the Courts and Judicial Proceedings Article; *accord In re Priscilla B.*, 214 Md. App. at 625. Accordingly, “we need not and will not wait for abuse to occur and a child to suffer concomitant injury before we can find neglect.” *In re Priscilla B.*, 214 Md. App. at 626. ““The purpose of the CINA statute is to protect children—not wait for their injury.”” *Id.* (quoting *In re William B.*, 73 Md. App. 68, 77-78 (1987)).

In this case, the court did not err or abuse its discretion in basing a finding of neglect on Father’s considerable history of alcohol and substance abuse. *See In re Adriana T.*, 208 Md. App. 545, 570 (2012) (stating that “a parent’s past conduct is relevant to a consideration of the parent’s future conduct”); *accord In re Priscilla B.*, 214 Md. App. at 625.⁶ In CINA proceedings, juvenile courts are right to consider the “parents’ history with [the Department] in assessing allegations of domestic violence,

⁶ At page 13 of his brief, Father himself recognizes that his prior conduct “should be considered in the context of the juvenile court’s determination of whether neglect occurred or is likely.”

substance abuse or alcohol abuse . . . and, more to the point, [Father's] credibility in denying them.” *In re Priscilla B.*, 214 Md. App. at 627. “[G]iven the well-known difficulty of overcoming drug addiction, and the likelihood that addiction will persist if untreated, a court can infer that a parent will continue to abuse drugs unless he or she seeks treatment,” *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 722 (2011), which Father has not done.

The court had any number of bases to conclude that Father’s debilitating addictions had put and would continue to put Child at a substantial risk of harm. The evidence suggests that Father continued to abuse drugs and alcohol even after he lost his ability to walk as a result of the motorcycle accident that occurred when he was intoxicated. He has prescriptions for a virtual pharmacopoeia of mind- and mood-altering drugs, including a powerful opioid for relief of pain; yet he claims to use marijuana to alleviate his pain, he has tested positive for another mood-altering drug for which he has no prescription (benzodiazepines), and he prevented his physician from conducting another drug test after he had tested positive for benzodiazepines. He did not follow through with treatment or therapy even when it was offered by a healthcare provider (Legacy Behavioral Health) or ordered by a court. Finally, his medical records afford no reason to infer that he is moving toward sobriety, because Dr. Leano continued to prescribe the same medications over the course of several visits, without any individualized assessment of Father’s condition.

In these circumstances, Father had the burden to produce evidence of his sobriety. See *In re Adoption/Guardianship of Amber R.*, 417 Md. at 722. He did not meet that

burden, because he produced no evidence of sobriety other than his own testimony, which is contradicted by his medical records. The court was not obligated to credit his testimony.⁷

In arguing that the court erred in finding that Child was a CINA, Father contends that the Department had no “hard evidence” of neglect. His argument consists largely of reasons why the court could have reached a different conclusion and complaints about the weight that the court placed on the evidence against him. For example, he cites favorable testimony concerning his ability to care for Child while Child lived with him in Florida. Similarly, he cites the absence of evidence of actual harm or neglect, as opposed to the prospect of harm or neglect. He criticizes the court for allegedly “err[ing] on the side of caution.”

Father, however, does not argue that any of the court’s factual findings are clearly erroneous. Although he takes issue with the legal principles that the court employed when he complains about the court’s abundance of caution, his complaint misses the mark, because the court was entitled to act as it did without a finding of actual harm. *See, e.g., In re Andrew A.*, 149 Md. App. at 418. In applying sound legal principles to factual findings that are not clearly erroneous, the court acted well within the scope of its

⁷ In addition to the evidence of Father’s continued abuse of drugs and alcohol, the record contained other evidence that Father had neglected and would neglect Child’s health and welfare. For example, although the abuse of drugs and alcohol had led to the motorcycle accident that permanently injured him, he allowed Mother to drive Child to an appointment when she was so intoxicated that she appeared to him to be “out of control.” Father thereby placed child at a substantial risk of serious harm – harm like the harm that Father himself had suffered only months earlier. It is a matter of only some mitigation that Father alerted the police after Child had gotten into the car.

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discretion. The court therefore did not err or abuse its discretion in concluding that Child was a CINA. A parent's battle with drug and alcohol addiction entitles him to compassion, but the court correctly concluded that it does not absolve him of his duties to his children. *See In re William B.*, 73 Md. App. at 73.

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