Circuit Court for Washington County
Case No. C-21-FM-24-001498

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 2460

September Term, 2024

ADRIANA MAYELA ARAUZ SALGADO

v.

SOFONIAS POVEDA AGUERO

Ripken,
Kehoe, S.,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: September 4, 2025

Adriana Mayela Arauz Salgado ("Mother"), appellant, and Sofonias Poveda Aguero ("Father"), appellee, citizens of Nicaragua, have two minor daughters, R. and A., who also are citizens of Nicaragua.[1] In September 2022, the family entered the United States and settled in Hagerstown, Maryland. In September 2024, Mother filed a complaint for custody accompanied by a motion for Special Immigrant Juvenile Status ("SIJ" or "SIJS") in the Circuit Court for Washington County, alleging that Father had abandoned and neglected his daughters, thereby rendering reunification not viable and requiring SIJS findings in the best interests of the daughters.

Following a hearing, the circuit court granted Mother sole legal and primary physical custody of the children, with Father's visitation rights at Mother's discretion; entered a child support order against Father; and made some, but not all, the requested SIJS findings. Specifically, the court refused to find that reunification with Father was not viable because of abuse, neglect, or abandonment. The court thereafter denied Mother's motion to alter or amend judgment (filed within 10 days of the original ruling).

[1] At the time the complaint was filed, R. was eleven years old and A. was seventeen years old. When the hearing was held nearly four months later, A. had turned eighteen. Under Maryland Code (1984, 2019 Repl. Vol.), Family Law Article ("FL"), § 1-201(a) and (b)(10), "[a]n equity court has jurisdiction over . . . 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," with "child" defined as "an unmarried individual under the age of 21 years." A. is unmarried.

Mother now appeals and asks that we reverse and remand "with instructions to make the requisite SIJS findings of parental abandonment and neglect, in furtherance of the children's best interests." We shall do so.

BACKGROUND

Mother, Father, and the two minor children at issue, R. and A., are citizens of Nicaragua.[2] A. was born in 2006, and R. was born in 2013. In 2022, the family entered the United States and settled in Maryland, seeking asylum. In February 2024, Father moved to Florida and has had no contact with Mother or the children since then, nor has he provided any financial support to them.

On September 29, 2024, Mother filed a complaint seeking sole legal and physical custody of R. and A. as well as "the necessary factual findings to enable Minors [R. and A.] to petition U.S. Citizenship & Immigration Services (USCIS) for Special Immigrant Juvenile Status (SIJS) pursuant to Section 101(a)(27)(J) of the Immigration & Nationality Act, 8 U.S.C. § 1101(a)(27)(J), 8 C.F.R. § 204.11."

Father was served with the complaint and filed an answer consenting to the relief demanded, but he did not appear at the ensuing hearing, on January 16, 2025, nor was he represented by counsel. Mother, A., and R. testified at the hearing.

Mother testified about her employment history; her daughters' names, parentage, and the dates and places of their birth; and the political strife in Nicaragua that led her to

[2] Mother has a third daughter, M., from a different father. M. was twenty years old at the time of the hearing. Her status is not at issue in this case.

flee to the United States out of fear for the safety of her and her family. Mother further testified that she and Father had separated in February 2024 because "he just wasn't helping [her] with [her] daughters," and she "felt like [she] could handle things better with [her] daughters alone"; that since then, Father has not paid any child support, nor has he participated in any "major decisions about their education or their healthcare"; that he has not visited either R. or A. since February 2024; and that, although Mother believed that, at the time of the hearing, Father still was living in Miami, she could not be certain because she had no contact with him. When asked whether, when she last saw him, Father was "physically and mentally able to work and pay child support if he wanted to," Mother replied, "The thing is that he's older now and he has a lot of illnesses and since I work, I really solved all of my issues." Finally, Mother stated that, if her daughters were to return to Nicaragua, there was no one there who could care for them, and she averred that she was able and willing to care for them here in Maryland.

A. corroborated Mother's testimony about her parentage and the date and place of her birth, as well as the political strife in Nicaragua and her fear while living there. She further testified that she "[does] not have like any contact with" Father; that he does not send any gifts for her birthday or holidays; that he has given her no "money directly for [her] expenses"; and that she does not want to return to Nicaragua.

R. testified through an interpreter and corroborated Mother's testimony about her parentage and the date and place of her birth. She testified briefly about her schooling and career goals, that she was "studying" English, that she felt "safe living here with" A. and Mother, and that she wanted "to continue living here" rather than in Nicaragua. R. further

testified that she "[hasn't] seen" Father, that he does not send any money or gifts for her birthday or holidays, and that she has not seen him since February 2024. R. concluded by declaring that she believed that she would have "a brighter future" in Maryland than in Nicaragua and that here, she could "make [her] dreams come true."

The court found

> that it's in the best interest of [R.] and [A.] to be in the primary physical custody and sole legal custody of their mother and any visitation with their father will be at their mother's discretion and given [A.'s] age at her discretion as well. Not so for [R.] This Court attributes a minimum wage to Sofonias Aguero of $13 an hour 40 hours a week, monthly wages of $2,253.33. Attributes a wage to the plaintiff of $3,293.33 a month. That's $19 an hour.

The court further found:

> Okay, the Court does find the minor child, [R.] is under the age of 21. She is a citizen and national of Nicaragua. The Court finds that [R.] is unmarried. The Court does have jurisdiction over [R.] [R.] is dependent on this Court for placement in the custody of her mother.
>
> The Court does not find that reunification with the biological father is not viable because there has been no allegation of abuse, neglect or abandonment. There's a child support order to be enforced. It is not neglectful behavior under Maryland law, neglect, child neglect is defined as not doing something that places the child at a physical risk. Court finds that it is not in [R.'s] best interest to be returned to her Country of nationality.

There was an apparent mix-up because the court had two copies of a proposed order that applied to R., and none applying to A. The court asked counsel to provide a copy of the proposed order naming A., but admonished counsel, "Please do not include, if you submit one please do not include any facts regarding neglect, abandonment or abuse. There is no evidence of same." The court thereafter entered written orders as to both R. and A.,

in both cases declining to find that reunification with Father is not viable because of abuse, neglect or abandonment.[3]

Within ten days of the hearing, Mother filed a timely motion to alter or amend judgment. The court denied that order, declaring:

> [Mother's] remedy for the alleged "abandonment" is collection of the Child Support ordered by this Court; and the Defendant has not neglected the children under 5-701(r) as the Defendant's behavior has not harmed the children, nor has it placed them at substantial risk of harm, nor has it caused mental injury to the children, nor created a substantial risk of mental injury.

Mother then noted a timely appeal.

DISCUSSION

Standard of Review

Appeals from bench trials are governed by Maryland Rule 8-131(c).[4] We accept the trial court's factual findings unless clearly erroneous. *Id.* We review its legal conclusions, and its application of law to the facts, without deference. *Romero v. Perez*, 463 Md. 182, 196-97 (2019); *Simbaina v. Bunay*, 221 Md. App. 440, 448 (2015).

[3] Mother appears to contend that the circuit court failed to make findings "whether it is in the children's best interest to be returned to Nicaragua." She is incorrect. Both orders expressly state the court's findings that it is in their best interest to remain in the United States.

[4] Maryland Rule 8-131(c) provides:

> **(c) Action Tried Without a Jury.** When an action has been tried without a jury, an appellate court will review the case on both the law and the 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.

Analysis

This appeal concerns an immigration classification known as Special Immigrant Juvenile Status ("SIJS"), which, as the Supreme Court of Maryland has explained:

> protects undocumented immigrant children residing in the United States from being reunified with an abusive parent in the child's home country. *See* Immigration and Nationality Act, 8 U.S.C. § 1101(a)(27)(J). This policy allows such children to become lawful permanent residents of the United States if they satisfy certain eligibility criteria. One criterion requires the child to obtain an order from a state juvenile court that includes certain factual findings about the child's circumstances, including, among others, that "reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, or abandonment" and that "it would not be in the [child's] best interest to be returned to the [child's] or parent's previous country of nationality or country of last habitual residence." 8 U.S.C. § 1101(a)(27)(J)(i)-(ii).

Romero, 463 Md. at 185-86.

"[W]hen a party requests SIJ status findings in his or her pleadings, the circuit court *must* undertake the fact-finding process (hear testimony and receive evidence) and issue 'independent factual findings regarding' the minor's eligibility for SIJ status." *Id.* at 190-91 (quoting *Simbaina*, 221 Md. App. at 458-59). In the instant case, the circuit court made findings regarding the daughters' eligibility for SIJ status but declined to find that Father had neglected, abused, or abandoned them.

The present case is controlled by *Romero*, which instructs us to eschew "a narrow analysis of whether [a parent] was neglectful in a technical sense." 463 Md. at 206. "The ultimate inquiry here, therefore, is whether [Father's] reunification with [R. and A.] is not viable because [Father's] prior conduct constituted neglect under Maryland law." *Id. See In re Dany G.*, 223 Md. App. 707, 720 (2015). Under the standard established in *Romero*,

it is clear that the circuit court erred in declining to find that reunification with Father is not viable.

We begin with the statutory definitions of "abandonment" and "neglect" under Maryland law. "'Abandoned' means left without provision for reasonable and necessary care or supervision." Md. Code (1984, 2019 Repl. Vol.), Family Law Article ("FL"), § 9.5-101(b). "'Neglect' means 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." FL § 5-701(s) (2025 Supp.).[5]

We are unaware of, and Mother does not direct us to, any Maryland authority setting forth a specific or minimum time for a parent's total absence from a child's life to constitute "abandonment." Mother pointed out in her motion to alter or amend judgment that a number of other states generally have said that total absence for six months or even less may suffice to establish abandonment or a presumption of abandonment. We need not adopt any specific criterion in this case. It is sufficient that, here, Father left Mother and his two daughters behind in February 2024, eleven months prior to the hearing, and has

[5] Effective October 1, 2024, FL § 5-701 was amended by the addition of a new subsection (m), which, in turn, led to relabeling subsequent subsections. 2024 Md. Laws, chs. 348, 349. The court's reference to FL § 5-701(r) in its order denying the motion to alter or amend judgment was based upon the prior version of the statute, which is identical to the current, relabeled subsection (s).

had no contact with them since, nor has he provided any financial support whatever. Moreover, at the time of the hearing, the evidence was uncontroverted that Mother (and her daughters) were not even sure where Father lived. On this record, we conclude that Father has abandoned R. and A. We further conclude that, given Father's abandonment of R. and A., reunification with them is not viable. The circuit court erred in refusing to find abandonment and that Father's reunification with them is viable.

For the same reasons, we hold that Father has neglected R. and A. At minimum, both daughters almost surely have experienced mental injury or a substantial risk of mental injury because of his disappearance from their lives, which is sufficient to satisfy the statutory definition. FL § 5-701(s). The circuit court erred in finding to the contrary.

We will not, however, disturb the court's child support award. Simply because Mother did not expressly request child support is not enough to exclude it from the purview of this case, where Mother has alleged that Father abandoned the family and provides no support for R. and A. and has had no contact with any of them since February 2024.[6] Merely by drafting her pleadings to exclude child support as a requested form of relief does not extinguish the daughters' and the State's interest in ensuring that the daughters are provided for. *See In the Matter of the Marriage of Houser*, 490 Md. 592, 606-10 (2025) (holding that because "child support is a right held by, and obligation to, the minor child," parents cannot, by mutual consent, waive the issue of child support).

[6] In any event, in her complaint, Mother prayed that the circuit court "GRANT such other and further relief as the nature of the cause may require." Under the circumstances of this case, that request clearly encompasses an award of child support.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED IN PART AND REVERSED IN PART. CASE REMANDED WITH INSTRUCTIONS TO ENTER FINDINGS THAT REUNIFICATION WITH FATHER IS NOT VIABLE DUE TO ABANDONMENT AND NEGLECT. COSTS DIVIDED EQUALLY BETWEEN THE PARTIES.