Circuit Court for Anne Arundel County
Case No. C-02-FM-17-003630

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2475

September Term, 2017

IN RE GUARDIANSHIP OF A.M. & A.M

Meredith,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: March 19, 2019

G.G., appellant, filed, in the Circuit Court for Anne Arundel County, a petition for guardianship of the person of two juveniles, A.M. and A.M., and for approval of factual findings that would permit both juveniles to apply for special immigrant juvenile ("SIJ") status.[1] Following a hearing, the court denied appellant's petition and made no findings regarding the juveniles' SIJ status. In this appeal, appellant presents two questions for our review, which we have consolidated and rephrased as:

1. Did the circuit court err in denying appellant's petition?

For reasons to follow, we answer that question in the affirmative and reverse the judgment of the court.

BACKGROUND

A.M., born May 19, 1997, and A.M., born November 30, 1998, (collectively the "Children"), are citizens of Peru but since 2016 have resided in Glen Burnie, Maryland, with their father's cousin, appellant. In 2017, appellant filed a petition for guardianship of the Children and for approval of factual findings that would permit the Children to apply for SIJ status, in light of the fact that the Children were "presently in the United States without valid immigration status." According to appellant's petition, the Children's

[1] Federal law permits immigrant children to seek SIJ status in federal court as an alternative to deportation. *Simbaina v. Bunay*, 221 Md. App. 440, 448-49 (2015). Prior to doing so, however, the child must obtain an "SIJ-predicate order" from a State court. *Id.* at 449. In order for the child to be eligible for SIJ status, the predicate order must include, among other things, a finding that the child "has been declared dependent on a juvenile court … or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State of juvenile court[.]" *Id.* at 450 (citing 8 U.S.C. § 1101(a)(27)(J).

mother, whose whereabouts were unknown, had abandoned them several years prior, while the Children's father, who lived in Virginia, was not "in a financial or emotional position to assume care of [the] Children." Attached to appellant's petition were affidavits from the Children and their father, all of whom supported the petition.

At the evidentiary hearing on appellant's petition, counsel for appellant informed the circuit court that appellant was seeking guardianship of the Children because they were "trying to enroll in college" but lacked "legal paperwork" due to their immigration status. Counsel also stated that the Children were living under appellant's care; appellant was supporting the Children financially; and appellant was willing to support the Children's "future educational endeavors." The court then asked counsel about appellant's familial relationship to the Children and their father:

THE COURT: This is the father's sister?

[COUNSEL]: The father's cousin, actually.

THE COURT: The father's cousin.

[COUNSEL]: Yes.

THE COURT: So, she wouldn't be a direct aunt?

[COUNSEL]: No, she would not be a direct relative, Your Honor.

THE COURT: Okay, that is problematic.

[COUNSEL]: I understand, Your Honor.

THE COURT: So, I am going to deny it. I can't grant this based on those facts. Is there anything else you want to tell me?

[COUNSEL]: Your Honor –

THE COURT: The father is here.

[COUNSEL]: Yes, Your Honor, but unfortunately, the –

THE COURT: The father has a legal obligation to support his children. And, of course, they are both over the age of 18 so I am not sure he even has that legal obligation.

[COUNSEL]: I understand, Your Honor.

THE COURT: And you have someone who is not a blood relative, so to speak, that wishes to be guardian of them?

[COUNSEL]: Yes, Your Honor.

THE COURT: Okay. Counsel, I am sorry, I have to deny your request. Thank you.

At that point the hearing concluded. The circuit court later issued a written order denying appellant's petition. In that order, the court did not provide a reason for its decision, nor did the court issue any findings regarding the Children's SIJ status. Appellant thereafter filed a motion for reconsideration, which the court also denied. The court did not provide a reason for that denial or issue any findings regarding the Children's SIJ status. This timely appeal followed.

DISCUSSION

Appellant argues that the circuit court erred in denying her petition for guardianship based on her "not being related enough" to the Children. Appellant maintains that none of the relevant Maryland statutes or rules require that someone in her position have an immediate familial relationship with the proposed ward in order for a petition for guardianship to be approved.

Ordinarily, "the circuit court is granted broad discretion in granting or denying equitable relief[.]" *Simbaina v. Bunay*, 221 Md. App. 440, 448 (2015) (citations and quotations omitted). But, "where an order involves an interpretation and application of Maryland constitutional, statutory or case law, [the appellate court] must determine whether the [circuit] court's conclusions are legally correct under a *de novo* standard of review." *Schisler v. State*, 394 Md. 519, 535 (2006) (internal quotations omitted).

Maryland Rule 10-201(a) states that "[a]n interested person may file a petition requesting a court to appoint a guardian of a minor or alleged disabled person."[2] Although, the Maryland Rules define "guardian" simply as "a natural or legal guardian," *See* Md. Rule 1-202(j), the Rules also provide, "[i]n determining whom to appoint as a guardian, the court shall apply the criteria set forth in Code, Estates and Trusts Article, § 13-707[.]" Md. Rule 10-205.1(b). Under the relevant portions of § 13-707, a person is eligible to serve as a guardian if he is "nominated by the disabled person if the disabled person was 16 years old or older when the disabled person signed the designation and, in the opinion of the court, the disabled person had sufficient mental capacity to make an intelligent choice at the time the disabled person executed the designation[.]" Md. Code, Est. & Trusts

[2] The Maryland Rules define "interested person," in relevant part, as "the minor or the disabled person; the guardian and heirs of that person; a governmental agency paying benefits to that person or a person or agency eligible to serve as guardian of the person under Code, Estates and Trusts Article, § 13-707; … and any other person designated by the court." Maryland Rule 10-103(f)(1). The Estates and Trusts Article of the Maryland Code similarly defines "interested person" as "the guardian, the heirs of the minor or disabled person, any governmental agency paying benefits to the minor or disabled person, or any person or agency eligible to serve as guardian of the disabled person under § 13-707 of this title." Md. Code, Est. & Trusts § 13-101(k).

§ 13-707(a)(1). The statute also states that a person is eligible to serve as guardian if he is "nominated by a person caring for the disabled person" or is "considered appropriate by the court[.]" Md. Code, Est. & Trusts § 13-707(a)(8) and (9).

Moreover, Section 13-702 of the Estates and Trusts Article of the Maryland Code states that "[i]f neither parent is serving as guardian of the person and no testamentary appointment has been made, on petition by any person interested in the welfare of the minor, and after notice and hearing, the court may appoint a guardian of the person of an unmarried minor." Md. Code, Est. & Trusts § 13-702(a)(1). The statute further states that, "[i]f the minor has attained his 14th birthday, and if the person otherwise is qualified, the court shall appoint a person designated by the minor, unless the decision is not in the best interests of the minor." Md. Code, Est. & Trusts § 13-702(a)(2). Under that statutory scheme, "guardian" is defined as "a person appointed by a court under Subtitle 7 of this title, according to the context in which it is used." Md. Code, Est. & Trusts § 13-101(i).

In discussing § 13-702, the Court of Appeals has noted that the statute "is very general, and specifically deals with only a few matters in connection with the appointment of a guardian of the person of a minor." *In re Adoption/Guardianship No. 10935*, 342 Md. 615, 624 (1996). The Court has further noted that the legislature, in enacting § 13-702, "intended that circuit courts would exercise their inherent equitable jurisdiction over guardianship matters pertaining to minors, adopting standards with respect thereto as would be consistent with and in furtherance of the incompetent ward's best interests." *Wentzel v. Montgomery General Hosp., Inc.*, 293 Md. 685, 701 (1982); *see also Id*. at 702

("It is a fundamental common law concept that the jurisdiction of courts of equity over [minors] is plenary so as to afford whatever relief may be necessary to protect the individual's best interests.").

Against that backdrop, we hold the circuit court erred in denying appellant's petition. The only discernible reason given by the court in denying the petition was that appellant was not a "blood relative" of the Children. That reasoning, however, is not supported by the Maryland Rules or statutes, as nothing in those Rules or statutes indicates that a person must be a blood relative of the minor in order to be that minor's guardian. To the contrary, the relevant rules and statutes expressly recognize appellant as a proper guardian, given that she had been nominated by the Children and their father and had, since 2016, assumed responsibility of the Children. Under those facts, we conclude that the court erred both as a matter of law and in the exercise of its discretion in denying appellant's petition.

To be sure, the circuit court, prior to denying appellant's petition, also stated that the Children's father had "a legal obligation to support his children," and that reasoning, if considered as a basis for the court's decision, is supported by statute. *See* Md. Code, Family Law § 5-203(a) and (b) (stating that parents are the natural guardians of their minor children and are jointly and severally responsibility for the children's care). Nevertheless, that statute "does not affect any law that relates to the appointment of a third person as guardian of the person of a minor child because: (1) the child's parents are unsuitable; or (2) the child's interest would be affected adversely if the child remains under the natural

guardianship of either of the child's parents." Md. Code, Family Law § 5-201. Thus, even if the court denied the petition on those grounds, which does not appear to be the case, the court still had the power to appoint appellant as guardian if the Children's parents were unsuitable or if the Children's interests would be affected adversely by remaining under their parents' natural guardianship. Under the facts of the instant case, both of those exceptions are applicable and provided justification for the granting of appellant's petition.

The circuit court, in denying appellant's petition, also indicated that it was "not sure" if the Children's father even had a legal obligation to support the Children because they were "both over the age of 18." Although it does not appear that the court relied on the Children's age as a basis for its denial of appellant's petition, we think it prudent to note that a "minor" includes an unmarried individual under the age of 21 for whom guardianship is being sought pursuant to a motion for SIJ factual findings. Md. Rule 10-103(g); Md. Code, Fam. Law § 1-201(b)(10). Under the facts of the present case, therefore, both Children were "minors."

In sum, we hold that the circuit court erred in denying appellant's petition for guardianship. We reverse the court's judgment and remand the case to that court for further proceedings consistent with this opinion. In so doing, we remind the court that one of the Children, who was born May 19, 1997, has already lost the ability to apply for SIJ status due to her having turned 21-years-old and that the other Child, born November 30, 1998, faces that same deadline in the coming months. As such, all proceedings subsequent to this Court's mandate should be undertaken "with haste." *In re Perez*, 462 Md. 275 (2019).

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY REVERSED; CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY ANNE ARUNDEL COUNTY.