

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1842

September Term, 2014

IN RE: JULIEANA G. D.

Woodward,
Kehoe,
Arthur

JJ.

Opinion by Woodward, J.

Filed: May 7, 2015

*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 September 24, 2014, following a hearing in the Circuit Court for Montgomery County, Julieana G.D. (“Julieana”), the child of Diana G. (“Mother”) and Dion D. (“Father”) was found to be a child in need of assistance (“CINA”).¹ The court placed Julieana in the care and custody of Mother under an Order of Protective Supervision (“OPS”), which included certain specific conditions to be supervised by the court and the Montgomery County Department of Health and Human Services (“the Department”). Mother filed a timely appeal of the court’s CINA finding and presents a single question for review: “Did the trial court err in determining that Julieana was a CINA?”² Finding no error, or abuse of discretion, we affirm the judgment of the circuit court.

BACKGROUND

On March 22, 2014, Mother went to work and left Julieana, who was two months old at the time, alone with Father for the first time. According to Father, Julieana began having what he described as seizures, so he placed her under cold running water for 15-20 minutes.

¹ As defined in Md Code (2006, 2013 Repl. Vol., 2014 Cum Supp.), Courts and Judicial Proceedings Article (“CJP”), § 3-801(f) provides:

(f) *Child in need of assistance*. — “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.

² Father is not a party to this appeal.

When Father eventually called 911, he told the operator that he thought he had cocaine seeping out of his pores and that the cocaine was transferred from his skin to Julieana when he used a wet wipe to wipe Julieana.³ Thereafter, Julieana “was taken by EMTs to Shady Grove emergency room, where she was warmed.” According to the EMT notes, Julieana’s nostrils were flared and her lips were blue, which were indications of vessel constriction. After at least 30 minutes of warming, Julieana’s body temperature was still only 86 degrees Fahrenheit, which is considered very cold for infants.

As a result of this incident, the Department “received a report that two-month-old Julieana had suffered from hypothermia as a result of being held under some cold water by her father.” Tara Huber, the social worker assigned to the case, met with Mother, Julieana, and the hospital staff. Huber also established a safety plan with Mother. Pursuant to the safety plan, Mother agreed to not allow Father to supervise Julieana until after he was interviewed by the Department. Mother also agreed to follow all treatment recommendations made by the hospital staff and Julieana’s pediatrician.

When Julieana was discharged from the hospital, the Department referred Julieana to an Infants and Toddlers program and referred Mother to therapy. Huber testified that, to the

³ Father admitted that he used cocaine, marijuana, and alcohol the night before he watched Julieana, and Mother admitted that she knew Father was still using drugs when she asked him to watch Julieana.

best of her knowledge, Mother complied with not allowing Father to supervise Julieana, but was concerned that Mother missed several of Julieana’s scheduled appointments. After receiving information about Mother’s mental health and substance abuse history, the Department also required Mother to schedule an appointment with a psychiatrist and follow all treatment recommendations.⁴ Mother, however, did not contact family services by the agreed date of March 28, 2014, to schedule an appointment.

Huber discussed the severity of the hypothermia incident with Mother and explained that Julieana “would have had to have been under the water for a long enough period of time, fifteen, twenty minutes, to have her body temperature drop that low.” Huber was concerned that after discussing the severity of the situation, Mother “continually said, she didn’t necessarily think that [Father] had done anything wrong, and she may have . . . acted in the same way.” As a result, Huber was afraid that, if Julieana had an episode of seizures in the future, “she might be held under the water again.” Huber was also concerned that Mother left Julieana in Father’s care knowing that he was using drugs. Overall, “one of the main

⁴ Mother disclosed that she had been diagnosed with bipolar disorder and had a history of substance abuse. According to Mother, the last time that she used marijuana was in December of 2013, when she was still pregnant with Julieana, who was born on February 2, 2014. Mother also disclosed that she gave custody of her son, who was four years old at the time of the incident, to her aunt in Virginia. Mother explained that she was unable to take care of her son because of her homelessness, hospitalizations, and criminal charges.

concerns [the Department] had throughout the investigation was [Mother's] judgment and decision making skills.”

On May 8, 2014, Mother's case was transferred from the assessment unit to the ongoing consolidated services unit. The case was transferred because the assessment unit indicated that Julieana had been neglected and that there were several high-risk factors involved with Julieana's ongoing care under Mother's supervision. The risk factors included the criminal history of both parents, a history of violence by both parents, and a history of instability resulting from being in and out of jail and from being homeless. Specifically as to Mother, the assessment team reported concerns about Mother's judgment, her limited capacity to make appropriate decisions, her inability to maintain compliance with services, and the lack of family support available to Mother and Julieana.

Susannah Wybenga, the consolidated services social worker, was assigned to follow up with the recommendations and referrals made in the initial assessment. Wybenga explained that Julieana was supposed to be evaluated by the Infants and Toddlers program, but after three missed appointments, her case was closed due to non-compliance. Mother missed several other appointments, some of which were rescheduled with the Department's assistance. After Wybenga was assigned to the case, Mother did not attend any mental health treatment appointments until she was court-ordered to do so after the shelter hearing.

The incident that led to the shelter hearing occurred on July 22, 2014 when Mother's landlord asked her to leave the premises. Mother left and had nowhere else to go. Mother informed Wybenga of her situation, but refused to give Wybenga the names of any friends or family that she could stay with and would not disclose her location to Wybenga. At that point, Wybenga believed that Mother was very unstable, so she told Mother to go to the Crisis Center. Mother went to the Crisis Center, but the Crisis Center did not have available accommodations, so instead, she spent the next two nights with Julieana sleeping on a bench on Shady Grove Road.

As a result of Mother's instability and homelessness, the Department filed a shelter care request. At the shelter care hearing, Mother told the court that she planned to go to a paternal cousin's house in Washington, D.C. The court, therefore, denied the shelter request, but imposed an order of protective supervision ("OPS"), with certain specific conditions.

Between the shelter hearing and the CINA hearing less than two months later, Mother lived at four different addresses and was unable to obtain a permanent place to live. At the time of the CINA hearing, Mother was living at the Comfort Inn, which was paid for by Housing Stabilization Services through September 18, 2014. Wybenga explained that, if Mother did not comply with the program requirements, she would lose her spot in the program and would not be offered another chance.

Wybenga testified that Mother was significantly more compliant with the Department since the OPS, but also explained that Mother said that she was not going to do anything unless it was court ordered. Mother also stated that she did not need or want the Department's services, that she was not taking any medication for her mental health issues, and that she did not plan to take any medication in the future. As a result, Wybenga was concerned that Mother would not comply with the housing program's requirements unless she was ordered to do so by the court.⁵ Wybenga ultimately opined that Julieana needed to be with Mother, but that Mother needed a lot of court-ordered services to maintain Julieana's safety.

In closing, the Department argued that the case all boiled down to Mother's bad judgment and that the court must look at the totality of the circumstances. The Department acknowledged that Mother was not the person who neglected Julieana, but argued that Mother needed services in place to maintain Julieana's safety. The child's attorney agreed with the Department and argued that Mother exhibited poor judgment in leaving Julieana alone with Father, a known drug user, in missing appointments for herself and Julieana, and in having unstable living conditions.

⁵ Doctor Evelyn Shukat also testified that Mother was open to mental health services, but that she would not go to the appointments on her own accord.

Mother's attorney, however, asked the court to find that Julieana was not a CINA. In support, Mother's attorney argued that the Mother did not neglect Julieana, that Julieana was developmentally on target, and that Mother was bonded with her daughter. She contended that the Department's involvement was unnecessary and also a burden because Mother did not have transportation. Finally, Mother's attorney argued that the court should not speculate about the need for future services, but should only consider whether there is a current threat of actual harm. Father conceded that he was not in a position to provide care for Julieana, but argued that Julieana should not be adjudicated CINA because the Department had not proved that Mother was unwilling or unable to care for the child.

The court sustained the majority of the facts in the Department's first amended petition. After sustaining the facts, the court considered whether, looking at the totality of the circumstances, there was a present and/or ongoing risk of harm to Julieana. As to Mother, the court considered her mental health, criminal history, history of homelessness, history of psychiatric hospitalizations, past drug use, past diagnosis of bipolar disorder, and her current diagnoses of depression and anxiety. The court explained that the overarching concerns were Mother's poor judgment and Mother's unwillingness to participate in services through the Department unless they were court ordered. The court determined that Mother's lack of judgment and decision making skills affected Julieana's well-being and put Julieana at future risk.

Ultimately, the court determined that Julieana was a CINA based on its findings, under the first prong of the statute, that Julieana had been both abused and neglected by Father, and, under the second prong, that neither of the parents were able to care for Julieana without the Department's assistance. Thereafter, the court placed Julieana in Mother's custody pursuant to an OPS, which included twelve court-ordered conditions for Mother. Mother filed a timely appeal of this decision.

DISCUSSION

Mother argues that the trial court abused its discretion in finding that Julieana was a CINA because the court's decision was based on the "conclusion that she and her mother would benefit from services and not based on a reasonable finding that she would suffer harm without the court's intervention." Mother contends further that "the court's conclusion that the mother failed to protect Julieana by leaving the baby with her father was based on a clearly erroneous factual finding."

The Department and the child's attorney respond that the court properly exercised its discretion in determining that Julieana was a CINA because Mother's actions placed Julieana at substantial risk of harm. Both parties also point out that Mother did not challenge or dispute any of the trial court's findings of fact.

In CINA proceedings,

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). “CINA cases ‘are very often fact-intensive[,]’” which is why “‘trial courts are endowed with great discretion in making decisions concerning the best interest of the child.’” *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 713 (2011) (citations omitted).

“When a child suffers abuse or neglect . . . and lacks a caretaker to give proper attention to his or her needs, a local department of social services may petition the juvenile court for a determination that the child is a CINA.” *Ashley S.*, 431 Md. at 685. “Upon receipt of a petition, the court is required to hold an adjudicatory hearing to determine whether the department’s factual allegations are true.” *Id.* “If the court finds that the allegations are accurate, a disposition hearing is held to determine whether the child is, in fact, a CINA, and, if so, what intervention is necessary to protect the child’s health, safety, and well-being.” *Id.* If the court finds that the child is a CINA, the court must determine the appropriate placement and what is in the child’s best interest. *See id.* at 685-86.

Here, after sustaining the majority of the Department’s factual allegations, the court then proceeded to the disposition stage to determine whether Julieana was a CINA. In making this determination, the court first had to determine whether Julieana was abused and/or neglected and if she was, whether her parents were unwilling or unable to properly care for her.

The circuit court found, based on the March 22, 2014 incident, that Julieana was abused⁶ and neglected⁷ by Father. Even though Mother was not home at the time of the incident and, arguably, was not involved, Father’s conduct, alone, was sufficient for the court to determine that Julieana was both abused and neglected. Neither statute requires both

⁶ Abuse is defined, in relevant part, as:

(2) Physical ... injury of a child under circumstances that indicate that the child’s health or welfare is harmed or is at substantial risk of being harmed by:

(i) A parent or other individual who has permanent or temporary care or custody or responsibility for supervision of the child[.]

CJP § 3-801(b).

⁷ Neglect is defined, in relevant part, as:

(s) *Neglect*. — “Neglect” means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or individual 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[.]

CJP § 3-801(s).

parents to commit abuse and/or neglect, but rather, only requires that the child was abused and/or neglected by a parent or other individual who has permanent or temporary care or custody or responsibility for supervision of the child.

The circuit court then considered the second prong of the test and determined that Father was unable to care for Julieana. As to Mother, the court noted: “I don’t think I heard anybody say that she’s unwilling to care for the child, but [rather] unable.” In determining whether Mother was able to properly care for Julieana, the court looked at the totality of Mother’s behavior and noted that none of the factors were dispositive in and of themselves. The court expressed concern regarding Mother’s reluctance and unwillingness to participate with the Department. The court noted that many of Mother’s actions were lapses in judgment and that Mother’s judgment directly impacted the well-being of her child and placed her child at risk of harm. All of the above-mentioned facts ultimately led the court to conclude, by a preponderance of the evidence, that Julieana was a CINA.

On appeal, we review the trial court’s factual findings for clear error and the court’s ultimate decision under the abuse of discretion standard. *See Ashley S.*, 431 Md. at 704. The court’s finding of facts are well supported by the record, and therefore, are not clearly erroneous. Mother argues that Julieana was well cared for and that she was never harmed while she was in Mother’s care. Mother, however, fails to recognize that her pattern of poor judgment placed Julieana at risk. Mother continued to demonstrate several unresolved high-

risk factors that the Department felt could have a negative impact on Julieana’s care. On July 11, 2014, Mother told Wybenga that she was putting all of her things in storage, but claimed that she was not homeless. Shortly thereafter, on July 22 and 23, 2014, Mother slept outside with six-month-old Julieana sleeping on her chest on a bench on Shady Grove Road. When Wybenga attempted to explore potential resources with her, Mother became “very defensive and hostile.” Mother also failed to recognize the life-threatening risk of the cold-water immersion incident by saying that she didn’t necessarily think that [Father] had done anything wrong, and she may have . . . acted in the same way.” Mother continued to demonstrate inappropriate attention to Julieana’s well-being by failing to schedule necessary medical appointments for her and was unable to articulate the steps she would take if Julieana was once again in need of emergency medical help. When the Department attempted to communicate with Mother about the possibility of engaging in services that could help keep Julieana safe, she was very disorganized, unfocused, hostile and even aggressive. Most importantly, Mother stated multiple times that she would only participate in services and attend medical appointments if they were court-ordered. As discussed above, Mother risked losing her housing if she did not comply with the housing program’s requirements. Accordingly, there was substantial evidence presented that demonstrated the need for the Department’s continued involvement. As this Court has previously explained, “The purpose of [the CINA statute] is to protect children – not wait for their injury.” *In re Priscilla B.*, 214

Md. App. at 626 (quoting *In re William B.*, 73 Md. App. 68, 77-78 (1987) (alteration in original)).

Under the circumstances and in considering the totality of Mother’s behavior, actions, history, and what is in the best interests of the child, the trial court did not err or abuse its discretion in determining that Mother was unable to give proper care and attention to Julieana and her needs. Accordingly, the court properly found, by a preponderance of the evidence, that Julieana was a CINA. See *In re Priscilla B.*, 214 Md. App. at 621 (stating that a court “must find the child a CINA by a preponderance of the evidence”).

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