

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0349

September Term, 2016

IN RE: S.J.

Krauser, C.J.,
Friedman,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: December 7, 2016

*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.

The Circuit Court for Montgomery County, sitting as the juvenile court, determined that “S.J.” was a Child in Need of Assistance (“CINA”). S.J. is appellant’s daughter. The court made its CINA determination based on a finding of neglect. The court ordered care and custody of S.J. to the Montgomery County Department of Health and Human Services (the “Department”) and placed S.J. in therapeutic foster care. In this appeal, appellant presents the following questions for our review:

1. Did the juvenile court err in refusing to suspend the disposition to allow for an assessment of the child’s and the mother’s eligibility for a voluntary placement agreement?
2. Did the juvenile court err in refusing to find that the child had a developmental disability, instead finding that the child had been neglected?

For reasons to follow, we answer both questions in the negative and affirm the judgment of the circuit court.

I.

BACKGROUND¹

S.J. was born on July 24, 2015 at approximately 24 weeks’ gestation. She weighed less than one pound at birth. S.J. remained at Holy Cross Hospital’s Neonatal Intensive Care Unit for three months after her birth due to a host of health problems, including but not limited to respiratory distress syndrome, sepsis, feeding problems, and left pulmonary artery branch stenosis. S.J. was discharged into appellant’s care on October 21, 2015,

¹ The facts set forth in Part I of this opinion are based upon matters set forth in the Department’s emergency CINA petition (filed February 25, 2016). Appellant stipulated to all facts set forth in that CINA petition.

weighing approximately four and one-half pounds. At that point, S.J. had an active diagnosis of prematurity, chronic lung disease, bradycardia of prematurity, and anemia of prematurity. S.J.'s pediatrician also diagnosed her as suffering from a "developmental disability" that was "likely to continue indefinitely" and would require "a combination and sequence of special treatment and services[.]"

Approximately five days after her discharge, S.J. was readmitted to the hospital after losing weight and passing pink urine. At the time of her re-admission, S.J. required oxygen and cardiorespiratory monitoring. In addition, the hospital staff expressed concerns regarding appellant's "functioning and her ability to follow through with a plan." The Department also noted that "there was difficulty having [appellant] and her family come in to obtain post[-]care training."

S.J. was discharged to appellant's care on December 7, 2015, having gained a significant amount of weight and no longer needing oxygen or cardiorespiratory monitoring. Post-discharge, three appointments were scheduled with various health-care providers, and appellant was told to consult the Kennedy Krieger Institute regarding S.J.'s developmental delays. Appellant subsequently took S.J. to only one of her three scheduled medical appointments, and appellant failed to schedule a developmental assessment with the Kennedy Krieger Institute.

Approximately two weeks after her December 7, 2015 discharge, S.J. was admitted to Children's National Medical Center ("Children's") due to insufficient weight gain and too few bowel movements. At this time, the hospital "had concerns that the mother may

not have been feeding [S.J.] regularly[.]” S.J. was discharged from Children’s several days later with instructions on feeding.

A few weeks later, S.J. was again hospitalized, this time for “seizure activity.” Upon admission, “the nutritionist discovered that the mother had been incorrectly mixing [S.J.’s] formula[.]” S.J. was prescribed anti-seizure medication, and two follow-up appointments were scheduled. Appellant did not bring S.J. to either appointment. Also, after January 13, 2016, appellant failed to bring S.J. to multiple appointments that were scheduled with various health-care and other service providers. Moreover, after these appointments were broken, appellant failed to reschedule those appointments.

On February 24, 2016, the Department conducted an in-home visit at which the Department discovered that appellant had left S.J. in the care of her (appellant’s) mother, who had never been trained in the proper care of S.J.² As the Department was in the process of removing S.J. from the home, appellant returned, and refused to provide the Department with S.J.’s medication and medical card. The Department filed an emergency CINA petition on February 25, 2016 and requested that S.J. be removed from appellant’s home.

II.

Up to the point when the CINA petition was filed, the Department had provided extensive services to appellant to assist her in the basic care of S.J. These services included monitoring appointments and assisting appellant in scheduling appointments,

² Appellant as a child was in the custody of her mother until appellant, herself, had been declared a CINA.

providing transportation to and from service providers and medical appointments, and providing supplies, such as diapers, wipes and clothing. The Department also assisted appellant in utilizing her health insurance, and helped her fill out transportation assistance forms.

Following a February 25, 2016 hearing on the Department's emergency CINA petition, the juvenile court granted the petition and found that returning S.J. to the care of appellant would be contrary to S.J.'s welfare. The court granted limited guardianship of S.J. to the Department and scheduled a one-day adjudicatory hearing. At an adjudicatory hearing held on April 7, 2016, appellant waived her right to trial and stipulated to the facts as alleged in the Department's emergency CINA petition, which have been summarized in Part I.

After appellant's stipulation, the Department asked the court to move forward with the disposition hearing. Appellant's counsel opposed such action, arguing that, because S.J. had been found to have a developmental disability, the court was required to hold in abeyance a CINA finding and order the Department to assess S.J.'s eligibility for voluntary placement. In response, the Department argued that such action was only required if the court found that S.J. was a CINA because of her developmental disability, not if it found that she was a CINA because of neglect, which is what the Department was alleging.

The court then heard arguments from both sides as to whether a finding of neglect was appropriate based on the facts established at the adjudication hearing. The court ultimately sustained the allegation of neglect stating:

Obviously this is a difficult case for the Court because I see a young mother who wants to take care of her child but doesn't have the ability to do it at this point based upon perhaps her own limitations, based upon the fact that there's a lot of care required for this child that would be difficult for anybody.

But at the same time in looking at the legal definition of neglect[,] leaving a child unattended[,] or other failure to give proper care and attention to a child by any parent or individual such that the child's health or welfare is harmed or placed at substantial risk of harm.

Nowhere in that legal definition [of neglect] is the Court to consider parental limitations or anything of that nature. It is just whether...the parent responsible for the care of the child has failed to give proper attention to a child...such that the child's health or welfare is harmed or placed at substantial risk of harm.

Because of the fragility of [S.J.] missing appointments did and does place her at substantial risk of harm. Not following up with the Retina Center after she's had laser surgery on her eyes. Not following up with the gastroenterologists and the cardiologists and...Kennedy-Krieger, all those things risk, placed [S.J.] at risk of substantial harm and placed her at risk of not developing further.

Additionally, the Court considers...the doctors at Children's [Hospital] were concerned that [S.J.] wasn't being fed regularly and they had to go back around and re-talk to [appellant] about how to feed her properly and that [S.J. failed] to thrive as a result of that. She basically hadn't gained any weight since her discharge.

And I realize that all of this has taken place in a very short amount of time in [S.J.'s] life but when the child has these types of disabilities and health concerns that they really need to be followed on a daily basis.

The Court can't ignore the fact that the way the Department became involved in this case wasn't by [appellant] reaching out and saying hey, I really need some help. It was by [S.J.] being readmitted to the hospital and not gaining weight and not thriving in the way that she should have been, at least according to the medical folks.

So I do think that the first amended petition makes out a case by a preponderance of the evidence that there has been neglect of [S.J.] so I will sustain it based on that.

After the court made the above findings, appellant's counsel again requested that the court hold disposition in abeyance and order the Department to evaluate the propriety of a voluntary placement. The juvenile court denied the motion, stating that it needed "to move forward with the disposition" and that "the time for considering the voluntary placement has passed[.]" Immediately thereafter, as mentioned earlier, the court determined S.J. to be a CINA based upon neglect and ordered limited guardianship to the Department.

III.

DISCUSSION

Appellant first argues that the juvenile court erred in refusing to hold in abeyance S.J.'s disposition hearing. Appellant maintains that when a child who is the subject of a CINA petition is found to have a developmental disability, Maryland law requires the court to suspend disposition so that the Department can assess the child's eligibility for placement in accordance with a voluntary placement agreement. Appellant avers that the juvenile court overlooked this requirement despite having found that S.J. had a developmental disability. The validity, *vel non*, of appellant's argument is controlled by Md. Code, Courts and Judicial Proceedings Article (Cts. & Jud. Proc.), § 3-819, which reads in relevant part:

Disposition hearing.

(a) *In general.* – (1) Unless a CINA petition under this subtitle is dismissed, the court shall hold a separate disposition hearing after an adjudicatory hearing to determine whether the child is a CINA.

(2) The disposition hearing shall be held on the same day as the adjudicatory hearing unless on its own motion or motion of a party, the court finds that there is good cause to delay the disposition hearing to a later day.

(3) If the court delays a disposition hearing, it shall be held no later than 30 days after the conclusion of the adjudicatory hearing unless good cause is shown.

(b) *Dispositions on petition.* – (1) In making a disposition on a CINA petition under this subtitle, the court shall:

(i) Find that the child is not in need of assistance and, except as provided in subsection (e) of this section, dismiss the case;

(ii) Hold in abeyance a finding on whether a child with a developmental disability or a mental illness is a child in need of assistance and:

1. Order the local department to assess or reassess the family's and child's eligibility for placement of the child in accordance with a voluntary placement agreement under § 5-525(b)(1)(i) of the Family Law Article;

2. Order the local department to report back to the court in writing within 30 days unless the court extends the time period for good cause shown;

3. If the local department does not find the child eligible for placement in accordance with a voluntary placement agreement, hold a hearing to determine whether the family and child are eligible for placement of the child in accordance with a voluntary placement agreement; and

4. After the hearing:

A. Find that the child is not in need of assistance and order the local department to offer to place the child in accordance with a voluntary placement agreement under § 5-525(b)(1)(i) of the Family Law Article;

B. Find that the child is in need of assistance; or

C. Dismiss the case; or

(iii) Subject to paragraph (2) of this subsection, find that the child is in need of assistance and:

1. Not change the child's custody status; or

2. Commit the child on terms the court considers appropriate to the custody of:

A. A parent;

B. Subject to § 3-819.2 of this subtitle, a relative, or other individual; or

C. A local department, the Department of Health and Mental Hygiene, or both, including designation of the type of facility where the child is to be placed.

(Emphasis added.)

As can be seen, under Cts. & Jud. Proc. § 3-819(a)(1), after a CINA petition has been filed and an adjudicatory hearing held, a court is required to hold a separate disposition hearing to determine whether the child is a CINA. Moreover, the disposition hearing must be held on the same day as the adjudicatory hearing “unless on its own motion or motion of a party, the court finds that there is good cause to delay the disposition hearing to a later day.” In making a disposition, the juvenile court must do one of the following: 1) find that the child is not a CINA; 2) hold in abeyance a finding as to whether a child with a developmental disability or a mental illness is a CINA; or 3) find that the child is a CINA. If the court finds that a child is a CINA, the circuit court is specifically allowed to grant custody of the child, on terms the court considers appropriate, to the custody of a local department. *See* Cts. & Jud. Proc. § 3-819(b)(iii)2C.

A child is considered a CINA if the child’s parent or guardian is unable or unwilling to properly care for the child and the child “has been abused, has been neglected, has a developmental disability, or has a mental disorder[.]” Cts. & Jud. Proc. § 3-801(f). The juvenile court in the present case properly fulfilled its duties under the above statutes. The court held the adjudicatory and the disposition hearings on the same day after finding no good cause to delay the proceedings. The court then determined that S.J. was a CINA because she had been neglected by appellant who was presently unable to give proper care and attention to S.J.’s needs.

As mentioned, appellant contends that the circuit court overlooked its responsibilities under Cts. & Jud. Proc. § 3-819(b)(ii). Appellant misunderstands the statute. Section 3-819 does not provide that a court must necessarily delay disposition if

a child is found to have a developmental disability. Rather, the statute requires that a court either determine whether a child is a CINA or hold in abeyance such a finding to assess whether a child with a developmental disability is eligible for placement under a voluntary placement agreement. But the court, by the plain meaning of the word of the statute, had other options. The court, in this case, properly exercised one of the alternative options allowed by Cts. & Jud. Proc. § 3-819(b)(iii)2C.

IV.

Appellant next argues: “The juvenile court erred in refusing to find that . . . S.J. had a developmental disability, instead finding that S.J. had been neglected, thus preventing the child and mother from being assessed for a voluntary placement.” The wording of the argument is, at least potentially, confusing. In this case, the court sustained all the allegations in the Department’s emergency CINA petition. One of those allegations was that S.J. was developmentally disabled. The court could have found, if it wished to do so, that S.J. was a CINA for that reason alone. But the court did not, as appellant’s argument suggests, refuse to find that S.J. had a developmental disability. The fact that S.J. has a developmental disability was recognized by the court and was undisputed. What the court declined to do was find that S.J. was a CINA because she was developmentally disabled. Instead, the court found that S.J. was a CINA due to neglect.

Appellate review of a juvenile court’s decision regarding child custody involves three interrelated standards. First, any factual findings made by the juvenile court are reviewed for clear error. *In re Yve S.*, 373 Md. 551, 586 (2003). Second, any legal conclusions made by the juvenile court are reviewed *de novo*. *Id.* “Finally, when the

appellate court views the ultimate conclusion of the [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.” *Davis v. Davis*, 280 Md. 119, 126 (1977).

The juvenile court's finding of neglect was not clearly erroneous. “‘Neglect’ means the leaving of a child unattended or other failure to give proper care and attention to a child...under circumstances that indicate: 1) that the child's health or welfare is harmed or placed at substantial risk of harm; or 2) that the child has suffered mental injury or been placed at substantial risk of mental injury.” Cts. & Jud. Proc. § 3-801(s). “In determining whether a child has been neglected, a court may and must look at the totality of the circumstances[.]” *In re Priscilla B.*, 214 Md. App. 600, 621 (2013). As this Court explained:

It makes sense to think of “neglect” as part of an overarching pattern of conduct. Although neglect might not involve *affirmative* conduct (as physical abuse does, for example), the court assesses neglect by assessing the *inaction* of a parent over time. To the extent that inaction repeats itself, courts can appropriately view that pattern of omission as a predictor of future behavior, active or passive: “[it] has long been established that a parent's past conduct is relevant to a consideration of the parent's future conduct. Reliance upon past behavior as a basis for ascertaining the parent's present and future actions directly serves the purpose of the CINA statute.” Differently put, “[c]ourts should be most reluctant to ‘gamble’ with an infant's future; there is no way to judge the future conduct of an adult excepting by his or her conduct in the past.”

Id. at 625-26 (internal citations omitted) (emphasis in original).

Appellant contends that the court abused its discretion in finding S.J. a CINA due to neglect on her part. According to appellant, the allegations of neglect against her “all

stemmed from the mother's lack of resources, including lack of stable housing, lack of transportation, lack of funds, and lack of organizational supports for child care and medical appointments." We disagree. The root cause of appellant's inability to care for S.J. was not poverty or lack of housing. Instead, the cause was appellant's inability or unwillingness to properly feed the child or to take the child to the many doctor's visits that were required – even though the Department went to great effort to help appellant with her transportation needs. As mentioned earlier, S.J. was hospitalized three times over a three-month period for a variety of medical issues, including insufficient weight gain and seizure activity. Each time, hospital staff found that appellant either was incapable of attending to S.J.'s needs or had been feeding S.J. incorrectly. On two occasions, S.J. showed significant improvement while hospitalized, only to regress while in appellant's care and, as a consequence, needed re-hospitalization. On one occasion, appellant left S.J. in the care of appellant's mother, who was not an "approved caregiver" due to her lack of training. Moreover, and despite S.J.'s serious medical and developmental issues, appellant failed on multiple occasions, and without any good explanation, to schedule and/or attend appointments for medical care and other necessary services for S.J. This failure on the part of appellant was not for a lack of effort on the part of the Department, which offered appellant "extensive" services, including transportation, scheduling assistance, and training in the proper care of S.J.

In summary, appellant demonstrated a general disregard for the proper care and overall wellbeing of S.J., which posed a substantial risk to S.J.'s health and developmental

needs. Accordingly, we hold that the court did not abuse its discretion in determining S.J. to be a CINA due to appellant's neglect.

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