UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1432

September Term, 2015

IN RE: BRIANNA L.

Woodward,
Arthur,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: April 4, 2016

On January 7, 2015, Brianna L., the minor child, was found to be a Child in Need of Assistance ("CINA") by the Circuit Court for Cecil County, sitting as a juvenile court. Although James L., appellant, signed an Affidavit of Parentage at the time of Brianna's birth in August of 2014, he admitted to Child Protective Services ("CPS") that he was not Brianna's biological father. On July 1, 2015, at the six-month CINA review hearing, the court ordered appellant to submit to a paternity test. Appellant responded by filing on July 7, 2015, a Motion for Appropriate Relief and Stay of Paternity Test, arguing that he "should not be forced to take a paternity test against my will." After the court denied his motion, appellant noted an appeal to this Court on August 28, 2015.

On appeal, appellant presents two questions for our review, which we have rephrased:

1. Did the court have authority to order a paternity test?
2. Did the court abuse its discretion by ordering a paternity test?[1]

We do not reach appellant's questions, because, as discussed below, the instant appeal is taken from a non-appealable interlocutory order and thus must be dismissed.

[1] The questions presented as stated in appellant's brief are:

1. Did the court have authority to order a paternity test, where paternity had already been established and no other individual was claiming paternity?
2. Assuming, arguendo, that the court was authorized to order a paternity test, did the court abuse its discretion by ordering a paternity test without first considering whether it was in the child's best interests?

BACKGROUND

Brianna was born on August 16, 2014. On November 21, 2014, the Cecil County Department of Social Services ("the Department") received a referral that Dianna C. ("the mother" or "Ms. C.") was neglecting Brianna. A subsequent investigation revealed "allegations of severe mental health concerns for Ms. [ ] C., including suicidal and homicidal ideations," as well as "concerns of substance abuse and unstable housing." The investigation eventually resulted in the emergent removal of Brianna from the mother's custody on December 16, 2014. After a hearing on December 17, 2014, the juvenile court granted the Department's Shelter Care Petition.

On December 18, 2014, the Department filed a petition with the juvenile court alleging that Brianna was a CINA. On January 7, 2015, the juvenile court held an adjudication and disposition hearing on the Department's petition. Counsel for the Department, the mother, the mother's counsel, and Brianna's counsel were in attendance at the hearing. Appellant was not present at the hearing, nor was anyone else claiming to be the father.

The Department submitted a report to the juvenile court at the January 7 hearing that detailed its investigation into the matter. The parties agreed to submit on the report. The report stated that the mother had recently been admitted to the hospital following a suicide attempt in November 2014. She was discharged from the hospital on November 21, 2014. The report stated that appellant was the mother's boyfriend, but was not the biological father of Brianna.

According to the report, CPS Assessors Kristen Berkowich and Lauren Brewer were initially unsuccessful in their attempt to contact Ms. C. On December 13, 2014, the assessors went to appellant's home, where Ms. C. had lived prior to her hospitalization, in an attempt to locate her.

Appellant informed the assessors that he had kicked the mother out of his home when he found out that she was pregnant with Brianna and another man was the father. He told them that, although he had signed an Affidavit of Parentage and was on Brianna's birth certificate, he was not the biological father. Appellant informed the assessors that the mother was mentally unstable and that he was concerned about her being unable to care for Brianna. Appellant "initially stated [that] he would provide care for Brianna, but then later advised that he would be unable to provide care for Brianna." Appellant and the mother have another child together, with appellant having custody.

On December 15, 2014, the Department received a second referral, again expressing concern for the mother's ability to care for Brianna due to her "major mental health issues." According to the referral, Mobile Crisis had become involved with the mother after she was kicked out of a domestic violence shelter in December for pretending to be a domestic violence victim. After being kicked out, the mother moved to a homeless shelter with Brianna. The mother admitted to Mobile Crisis that she had tried to kill herself on multiple occasions. The mother also admitted to having hallucinations telling her to kill herself, the baby, and the baby's father. Mobile Crisis

did not observe maltreatment of Brianna, but believed the child to be at a high risk due to the mother's severe mental illness.

On December 16, 2014, the assessors finally met with the mother. The mother talked to them about her past plots to kill Brianna, hallucinations of hearing her dead father and seeing ghosts, and her refusal to go back on medication. The mother also confirmed to them that appellant was not Brianna's father. After this meeting, the Department removed Brianna from the mother's custody and placed her in foster care.[2] Brianna was four months old at the time she was placed in foster care.

The Department's report recommended that Brianna be found to be a CINA. The juvenile court agreed and, in the Adjudication and Disposition Hearing Order dated January 7, 2015, the court found Brianna to be a CINA and committed her to the custody of the Department.[3]

On July 1, 2015, a six-month review hearing was held. The Department's counsel, mother, mother's counsel, the child's counsel, and appellant were present. A progress report was submitted to the court. The report detailed the developments in the case that had occurred since the January 7 hearing.

The report stated that on February 23, 2015, Foster Care Natural Parent Worker Sarah Callahan met with the mother to complete a Service Agreement. The Service

[2] According to the Shelter Care Order issued on December 17, 2014, Brianna's "Father is unknown."

[3] Although the order lists the father as James M., there is no evidence of anyone with that name being involved in this case.

Agreement included a list of tasks for the mother to complete, including drug testing, obtaining stable housing, attending parenting classes, maintaining employment, and completing a psychological evaluation. Callahan met with the mother again on June 10, 2015, to update the Service Agreement. Although the Department had requested that the mother complete a substance abuse evaluation, she had not done so at the time of the July hearing.

The report acknowledged that both the mother and appellant said that appellant was not Brianna's father. The mother named two other men as the possible biological father, "Roy Caleb I. or Josh D.," but did not believe that they would have any interest in raising Brianna. The report also stated that, at a child support hearing on May 14, 2015, the Cecil County Circuit Court found appellant to be Brianna's father based on his claim that he was the father. A Service Agreement was completed with appellant on June 10, 2015. The Agreement required him to complete the same tasks as the mother's Agreement. Appellant is currently seeing a counselor and psychiatrist, has completed parenting classes, and has a full time job.

The mother's housing situation remained unstable throughout the review period until April 2015, when she and appellant began living together again. The parties attended visitation with Brianna infrequently at first, but started going to every visit after they moved in together. The report recommended that Brianna continue to be a CINA and that the case be scheduled for a permanency planning hearing.

In addition to the report, the issue of paternity was also raised at the July 1 review hearing. Counsel for the Department stated to the juvenile court:

> [Appellant] is listed on the birth certificate as the child's father; but based on all the conversations that the [D]epartment has had with him, he appears to admit that he is not the father. So I attached to the proposed order a request for a paternity test. But frankly, your Honor, I think this is—it's a philosophical question really. If [appellant] is on the birth certificate and desires to act as the father for this child, I think historically the courts would have accepted that and issued a Declaration of Paternity based on—on [appellant's] desires.
>
> So I feel though from the Department's standpoint **it's important to know that we aren't going to get down the road a year from now and all of a sudden be looking for some unknown father. So I think we've got to face this question squarely early in the game. . . . The [D]epartment is recommending that a DNA test be done.**

(Emphasis added).

Counsel for Brianna agreed with the order for a paternity test and stated to the court:

> I think we need to think about the other potential biological father that's out there and his rights. And, I mean, if we knowingly name somebody the father—**if we name someone the father knowing that he's not really the father, I don't know if that's going to come back to haunt us at some later date. So I think getting paternity straight at this point is a good idea.**

(Emphasis added).

The mother opposed the order for the paternity test, and her attorney explained to the court:

> [M]y client is opposed to the DNA testing. **There is a Paternity Affidavit.** For all intents and purposes [appellant] has signed that;

> and, therefore, openly notoriously acknowledged his paternity. So **we would ask the court at this point not to order the DNA, but to declare him to be the father of Brianna.** I think actually by virtue of signing the Paternity Affidavit he has actually been declared the father of Brianna.

(Emphasis added).

Appellant spoke for himself, stating to the court:

> I would like to say I was there all during [the mother's] pregnancy with Brianna. Brianna is my daughter. Regardless of whether the court wants to order a DNA test or not she's always going to be my daughter. I love Brianna; and I don't feel that it's necessary.

The juvenile court then ruled, "Despite the father's protest that he is, in fact, the father, the court is going to order a DNA test so that we know for sure."

In its Review Hearing Order, dated July 1, 2015, the juvenile court continued Brianna's custody with the Department for appropriate placement. The permanency plan was for Brianna to be reunited with her natural parents. A permanency planning hearing was scheduled for December 16, 2015. The order also included the following finding: "The father of the child, as listed on the birth certificate is James [L.]. Mr. L. states that he is not the actual father, but that he wishes to care for the child."

On July 2, 2015, the juvenile court entered an Order for Paternity Testing of appellant. On July 7, 2015, appellant filed a pro se Motion for Appropriate Relief and Stay of Paternity Test. In his motion, appellant argued that he was opposed to the paternity test, because he is "automatically presumed to be the father of Brianna L. I am on the birth certificate as the father and I signed the Affidavit of Parentage. Therefore, I

am the father and I should not be forced to take a paternity test against my will." Appellant's motion was denied by the court on August 6, 2015.

On August 28, 2015, Appellant filed his notice of appeal of both the July 1 Order for Paternity Testing and the August 6 order denying appellant's motion for appropriate relief.

DISCUSSION

Motion to Dismiss Appeal

On December 30, 2015, the Department filed a Motion to Dismiss the instant appeal along with its brief. Counsel for Brianna also moved to dismiss the appeal in her brief.

The Department, joined in by Brianna, contends that appellant's appeal of the juvenile court's August 6, 2015 order denying his Motion for Appropriate Relief and Stay of Paternity Test should be dismissed, because such order is an unappealable interlocutory order. The Department argues that the denial of the motion is not appealable, because it was not a final judgment. According to the Department, there is no final judgment where further action needs to be taken in a case; here, a further hearing would be required on the issue of paternity after the parties receive the results of the paternity test. The Department also claims that the August 6 order is not appealable under Md. Code (2006, 2013 Repl. Vol.), § 12-303(3)(x) of the Courts and Judicial Proceedings (II) Article ("CJP"), because such order does not deprive appellant "of the care and custody of his child, or chang[e] the terms of such an order."

Appellant counters that the instant appeal was taken from the denial of what was essentially a motion to vacate the Order for Paternity Testing. According to appellant, he was asking the juvenile court to cancel the order for paternity testing; therefore, his motion was a motion to vacate even though he did not call it a motion to vacate when he filed it. Appellant argues that the denial of a motion to vacate is a final, appealable judgment. Appellant also asserts that the juvenile court summarily denied his motion to vacate and did not intend to take any "further action with regard to forcing [appellant] to submit to genetic testing." Finally, appellant argues, in the alternative, that the order denying his motion is an appealable collateral order under the collateral order doctrine.

Maryland Rule 8-202(c) provides, in relevant part, that

> In a civil action, when a timely motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534.

Contrary to appellant's argument, his motion for appropriate relief is not a "motion to vacate" the Order for Paternity Testing under Rules 2-532, -533, or -534, because Title 2 of the Maryland Rules does not apply to CINA proceedings. *See* Md. Rule 1-101(b) ("Title 2 applies to civil matters in the circuit courts, except for Juvenile Causes under Title 11 of these Rules and except as otherwise specifically provided or necessarily implied."). A CINA proceeding is a juvenile cause under Title 11. *See* Md. Rule 1-101(k). As a result, the filing of appellant's motion for appropriate relief within 10 days of the entry of the Order for Paternity Testing did not toll the appeal period for filing

an appeal from such order. Because appellant's appeal was noted fifty-seven days after the entry of the Order for Paternity Testing and twenty-two days after the denial of appellant's motion for appropriate relief, only the juvenile court's denial of the Motion for Appropriate Relief and Stay of Paternity Test is before this Court in the instant appeal. *See* Md. Rule 8-202(a).

Generally, a party has the right to appeal from a final judgment. *See* CJP § 12-301. This Court has determined:

> A ruling of the circuit court constitutes a final judgment when it either determines and concludes the rights of the parties involved or denies a party the means to prosecut[e] or defend[] his or her rights and interests in the subject matter of the proceeding. In determining whether a particular court order or ruling is appealable as a final judgment, we assess whether any further order was to be issued or whether any further action was to be taken in the case.

In re Katerine L., 220 Md. App. 426, 437-38 (2014) (alterations in original) (citations and internal quotation marks omitted).

Therefore, to be a final judgment, the order in the case *sub judice* must have concluded the rights of appellant, and there must be no further action to be taken in the case. Here, appellant's parental rights have not yet been determined, because the paternity test has not been conducted and the juvenile court has not made a finding with regards to paternity. After the juvenile court orally granted the Department's request for a paternity test, the mother's counsel advised the court that "even if the DNA test excludes [appellant], then I think the court still needs to have a hearing to determine whether or not it's in the best interest of the child to exclude [appellant] as father and

strike what appears to be already a paternity declaration." The juvenile court agreed, stating that "at the request of any of the attorneys that a review hearing would be added." For those reasons, there is no final judgment.

"An order that is not a final judgment is considered to be an interlocutory order and ordinarily is not appealable unless it falls within one of the statutory exceptions set forth in [CJP] § 12-303. . . ." *In re Samone H.*, 385 Md. 282, 298 (2005). The statutory exceptions relevant to a CINA proceeding are listed in CJP § 12-303(3)(x), and they include orders "[d]epriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order."

The case of *Katerine L.* provides us with guidance on the application of CJP § 12-303(3)(x). 220 Md. App. at 426. In *Katerine L.*, this Court held that an order in a CINA proceeding denying a motion by the mother's estranged husband seeking genetic testing of the children was not an appealable interlocutory order, because it did not adversely affect the husband's right to care and custody of the children. *Id.* at 440. This Court went on to state that the

> focus should be on whether the order and the extent to which that order changes the antecedent custody order. It is immaterial that the order appealed from emanated from the permanency planning hearing or from the periodic review hearing. If the change could deprive a parent of the fundamental right to care and custody of his or her child, whether immediately or in the future, the order is an appealable interlocutory order.

Id. (citations and internal quotation marks omitted). Furthermore, the order in *Katerine L.* was not appealable under the collateral order doctrine, because the order did not

conclusively determine the question of parentage of the children; the trial court could revisit the issue of testing at any review hearing. *Id.* at 440-41.

As correctly noted by appellant, the facts in the instant case do differ from those in *Katerine L.* with regards to one important aspect; in this case the juvenile court ordered the paternity test, whereas the *Katerine L.* court denied a motion for a paternity test. Despite this difference, we hold that the order denying appellant's motion for appropriate relief is not appealable. We shall explain.

First, and foremost, the juvenile court's order denying appellant's motion for appropriate relief has no effect on appellant's parental rights, because such order did not change the terms of any prior custody order, nor the Order for Paternity Testing. Second, even if the Order for Paternity Testing was before us, such order did not change the terms of any prior custody order. Simply ordering the paternity test does not determine parentage; instead, a paternity test produces a report that the court can then use in determining parentage. The court's denial of appellant's motion for appropriate relief thus did not deprive appellant "of the care and custody of his child," or otherwise adversely affect appellant's parental rights. CJP § 12-303(3)(x). Accordingly, the order of denial is not an interlocutory order appealable under CJP § 12-303(3)(x).

At this point, it is unclear what will happen to appellant's parental rights. He has acknowledged that he is not Brianna's biological father, but he signed an Affidavit of Parentage. This Court has previously held that signing an Affidavit of Parentage is a legal determination of parentage. *See Davis v. Wicomico Cnty. Bureau of Support*

Enforcement, 222 Md. App. 230, 241, *cert. granted*, 444 Md. 638 (2015). Therefore, a paternity test result excluding appellant as Brianna's father does not necessarily mean that appellant will be stripped of his parental rights. A hearing must be held for the juvenile court to make a declaration of parentage. In the event that the court decides to declare that appellant is not the father, he would have an appealable interlocutory order. No such order exists at this time.

Finally, appellant's argument that the denial of his motion for appropriate relief is appealable under the collateral order doctrine fails as well. The requirements of a collateral order are well established. In *Pittsburgh Corning Corp. v. James*, the Court of Appeals stated:

> We have made clear, time and again, as has the United States Supreme Court, that the collateral order doctrine is a very narrow exception to the general rule that appellate review ordinarily must await the entry of a final judgment disposing of all claims against all parties. It is applicable to a "small class" of cases in which the interlocutory order sought to be reviewed (1) conclusively determines the disputed question, (2) resolves an important issue, (3) resolves an issue that is completely separate from the merits of the action, *and* (4) would be effectively unreviewable if the appeal had to await the entry of a final judgment.

353 Md. 657, 660-61 (1999) (alterations in original).

Appellant's appeal fails all of the requirements of the collateral order doctrine. For example, the order denying the motion for appropriate relief does not conclusively determine any question. In addition, an order requiring a paternity test in a CINA case is not "an issue that is completely separate from the merits of the action." *See id.* at 661. A

paternity test is evidence used by the court in determining parentage, which is always integral to a CINA case. This case will be reviewable once parentage is definitively established, but not before then. Therefore, the case *sub judice* is not appealable under the collateral order doctrine.

APPEAL DISMISSED; APPELLANT TO PAY COSTS.