Circuit Court for Montgomery County
Case Nos. 06-I-16-133 & 06-I-16-134

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1876

September Term, 2016

IN RE: J.D. & S.D.

Beachley,
Shaw Geter,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: May 16, 2017

The Circuit Court for Montgomery County, sitting as a juvenile court, declared J.D. and S.D. (the "children") to both be Children in Need of Assistance ("CINA[1]"). The court committed the children to the Montgomery County Department of Health and Human Services (the "Department") and placed them in the custody of their paternal grandmother, Linda D. ("Grandmother"). The children's mother, Rose D. ("Mother" or appellant) appealed and presents one question for our review: Did the court err by removing the children from their mother's custody? We perceive no error and affirm.

FACTS AND PROCEDURAL HISTORY

Mother gave birth to a daughter, S.D., in February 2013, and a son, J.D., in January 2014. In August 2015, the Department became involved with the family following reports that the children's father, Andrew D.[2] ("Father"), physically abused Mother in front of the children. The Department learned that Father had a history of threatening Mother and the children, including hitting and shaking S.D. As a result of Father's actions, Mother obtained a temporary protective order for herself and the children.[3] In response to these

[1] A CINA is 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." Md. Code (1973, 2013 Repl. Vol., 2016 Supp.), § 3-801 of the Courts and Judicial Proceedings Article ("CJP").

[2] Father participated during these proceedings through counsel, but was not present due to incarceration. He agreed with the recommendations of the Department, and is not a party to this appeal.

[3] This temporary protective order was in effect until November 2016, when it was modified to permit visitation with Father, provided that Grandmother supervised Father's visits.

domestic violence issues, the Department offered services to Mother to help protect against further domestic violence. From November 2015 until April 2016, Mother participated in therapy which was offered by the Department. After Mother completed her therapy, the Department closed its case file, satisfied that no further domestic violence concerns remained.

Even though the Department eventually closed its file, while providing therapy in December 2015, the Department recommended the family to Montgomery County Infants and Toddlers ("Infants and Toddlers"), an organization that provides services, including behavioral and social development testing, to children.[4] At first, mother seemed receptive.

Infants and Toddlers determined that J.D. qualified for their services because he displayed at least a 25% delay in his development.[5] The Kennedy Krieger Institute examined J.D. and determined him to be on the autism spectrum. S.D., however, displayed no such delay or diagnosis. Esther Kim, a social worker with Infants and Toddlers, worked with Mother and the children to schedule special education services for J.D. which began

[4] Infants and Toddlers attempted to contact the family in September 2015, but closed their case file in November when they were not able to reach the family. Infants and Toddlers successfully contacted the family a month later.

[5] According to a social worker with Infants and Toddlers, then nearly two-year-old J.D. was at an eighteen-month level as to adaptive skills, twelve months with receptive language, and nine months as to "social emotional" development.

in January 2016. Although S.D. had no delay, Infants and Toddlers included her in the sessions with J.D. and Mother. J.D. showed improvements from these sessions.

After several months of progress, Mother began to cancel meetings with increasing frequency. From January to July 2016, Mother and J.D. attended twenty-two sessions, but missed seventeen.[6] Notably, most of the missed meetings occurred in May and June, which marked a period of "decline" in which Mother demonstrated a lack of engagement with the services. According to Mother, these absences were due to various reasons, including that everyone had an allergic reaction to eggplant, that Mother was dealing with a staph infection, that the children suffered from diarrhea, or that the children had various rashes.

Mother's "decline" also coincided with an incident in May 2016 wherein Mother left S.D. alone in a locked car on a hot day. On May 26, 2016, Mother decided to purchase a roll of AstroTurf to make a playpen for her children to play in while outside. While at the Home Depot with J.D., Mother heard her car alarm sound. She left the store to discover that a police officer had broken a window of her car and extracted S.D. from the vehicle.

Although she acknowledged that she had left S.D. unattended, Mother believed that she had left the engine running with the air conditioning turned on. According to the criminal citation, however, it was 89 degrees outside and the engine was not running. Mother disputes the officer's rendition of the events, and believes that the officer was "seeing things about the situation which were not the case." Further, Mother felt that S.D.

[6] On five other occasions, the therapist took leave or was not available due to illness.

was never in any danger. According to Mother, "What causes heat stroke . . . to be deadly has nothing to do with the ambient temperature outside, it has to do with sun coming through the window, the windows on my vehicle are tinted. I'd left it running. I had frozen groceries in there as well." On September 22, 2016, Mother pled guilty to leaving a child unattended in a vehicle and was sentenced to probation before judgment and a six-month period of supervised probation.

After Mother left S.D. unattended in a vehicle, in early July 2016, the Department assigned Chris Carmello, a licensed graduate social worker to work with and monitor the family.[7] During this time, Carmello noted a number of concerns regarding the safety and well-being of the children. Carmello learned that in January 2016, Mother had rented a room in her home to a woman and her two children. The children's father, a registered sex offender, sometimes stayed at the home. Because of this, Carmello had "great concern in regards to [Mother's] judgment and her ability to keep her children safe." Mother justified her decision by conducting her own investigation of the man and determined that he was not a threat to her children.[8]

With regard to the care her children needed, Mother demonstrated a disconnect from reality. She failed to timely follow through with Department recommendations, such as

[7] The court accepted Carmello as an expert in social work.

[8] The sex offender obtained his status from a fourth degree sexual offense when he was nineteen and the minor was an older teenager.

obtaining child care vouchers and Social Security benefits for J.D. She also insisted that S.D. required behavioral or educational services, despite S.D. showing no signs of delay or a need for such services. For example, Mother put S.D. on the waiting list to be evaluated by the Lourie Center in the Therapeutic Nursery Program, which treats children with "significant social [and] emotional needs[.]" Further, Mother felt that S.D. was threatening her and J.D., that S.D. did not like eye contact, did not like to wear shoes, and that S.D. sometimes ran away. Additionally, Mother stated that J.D. was being abused and neglected in day care, and that S.D. had developed a neurological vision disorder and "kicks and pushes a lot, gets rigid, and rejects affection often, very sensitive to shoes and hair brushing[,]" and that she "throws herself into objects and people[.]" Infants and Toddlers concluded, however, that S.D.'s behavior did not match Mother's descriptions.

Mother also ignored professional recommendations to address J.D.'s autism. For example, Mother failed to take J.D. to therapy sessions as recommended by medical professionals. When Mother sought more services for J.D., Infants and Toddlers referred her to the Star Bright Program, a class for families with children with developmental delays. Mother went to one session of this program – arriving late and leaving early. Mother refused to return, stating that J.D. was not treated well and that the class occurred during his nap time.

Additionally, during her period of decline beginning in May, Mother constantly felt that her children were ill, and the Department became concerned that Mother may have been seeking unnecessary care for them. On one occasion, Mother wanted to have the

children tested for allergies, an "invasive" and "involved" procedure. In the span of two months, Mother made four trips to the hospital with the children, but according to Carmello, "nothing ever resulted from any of those hospital visits." On one such trip, Mother took S.D. to the hospital for a urinary tract infection, complaining that S.D. was not urinating. At the hospital, however, S.D. had no issue urinating.

Finally, Worchester County's Department of Social Services notified the Department that it had received reports that domestic violence had occurred in front of the children. Apparently, on a family trip to Ocean City, Mother stopped the car in the middle of a dual highway and assaulted her mother during an argument.

The Department determined that Mother's behavior was having a detrimental effect on the children. When Mother inevitably failed to follow through with the Department's recommendations, Mother provided inconsistent excuses. Mother was "[u]p and down[,]" varying in her interactions with the Department.

Ultimately, the Department removed the children from Mother's care on August 25, 2016. The next day, the Department petitioned the court, seeking shelter care and a declaration that the children were CINA. The court granted the petition in a Shelter Order dated September 2, 2016. The order instructed that the Department take temporary custody of the children with a limited guardianship granted to Grandmother, but provided Mother with twice-weekly supervised visitation.

When the children arrived at Grandmother's home, Grandmother noticed that the children were not wearing shoes, that S.D. was wearing J.D.'s pants with no underwear,

and that J.D. was in a diaper and shirt. Furthermore, the children were "dirty," and apparently had not been introduced to any sort of routine. During this time, Mother voluntarily entered a hospital for a three-day period of respite care.

On September 23, 2016, the court held an adjudication hearing where, by agreement of the parties, the court sustained the allegations as stated in the Department's First Amended Child in Need of Assistance Petition. The disposition hearing took place over three days: October 6, October 25, and October 31.

In the interim between the adjudication hearing and the disposition hearing, Mother visited with the children. Some of these visits posed problems. At one visit, when the children went to the bathroom, Mother accused Carmello of telling S.D. that she should be glad she was away from her Mother. Carmello denied this. At other visits, Mother was unable "to manage the children's behaviors and keep them safe." For example, at one visit, Mother claimed that J.D. was potty-trained and took off his diaper, whereupon J.D. urinated on the carpet. At the following visit, Mother made the same claim, but before she could remove J.D.'s diaper, Department staff intervened. On one occasion, Mother left early because she was unhappy with Department staff. Mother also complained about Grandmother's care of the children, going so far as to attempt to file a report with Frederick County Child Protective Services over a scrape on J.D.'s knee, which Grandmother stated was from a fall, not a dog bite, as Mother believed.

At the disposition hearing, the court heard testimony from numerous witnesses. Ms. Kim from Infants and Toddlers testified that "when mom was . . . present and focused, she

was amazing . . . . But especially towards [sic] the end, that was very rare." Carmello, noting her observations from working with the family for several months, testified that the children would be at "substantial risk" of harm if returned to Mother. Carmello recommended that the children remain with Grandmother.

Mother testified that she was attending a weekly therapy session. As to the disposition of the children, she wanted the children returned to her so that S.D. could be treated at the Lourie Center. Concerning the children's care with Grandmother, Mother worried that they were not eating vegetables. Moreover, Mother was concerned that Father had access to the children because he resided in the same home as Grandmother. When asked by Father's counsel if Mother had dealt with the issues that led to the removal of the children, Mother responded:

> I'm not sure that I quite understand why the children were removed, but I can say that having a break to catch up on things and to accomplish all of the things that I needed to, to make sure that my house is everything that they deserve and that I am feeling healthy enough not only to care for them, but to be a good example for them and to continue with my education and to provide for them, there, there's been a lot of good things that have come from getting this break.

On October 25, 2016, the court ruled from the bench. It determined that the children were CINA and that they should remain with Grandmother. The court's Disposition Order also provided for the continuation of the twice-weekly supervised visitation between Mother and the children, and ordered Mother to take a parenting class, undergo a psychological evaluation, and follow all treatment recommendations. Mother timely appealed.

STANDARD OF REVIEW

We review CINA proceedings pursuant to three different, yet inter-related standards:

> In CINA cases, 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) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). We review Mother's challenge to the court's placement of the children for an abuse of discretion. The Court of Appeals has noted:

> [Q]uestions within the discretion of the trial court are much better decided by the trial judges than by appellate courts, and the decisions of such judges should only be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred. In sum, to be reversed the decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.

In re Adoption of Cadence B., 417 Md. 146, 155-56 (2010) (quoting *Yve S.*, 373 Md. at 583-84). The juvenile court is vested with such broad discretion because "only [the trial judge] sees the witnesses and the parties, [and] hears the testimony . . . [the court] is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor." *Baldwin v. Baynard*, 215 Md. App. 82, 105 (2013) (quoting *Yve S.*, 373 Md. at 586); *see also In re Priscilla B.*, 214 Md. App. 600, 623 (2013) (quoting *In re Danielle B.*,

78 Md. App. 41, 69 (1989) (noting that "[t]he duties of a juvenile court judge are very broad and pervasive")).

DISCUSSION

Mother concedes that the children were CINA, but contends that the court erred in removing the children from her custody. Noting that parents enjoy the constitutional presumption that a child's best interests are served by maintaining parental rights, Mother claims that the court abused its discretion in the face of evidence that Mother was an "amazing parent" who briefly stumbled in the face of extraordinary circumstances. *In re Yve S.*, 373 Md. at 571.

We note at the outset that "a more stringent standard of proof is required to deny custody" than to adjudicate a child to be a CINA. *In re Joseph G.*, 94 Md. App. 343, 350 (1993). However,

> Where the child has been declared a "child in need of assistance" because of abuse or neglect, the trial court is further constrained by the requirements of § 9-101 [of the Family Law Article]. This section directs the court to deny custody to the parent unless the court makes a specific finding that there is no likelihood of further abuse or neglect. The burden is on the parent previously having been found to have abused or neglected his or her child to adduce evidence and persuade the court to make the requisite finding under § 9-101(b).

In re Yve S., 373 Md. at 587 (footnotes, internal citations, and quotation marks omitted). Put simply, once a court determines a child to be a CINA due to abuse or neglect, the parent bears the burden of proving that "there is no likelihood of further child abuse or neglect." *See* Md. Code (1984, 2012 Repl. Vol.) § 9-101(b) of the Family Law Article ("FL").

Mother relies on *In re Joseph G*. to support her contention that the court abused its discretion. 94 Md. App. at 343. In *Joseph G.*, Joseph's father appealed from a trial court decision denying him custody of Joseph. *Id*. at 345. There, the Baltimore City Department of Social Services removed Joseph from his mother's care after evidence of physical and sexual abuse. *Id*. at 345-46. In an effort to distance himself from the mother, the father ended his relationship with the mother and moved several miles away to live with his own mother. *Id*. at 346. Although we concluded that the evidence sufficiently showed Joseph to be a CINA, we held that the evidence did not indicate a risk of harm to Joseph. *Id*. at 346-47, 351. Despite the fact that Joseph's father appeared to be in denial of the harm the mother caused Joseph, we concluded that the father appropriately severed his ties with the mother by moving sufficiently far away to keep Joseph safe. *Id*. at 351. Additionally, the father obtained employment and sought appropriate child care facilities. *Id*. Accordingly, we concluded that the trial court abused its discretion in not considering other less restrictive options and vacated and remanded the trial court's custody determination. *Id*. at 351-52.

Unlike the father in *Joseph G.*, the trial court here determined Mother to be the source of concern for the well-being of the children. In *Joseph G.*, we vacated the court's decision to deny the father custody because the mother was the source of abuse, and the father had separated himself from the mother in order to provide a safe home for Joseph. Here, however, the trial court determined Mother herself to be the cause of harm to the children. *Joseph G*. is therefore readily distinguishable.

We conclude that the court did not abuse its discretion in determining that Mother failed to meet her burden of demonstrating that there was no further likelihood of abuse or neglect. At the disposition hearing, the court concluded,

> The Court had the opportunity to hear testimony from all the different people involved in this case and specifically, will note some of the following things about the testimony and the evidence that has been presented.
>
> The Court would first note that with respect to Esther Kim from Infants and Toddlers, one thing [Mother's counsel] said was that Ms. Kim said, mom was a great mom. **What Ms. Kim said was, when mom is engaged, when mom was engaged, she was a good mom. She also testified to watching the downward mental decline of [Mother]. And I have to agree with the [Department] that this case is about the totality of the circumstances.** It's not that the Court is looking at just one thing and making a determination as to whether or not the children will be safe and free from harm if they're returned to their mother, but **the Court is looking at all the different things that have taken place in this case.**
>
> **If it was just that mom didn't really work with Infants and Toddlers, despite having an autistic son, that would be one thing, but it's the Infants and Toddlers coupled with the Star Bright, not giving it the opportunity and it's this notion that I saw today when she testified that, she knows best and it doesn't have to, not in the sense that a parent knows what's best for their child, but in the sense that she knows more than everyone about the certain issues, the autism, the health, whatever the case may be. That's concerning to the Court because implicit in that is she's not following the advice of anybody who is trying to assist her children to make sure they are safe and well cared for.**
>
> So, yes, she takes the first step and gets the examination done by Kennedy Krieger, but she doesn't take the second step in following through with what the recommendations are because, yet again, she knows better than what they say. **The Court's concerned also with the lack of judgment. Today, when questioned regarding leaving [S.D.] in the car, [Mother], I believe got a little bit weepy. But it wasn't, she wasn't saying that she really saw what was wrong, all the different safety implications of leaving [S.D.] in the car and she, what she said was, at least the way the Court took it to be, was had she not done that maybe she wouldn't be**

sitting here and she would still have her kids. That's what the Court heard.

I also will note that her statement was with respect to the officer was, what the officer thought was happening, wasn't really what was happening. Again, that's a concern to the Court because, once again, mom's way of thinking is the appropriate way and the officer was mistaken and didn't know what he was talking about. It wasn't 89 degrees and the engine was on, it wasn't off.

Fourth degree sex offense, really, the bottom line is, having a sex offender in the home, period, is a problem. I don't care what kind of degree, whether it's a fourth degree, third degree, second degree, first degree, whatever, so that, again, shows lack of judgment. And yet, today, she was still talking about well, I did this check and I talked to these people and this, that and whatever, when, if you are able to, if you have good judgment, you are not making a decision like that.

With respect to the mental health issues, Ms. Kim talked about the mental health decline. Mom, obviously admitted herself to the hospital from August 28th to August 31st, which is a step in the right direction, but I don't see that that, that anything has truly changed. Four weeks of talk therapy when, I can't think of the counselor's name [Miller], but the counselor said, he didn't think talk therapy was really what she needed to be on top of whatever is happening with her mental health.

So, and quite frankly, the Court's seen plenty of cases where people go into the mental health facility for a few days, come out and everyone says they're fine and they are not fine. So, that doesn't really hold any water as far as I'm concerned.

Leaving [S.D.] unattended is an example of part of that mental health decline. And, frankly, even today, her testimony was, at points, rambling, and at points, really difficult to follow, not being able to stay on the point of what the questions were. That gave the Court some concern.

And also, perhaps not as much, but this idea that the kids are sick, the kids are sick with the urinary tract infection, the staph infection. They were treated somewhat for diarrhea, but it does seem that there was this constant, they are sick and therefore they can't engage in these different activities that

> people who are trying to assist the kids and mom, are saying would be good for them.
>
> **At any rate, the Court doesn't think anything really has changed since the initial shelter hearing of the children. The Court's still concerned that a return home of these children, could result in harm coming to them and does put their safety, and their health and well-being at risk.**
>
> So, for all those reasons, I am going to decline doing an order of protective supervision. Children will stay with the paternal grandmother [. . . .]
>
> At any rate, the Court will find that the children are children in need of assistance. That they have been neglected and that neither parent, at this point, is able to give proper care and attention to them.

(Emphasis added).

The court's factual findings are grounded in the testimony and evidence it received. Mother failed to meet her burden to adduce evidence showing no likelihood of further abuse or neglect. *In re Yve S.*, 373 Md. at 587. The trial court, therefore, did not abuse its discretion in removing the children from Mother's custody. We cannot hold that the court's decision is "well removed from any center mark," nor is the determination "beyond the fringe" of what we deem "minimally acceptable." *In re Adoption of Cadence B.*, 417 Md. at 155-56 (quoting *In re Yve S.*, 373 Md. At 583-84). Accordingly, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY SITTING AS A JUVENILE COURT AFFIRMED. COSTS TO BE PAID BY APPELLANT.