

Circuit Court for Montgomery County
Case No.: 06-I-21-000074

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 41

September Term, 2022

IN RE: A. R.

Kehoe,
Leahy,
Friedman,

JJ.

Opinion by Kehoe, J.

Filed: August 9, 2022

*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.

In this appeal, we consider whether the Circuit Court for Montgomery County, sitting as a juvenile court in a child in need of assistance case, erred when it suspended S.W.’s supervised in-person visitations with her four-year-old daughter, A.R.,¹ because the court determined that such visitations were not in A.R.’s best interest. The appellee is the Montgomery County Department of Health and Human Services (the “Department”). Ms. W. asserts that the court erred. The Department disagrees.

We will affirm the court’s judgment. There was substantial evidence to support the juvenile court’s factual findings, the court’s reasoning was legally correct, and the court did not abuse its discretion in suspending in-person visitation in light of the very unusual circumstances presented by this case.

BACKGROUND

This is the second time that A.R.’s CINA case has been before this Court. In *In Re A.R.*, No. 1301, 2021 Term, 2022 WL 872300 (filed March 24, 2022) (“*A.R. I*”), a panel of this Court addressed Ms. W.’s contentions that the juvenile court erred when it found that A.R. was a child in need of assistance. In the course of affirming the juvenile court’s judgment, the *A.R. I* panel analyzed the evidence pertaining to Ms. W.’s serious psychiatric and neurological problems and their significant negative effects on A.R.’s physical and

¹ In the proceedings before the juvenile court, the counsel and the court referred to Ms. W. and her daughter by their names. For the sake of consistency, when we quote from the trial record, we will substitute “Ms. W.” and “A.R.” for their names without bracketing.

emotional health as well as her cognitive and behavioral development. *Id.*, slip op. at 2–8; 2022 WL 872300 at *1–*4.

In summary, Ms. W. and A.R. first came to the Department’s attention in June and July of 2021 because of two separate reports of seizures and bizarre behavior on Ms. W.’s part coupled with concerns about A.R.’s safety. The Department investigated both reports. In a meeting with Ms. W. on July 30, 2019, the Department recommended that (1) one of its social workers should periodically visit Ms. W.’s apartment to monitor A.R.’s well-being and safety, (2) Ms. W. should have a mental health evaluation and follow up on any treatment recommendations, and (3) the Department would assist Ms. W. in finding more secure housing. Ms. W. agreed to these proposals. Vanessa Pierre-Louis was the social worker with the Department who began to work with Ms. W. and to monitor A.R.

On August 23, 2021, Ms. Pierre-Louis visited Ms. W’s apartment. Ms. W. told the social worker that her neighbors were “pedophiles, terrorists, [and]’illegals,” and said that “‘9/11 is coming.” Ms. W. sent several emails to Ms. Pierre-Louis stating that the property management company for her apartment was entering her residence without her permission and keeping her under surveillance. On August 31, Ms. W. telephoned Ms. Pierre-Louis from a Montgomery County Police Station. She was at the station to report that police officers had raped A.R. She told the detective who was interviewing her that the details of the assault were set out in a comic book and demanded \$3 billion in damages. Ms. W. was taken to a hospital and was discharged after a mental health evaluation. But later that night, police found Ms. W. wandering through her neighborhood and apparently experiencing a

psychotic episode. She was involuntarily admitted to a hospital for a psychiatric evaluation and treatment. On the next day, the Department filed a CINA petition seeking emergency shelter care for A.R., which was granted. On September 17, the juvenile court conducted an adjudicatory hearing on the petition and granted the relief sought by the Department.

The court's findings were summarized by the *A.R. I* panel as follows:

S.W. was emergently admitted for inpatient psychiatric treatment and there was no plan of care for A.R. during the hospitalization. S.W. was being treated by a neurologist for epilepsy with complex partial seizures, but her seizures were not entirely controlled, and further treatment was being considered. S.W. lacked insight into the cause of her behavior necessitating A.R.'s removal, particularly whether mental health issues, epilepsy, or a mix of the two caused the August 31 incident. The court concluded that there had been neglect. The court further found that, although S.W. believed she was able to care for A.R., without more information about S.W.'s mental health and how it related to her epilepsy, S.W. was unable to care for A.R. The court therefore concluded that the Department met its burden to prove that A.R. was a CINA. The court entered an order on October 6, 2021, finding A.R. was a CINA and granting custody of A.R. to the Department for continued placement in foster care.

At the disposition hearing, and pertinent to the issues raised in this appeal, the court ordered Ms. W. to participate in a psychological evaluation to identify barriers to her reunification with A.R., to participate in a psychiatric evaluation, and to follow up on all treatment recommendations. In addition, the court ordered that Ms. W. was to have a minimum of twice-weekly supervised visits with A.R.

After the juvenile court entered its order on October 6, 2021, the Department received updates on A.R.'s well-being, her progress in foster care, the results of the court-ordered mental health evaluation for Ms. W., and Ms. W.'s compliance with recommendations

resulting from that evaluation. Additionally, the Department asked the court to reduce Ms. W.'s supervised visitations from twice weekly to once weekly. Later, the Department requested that the court suspend supervised visitations between Ms. W. and A.R. altogether. The juvenile court conducted an evidentiary hearing on all of these matters in conjunction with a statutorily-required review hearing.²

An important witness at the hearing was Denise Michaels, L.M.S.W., the social worker with the Department who was in charge of arranging for and supervising Ms. W.'s visits with A.R. Ms. Michaels testified that she had observed between twenty and thirty interactions between A.R. and her mother and had been present for each visitation. She was admitted as an expert witness. Ms. Michaels told the court that, in her opinion, A.R. was showing “anxiety responses to the worries that are continually voiced by her mother”

² See Courts & Jud. Proc. § 3-816.2, which provides that, subject to exceptions not relevant to this appeal, a juvenile court:

shall conduct a hearing to review the status of each child under its jurisdiction within 6 months after the filing of the first petition under this subtitle and at least every 6 months thereafter.

(2) At a review hearing under this section, the court shall:

(i) Evaluate the safety of the child;

(ii) Determine the continuing necessity for and appropriateness of any out-of-home placement;

(iii) Determine the appropriateness of and extent of compliance with the case plan for the child;

(iv) Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating the court's jurisdiction; and

(v) Project a reasonable date by which the child may be returned to and safely maintained in the home or placed for adoption or under a legal guardianship.

during Ms. W.’s visits; (2) although there was “a connection and a bond” between Ms. W. and A.R., the relationship was characterized by “inconsistent trust” and “worries” on A.R.’s part. She explained:

On the positive side, [when Ms. W.] is able to focus on and engage with [A.R.], [the child] is responsive and engaged with [Ms. W.]. However, those sort of focused activities [don’t] happen during the entire visit. What happens [in all but one visitation] is that [Ms. W.] becomes distracted by her own worries and concerns, [and] frustrations, voices them out loud and loses focus, away from the child. . . . At times [Ms. W.] well, the best word I can use is interrogates [A.R.] over things that are happening in the foster home. At those times [A.R.] may not answer right away, or she may repeat her mother’s question.

There are other times when [A.R.] will come over and seek physical proximity with me when [Ms. W.] is sort of going off, talking about all the things happening to her, all the lawsuits that she’s filed, all the evil that is being done to them it’s very hard to — we try to remind [Ms. W.], but it sometimes makes [Ms. W.] more argumentative. And it’s very noticeable that [A.R.] is observing this and is taking all of this in.

* * *

So there is an increase in sort of bossy, disrespectful behavior [by A.R.] in the [foster] home. There [are] attempts to get negative attention, based on things that are not true. In addition, we have concerns that [A.R.] is blaming herself and internalizing some of these message messages. We have sort of setbacks and regressions after [Ms. W.’s visits].

* * *

Based on everything that we’ve observed, and I have concerns [as to whether Ms. W.] is going to be able to maintain . . . being, compl[iant in] treatment. And I have big concerns over how that’s going to affect [A.R.]. I believe that visits are supposed to be, [and] we want to be them to be, positive[.] We want them to build on [and] heal that bond [to] move towards reunification, build the trust, that sense of security in a child, a positive attachment. And the visits just aren’t doing that, and I’m very concerned over the continuing impact on [A.R.].

Among the exhibits introduced at the hearing was a report by Katherine Martin, Ph. D., the psychologist who performed the mental health evaluation on Ms. W. The court found that her report was credible.³ Additionally, the court stated that it found that the Department’s witnesses were credible but that Ms. W.’s factual testimony was not.

At the conclusion of the hearing, Ms. W. contended that the CINA proceeding should be dismissed and A.R. returned to her care. Alternatively, she argued that the court should not only deny the Department’s request to suspend visits but also should increase the frequency of visitations from two per week to an unspecified larger number.

The juvenile court entered an order stating that A.R. would remain a CINA, committed to the Department’s care. Relevant to the issues raised in this appeal, the court found that:

(1) After a mental health evaluation, Ms. W. was diagnosed as exhibiting symptoms of Paranoid Personality Disorder (“PPD”) and Brief Psychotic Disorder.

(2) Dr. Martin’s report identified Ms. W.’s “suspiciousness” as an aspect of her PPD that affected her interactions with A.R. The court found that as a result of her PPD, Ms. W. “may be overprotective regarding safety and danger and this may limit A.R.’s normal developmental experiences. Moreover, children of parents with PPD are at risk of developing anxiety because their parent continually offers them reasons to worry and be fearful.” Dr. Martin further commented that “[b]ecause Ms. W. lacks trust in others and

³ Specifically, the court stated that Dr. Martin’s report was “the product of a lot of work, her expertise, her observations from testing Ms. W., and interviews with Ms. W. It is very detailed and thorough. Her report is also corroborated by a number of other things that happened in this case.”

her behavior patterns are relatively ingrained, [mental health] treatment is likely to be long term and very gradual and Ms. W. is at risk for prematurely terminating treatment.” The court found that the Department had arranged for Ms. W. to begin treatment, but that she subsequently “terminated her treatment” with that provider. As a result, said the court, Ms. W.’s “mental health treatment . . . never got off the ground.”

(4) Ms. W.’s suspiciousness also negatively affected her visits with A.R. After visitations, A.R.’s behavior at her foster home “regressed” in ways that were disruptive to the household and harmful to A.R. herself. The court noted that credible evidence showed that, after Ms. W.’s visits, A.R. “would be mean-spirited, disrespectful, and display passive-aggressive and gaslighting behavior. She would attempt to bully and intimidate other members of the foster household and attempt to ‘triangulate’ household members against each other.” The court also found that, after some visitations with Ms. W., A.R. experienced “flair-ups” of a pre-existing eczema condition. The court took note of the fact that, during a three-week period in January 2022 when there were no visits, A.R.’s “behavior in the foster home and eczema improved.”

(5) Although some of Ms. W.’s visits with A.R. went relatively smoothly, many did not. For example, prior to a scheduled visitation on January 27, 2022, a caseworker for the Department attempted to discuss “ground rules” for the visits but Ms. W.:

interrupted frequently and accused the Department’s social worker of retaliating due to lawsuits and complaints [that] Ms. W. had filed. Although the Department attempted to redirect Ms. W. so she could have a safe visit with [A.R.], Ms. W. became increasingly loud, dysregulated, and accusatory. Eventually the visit was cancelled.

Other visitations were also problematic: Ms. W. raised unfounded complaints about the cleanliness and tidiness of the room in which visitation was to be held.⁴ She complained that the toys provided by the Department were not age appropriate, or were dirty, or both. She often argued with Departmental social workers, and on at least one occasion, security staff was required to intervene. Sometimes she criticized A.R. for making mistakes while working on games and puzzles.

(6) After summarizing this and similar evidence, the juvenile court stated:

At this time, the visits are unworkable and the Department's concerns, which the Court credits, about the minor child's reactions to visitation are well founded. The Court has also considered an alternative that might be appropriate. Minor Child's counsel has suggested the Safe Passages Center. The Court takes judicial notice that [Safe Passages] offers supervised visitation and monitored exchange for parents in high conflict or high risk situations. There is no evidence that [Safe Passages] offers services in child welfare cases, though. Moreover, the point of the Department's supervising visits is for the Department to know what is going on and be able to make recommendations to the Court. Accordingly, [Safe Passages] is not an appropriate alternative.

Based on these findings, the juvenile court ordered that visitation between A.R. and Ms. W. were to be suspended until Ms. W. "is compliant with mental health treatment and consents to communication between the Department and her mental health provider(s)." The court also ordered the parties to "explore the feasibility and suitability of Ms. W.'s

⁴ Ms. W. introduced a photograph of a couch in the visitation room to buttress her contention that the visitation rooms were dirty. In its findings, the court stated that Ms. W.'s "photograph of the visiting room's couch did not appear unacceptably dirty to the Court."

writing letters to the minor child with said letters to be screened by the Department for propriety prior to the minor child receiving them[.]”

THE STANDARDS OF REVIEW

The standard of appellate review in CINA cases is well-established:

First, we review the juvenile court’s factual findings for clear error. *In re J.R.*, 246 Md. App. 707, 730, *cert. denied* 471 Md. 272 (2020). In doing so, we consider the evidence in the light most favorable to the prevailing party and bear in mind that not only is the trial court the judge of a witness’s credibility, the court is also the judge of the probative weight of the evidence. *L.W. Wolfe Enterprises, Inc. v. Maryland Nat’l Golf, L.P.*, 165 Md. App. 339, 343–44 (2005); *see also* Md. Rule 8-131(c) (When an action has been tried without a jury, the appellate court . . . will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.”)

Second, the juvenile court’s legal rulings are reviewed without deference. *In re J. R.*, 246 Md. App. at 730–31.

Finally, the ultimate resolution of CINA cases is a matter of the juvenile court’s discretion. In the absence of clearly erroneous fact finding or legal error, we will interfere with the juvenile court’s decision only when the court’s ultimate resolution of the issue before it is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *In re Ashley S.*, 431 Md. 678, 704 (2013) (quoting *In re Yve S.*, 373 Md. 551, 583–84 (2003)). This standard

applies in cases in which a court restricts visitation. *In re: Mark M.*, 365 Md. 687, 704 (2001).

ANALYSIS

A

Ms. W.’s sole contention on appeal is that the juvenile court erred when it suspended visitation. She presents several arguments:

First, she asserts that, although it is within a juvenile court’s authority to suspend in-person visits between parent and child, suspensions should be limited to “extraordinary cases” and the present case is not such a case. She points to *Painter v. Painter*, 113 Md. App. 504 (1997), and *In re Iris M.*, 118 Md. App 636 (1998), as support for her contention.

Second, citing *In re Yve S.*, 373 Md. 551 (2003), and *In re Jertrude O.*, 56 Md. App. 83 (1983), she contends that visitation “presented no risk of harm to A.R. [because] there was no nexus between the visits and A.R.’s eczema flare-ups and allegedly manipulative behavior in her foster placement.” She characterizes the Department’s evidence to the contrary as “tenuous and unpersuasive.”

Third, Ms. W. argues that suspending visits was against A.R.’s best interest. She points out that the evidence demonstrated that she and A.R. have “an undeniable bond,” and argues that the Department should have sought the assistance of mental health professionals to address A.R.’s eczema flare-ups and disruptive behavior in her foster family instead of suspending visitations. According to Ms. W., the juvenile court erred when it did not follow up on her counsel’s suggestion to utilize the Safe Passages Center

as a resource to arrange and supervise her visits with A.R. According to Ms. W., the court also erred when it stated that a purpose of supervised visitations was to enable “the Department to know ‘what is going on’ and to ‘be able to make recommendations to the Court.’” Ms. W. contends that the Department “needed to control the visits in order to, essentially, build its case” against her and the court allowed itself to become complicit in this effort.

Finally, she argues that the court’s order “interferes with Ms. W’s and A.R.’s ability to reunify and frustrates their existing bond,” which, she asserts “worked against [the court’s] legal duty to promote reunification of the family.” She asserts that the court should have continued in-person visitation because reducing it “infringes upon [Ms. W.’s] ability to interact with A.R., to practice her parenting skills, and to create a stronger (and, as the [D]epartment desires, a healthier) bond with A.R.”

For the reasons that we will next explain, none of these contentions are persuasive.

B

Ms. W. argues that the juvenile court erred when it suspended visitation because a court’s authority to do so should be limited to “extraordinary cases” and the facts in the present case do not meet that threshold. We do not agree.

Ms. W.’s reliance on *Painter v. Painter*, 113 Md. App. 504 (1997), is misplaced. In *Painter*, this Court held that the trial court did not abuse its discretion in denying a father’s request to have visitation with his sixteen-year old son because the father had repeatedly physically and emotionally abused both the child, his sibling, and their mother in the child’s

presence with the result that the child had developed post-traumatic stress syndrome and had attempted to commit suicide after their last visitation. 113 Md. App. at 519–21. To be sure, the facts in *Painter* were extreme, but there is nothing in our opinion to suggest that a similar showing of dire, life-threatening necessity is necessary to withhold visitation.⁵

In fact, the rule is that a CINA court may restrict or deny visitation “when the child’s health or welfare is threatened.” *In re J.J.*, 231 Md. App. 304, 347 (2016) (citing *In re Yve S.*, 373 Md. at 566–67). A juvenile court’s decision to suspend parental visitation is reviewed for abuse of discretion. *In re: Mark M.*, 365 Md. at 704.

Two additional considerations enter into deciding whether a juvenile court’s decision to limit or suspend visitation is beyond the fringe of what an appellate court deems minimally acceptable. The first is that “the child’s best interest has always been the transcendent standard” in child welfare proceedings. *In re Ta’Niya C.*, 417 Md. 90, 112 (2010). The second is that, in cases, like the present one, in which a child has been either abused or neglected, the court “shall deny custody or visitation [by party responsible for

⁵ Ms. W. also cites *In re Iris M.*, 118 Md. App. 636, 647–48 (1998), in which a trial court denied a father’s request for supervised visitation with his thirteen-year old daughter because, among other substantive and procedural errors, the court (1) equated the father’s *nolo contendere* plea to a charge of sexually abusing his daughter with an affirmative admission of guilt, (2) refused to permit the father to review the report that was the basis of the CINA petition, and (3) never entered an order adjudicating the child to be a CINA even though the case had been pending for three years.

Iris M. dealt with an extremely unusual situation, and we do not see how it is relevant to the cases like the one before us in which the trial court’s factual findings were supported by substantial evidence and not marred by fundamental procedural errors.

the neglect], except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.” Md. Fam. Law § 9-101. Section 9-101 is applicable in CINA cases. *In re Yve S.*, 373 Md. 551, 587 (2003). “The burden is on the parent previously having been found to have . . . neglected his or her child to adduce evidence and persuade the court to make the requisite finding[.]” *Id.*

As we have related, in 2021, the juvenile court concluded that A.R. was a child in need of assistance based upon Ms. W.’s neglect of her. Therefore, it was Ms. W.’s burden to show that visitations were conducted in a way that “assure[d]” A.R.’s “psychological, and emotional well-being.” The court had ample evidence before it that demonstrated that Ms. W. had not been successful in addressing her mental health issues and that those same problems were having a negative effect upon A.R. The juvenile court applied the correct legal standard in this case.

Ms. W.’s second contention is that the evidence supporting the Department’s contention that the recurrence of A.R.’s eczema and her behavioral “flare-ups” with her foster family were related to her visits was “tenuous and unpersuasive.” But it is the role of the trial court, and not an appellate court, to assess the credibility of witnesses and the probative weight of evidence.

Ms. W.’s remaining contentions are closely related: She asserts that the court’s order suspending visitations was against A.R.’s best interest and contrary to the statutory goal of

family reunification.⁶ The argument is unpersuasive. There was substantial evidence that Ms. W.’s visits were dysfunctional and were harmful to A.R. Although family reunion is a goal of the CINA process, the best interest of the child is always the “transcendent consideration.” The juvenile court’s order suspending parental visits was not an abuse of discretion.

Ms. W.’s contention that the Department should have sought the assistance of mental health professionals to address A.R.’s eczema flare-ups and disruptive behavior in her foster family instead of suspending visits is also unpersuasive.⁷ As the Department points out in its brief, it was *Ms. W.*’s failure to obtain the court-ordered evaluations and treatment that caused the breakdown of her visits with A.R.⁸

⁶ See Courts & Jud. Proc. § 3-802(a):

(a) The purposes of this subtitle are:

- (1) To provide for the care, protection, safety, and mental and physical development of any child coming within the provisions of this subtitle;
- (2) To provide for a program of services and treatment consistent with the child’s best interests and the promotion of the public interest;
- (3) *To conserve and strengthen the child’s family ties and to separate a child from the child’s parents only when necessary for the child’s welfare;*

* * *

(Emphasis added.)

⁷ In fact, the juvenile court did order the Department to arrange for “individual therapy” for A.R., while ordering Ms. W. to “participate in weekly psychotherapy, under the direction of the Department” and to “follow all treatment recommendations of her psychiatric assessment, under the direction of the Department.”

⁸ In light of Ms. W.’s difficulties in following through on the court-ordered treatment, the juvenile court did not abuse its discretion in declining to suspend visitation to give Ms.

(continued)

Finally, the court did not abuse its discretion when it declined to suspend Ms. W.’s visits in order to give her counsel an opportunity to attempt to utilize the Safe Passages Center to supervise visitations. The credible evidence before the court indicated that, because of Ms. W.’s problematic behavior, her visits with A.R. were not in the child’s best interest. And Ms. W.’s appellate assertions to the contrary notwithstanding, there was no evidence that the Department was attempting to manipulate the visitation process to “build its case” against her. In fact, the evidence was to the contrary—Ms. Michaels testified that family reunification was the Department’s goal.

The juvenile court was presented with a very difficult case involving unusual issues. We sympathize with Ms. W. and appreciate her desire to be reunited with her daughter. But, and as we commented in another case involving the welfare of children, “[n]othing in [the court’s] well-reasoned ruling can be described as anything remotely resembling an abuse of judicial discretion.” *St. Cyr v. St. Cyr*, 228 Md. App. 163, 201 (2016).

**THE JUDGMENT OF THE JUVENILE
COURT FOR MONTGOMERY COUNTY
IS AFFIRMED. APPELLANT TO PAY
COSTS.**

W.’s counsel an opportunity to attempt to utilize the Safe Passages Center to supervise visitations.