

Circuit Court for Howard County
Case No: C-13-JV-20-000175

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 292

September Term, 2021

IN RE: T.K.

Arthur,
Shaw Geter,
Harrell, Glenn T, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: November 9, 2021

*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 October 2020, the Howard County Department of Social Services filed a petition in the Circuit Court for Howard County, alleging that T.K. was a child in need of assistance (“CINA”) due to neglect by his mother, N.K. A circuit court magistrate held an adjudicatory hearing in January 2021, where the parties stipulated to the factual allegations of neglect. At the conclusion of the dispositional hearing in February, the magistrate recommended the case be dismissed and that custody of T.K. be awarded to his father. Mother filed exceptions to the recommendations and on March 31, 2021 a *de novo* hearing was held. Following arguments of counsel, the juvenile judge dismissed the petition, found that it was in the best interests of the child to be placed with a parent who was willing and able, and granted custody of T.K. to Father.

Mother timely appealed and presents two questions for our review:

1. On the facts of this case, did the juvenile court err when it transferred sole custody of T.K. to Father from Mother without conducting a contested dispositional hearing at which it received evidence on and fully assessed T.K.’s best interests?
2. Did insufficient evidence support the juvenile court’s decision to transfer sole custody of T.K. from his custodial parent, Mother, to his noncustodial out-of-state parent, Father, before dismissing the case?

For the following reasons, we affirm.

BACKGROUND

The Department of Social Services (“Department”) began providing various services to the K. family in May 2020. In October 2020, the Department filed a CINA petition alleging that Mother neglected both T.K. and his sister Ta.K.¹ Mother and children

¹ Ta.K. is not a party to this appeal.

resided with the children’s maternal grandmother and maternal uncle. The petition made no allegations against Father and, at that time, Father’s whereabouts were unknown. On December 30, 2020, the Department filed a Discovery Report, indicating that Mother continued to have T.K. in her care and wanted to maintain custody; the Department had located Father in Georgia and he was ready and willing to take custody of the child; and the Department requested, *inter alia*, that T.K. be declared a CINA and remain in Mother’s care with an order of protective supervision.

At the January 2021 adjudicatory hearing, Mother stipulated to certain factual allegations regarding neglect and the court sustained the facts. Disposition was continued to February 24, 2021. At that hearing, the Department’s counsel informed the court that she intended to dismiss the petition with custody to Father. Mother’s counsel stated that she had witnesses who would testify that the father was not fit and that the matter of custody was contested. Following the arguments of counsel, the magistrate stated that she would recommend dismissal and the issuance of an order awarding custody to the father. She then entered her dispositional findings which stated:

There is no custody order controlling the matter, therefore both parents present as natural legal and physical custodians. Facts presented at adjudication prove that mother abused and/or neglected her children, including [T.K.]. No such facts are presented or sustained as regards the father. The father, therefore, continues with his natural rights to legal and physical custody of the child. The Department has had several contacts with [Father]. The father presents himself to the Department asserting that he is a fit and proper parent to the child and that the child must be released to him. The paternity having been confirmed by the Department, the Department seeks dismissal of the CINA petition with custody to fit parent, [Father]. [Counsel], on behalf of her client, [Mother], seeks

postponement of the disposition hearing. The matter does not reach disposition as the Department moves to dismiss the CINA petition and release child to the father. . . .

ORDERED, that the CINA petition is dismissed and the matter is closed, order of custody to father will be included in [a] separate order.

Mother filed exceptions and at a *de novo* hearing held on March 31, 2021, before a circuit court judge, the Department stated that it was “seeking to withdraw or dismiss” the petition in accordance with *In re Russell G.*, 108 Md. App. 366 (1996), where the “Court did indicate that if a parent is willing and able to provide proper care and attention to a child and is found to be a fit and proper parent, then the [c]ourt cannot adjudicate a child as a [CINA].” The Department further indicated that because child’s counsel consented to the withdrawal of the petition, the Department was not “prohibited from a unilateral dismissal or withdrawal.” Counsel stated that Father was a fit and proper parent who was able and willing to care for T.K. and T.K.’s counsel agreed.

Mother did not contest the Department’s ability to dismiss the case, but rather, argued that, at the initial hearing, the magistrate should have conducted “a best-interest analysis” prior to issuing the custody order. She argued the circuit court judge should have allowed “Mother to testify, Mother’s witnesses to testify -- and I understand that Father ha[d] witnesses as well.” According to her, “the [c]ourt prematurely changed custody and issued an order of custody to Dad without determining whether or not Dad [wa]s a fit parent.” She then requested that an order of custody not be issued, leaving the parents the opportunity to pursue custody in family court.

Father argued that Maryland law, specifically, Md. Code, Courts and Judicial Proceedings (“CJP”) § 3-819(e) required that “if the allegations in the petition are sustained against only one parent of the child, and another parent is available and willing and able, then the Court may not find that the child is a [CINA], and . . . may grant custody” With respect to conducting a best-interests analysis, Father argued that the Department’s attorney had used “the best-interest standard in her determination of what is appropriate for [T.K.], and she agrees that the petition should be dismissed.”

Following the arguments of counsel, the court dismissed the petition and granted Father sole legal and physical custody of T.K., with reasonable and liberal visitation with Mother. Mother timely appealed.

STANDARD OF REVIEW

The following “three distinct but interrelated standards of review” apply to this Court’s review of CINA cases. *In re J.R.*, 246 Md. App. 707, 730 (citation omitted), *cert. denied*, 471 Md. 272 (2020).

When the appellate court scrutinizes factual findings, the clearly erroneous standard of Rule 8-131(c) applies. Second, if it appears that the court erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the 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.

In re M., 251 Md. App. 86, 111 (2021) (citations omitted).

An abuse of discretion exists “where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles.” *In re Andre J.*, 223 Md. App. 305, 323 (2015) (citation and quotation marks omitted) (alteration in original). A circuit court’s ultimate decision will be left undisturbed unless it is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.” *In re Ashley S.*, 431 Md. 678, 704 (2013) (citation and quotation marks omitted).

DISCUSSION

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, CJP § 3-801(f).

As noted *supra*, the filing of a CINA petition requires two hearings. First, there is the adjudicatory hearing, which determines whether the allegations in the petition are true. *Id.* § 3-801(c). Then there is a disposition hearing, to determine whether the child truly is a CINA, and, if so, the nature of the court’s intervention. *Id.* § 3-801(m). Lastly,

[i]f the allegations in the petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child, the court may not find that the child is a child in need of assistance, but, before dismissing the case, the court may award custody to the other parent.

Id. § 3-819(e).

I. The juvenile court did not err in granting sole custody of T.K. to Father without conducting an evidentiary hearing to assess T.K.'s best interests.

Mother first argues the juvenile court erred in granting custody of T.K. to Father based solely on the sustained facts in the petition. She contends the court should have conducted a hearing and should have allowed her to present evidence prior to making a decision that it was in T.K.'s best interests to award custody to Father. She argues that her proffers and Father's proffers created material disputes of factual issues and thus the court was required to take testimony. The Department argues that the court acted properly and was not required to hold an additional hearing prior to granting custody to Father after Mother stipulated to the allegations of neglect against her.

At the January 27, 2021 adjudicatory hearing, the parties agreed to the following:

- [T.K.] currently resides with his mother and sister at [residence in Maryland]. [T.K.'s] father is [] of [residence in Georgia].
- This case was referred to the Department on May 21, 2020 for Family Preservation Services to assist [Mother] with issues related to housing.
- [Mother] has Type I diabetes and has been hospitalized three times since the case has opened. She relies on her mother and brother to provide care for her children while she is hospitalized. [Mother] told this worker [Erin Harkleroad] she has been diagnosed with gastroenteritis. [Mother] has a medical marijuana card for nausea related to her diabetes.
- On June 25, 2020, [Mother] contacted the Howard County Police with a report that [Ta.K.] was beaten by a man named Roderick Thaxton while the child was at [Mother's] friend's home (Martha Perou). [Mother] dropped her children at Ms. Perou's home at 11:00 pm on 6/25/20. She left them there in the care of Roderick Thaxton who she knew had been drinking alcohol. [Mother] admitted that she had been drinking alcohol and using marijuana. When she returned to Ms. Perou's home she learned that Mr. Thaxton had hit [Ta.K.] with a belt and a spatula which caused bruising. He also pulled out some of her hair.
- [Mother] was indicated for neglect of both of her children.
- The CPS worker signed a safety plan that the children could not be at Martha Perou's home due to the poor conditions. [Mother] called the Department on July 17, 2020 to ask if she could go to see Ms. Martha Perou.

- [Mother] had housing until October/November 2017, when she provided verbal 30 day notice to her landlord of her departure. [Mother] presently has a three bedroom apartment and has resided there since November, 2020.

- On September 14, 2020, a Family Involvement Meeting was held to see how other family members could support [Mother] and her children. It was decided that the family would meet together to create their own plan on how they can assist [Mother] with the routines and schooling for her children.

- On October 2, 2020, [Mother] told the worker that [T.K.] got ahold of a stair railing pole and hit [Ta.K.] with the pole and cut her eye. [Mother] put ice on [Ta.K.'s] eye. [Mother] did not take [Ta.K.] to the physician to look at her eye.

- Since the Department has been working with [Mother], she was referred to therapy where she attended a couple of sessions and discontinued therapy. [Mother] is enrolled in individual therapy at Families First since November 2020, one time per week.

As a result of these stipulations, Mother conceded that she neglected T.K., but Mother argues that because there was only one isolated incident, custody should have been considered for her. The stipulation, however, noted two distinct occurrences, one in June, and the other in October. We observe that the Department initially became involved with this family in May 2020 and filed the CINA petition less than six months later. During this timeframe, Mother was hospitalized three times and admitted that she relied on family members for assistance during her hospitalizations. She stipulated that while under the influence of a combination of alcohol and marijuana, she left her children with an individual who had been drinking and who then, during Mother's absence, abused the children. In addition, there was a separate incident where mother did not seek medical attention for her daughter, after T.K. hit her with a pole causing a cut to her eye. During this same timeframe, Mother attended recommended therapy inconsistently. As we see it,

the record clearly reflects two incidents while Mother was being assisted by the Department within a four-month timeframe.

Mother, nevertheless, argues that the sustained facts, by themselves, do not establish it was in T.K.’s best interest to award custody to Father. She states the facts did not establish that she was unable to care for T.K. and the court’s decision failed to consider that she was willing and able. She argues that her proffers cast doubt on Father’s ability to care for T.K. and that custody to him was not in T.K.’s best interest.

At the exceptions hearing, Mother indicated she had witnesses, “particularly one witness who has another child with [Father] and who can testify to [Father’s] abusive manner towards her and towards the child.” In addition, Mother asserted that, “she would testify to the fact that [Father] was abusive to her, and would testify to his attempting to teach [T.K.] about fire by lighting a flame to his arm and then telling the maternal grandmother that that was appropriate” Mother also indicated that T.K. had “lived five years with his mother and his mother’s family” in Maryland and that he did not “know his father or his father’s family” who were in Georgia.

We observe that § 3-819(e) of the Courts and Judicial Proceedings Article does not require a court to award custody following the dismissal of a CINA petition, but rather, allows the court discretion to do so and we agree with Mother that a child’s best interest is always paramount in both CINA proceedings as well as custody matters. *In re M.H.*, 252 Md. App. 29, 41–42 (2021) (“The broad purpose of the CINA statute is to ensure that ‘juvenile courts (and local departments of social services) exercise authority to protect and advance a child's best interests when court intervention is required.’”) (citations omitted);

Wagner v. Wagner, 109 Md. App. 1, 11 (1996) (“We also keep in mind that ‘[o]verarching all of the contentions in disputes concerning custody or visitation is the best interest of the child[ren].’”) (alterations in original) (citation omitted).

We also note that § 3-819(e) does not require that a court find unfitness in the neglectful parent prior to awarding custody to the non-custodial parent. It specifies:

If the allegations in the petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child, the court may not find that the child is a child in need of assistance, but, before dismissing the case, the court may award custody to the other parent.

In construing a statute, we first look to its plain meaning. Thus, “[i]f the words of the statute, construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning, we will give effect to the statute as it is written.” *Walzer v. Osborne*, 395 Md. 563, 572 (2006) (citation and quotation marks omitted). Here, the statute’s plain language does not support the notion that the court must find the neglectful parent unfit or that a separate evidentiary hearing is required to award custody or to assess the best interests of the child. As we see it, while there may be circumstances where a hearing would be appropriate, a court can properly exercise its discretion by declining to have a hearing.

In 2020, the Court of Appeals in *In re R.S.*, 470 Md. 380 (2020) examined whether, in a CINA context, a non-custodial parent who was willing and able to parent should have been awarded custody. In *R.S.*, the allegations of neglect were attributed only to the mother and while the Department did express concerns about the father’s fitness, it did not amend

the petition to include any allegations against him. *Id.* at 417. The juvenile court proceeded to deny sole custody to the father without a finding that he was unfit based on its improper interpretation of the Interstate Compact for the Placement of Children. *Id.* The Court of Appeals held that “once it established paternity, [the father] had all the ‘rights and responsibilities’ of a proper parent. Therefore, in the absence of an express finding that [the father] was unfit, [the father] should not have been denied custody. . . . [T]he juvenile court was required to render a decision regarding the fitness of [the Father]—or his ability and willingness to give proper care to the child.” *Id.* Because the court failed to assess the father’s fitness, an additional hearing was warranted. *Id.* at 417-18.

In the case at bar, the allegations were sustained against Mother only, and unlike in *In re R.S.*, the Department concluded that Father was fit and proper. Here, after evaluating the relevant case law, documents, stipulations and arguments of counsel, the circuit court judge found that Father was fit and willing and that it was in the best interest of the child to award him custody. Under these circumstances, we hold that the court was not required to hold a hearing and that the court acted in accordance with relevant statutes and caselaw.

II. There was sufficient evidence in the record for the Court to award custody.

As previously stated, we have found no authority to support the contention that a separate evidentiary hearing was required to award custody. At the time of the proceedings, T.K. was four or five years old and Father was not a stranger as he was present, at least, during the first two years of T.K.’s life. The Department had obtained Child Protective Services clearances on Father and all adult members of his family, verified his employment, conducted a video tour of his home, including T.K.’s room, and examined

various court databases for information about Father with negative results. The Department then concluded, based on its investigation, that Father was a fit and proper parent who was willing and able to provide for T.K.

Mother argues that her proffers raised material disputes of fact. However, Mother’s proffers were less than detailed, occurred several years prior to the court hearing, resulted in no injury, were not previously reported to any authority, and did not support neglect or abuse of T.K. We note that a single incident of a less than traditional act warning a child about fire does not make a parent unable to care for his child. *See In re Yve S.*, 373 Md. 551, 572 (2003) (“The fact that appellant . . . is less than a perfect parent . . . is not a legitimate reason to remove them from a natural parent competent to care for them . . .”). Likewise, a relationship with another woman and child cannot be determinative of a parent’s ability to care for the child at issue. *See In re Adoption of Ta’Niya C.*, 417 Md. 90, 116 (2010) (“A court may reach different conclusions . . . regarding different children of the same parent.”). Mother’s argument that *In re M.H.*, 252 Md. App. 29 (2021) supports her position is not persuasive. That case involved the submission of shelter care reports as evidence and proffers at an adjudication hearing. *Id.* at 53-54. This Court held “[t]he practice of ‘submitting on the report’ in a contested adjudication is flatly contrary to the CINA statute.” *Id.* at 54. Here the proffers suggested were clearly not presented in the adjudication phase. Rather, they were presented during the dispositional phase where the Department was requesting dismissal and that custody be awarded to the father.

Regarding the custody determination, we hold the court had ample evidence to find that Father was willing and able to have custody of his son and the award was in the best

interest of the child. The juvenile court stated, “[b]ased on what’s been presented to this [c]ourt concerning the arguments and the [c]ourt’s review of the petition, I am going to find that--even without hearing any other proffer or any other testimony--that it is in the child’s best interest to be placed with the parent that is willing and able--and therefore the [c]ourt is going to dismiss the petition, and I am going to place [T.K.] with [Father].” The court was not required to articulate every factor evaluated in making its assessment and its failure to do so was not error. *See Thomas v. City of Annapolis*, 113 Md. App. 440, 450 (1997) (“Since a trial judge is presumed to know the law, the judge is not required to set out in detail each and every step of his thought process.”) (citation omitted).

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