

Circuit Court for Prince George's County
Case No. CINA-20-0006

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 602

September Term, 2020

IN RE: A.D.

Kehoe,
Gould,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: February 23, 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.

This appeal arises from an order by the Circuit Court for Prince George’s County, sitting as a juvenile court, which adjudicated A.D. (born May 2003) as a child in need of assistance (“CINA”)¹ and maintained her placement with B.D., her maternal grandmother (“Grandmother”). In her appeal, N.D. (“Mother”), A.D.’s mother, presents two issues, which we have slightly reworded:

1. Did the juvenile court commit error when it decided that A.D. was a child in need of assistance at the adjudication hearing?
2. Did the juvenile court err when it found that A.D. was a child in need of assistance when her mother was willing and able to care for her and she did not require the court’s intervention?

Mother is correct that the juvenile court erred when it declared A.D. to be a CINA in the adjudication hearing instead of the disposition hearing. However, she has not demonstrated that she was prejudiced by the error. There was substantial evidence in the record to support the juvenile court’s findings of fact. We affirm the judgment of the juvenile court.

Facts and Legal Proceedings

On January 10, 2020, the Prince George’s County Department of Social Services filed a CINA petition relating to A.D., who was sixteen years old at the time. The Department alleged that it had received two Child Protective Services (“CPS”) referrals reporting that

¹ Pursuant to Md. Code, § 3-801(f) of the Courts & Judicial Proceedings Article, a “child in need of assistance” means “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.”

A.D. had run away from Mother’s home and was afraid for her safety following a physical altercation with Mother on December 21, 2019.

The Department created a safety plan and tried to initiate a Family Involvement Meeting to resolve the safety concerns, but Mother declined to participate.² At a shelter care hearing on January 10, 2020, the Department requested that the juvenile court order shelter care and urged the court to adopt A.D.’s preference for placement with Grandmother. Mother did not object to shelter care but did not want A.D. sheltered with Grandmother. The juvenile court granted the Department’s request for shelter care and scheduled an adjudicatory hearing on February 5, 2020.

Before the adjudicatory hearing, the Department filed a report stating that A.D. was doing well in shelter care and at school, was up to date on her medical appointments, and had been referred for therapeutic services. The report also stated that the Department had attempted contact with Mother on several occasions with no success, that Mother had failed to appear for her substance abuse evaluation and that she had not attempted to reschedule the evaluation. The Department also reported that A.D. and Grandmother were interested in beginning the custody and guardianship process.

At the February 5, 2020, adjudicatory hearing, Grandmother acknowledged that she was estranged from Mother and expressed her concerns about Mother’s excessive alcohol

² The whereabouts of A.D.’s natural father, C.C. (“Father”), remained unknown during the pendency of the CINA matter, and he is not a party to this appeal.

consumption and mental health.³ Grandmother explained that Mother had been diagnosed with severe depression and had attempted to commit suicide while she was pregnant with A.D. As a result, A.D. began living with Grandmother shortly after her birth. In 2004, when Mother started taking A.D. out late at night and keeping her away from Grandmother, Grandmother and Father filed for custody of the child. The court issued a custody order to Grandmother and Father, and they shared custody of A.D. from 2005 until 2016, when Mother sought and was granted sole physical and legal custody.

A.D. testified that she could recall living in a stable housing situation for only two school years. At other times, the family moved between hotels, motels, and the home of L.D., Mother’s father (“Grandfather”). However, Mother’s relationship with Grandfather was contentious, and he had evicted her from his home on more than one occasion in the past. A.D. testified that her relationship with her mother “wasn’t good.” She said that Mother smoked marijuana and drank alcohol heavily on a daily basis, called her names such as “bitch” and “whore,” has pushed her, thrown things at her, hit her, threatened her life, and blamed her for the family’s homelessness.

A.D. related that on the afternoon of December 21, 2019, Mother woke her and stated, “Bitch, go clean out the refrigerator or you’re going to get a new placement by tomorrow.” A.D. could smell the odor of liquor on her breath. A.D. ignored Mother and tried to leave the room, but Mother blocked the door and pushed A.D. into the wall and a fan, punched

³ In its CINA petition, the Department alleged that “it is reported” that Mother “has an untreated mental illness. Although the petition did not indicate the source of the report, its substance was consistent with Grandmother’s testimony at the adjudicatory hearing.

her, and squeezed her around the neck, resulting in bruising under her left eye, on the right side of her back, and on her right shoulder. When A.D.’s 12-year-old brother, E.D., attempted to intervene in the altercation, Mother pushed him into A.D., and he “flipped over,” resulting in a cut on his left side.

The encounter ended when Mother left the room, but several times during that night Mother returned, turned on the light, said, “bitch, there’s no sleeping in here,” and threatened to stomp on A.D.’s head while she was sleeping.⁴ A.D. was afraid she was going to die. As a result, the next morning A.D. left the house while Mother was in the bathroom and went to a friend’s house. Grandmother picked her up a few days later, and she remained with Grandmother until the shelter care hearing.

During that time period, Mother came to Grandmother’s house three or four times, yelling and banging on the door, but Grandmother did not open the door, fearing for A.D.’s safety. A.D. refused to go to school because she worried that Mother would come to her school and attempt to remove her from the building.

A.D. did not believe she would be safe if returned to Mother’s care. Stating that she just wanted to “live a normal life,” and characterizing her relationship with Grandmother as “really good,” A.D. professed a desire to remain with Grandmother.

Mother testified that it was A.D. who initiated the altercation on December 21, 2019, and that A.D. had become physical with her in the past. Mother denied having threatened

⁴ At the time, the family was living in Grandfather’s house, where A.D. slept on the floor of Grandfather’s bedroom. Grandfather was not home during the altercation.

A.D. and, despite acknowledging the presence of bruises on A.D.’s body following the incident, said she is always “very gentle” with her daughter and does not use physical discipline.

Mother realized that A.D. had run away the morning after the fight when she went outside, found her car tires slashed, and returned to the house to find A.D. gone. She called the police, who examined her injuries and took a report. She claimed to have taken photos of her injuries but said she no longer had them, as her phone had fallen into water, and she did not produce a copy of the police report. When Mother later learned that A.D. was with Grandmother, she feared that Grandmother would poison A.D.’s mind against her and that a prolonged placement with Grandmother would put an additional strain on her relationship with her daughter.

Mother denied that the Department had offered her services but said she would accept them if offered. She sought to have A.D. returned to her care, suggesting that the family could live with Grandfather, notwithstanding her acknowledgment that she and her father do not communicate well and her belief that he is the root of all her problems. Explaining that she wanted what was best for her daughter, Mother denied that it was in A.D.’s best interest to live with Grandmother, despite A.D.’s stated desire to do so.

In closing, Mother denied that the Department had made reasonable efforts toward eliminating the causes of A.D.’s removal from her home. She also claimed she was ready, willing, and able to have A.D. returned to her care and that the only barrier to that plan was A.D.’s refusal. If A.D. were not returned to her, Mother requested that the child be placed

in foster care, a setting that would better facilitate the repair of the mother-daughter relationship.

The juvenile court recognized that the Department had not yet completed Mother’s evaluation and decided not to proceed immediately to disposition. Instead, the court indicated that it was planning to reset the matter for disposition in 30 days so the parties would have a “complete opportunity to finish everything that needs to be done.” When the juvenile court learned that the next available hearing date was not until March 13, 2020, it found good cause to go past 30 days for disposition, a decision to which all parties assented.

The court found that the Department had made reasonable efforts to eliminate the need for A.D.’s removal and determined that the Department had proven the allegations in the CINA petition by a preponderance of the evidence. The juvenile court therefore sustained the allegations, finding that it was contrary to A.D.’s welfare to be returned to Mother’s care. The court found that A.D. had been abused and was a CINA and placed her in the Department’s care and custody, with placement at the Department’s discretion. The juvenile court issued its written CINA adjudication findings and order on February 6, 2020.⁵

In its report to the court in anticipation of the March 13, 2020 disposition hearing, the Department stated that A.D. was in “a safe and stable environment in the Prince George’s County area” but did not provide her exact location due to safety concerns. A.D. was doing

⁵ Mother appealed that order, but this Court dismissed the appeal as premature. *See* No. 2643, September Term 2019.

well in school, was up to date on medical appointments, and was scheduled to begin therapy the week of March 23, 2020. The Department also reported that it had attempted to contact Mother on four occasions since the adjudicatory hearing, but Mother had not responded, nor rescheduled the substance abuse assessment that she had missed in January.

As a result of court closures necessitated by the COVID-19 pandemic, the disposition hearing was postponed several times and ultimately took place on August 7, 2020. During the hearing, the Department—and A.D., through counsel—requested that the court determine that A.D. was a CINA based on abuse by Mother and continue her placement with Grandmother.⁶ Mother’s attorney stated that she had had no contact with Mother since the February adjudicatory hearing, despite attempts to contact her by phone, email, and mail; therefore, counsel declared she could “take no position at this time.” A.D. declined to add anything, other than to offer her assessment that things were going well for her.

The juvenile court incorporated the findings from its adjudication order into its disposition order, including its finding that the Department had made reasonable efforts and its conclusion that A.D. was a CINA. The juvenile court filed its written disposition findings and order on August 17, 2020.

⁶ The Department noted that its background check on Grandmother had come back “clean.”

Analysis

1.

Mother first contends that the juvenile court erred when it declared A.D. a CINA during the February 2020 adjudicatory hearing, rather than during a separate disposition hearing, as required by Courts & Jud. Proc. § 3-819(a).⁷ She acknowledges that the juvenile court held a separate disposition hearing in August 2020, in which it incorporated its findings made during the adjudicatory hearing. However, Mother asserts, this neither cured the court's initial error nor rendered that error harmless. This is so, she argues, because she was not given the opportunity to expound on the reasons A.D. should be returned to her during the August 2020 hearing.⁸ She therefore requests that we remand the matter to the juvenile court for a full disposition hearing.

⁷ Courts & Jud. Proc. § 3-819(a) provides:

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

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

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

⁸ In fact, Mother did not attend the August hearing.

The Department and A.D. acknowledge that the juvenile court made a procedural mistake when it determined that A.D. was a CINA during the adjudicatory hearing. However, they assert that the error was harmless and caused no prejudice to Mother.

The standard of review applicable to CINA proceedings is well-established: (1) we review factual findings of the juvenile court for clear error, (2) we determine, “without deference,” whether the juvenile court erred as a matter of law, and if so, whether the error requires further proceedings or is instead harmless, and (3) we evaluate the juvenile court’s final decision for abuse of discretion. *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018). In doing so, we must remain mindful that it is the juvenile court that “sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [it] 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. Bayard*, 215 Md. App. 82, 105 (2013) (quoting *In re Yve S.*, 373 Md. 551, 585-86 (2003)).

Before addressing the merits of Mother’s contention, we must consider whether the issue has been adequately preserved for our review. Maryland Rule 8-131(a) provides that if an issue does not “plainly appear[] by the record to have been raised in or decided by the trial court,” we “[o]rdinarily . . . will not decide [the] issue.”

During the adjudicatory hearing, Mother made no objection when the juvenile court: (1) declined to proceed directly to disposition and instead sought to set disposition in 30 days, in light of its understanding that the Department had not completed Mother’s full

evaluation; (2) determined that good cause existed to extend the disposition hearing for more than 30 days because the next available date for the hearing was not until March 13, 2020;⁹ (3) made its factual determination that the Department had proven the allegations in the CINA petition by a preponderance of the evidence and sustained the allegations in the petition; and (4) found that A.D. was a CINA to be placed in the care and custody of the Department for appropriate placement. Nor did Mother appear at the disposition hearing to object to a CINA determination or explain why A.D. should be returned to her. Therefore, Mother failed to preserve her argument regarding the court’s finding that A.D. was a CINA during the adjudicatory hearing. Moreover, as we explain below, she would fare no better had she done so.

As the Court of Appeals recently explained:

The juvenile court proceeding to determine whether the child is a CINA consists of two stages – an adjudicatory hearing and a disposition hearing.

Adjudicatory Stage

As a first stage in resolving a CINA petition, the juvenile court is to hold an adjudicatory hearing to determine whether the department’s factual allegations in the CINA petition are true. CJ §§ 3-801(c), 3-817(a); Maryland Rule 11-114. At the adjudicatory hearing, the rules of evidence apply and the allegations in the petition must be proved by a preponderance of the evidence. CJ § 3-817(b)-(c); Maryland Rule 11-114(e).

Disposition Stage

If the court finds that the allegations in the petition are true, the court then holds a separate disposition hearing to determine whether the child is, in fact, a CINA and, if so, the nature of any necessary court intervention. CJ §§ 3-801(m), 3-819(a). Although the disposition hearing is ‘separate’ from the

⁹ In fact, Mother’s attorney specifically consented to extending the disposition hearing by more than 30 days.

adjudicatory hearing, the two hearings are ordinarily to be held on the same day. CJ § 3-819(a). At the disposition stage, it is left to the discretion of the juvenile court whether to insist on strict application of the rules of evidence. Maryland Rule 5-101(c)(6). The court may find that the child is not a CINA and dismiss the case. CJ § 3-819(b)(1)(i). Alternatively, the court may determine that the child is a CINA, in which case it may take one of three actions: (1) decide not to change the child’s current custody; (2) commit the child to the custody of a parent, relative, or another suitable individual; or (3) commit the child to the custody of the local department of social services or the Maryland Department of Health. CJ § 3-819(b)(1)(iii). If the child is placed out of the home, the court must later hold a permanency planning hearing to determine a permanency plan for the child. CJ § 3-823(b).

In re O.P., 470 Md. 225, 236-37 (2020) (footnotes omitted).

We are not persuaded that the juvenile court’s procedural oversight in any way prejudiced Mother. Her only claim of prejudice on appeal appears to be that by the time of the disposition hearing, A.D. had been out of her care and living with Grandmother for eight months and that she was “never afforded the opportunity contemporaneous with the finding of A.D. as a CINA . . . to expound on why A.D. should not continue to be separated from her.” This claim is not supported by the record.

When the juvenile court prematurely found A.D. to be a CINA during the February 2020 adjudicatory hearing, Mother was afforded the opportunity to object and explain her disagreement with the finding, but she remained silent. And, although Mother claimed she was willing and able to have A.D. returned to her, she acknowledged that A.D. refused to come home. Her “biggest concern” was not separation itself but the child’s placement—she preferred that A.D. be placed in foster care rather than with Grandmother. Mother had another opportunity to express her objections and concerns at the August 2020 disposition

hearing, but she did not attend that hearing. Nor had she been in contact with the Department or her own attorney for the previous six months.

At the adjudicatory hearing, the juvenile court sustained the allegations in the CINA petition, including the allegations that Mother had physically attacked and threatened to kill A.D. and suffered from substance abuse issues and an untreated mental illness. In light of these findings, and assuming that the court had not prematurely declared A.D. to be a CINA, it is very hard to conjecture how or why the juvenile court would have discontinued shelter care and returned A.D.—who advocated for placement with Grandmother—to Mother’s care prior to the disposition hearing. In the period between the adjudication and disposition hearings, A.D. remained out of Mother’s care. The delay between the two hearings, while regrettably lengthy, was largely due to court closures resulting from the COVID-19 pandemic. The delay was certainly not the result of the court’s error during the adjudicatory hearing.

Moreover, and despite the juvenile court’s erroneous CINA disposition during the February 2020 adjudicatory hearing, the court did hold a formal disposition hearing in August 2020, making the requisite dispositional findings, which incorporated its findings during the adjudicatory hearing. Mother, however, did not attend the hearing to voice any reason why A.D. was: (i) no longer subject to the potential for abuse, (ii) was not a CINA, or (iii) should be returned to Mother’s care. The juvenile court cured its previous error and properly ruled that A.D. was a CINA and continued her placement with Grandmother.

For these reasons, we hold that Mother was not prejudiced and that any procedural error by the juvenile court was harmless.

2.

Mother also avers that the juvenile court erred in determining that A.D. was a CINA based on abuse. Even if the juvenile court determined that the evidence was sufficient to prove that A.D. had sustained injuries in the December 2019 altercation, Mother claims, the evidence was insufficient to show that the injuries indicated a substantial risk of harm, especially in light of the fact that A.D. had not involved the police nor seen a doctor afterwards. And, according to Mother, A.D.’s age (17 years old at the time of the disposition hearing) and Grandmother’s “omnipresence in the life of the family” rendered the court’s intervention unnecessary and A.D.’s removal from Mother’s care inappropriate.

We hold that Mother has failed to preserve the issue. At the adjudicatory hearing, Mother made no objection to the juvenile court’s finding that the allegations in the CINA petition—including the allegations of abuse—had been proven by a preponderance of the evidence, nor did she comment when the court prematurely declared that A.D. was a CINA based on that abuse. Accordingly, Mother’s claim that the juvenile court erred in sustaining the abuse allegations in the CINA petition and adjudicating A.D. a CINA is not preserved for our review. Md. Rule 8-131(a).

We are aware that Mother did not appear at the August 2020 disposition hearing and that she had had no contact with her own attorney after the adjudicatory hearing. As a

result, her attorney was unable to take a position on the CINA disposition.¹⁰ So, assuming for purposes of analysis that her appellate contention is preserved for review, it is not persuasive. Pursuant to Courts & Jud. Proc. § 3-801(f),¹¹ a child may be adjudicated as a CINA if he or she has been abused or neglected. *In re J.R.*, 246 Md. App. 707, 752, *cert. denied*, 471 Md. 272 (2020). The standard that must be employed by the juvenile court in CINA adjudication proceedings is preponderance of the evidence. *Id.* See also Courts & Jud. Proc. § 3-817(c). In determining whether neglect or abuse has occurred, the standard is measured against the totality of the circumstances. *In re J.R.*, 246 Md. App. at 752.

At the contested adjudicatory hearing, the juvenile court heard testimony from the Department social worker, Mother, Grandmother, and A.D. A.D. testified that on December 21, 2019, Mother, with alcohol on her breath, woke her, ordered her to clean out the refrigerator or risk being sent away, pushed her into a wall and fan, hit her, and threatened to stomp on her head while she was sleeping. A.D. was unnerved enough by the encounter to leave the home the following morning and report the incident to Grandmother,

¹⁰ By the time of the adjudication hearing, Mother had also entirely dropped out of contact entirely with the Department.

¹¹ To reiterate, Courts & Jud. Proc. § 3-801(f) states:

“Child in need of assistance” means 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.

who photographed the injuries; the photographs were admitted into evidence. A.D. also said she did not feel safe with Mother. Grandmother added that she had concerns about Mother’s mental health and drug and alcohol usage.

Mother presented her side of the story, stating that it was A.D. who initiated the December 2019 incident and denying that she had placed hands on the child, except to defend herself. She also claimed that she was willing and able to care for A.D. and that she maintained a home where A.D. could be safe.

Of course, in an assessment of the credibility of witnesses, the juvenile court “was entitled to accept—or reject—*all, part, or none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence.” *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011) (emphasis in original). The court’s finding, by a preponderance of the evidence, that A.D. had testified truthfully about abuse suffered at the hands of Mother was not erroneous “merely because the [juvenile court] *could* have drawn different ‘permissible inferences which might have been drawn from the evidence by another trier of the facts.’” *Id.* (emphasis in original) (quoting *Hous. Opportunities Comm’n of Montgomery County v. Lacey*, 322 Md. 56, 61 (1991)).

In addition, the record sufficiently supported a finding that Mother was not ready, willing, or able to care for A.D. The evidence showed that Mother had not communicated with the Department or her attorney at all between February and August 2020 and failed to appear at the disposition hearing. She had not, to the court’s knowledge, completed the substance abuse assessment required by the Department. She presented no evidence that

she had engaged in services or undertaken other corrective measures to alleviate the Department's safety concerns. Nor had she shown that she had a stable housing situation. In the absence of any such evidence, there was no basis for the juvenile court to determine that A.D. would be safe if she were returned to Mother's care.

The court's factual findings were not clearly erroneous, and its ultimate decision adjudicating A.D. as a CINA was not an abuse of discretion.

**THE ORDER OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY,
SITTING AS A JUVENILE COURT, IS
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**