

Circuit Court for Baltimore County
Case No. C-03-JV-20-000709

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1134

September Term, 2020

IN RE: J.I.

Reed,
Wells,
Zic,

JJ.

Opinion by Zic, J.

Filed: May 26, 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.

The Baltimore County Department of Social Services (“Department”) filed a petition to have J.I., the minor child of C.I. (“Mother”) and G.F. (“Father”), declared a child in need of assistance (“CINA”) in the Circuit Court for Baltimore County.

Following a hearing, the court, sitting as the juvenile court, found J.I. to be a CINA and ordered that he be placed in the care of the Department. In this appeal, Mother, appellant, presents two questions:

1. Did the juvenile court err in finding J.I. to be a CINA and in committing him to the custody of the Department?
2. Did the juvenile court err in finding that the Department had made reasonable efforts to prevent placement of J.I. in the Department’s custody?

For reasons to follow, we hold that the juvenile court did not err in finding J.I. to be a CINA, in committing him to the custody of the Department, or in finding that the Department had made reasonable efforts to prevent placement. Accordingly, we affirm the judgment of the circuit court.

BACKGROUND

J.I. was born in 2003 to Mother and Father. In 2020, J.I. lived in New York with Mother while Father lived in Maryland. That same year, Mother went to live in a homeless shelter, so she arranged to have J.I. live with Father in Maryland. Mother planned to later relocate to Father’s home in Maryland.

Shortly after J.I. arrived at Father’s residence, but before Mother relocated to Maryland, there was an altercation between J.I. and Father. In May of 2020, J.I. was charged as an adult with first-degree assault, second-degree assault, and destruction of

property. J.I. was removed from Father’s home and placed in a juvenile detention facility.

On July 17, 2020, all charges against J.I. were dismissed, and he was released from the detention facility. Neither Father nor Mother was present to retrieve J.I. from the facility. After receiving a report that J.I. had been released but no caregiver was present to take care of him, the Department filed a CINA petition on his behalf.

Adjudication and Disposition Hearing

At a hearing before a magistrate on the Department’s petition, Father admitted that he was unable to care for J.I. at that time. Father asserted that he had concerns about J.I.’s “violence in the home” and “destruction of property.”

Mother also admitted that she was unable to care for J.I. at that time. She claimed that her inability to care for J.I. was due entirely to the fact that she lived in a homeless shelter in New York and lacked the resources to move to Maryland. She also claimed that it was unsafe for J.I. to return to New York due to something that J.I. “witnessed.”¹

Regarding her home and financial situation, Mother claimed that she was willing to move to Maryland and live in a shelter with J.I., but that she needed the Department’s assistance with the expense of moving. She also claimed that she had been “asking the Department to help her get here.”

The Department asserted that it attempted to provide services for Mother in Maryland but that those attempts were unsuccessful because Mother was not a resident of

¹ The record is unclear as to what exactly J.I. witnessed or why it was unsafe for him in New York.

Maryland. The Department noted that it contacted Prologue, a program for people experiencing homelessness, to work with Mother, but Prologue refused because Mother was not a resident of Maryland. The Department also tried to find a shelter for Mother in Maryland but discovered that none were available. The Department claimed that it also offered to assist Mother with the financial costs of visiting with J.I. in Maryland, including paying for a brief hotel stay. The Department added that, if J.I. were to be found a CINA, the Department would continue to provide services, including helping Mother find housing, in an effort to reunify J.I. with one or both of his parents.

Mother disputed the Department’s claim that it offered to pay for her hotel stay during visitation. Mother added that she would be willing to stay in a hotel room with J.I. in Maryland, at the Department’s expense, until she could establish residency. The Department responded by stating that it would pay for Mother to stay in a hotel “for a brief period of time” but that it could not, and would not, do so indefinitely.

J.I.’s counsel proffered that, at the time of the hearing, J.I. had “a substantial issue with his leg” that needed to be “checked out” by a specialist. Counsel also noted that J.I. had not been enrolled in school and that his home school was lacking certain necessary information. Counsel added that J.I. did not have a computer for school and had only “one outfit of clothes.”

The magistrate sustained the allegations in the Department’s petition and determined J.I. to be a CINA based on a finding of neglect. The magistrate stated that the

CINA finding was not based on Mother’s “poverty” but rather on the inability of both parents to provide a safe environment for J.I.

Exceptions

Mother filed exceptions to the magistrate’s recommendations. At the exceptions hearing, Mother did not dispute the magistrate’s finding that she was unable to provide care for J.I. Mother claimed, however, that that finding did not support the magistrate’s finding of neglect because “homelessness is not a reason to find one has neglected their child.”

The circuit court, sitting as the juvenile court, overruled Mother’s exceptions and adopted the magistrate’s recommendations. In so doing, the court found that Mother had neglected J.I. because she had been unable to provide appropriate care when J.I. was released from juvenile detention. The court noted that Mother’s homelessness was “a piece of it” but was “not the sole part of it.”

The juvenile court subsequently issued an order declaring J.I. to be a CINA. The court found that it was contrary to J.I.’s welfare to return him to the care of Mother and Father because “both [parents] failed to provide appropriate care for [J.I.] upon his release” from the juvenile facility. The court also found that the Department had made reasonable efforts to prevent the need for removal, which included conducting an Alternative Response assessment,² reviewing records, researching and exploring

² Pursuant to Family Law § 5-706, “alternative response” refers to “a component of the child protective services program that provides for a comprehensive assessment of: (i) risk of harm to the child; (ii) risk of subsequent child abuse or neglect; (iii) family

family/relative resources, conducting a Family Team Decision Meeting, providing financial assistance to J.I., and offering to provide assistance to Mother for visitation. The court ordered that J.I. be committed to the custody of the Department pending further dispositional review by the court. The court also ordered that Mother and Father be allowed liberal and unsupervised visitation with J.I.

DISCUSSION

I.

Mother first contends that the juvenile court erred as a matter of law in finding that she had neglected J.I.³ Mother asserts that the sole basis for the court’s finding was the fact that she was homeless and impoverished. She maintains that the relevant statutory scheme expressly prohibits a court from committing a child to the custody of the Department solely because the parent lacks shelter.

Appellate review of a juvenile court’s decision regarding child custody involves three interrelated standards. First, any factual findings made by the juvenile court are reviewed for clear error. *In re Yve S.*, 373 Md. 551, 586 (2003). Second, any legal conclusions made by the juvenile court are reviewed de novo. *Id.* Finally, if the court’s ultimate conclusion is “founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [circuit court’s] decision should be disturbed

strengths and needs; and (iv) the provision of or referral for necessary services.” Md. Code Ann., Fam. Law § 5-706(a)(1).

³ Father filed an appellee brief in which he joins in Mother’s arguments. Father does not raise any argument regarding the juvenile court’s finding of neglect as it pertains to him.

only if there has been a clear abuse of discretion.” *In re J.J.*, 231 Md. App. 304, 345 (2016) (alteration in original) (quoting *In re Yve S.*, 373 Md. at 586), *aff’d*, 456 Md. 428 (2017). “A decision will be reversed for an abuse of discretion only if 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 J.J.*, 231 Md. App. at 345 (quoting *In re Yve S.*, 373 Md. at 583-84).

Section 3-801(f) of the Courts and Judicial Proceedings Article defines “[c]hild in need of assistance” as “a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” When a petition is filed alleging that a child is a CINA, the circuit court must hold an adjudicatory hearing to determine whether the allegations in the petition are true. Md. Code Ann., Cts. & Jud. Proc. §§ 3-801(c), 3-817(a). If such a determination is made, the court must then hold a disposition hearing to determine, among other things, whether the child is a CINA. Cts. & Jud. Proc. § 3-819. An allegation that a child is a CINA must be proven by a preponderance of the evidence. *In re Nathaniel A.*, 160 Md. App. 581, 595 (2005). If the court finds that a child is a CINA, the court must either maintain the child’s current custody status or commit the child to the custody of a parent, a relative or other appropriate individual, a local department, or the Maryland Department of Health. Cts. & Jud. Proc. § 3-819(b)(1)(iii).

As noted, a child may be found to be a CINA if it is proved that the child has been neglected. *Id.* § 3-801(f)(1). “‘Neglect’ means the leaving of a child unattended or other failure to give proper care and attention to a child . . . under circumstances that indicate: (1) [t]hat the child’s health or welfare is harmed or placed at substantial risk of harm; or (2) [t]hat the child has suffered mental injury or been placed at substantial risk of mental injury.” *Id.* § 3-801(s). “In determining whether a child has been neglected, a court may and must look at the totality of the circumstances” *In re Priscilla B.*, 214 Md. App. 600, 621 (2013). Moreover, in evaluating whether a “substantial risk of harm” exists, “the court has ‘a right—and indeed a duty—to look at the track record, the past, of [a parent] in order to predict what [his or] her future treatment of the child may be.’” *In re J.J.*, 231 Md. App. at 346 (first alteration in original) (quoting *In re Dustin T.*, 93 Md. App. 726, 735 (1992)). In other words, a court “need not wait until the child suffers some injury before determining that he is neglected,” but rather, based on a parent’s past conduct, may find the child “to be at risk and, therefore, a CINA.” *In re Nathaniel A.*, 160 Md. App. at 596-97 (quoting *In re William B.*, 73 Md. App. 68, 77 (1987)).

We hold that the juvenile court did not err in declaring J.I. to be a CINA based on Mother’s neglect, nor did the court err in committing J.I. to the custody of the Department. The court found that Mother had neglected J.I. after she had failed to provide him with a place to stay or other appropriate care following his release from the juvenile facility in July of 2020. Based on that finding, and based on Mother’s admission that she was unable to care for J.I., the court determined that returning J.I. to Mother’s

care was contrary to his welfare. As a result of Mother’s neglect and the fact that J.I. had no place to live, the court concluded that J.I. was a CINA and should be committed to the custody of the Department. Those findings were legally correct and supported by the evidence.

Mother argues that the juvenile court erred as a matter of law in finding that, because of her lack of shelter, she had neglected J.I. Mother relies on § 5-525 of the Family Law Article, which states, in pertinent part, that “[a] child may not be committed to the custody or guardianship of a local department and placed in an out-of-home placement solely because the child’s parent or guardian lacks shelter” Md. Code Ann., Fam. Law § 5-525(d)(2)(i).

Mother is mistaken. The juvenile court did not base its decision solely, or even primarily, on Mother’s lack of shelter. The court based its decision on Mother’s inability to be present in Maryland to care for J.I. following his release from juvenile detention and her subsequent admission that she was unable to provide care for him either in Maryland or New York.⁴ Whether that failing was the result of Mother’s lack of resources or some other undisclosed reason, the fact remains that J.I. was neglected due to Mother’s inability to give proper care and attention to his needs. Under the

⁴ At the initial hearing before the magistrate, Mother claimed that it was not safe for J.I. to return to New York. At the exceptions hearing, Mother reversed her position and claimed that returning J.I. to New York was an option in lieu of a CINA finding. Mother did not provide any explanation as to what had changed that would cause her to deviate from her previous assertion that it was not safe for J.I. to live in New York, and it does not appear that the juvenile court considered returning J.I. to New York as a viable option. Mother does not raise the issue in the instant appeal.

circumstances, the court had no choice but to declare J.I. to be a CINA and commit him to the custody of the Department. *See In re Priscilla B.*, 214 Md. App. at 622 (“The purpose of CINA proceedings is ‘to protect children and promote their best interests.’” (quoting *In re Rachel T.*, 77 Md. App. 20, 28 (1988))).

Mother, relying on *In re Ashley S.*, 431 Md. 678 (2013), argues that her “ongoing and consistent cooperation with, and requests for assistance from, the Department [was] evidence of her willingness to provide appropriate care for her son.” We remain unpersuaded. A CINA determination may be made when a parent is “unable *or* unwilling to give proper care and attention to the child and the child’s needs.” Cts. & Jud. Proc. § 3-801(f) (emphasis added). Again, the record makes plain that Mother was unable to give proper care and attention to J.I.’s needs, which supported the juvenile court’s CINA determination. That she may have been willing to provide such care is not dispositive as to the court’s final determination.

In any event, Mother’s reliance on *In re Ashley S.* is misplaced. That case involved a review of whether the juvenile court abused its discretion in ordering a permanency plan of adoption, not whether the court erred in making an initial CINA determination and placing a child in the custody of the Department. *In re Ashley S.*, 431 Md. at 714-19. Moreover, at no point did the Court of Appeals state, or even suggest, that a parent’s cooperation with the Department is somehow dispositive of whether the parent was able to provide appropriate care for a child at the time of the CINA determination. *Id.* That determination is based, rather, on the totality of the

circumstances. *In re Priscilla B.*, 214 Md. App. at 621. Here, the totality of the circumstances supported the juvenile court’s decision.

II.

Mother next claims that the juvenile court erred in finding that the Department had made “reasonable efforts” at preventing placement of J.I. in the Department’s custody. Mother claims that the Department’s efforts at providing services were insufficient and that it was not relieved of its obligation to provide services simply because she did not live in Maryland.

Generally, the Department is required to make reasonable efforts “to preserve and reunify families: (i) prior to the placement of a child in an out-of-home placement, to prevent or eliminate the need for removing the child from the child’s home; and (ii) to make it possible for a child to safely return to the child’s home.” Fam. Law § 5-525(e)(1). In addition, whenever a disposition hearing on a CINA petition is conducted, the juvenile court must “make a finding whether the local department made reasonable efforts to prevent placement of the child into the local department’s custody.” Cts. & Jud. Proc. § 3-816.1(b)(1). “A [juvenile] court’s finding regarding whether the Department made reasonable efforts . . . is a factual finding that the appellate court reviews pursuant to the clearly erroneous standard.” *In re Shirley B.*, 191 Md. App. 678, 708 (2010).

“[T]here is no bright line rule to apply to the ‘reasonable efforts’ determination; each case must be decided based on its unique circumstances.” *Id.* at 710-11. At a

minimum, the Department must “make ‘reasonable efforts’ to ‘preserve and reunify families’ and ‘to make it possible for a child to safely return to the child’s home.’” *In re Rashawn H.*, 402 Md. 477, 500 (2007) (quoting Fam. Law § 5-525(e)(1)). Moreover, the Department must be ever mindful that, in determining and implementing those efforts, “the child’s safety and health shall be the primary concern.” Fam. Law § 5-525(e)(2).

That said, there are limits to what is required of the Department. It “is not obliged to find employment for the parent, to find and pay for permanent and suitable housing for the family, to bring the parent out of poverty, or to cure or ameliorate any disability that prevents the parent from being able to care for the child.” *In re Rashawn H.*, 402 Md. at 500. The Department “must provide reasonable assistance in helping the parent achieve those goals, but its duty to protect the health and safety of the children is not lessened and cannot be cast aside if the parent, despite that assistance, remains unable or unwilling to provide appropriate care.” *Id.* at 500-01.

Against that backdrop, we hold that the juvenile court did not err in finding that the Department had made reasonable efforts at avoiding placement of J.I. in its custody. The record shows that the Department attempted to provide services for Mother in Maryland, but those attempts were unsuccessful. For instance, the Department contacted Prologue, a program for people experiencing homelessness, but Prologue refused to work with Mother because she was not a Maryland resident. It also contacted various shelters in Maryland, but none were available. In addition, the Department conducted assessments, reviewed records, researched family/relative resources, provided financial

assistance to J.I., and offered to pay for Mother to stay, temporarily, in a hotel room in Maryland.

Mother argues that the Department failed in its obligation to provide services, yet she has not indicated what specifically the Department was required to do, or could have done, to remedy her inability to properly care for J.I. The only suggestion we could find from Mother came during the disposition hearing when she stated that she would be willing to stay in a hotel room with J.I. in Maryland, at the Department’s expense, until she could establish residency. But, as the Department pointed out, it could not, and would not, pay for Mother to stay in a hotel room indefinitely. That refusal was reasonable and not a dereliction of the Department’s obligations. *See In re Shirley B.*, 191 Md. App. at 716 (noting that “the Code of Maryland Regulations . . . provides that the Department shall provide, ‘[t]o the extent that funds and other resources are available, a range of services that will facilitate or maintain successful reunification of the child’” (alteration in original) (quoting Md. Code Regs. 07.02.11.14(A))).

Similarly, the lack of available resources did not diminish the “reasonableness” of the Department’s efforts. *See In re Shirley B.*, 191 Md. App. at 716 (“That the Department’s efforts to connect [the parent] with services . . . were unsuccessful, because the services were not available, does not mean that the Department’s actions did not satisfy the ‘reasonable efforts’ requirement.”). That is, although the Department’s efforts proved unsuccessful, it nevertheless provided reasonable assistance to help Mother

overcome any impediments to her ability to properly care for J.I. Thus, the juvenile court did not err in determining that the Department had made “reasonable efforts.”

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