

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

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1301

September Term, 2021

In Re: A.R.

Shaw,
Wells,
Ripken,

JJ.

Opinion by Ripken, J.

Filed: March 24, 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.

On October 6, 2021, the Circuit Court for Montgomery County, sitting as a juvenile court, entered an order finding that four-year-old child, A.R.¹, was a child in need of assistance (“CINA”). The circuit court awarded custody to the Department of Health and Human Services (“the Department”) for A.R.’s continued placement in foster care. A.R.’s mother, S.W., challenges that order.

In July 2021, the Department received reports indicating that S.W.’s mental health was affecting the safety of A.R. While working with the Department to address safety concerns for A.R., S.W. experienced an episode requiring her to be emergently hospitalized for a week of inpatient psychiatric care, at which point the Department emergently sheltered A.R. The Department filed a Petition alleging that A.R. was a CINA and requesting continued shelter care. S.W. disputed the allegations in the Petition but stipulated at the adjudicatory hearing that the Department could prove the allegations by a preponderance of the evidence. The court sustained the facts in the Petition and ordered that A.R. remain in the Department’s custody pending disposition.

At the contested disposition hearing, the court took testimony and evidence. The court found that, although S.W. had since been making efforts to address concerns, A.R. had been neglected. The court also found that, without more information about S.W.’s mental health issues, A.R. could not be safe in S.W.’s care. The court concluded that A.R. was a CINA and awarded custody to the Department for continued foster care placement.

¹ For confidentiality, we refrain from using the parties’ names and will instead use initials.

S.W. filed a timely appeal to this Court alleging that the circuit court erred in finding A.R. to be a CINA. For the reasons discussed below, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A.R. is the minor child of S.W.² A.R. lived with S.W. upon A.R.'s birth in 2017. The Department first became involved with S.W. and A.R. in June of 2019 following a report of suspected caregiver impairment. The report indicated that S.W. was experiencing sudden stress-induced seizures. The Department conducted a risk of harm assessment, which resulted in the Department referring S.W. for wraparound services and referring A.R. for a developmental evaluation. The Department closed its case after the completion of the assessment and the related referrals.

On July 23, 2021, the Department began another risk of harm assessment following a report of concerns about S.W.'s mental health. The report alleged that S.W. kept four-year-old A.R. secluded in a bedroom in her apartment for the child's safety and made A.R. use a portable toilet rather than the toilet in the apartment's bathroom because S.W. believed peeling paint made the bathroom toilet unsafe. The report also alleged that police officers responded to the home on numerous occasions because S.W. believed that people were breaking into the apartment, but officers had not detected any evidence of a home invasion. The report further alleged that S.W. kept the kitchen window open due to her concerns that there was a gas leak in the stove and claimed that maintenance staff continuously entered her home without requisite notice.

² A.R.'s biological father did not participate in adjudication or disposition, and he is not a party to this appeal.

Subsequently, a social worker went to the home and determined that A.R. was safe in S.W.'s care. The social worker continued to assist S.W. with housing issues and referred the case for family preservation in-home services. S.W. expressed concerns about the service provider's intentions. The service provider described S.W. as "demanding and grandiose" in their interaction. S.W. denied having a diagnosis relating to her mental health.

On July 30, 2021, the Department held a family team decision meeting with S.W. S.W. agreed to participate in a mental health evaluation and follow resulting recommendations, participate in family preservation in-home services, and attend all medical appointments and follow those resulting recommendations. The service provider agreed to advocate to secure more suitable housing for S.W. The Department scheduled S.W. for a psychological evaluation in September 2021. S.W. experienced a seizure during the meeting and had to leave early, hence she was unaware of the scheduled evaluation.

On August 23, 2021, Vanessa Pierre-Louis ("Pierre-Louis"), a social worker with the Department, began working with S.W. and A.R. During a home visit on August 23, 2021, S.W. described her neighbors as "pedophiles, terrorists, 'illegals,' and said that '9/11 is coming.'" Following the home visit, S.W. sent several emails to Pierre-Louis accusing the property management company of entering her home without permission and surveilling her residence.

Pierre-Louis reported that on August 31, 2021, she received a call from S.W. informing her that S.W. had taken A.R. to a Montgomery County Police Station. S.W.

accused the police of raping A.R. Pierre-Louis could hear S.W. demanding three billion dollars. S.W. told a detective that the details of the rape were contained in a comic book.

After S.W. left the police station with A.R., Pierre-Louis and other Department staff met with them. S.W. refused transport for a mental health evaluation and presented with a rapidly changing mood. The Department's Crisis Response Team arrived on scene and determined that S.W. could not recall the events of her day. S.W. was taken to a hospital for a mental evaluation and was discharged from the hospital later that day. That night, police found S.W. "wandering in the community" and "experiencing a psychotic episode." They transported her back to the hospital for involuntary inpatient psychiatric care. S.W. was admitted.

On September 1, 2021, the Department filed a CINA petition and emergency shelter hearing request for A.R. The Department indicated that the reason for A.R.'s removal was that following "mental health concerns, [S.W.] was Emergency Petitioned and sent" for inpatient treatment. The court held a shelter care hearing on September 1, 2021, during which S.W. was not present. The circuit court entered an order for continued shelter care placement and further ordered that S.W. have supervised visitation.

On September 17, 2021, the court held an adjudicatory hearing on the CINA Petition. S.W. denied the allegations in the Petition, but conceded that, if the case went to trial, the Department could prove the allegations by a preponderance of the evidence. The court found the allegations in the Petition were sustained.

On September 30, 2021, the court held a disposition hearing. At that hearing, Pierre-Louis testified for the Department as an expert in social work in the area of safety and risk

assessment. She testified that in her expert opinion, based on her observations as the family preservation social worker and based on the allegations in the Petition, A.R. was a CINA. Pierre Louis stated that not enough was known about S.W.'s mental health, including what triggered her behavior, or further whether A.R. could be safe in S.W.'s care.

J.C. Humphries ("Humphries"), a Department social worker, also testified for the Department as an expert in social work. Humphries worked with A.R. and supervised visits between S.W. and A.R. She testified that following an evaluation of A.R. by a doctor, there were concerns about A.R.'s development in socialization and speech. Humphries stated that when she first interacted with A.R., A.R. did not have a play routine but would throw toys and did not respond to requests to stop throwing the toys. In addition, A.R. would not communicate but would mimic things said to her.

Humphries further testified regarding her additional observations during the supervised visits between A.R. and S.W. She indicated that S.W. and A.R. had six face-to-face visits. In the first few visits, S.W. was very anxious, repeatedly questioned marks on A.R.'s arms, and alleged that A.R. was being abused in her foster home. Humphries attempted to redirect S.W. to spend time with A.R. On one occasion, S.W. became angry and continuously asked A.R. about abuse in the foster home. A.R. began to get upset, and Humphries had to pause the visit and remove A.R. from the room until S.W. calmed down. During another visit in which A.R. was throwing toys and ignoring S.W., Humphries attempted to explain to S.W. issues related to the trauma that children experience and that it is difficult to understand the feelings of a four-year-old. S.W.

responded that A.R. does not say or do negative things and that someone must be making her act that way.

Humphries also testified that, for all but one of the one-hour visits, S.W. was frequently on the phone. According to Humphries, S.W. would spend anywhere from ten to fifteen minutes on phone calls, except for the last visit, where she was on her phone for approximately forty minutes. In some instances, while S.W. was on the phone and not paying attention to A.R., A.R. would get upset and throw toys around the room. Humphries stated that S.W.'s last two visits were "very pleasant" and that A.R. was "blossoming."

Humphries also testified that A.R. was blossoming in foster care. Humphries believed that A.R. seemed comfortable and had formed a bond with her foster family. Since beginning foster care, A.R. made many improvements including speaking more clearly and communicating, listening well, and enjoying play time, and Humphries stated that A.R.'s "imagination is coming through."

Based on her observations and familiarity with the case, Humphries opined that A.R. should be found to be a CINA. Humphries expressed concern with S.W.'s inability to understand the basic needs of a four-year-old. Humphries explained that A.R. should remain in foster care "until everything is resolved," rather than return to S.W. under protective supervision because A.R. and S.W. had already been working with the Department and receiving in-home services when A.R. went into shelter care.

S.W. also testified. She stated that she could not remember the events of August 31 but described the episode as a "break." She stated that the behavior leading to her hospitalization was caused by having not slept in four days. She testified that following the

August 31, 2021 episode, she moved out of the apartment and was living in a hotel while awaiting placement elsewhere. S.W. further testified that the conditions of her previous apartment contributed to her stress related seizures. S.W. had not experienced a seizure since moving and was feeling significantly better and stress-free.

S.W. testified that since her release from the hospital, she has done trauma therapy, registered for evaluations, consistently seen a neurologist for her seizures, and taken parenting classes. She also introduced into evidence a letter from her neurologist stating that S.W. was diagnosed with epilepsy and complex partial seizures, and the medication he prescribed reduced the frequency of her seizures, although she continued to experience occasional seizures while undergoing that treatment.

S.W. denied using her phone during the visitation times with A.R. She confirmed that she had concerns about marks on A.R.'s arm but stated that she loves A.R. and enjoys the visits. S.W. stated that her support system included: Bethesda Cares, two caseworkers, her lawyer, and a few others whom she did not identify. S.W. also stated that she had “another sister”³ and other family, of whom the Department was not aware. S.W. said that she would be willing to take the recommended classes to have A.R. returned. She argued that she had ameliorated the issues that resulted in A.R.'s removal and requested that the court find that A.R. was not a CINA. S.W. also requested that, if the court were to find A.R. to be in need of assistance, A.R. remain with S.W. under protective supervision.

³ The Department considered placement of A.R. with one of S.W.'s sisters but did not pursue that option following an altercation between S.W. and her sister.

After the parties rested, the court issued an oral ruling. It found as follows: S.W. was emergently admitted for inpatient psychiatric treatment and there was no plan of care for A.R. during the hospitalization.⁴ 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. S.W. timely appealed that order.

ISSUE PRESENTED

S.W. presents one issue for our review: “Did the court err when finding A.R. was a child in need of assistance when [S.W.] was briefly hospitalized and, after release, was willing and able to care for A.R.?” For the reasons to follow, we hold that the circuit court did not err in finding A.R. to be a CINA, and we shall affirm.

⁴ The court referred to the hospitalization as a four-day event, but S.W. testified that she was hospitalized for seven days.

DISCUSSION

In re Yve S. discusses the three interrelated standards governing appellate review of CINA cases:

When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Secondly,] [i]f it appears that the [juvenile court] erred as to matters of law, further proceedings in the [juvenile] court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [juvenile court's] decision should be disturbed only if there has been a clear abuse of discretion.

373 Md. 551, 586 (2003) (some alterations in original). *See also In re Caya B.*, 153 Md. App. 63, 73–74 (2003).

I. THE CIRCUIT COURT DID NOT ERR IN FINDING A.R. TO BE A CINA.

Maryland Code, Courts and Judicial Proceedings Article (CJP”) § 3-801(f) defines a child in need of assistance as “a child who requires court intervention” because: (1) the child has been abuse or neglected, and (2) the child’s parents are “unable or unwilling to give proper care and attention to the child and the child’s needs.” CJP § 3-801(f) (2020 Repl. Vol.). An allegation that a child is a CINA must be proven by a preponderance of the evidence, and the burden of proof is on the Department. CJP § 3-817(c). S.W. contends that the court erred in finding A.R. to be a CINA under both prongs because A.R. was not neglected and S.W. was able and willing to care for A.R.

A. The Circuit Court Did Not Err in Finding that A.R. Was Neglected.

S.W. first contends that the court erred in finding A.R. was neglected because its finding was based on the sole incident of involuntary hospitalization resulting from her

medical condition. As to that sole incident, S.W. argues that her conduct did not rise to the level of neglect because S.W. did not leave A.R. with inappropriate caregivers or “to fend for herself.” And, she continues, throughout her August 31 episode, there was no indication that A.R. was harmed or at substantial risk of being harmed. Though S.W. acknowledges her behavior that day was concerning, she maintains that A.R. was with her the entire time she was at the police station, that speaking with the police did not harm A.R., and that S.W. herself called the Department and informed them of the situation. Moreover, S.W. argues that her refusal to be evaluated does not constitute neglect of A.R. S.W. instead contends that the court should have considered the stability she maintained over the entire period of time in which she cared for A.R. The Department argues that A.R. was neglected when S.W. was hospitalized seven days without S.W. having a plan for A.R.’s care and that S.W.’s lack of insight into the cause of her hospitalization placed A.R. at substantial risk of harm.

The first prong of the CINA statute necessitates a finding that a child has been abused or neglected. CJP § 3-801(f). “‘Neglect’ means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent . . . under circumstances that indicate . . . [t]hat the child’s health or welfare is harmed or placed at substantial risk of harm[.]” CJP § 3-801(s)(1). Neglect is part of “an overarching pattern of conduct.” *In re Priscilla B.*, 214 Md. App. 600, 625 (2013). “The judge need not wait until the child suffers some injury before determining that [s]he is neglected. This would be contrary to the purpose of the CINA statute. The purpose of the act is to protect children—not wait for their injury.” *In re Nathaniel A.*, 160 Md. App. 581, 596 (2005) (alteration

omitted) (quoting *In re William B.*, 73 Md. App. 68, 77–78 (1987)). The harm to the child “must be a real one predicated upon hard evidence; it may not be simply gut reaction or even a decision to err-if-at-all on the side of caution.” *In re William B.*, 73 Md. App. at 78 (quoting *In re Jertrude O.*, 56 Md. App. 83, 100 (1983)).

Based on our review of the record, we discern no error in the court’s conclusion that A.R. was neglected. S.W.’s behavior preceding her hospitalization, absence of a plan for A.R.’s care during her incapacity, and lack of insight into the cause of her incapacity placed A.R.’s health and welfare at substantial risk of harm. S.W.’s intense suspicions and concerns for A.R.’s wellbeing led to A.R.’s isolation and hindered the Department’s attempts to provide support. Despite suffering from stress-induced seizures and undergoing a period of intense stress, which S.W. states caused sustained sleep loss, S.W. did not enact a plan for A.R. in the event of a hospitalization or other incapacity. A.R. remained with S.W. as her behavior became more erratic. The only care available during S.W.’s hospitalization was shelter care through the Department. These circumstances are legally sufficient to establish neglect. *See Doe v. Allegany Cnty. Dept. of Social Servs.*, 205 Md. App. 47, 60 (2012) (“[A] finding of neglect may be based on a substantial risk of harm to the child if the [Department] does not take charge of the child.”).

S.W. argues that A.R. was not at substantial risk of harm during the August 31 episode because she was not left with inadequate caregivers or left alone “to fend for herself,” and any future harm to A.R. was speculative. We disagree. A.R. would not have been able to “fend for herself” had the Department not intervened. *See In re William B.*, 73 Md. App. at 79 (finding substantial risk of harm because a child was unable to care for

himself at eight years of age); *Doe*, 205 Md. App. at 61 (holding that it is proper for the trier of fact to “focus on the impact the actions of [parents] could have had on [the child] had the local department not taken charge of [the child].”). The court’s determination that A.R. was neglected was neither speculative nor precautionary, but rather was based on a cumulation of evidence presented. Therefore, we hold that the circuit court did not err in finding that there was neglect.

B. The Circuit Court Did Not Err in Finding that S.W. Was Unable to Give Proper Care and Attention to A.R.

S.W. next argues that the court erred in finding that she was unable to care for A.R. According to S.W., she addressed all of the issues that led to the Department’s removal of A.R. because, since removal, S.W. had secured stable housing and had addressed her mental health diagnoses. Therefore, S.W. argues it was error for the court to find that she was unable to care for A.R. based on “what was not known about her epilepsy condition and her possible mental health diagnosis.” The Department responds that evidence showed that S.W. was incapable of assessing when she may need assistance caring for A.R.

The purpose of the CINA statute is to “protect and advance a child’s best interests when court intervention is required.” *In re Najasha B.*, 409 Md. 20, 33 (2009). Therefore, as we have stated, courts need not wait for an injury to occur before finding neglect. *In re Nathaniel A.*, 160 Md. App. at 596. Because neglect is part of “an overarching pattern of conduct,” a parent’s “past conduct is relevant to a consideration of the parent’s future conduct. Reliance upon past behavior as a basis for ascertaining the parent’s present and

future actions directly serves the purpose of the CINA statute.” *In re Priscilla B.*, 214 Md. App. at 625–26 (quoting *In re Adriana T.*, 208 Md. App. 545, 570 (2012)).

Based on our review of the record, we discern no error in the court’s conclusion that S.W. was unable to safely care for A.R. The circuit court acknowledged that S.W. was willing to care for A.R. and that S.W. sincerely believed that she was able to do so. Even so, the court found that without more information as to S.W.’s mental health issues and how they relate to her epilepsy, S.W. was unable to care for A.R. S.W.’s testimony and the note from her doctor indicated that although her seizures had improved in terms of decreased frequency, they were still occurring even with the treatment, and the doctor was exploring the possibility of surgery in the future. Moreover, Pierre-Louis stated that S.W. had not undergone the scheduled psychological evaluation and opined that not enough was known regarding S.W.’s mental health to ensure that it was safe for A.R. to return to S.W.’s custody. Pierre-Louis further stated that S.W. told her A.R. did not have negative feelings and S.W. did not understand the basic needs of a four-year-old. S.W. demonstrated a lack of insight into the causes of her behavior by denying that the August 31 incident could be related to a condition with her mental health and maintaining that the incident was caused by sleep deprivation. This evidence was sufficient to support the circuit court’s ruling that S.W. was unable to give proper care and attention to A.R.

II. THE CIRCUIT COURT DID NOT ERR IN AWARDING CUSTODY OF A.R. TO THE DEPARTMENT FOR CONTINUED FOSTER CARE.

Finally, S.W. argues that it was in A.R.’s best interest to be returned to S.W.’s custody, as opposed to being continued in shelter care placement. She argues that there was

“no longer an urgent reason” to keep A.R. separated from S.W., and the circuit court erred in declining to return A.R. to S.W.’s custody. The Department responds that the evidence shows that S.W. had not alleviated the issues raised by the Department at the time of the disposition hearing. The Department also argues that when removal is based on neglect, the burden is on the parent to show that custody is appropriate.

In the CINA context, “there remains a strong presumption that a child’s best interests are served by placement with a parent.” *In re R.S.*, 242 Md. App. 338, 364 (2019), *aff’d* 470 Md. 380. “Courts, not administrative agencies or social workers, are the ultimate evaluators of a parent’s ability to care for [her] child, and the ultimate decision-makers as to whether placement with a fit parent is in the child’s best interests.” *Id.* at 366 (quoting *In re Dependency of D.F.-M.*, 157 Wash. App. 179, 192–93 (2010)). The purpose of the disposition hearing is for the court to determine whether the child is in need of assistance, and if so, the nature and extent of that assistance. *In re Michael W.*, 89 Md. App. 612, 620 (1991); CJP § 3-801(m) (“‘Disposition hearing’ means a hearing . . . to determine: (1) [w]hether a child is in need of assistance; and (2) [i]f so, the nature of the court’s intervention to protect the child’s health, safety, and well-being.”).

We hold that the court did not err in continuing A.R.’s placement in foster care. The evidence presented to the court included S.W.’s history and her lack of a support system. The CINA Petition indicated that S.W. and A.R. had limited social supports. When asked at the disposition hearing about her support system, S.W. listed her attorney, her caseworkers, and S.W. referenced family members “as well as a few others[.]” The court found that there was neglect and that there was insufficient information regarding S.W.’s

mental health to determine if A.R. was safe in her custody. Notably, the Department's experts opined that placement in protective supervision would not be appropriate. Humphries explained that S.W. had been provided in-home services when A.R. was removed and placing A.R. and S.W. together was not appropriate until more was known about their needs. Furthermore, the Department introduced expert testimony as to A.R.'s improved condition upon staying in foster care. *See In re Priscilla B.*, 214 Md. App. at 631–32 (holding that one of the circumstances supporting the circuit court's CINA determination was the child's "improved condition and appearance upon staying with the Caregivers."). The court, after considering the evidence, found that placement of A.R. with her mother, whether under an order of protective supervision or not, was not in A.R.'s best interest. We discern no error in that conclusion.

**JUDGMENTS OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**