UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1330

September Term, 2014

IN RE: KAYLAH S.

Woodward,
Wright,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: November 24, 2015

*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.

Appellant, Kaylah S., was found to be involved in the delinquent act of second degree assault in the Circuit Court for Baltimore County, Maryland. Appellant was placed on supervised probation as a result, and ordered, *inter alia*, as a special condition of probation, to pay the Public Defender a fee of $750 within one year. Appellant timely appealed to this Court, and presents the following issue for review:

> Whether the juvenile court imposed an illegal condition of probation when it required Kaylah S.' mother to pay $750 to the Public Defender because she applied to that office fewer than ten days before the delinquency hearing.

Subsequent to the filing of appellant's brief, the State moved to dismiss the appeal on the grounds that appellant's probation was terminated and her case closed by the Circuit Court for Baltimore County. Appellant filed an opposition to the State's motion, as well as a cross-motion to stay the $750 order. This Court then deferred ruling on the State's motion to dismiss and granted appellant's motion to stay. Having now considered the issues presented, both in the briefs and at oral argument, we shall grant the State's motion to dismiss this appeal.

BACKGROUND

On April 9, 2014, a delinquency petition was filed in the Circuit Court for Baltimore County, alleging that appellant was involved in a second degree assault of another student, Valerie T., and disrupting school operations. On June 3, 2014, the Public Defender

requested a postponement because a belated application for representation was filed by appellant.

At the hearing on the postponement, an unidentified speaker informed the juvenile master that the application was delayed due to an intervening surgical appointment. The State did not object to the postponement. After noting that the application for representation by the Public Defender was filed late, the master granted the postponement and assessed a fee of $750.00. However, the master did not identify, in court, who was to pay the fee. And, the juvenile clerk's worksheet makes no mention of a fee.

By written form order, a judge of the circuit court agreed with the master's recommendation for a postponement and ordered that adjudication would commence on June 23, 2014. There is no mention of any fee on this postponement order.

On June 23, 2014, adjudication was held before the same master. At that hearing, sixteen-year-old Kaylah proceeded on a non-delinquent statement of facts, and the State proffered as follows:

> On February 4, 2014, the SRO at Woodlawn High School responded to one of the classrooms, made contact with the victim, [Valerie T.], who is present. She indicated that this respondent, identified as [Kaylah S.], threw a desk at her, and it hit her in the mouth.
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> * * *
>
> The officer then interviewed the respondent. She admitted throwing the desk, Your Honor.

> The victim's bottom lip was cut and bleeding. All events occurred in Baltimore County. State's case.

The master found that the facts were sustained to the charge of being involved in second degree assault. The master then heard from counsel, who provided more detail about the underlying incident, as well as some information about appellant's background. Appellant also apologized, in court, to the victim, Valerie T.

At that point, the master addressed appellant's mother because the master overheard the mother "murmer [sic] back there that she started it," referring to the victim. After admonishing the mother, the master observed that the application for representation to the Public Defender was untimely filed. Apparently still addressing the mother, the master stated, "You applied late, I told you there would be a fee of $750." The master then found as follows:

> All right. I find her delinquent. She is placed on supervised probation. She is to have no unlawful contact with the victim. She is to have counseling as deemed appropriate, anger management.
>
> I want her to write a letter of apology. Continue her current counseling, follow the recommendations, stay on her meds, and I am assessing a public defender fee in the amount of $750. That's payable within one year.

Also on June 23, 2014, a written Master's Finding and Recommendation memorialized the special conditions, in part, as follows:

> Respondent was placed on Supervised Probation, is to have no unlawful contact with the victim, is to pay the Public Defender's Fee of

> $750.00 within one year, is to attend Counseling as deemed appropriate by the Department of Juvenile Services, as well as the Anger Management Program, and is to compose a letter of apology.

On June 14, 2014, the Public Defender filed a Notice of Exception, specifically challenging disposition. On July 28, 2014, a hearing on the exceptions took place before a judge of the circuit court. Appellant's counsel argued the $750.00 fee was an illegal condition of probation on the grounds that: (1) "[i]t adheres to a party that's not the probationer, which is the mother;" and, (2) the condition did not "have a rational relationship to the purpose of the probation." The court denied the exception, finding that the fee was not an illegal condition of probation.

The court's finding was memorialized on a pre-printed form, entitled "Order for Probation of Delinquent or for Protective Supervision." ("Order for Probation"). That form ordered that the respondent, *i.e.*, Kaylah, "shall abide by the following special conditions checked off below . . ." One of those special conditions was "Public Defender Fee of $750 within 1 year." The order was signed by a master, dated June 23, 2014, and by a judge of the circuit court, dated July 28, 2014. A timely notice of appeal was filed from this order.

On or around April 10, 2015, after this case was set in this Court, the State filed a motion to dismiss. In that motion, the State informed us that the Department of Juvenile Services filed a request for termination of supervised probation in appellant's case on January 15, 2015. The request was granted by a master on January 21, 2015, and the case

was closed in the circuit court on January 23, 2015. Accordingly, the State contended that, whereas the juvenile case in the Circuit Court for Baltimore County was now over, any issue with respect to the aforementioned special conditions of probation were moot. Therefore, the State moved to dismiss the appeal.

Appended to the State's motion, as Attachment A, was a one page Court Memorandum, dated January 15, 2015. That memorandum set forth details of appellant's adjudication and disposition, including, in pertinent part, that "[t]he respondent was found delinquent for committing Assault 2nd Degree and placed on supervised probation with the following conditions: to pay $750 public defender fees, . . ." Then, after providing details of appellant's progress while on probation, the memorandum presented the following recommendations and justifications:

> The respondent has complied with DJS supervision, has no pending charges, and has completed the Court mandated probation conditions. Therefore, the Department of Juvenile Services respectfully requests that her probation case (pet. J14-0515) is closed.

In addition, and also attached to the State's motion to dismiss as Attachment B, are the docket entries from the Circuit Court for Baltimore County. Those docket entries provide that the request for termination was filed and then granted on January 21, 2015. The

docket entries and the disposition history of the case then both indicate that appellant's case was closed in the circuit court on January 23, 2015.[1]

On or around April 20, 2015, appellate counsel filed an Opposition to the State's Motion to Dismiss, and a Cross-Motion for a Stay of the Juvenile Court's Order Imposing Payment of a $750 Public Defender Fee. In that opposition, counsel averred, in part, that:

> 5. Based upon the closure of the DJS file, the State contends that the instant appeal has now been rendered moot. The State's suggestion that DJS's closure of its file renders this appeal moot is incorrect because the closure of the DJS file has absolutely no effect upon the still-outstanding $750 public defender fee that was imposed by the juvenile court.

In addition to asserting that a controversy still was properly presented to this Court, and, therefore, not moot, appellant's counsel appended two affidavits to its filing. One affidavit, signed by an individual affiliated with appellate counsel, provided details of communications with both appellant's former probation agent in the Department of Juvenile Services, Chatega Colbert, as well as Ms. Colbert's supervisor, Adrian Tyree. The second affidavit, signed by an employee of the Finance Department at the Office of the Public Defender, concerned that employee's understanding of the status of the aforementioned $750 fee.

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[1] During oral argument before this Court on October 6, 2015, counsel agreed that appellant's probation has been closed, as evidenced by the signature on the Court Memorandum dated January 15, 2015.

On May 1, 2015, this Court issued an order augmenting the briefing and argument schedule, and directing that the State's motion to dismiss be referred to the panel of judges assigned herein. This Court also granted Appellant's motion to stay. Additional detail may be provided in the following discussion.

DISCUSSION

Appellant contends that the special condition of probation, requiring her mother to pay $750 to the Public Defender, is illegal. More specifically, appellant asserts that: (1) absent a request from the Public Defender for reimbursement, the juvenile court does not have independent authority to impose a fee; and, (2) assuming *arguendo* that the juvenile court could impose a fee, the condition of probation was improper because the juvenile court failed to determine if her mother had a "reasonable [ability] to pay."

The State responds that we should dismiss this appeal as moot. This is because the juvenile court closed appellant's case on January 23, 2015, and terminated her probation. In the alternative, the State asserts that the juvenile court did not abuse its discretion in conditioning probation upon payment of the $750 fee to the Public Defender. The State also observes that appellant's contention that the order of probation required her mother to pay the fee is not supported by the record because the order is directed to her as the "Respondent" and her mother is not a party to this appeal.

In reply, appellant acknowledges that her file has been closed, but asserts that "the juvenile court did not rescind its earlier directive that Kaylah S. pay the $750 fee to the Public Defender by June 23, 2015" and that, therefore, this case is not moot. Appellant also argues that the controversy warrants a ruling from this Court based on commentary from the master that the day set for appellant's adjudication was "going to be a busy day," and that she, the master, intended to "collect a lot of money for the Public Defender's Office." Appellant also maintains on the merits that the juvenile court was without authority to impose a fee, and that, even so, the court erred in not determining whether her mother had the ability to pay the fee. Finally, appellant counters the State's argument that her mother is not party to this appeal by asserting that her "challenge to the legality of the $750 fee does not turn on the identity of the party directed by the lower court to make payment."

It is unnecessary for us to address the merits of these various contentions because we are persuaded that this case is now moot. Maryland Rule 8-602 (a) (10) provides that a court may dismiss an appeal if "the case has become moot." "A case is moot when it does not present 'a controversy between the parties for which, by way of resolution, the court can fashion an effective remedy.'" *Potomac Abatement, Inc. v. Sanchez*, 424 Md. 701, 710 (2012) (quoting *Adkins v. State*, 324 Md. 641, 646 (1991)). Further, "[i]t is well settled that "[a]ppellate courts do not sit to give opinions on abstract propositions or moot questions, and appeals which present nothing else for decision are dismissed as a matter of course."*Cottman*

v. State, 395 Md. 729, 744 (2006) (quoting *State v. Ficker*, 266 Md. 500, 506-07 (1972) (citations omitted)).

The case of *In re Julianna B.*, 407 Md. 657 (2009), is instructive. There, the Circuit Court for Montgomery County, sitting as a juvenile court, found that Julianna B. was involved in second-degree murder for stabbing another juvenile in the heart. *Id.* at 660. During her placement as a result of that finding, the Department of Juvenile Services ("DJS") informed the juvenile court that Julianna B. was "doing exceptionally well both behaviorally and academically." *In re Julianna B.*, 407 Md. at 660. In addition, DJS requested home passes for Julianna B., but those requests were denied by the court, noting on one occasion that "Respondent has been adjudicated delinquent of second [degree] MURDER!" *Id.*

Thereafter, DJS requested two review hearings. *In re Julianna B.*, 407 Md. at 661. After the first request for a review hearing was denied, and after submitting letters informing the juvenile court that Julianna B.'s behavior was "exemplary," and that she had earned her high school credits, DJS requested another review hearing. This second request for a hearing was supported by a detailed psychological evaluation of Julianna B. that recommended that a "gradual transition from placement to the community would be appropriate." *Id.* at 661. The juvenile court agreed to set a review hearing. *Id.*

Prior to that hearing, DJS furnished the court with a transition plan recommending that Julianna B. be permitted to attend Anne Arundel Community College. *In re Julianna B.*, 407

Md. at 661. At the hearing, conducted on June 18, 2007, the juvenile court heard testimony in favor of the modified plan from the Secretary of DJS, Julianna B.'s regular psychologist, and her case management specialist. *Id.* The juvenile court also heard from the victims' parents, who opposed the modification. *Id.* At the conclusion of the hearing, the court denied the motion for modification of the treatment plan, finding that Julianna B. was "a danger to others," and that her "detention in a secure facility is necessitated." *Id.*

After Julianna B. appealed to this Court, the State moved to dismiss the appeal on the grounds that a denial of a motion to modify a treatment plan was not appealable. *In re Julianna B.*, 407 Md. at 661, 663, 667. We disagreed, finding that the denial of the modification was a final judgment, and therefore, appealable under Section 12-301 of the Courts and Judicial Proceedings Article. *Id.* at 661-62. We then held that the juvenile court had abused its discretion by denying any supervised leave and by continuing Julianna B.'s commitment and remanded the matter to the juvenile court. *Id.* at 659, 662. The State petitioned that decision to the Court of Appeals, asking: (1) whether the appeal should be dismissed because the juvenile court's denial of modification was not a final, appealable order; and, (2) whether the juvenile court properly exercised its discretion in denying the motion for modification. *Id.* at 659.

When the case was briefed for the Court of Appeals, the parties informed that Court of proceedings that,four days after our mandate issued, the juvenile court entered an order

modifying Julianna B.'s treatment plan. *In re Julianna B.*, 407 Md. at 662. The juvenile court granted Julianna B. home passes and found that the permanency plan should be reunification of Julianna B. with her mother. *Id.* The Court of Appeals was also informed that, since the juvenile court entered its order modifying the treatment plan, Julianna B. was released from commitment and presently resided with her mother. *Id.* at 662 n. 1. The Court was also informed that Julianna B. was taking courses online from the University of Maryland, and that she had received a scholarship to Wesley College in Dover, Delaware. *Id.* Because both Julianna B. and her mother would be moving to attend college soon, DJS had transferred Julianna B.'s case to Delaware. *Id.*

Based on these developments, the Court of Appeals held that the question concerning whether the juvenile court properly exercised its discretion in denying the motion for modification of the treatment plan was rendered moot. *In re Julianna B.*, 407 Md. at 664-68. The Court concluded that the juvenile court's order following the June 18, 2007 review hearing was "no longer the operative order addressing her treatment service plan." *Id.* at 664 (discussing *State v. Peterson*, 315 Md. 73 (1989)). And, noting that it had the authority nevertheless to express its views on a moot case, the Court of Appeals declined to do so:

> Although "[w]e have the constitutional authority . . . to express our views on the merits of a moot case," [*J.L. Matthews, Inc. v. Maryland-Nat'l Capital Park & Planning Comm'n*, 368 Md. 71, 96 (2002)], this is not an appropriate case in which to do so. Judge (later Chief Judge) Hammond, speaking for the Court in *Lloyd v. Board of Supervisors of Elections*, 206 Md. 36, 111 A.2d 379

(1954), expressed the rule that has been frequently cited thereafter in Maryland mootness cases. The *Lloyd* Court said that

> "only where the urgency of establishing a rule of future conduct in matters of important public concern is imperative and manifest, will there be justified a departure from the general rule and practice of not deciding academic questions. [I]f the public interest clearly will be hurt if the question is not immediately decided, if the matter involved is likely to recur frequently, and its recurrence will involve a relationship between government and its citizens, or a duty of government, and upon any recurrence, the same difficulty which prevented the appeal at hand from being heard in time is likely again to prevent a decision, then the Court may find justification for deciding the issues raised by a question which has become moot, particularly if all these factors concur with sufficient weight."

Id. at 43, 111 A.2d at 382.

In re Julianna B., 407 Md. at 665-66.

The Court concluded that the case did not meet this standard because of its "somewhat unique circumstances." *In re Julianna B*., 407 Md. at 666. The Court observed

> From the standpoint of the juvenile court judge, this case arose out of one of the most serious crimes known to the law. From the DJS standpoint, Ms. B. seems to be a most remarkable individual whose rehabilitation motivated DJS to efforts rarely, if ever, seen in seeking to obtain some modification of her treatment service plan.

In re Julianna B., 407 Md. at 66-67.

As for the State's remaining question presented, whether the denial of a modification motion was a final, appealable order, the Court of Appeals stated that was "immaterial"

because the result would be the same in the case under consideration, no matter the resolution of that question. *In re Julianna B*., 407 Md. at 663. Thus, the Court vacated this Court's judgment and remanded the case with instructions to dismiss the appeal as moot. *Id.* at 668.

Here, on June 23, 2014, the master recommended that appellant reimburse the Public Defender $750 as a special condition of probation. On July 28, 2014, that recommendation was accepted by the juvenile court and memorialized in the Order for Probation. Thereafter, on January 15, 2015, the Department of Juvenile Services informed the juvenile court that appellant "has completed the Court mandated probation conditions" and requested termination of her probation case. On January 21, 2015, that request was granted and appellant's juvenile case was closed, effective January 23, 2015. At that point, the juvenile court's earlier Order for Probation, which included the disputed fee, was no longer the operative order in this case. Accordingly, we conclude that this case is moot because there is no longer an existing controversy between the parties. We also decline appellant's invitation to address the merits notwithstanding this conclusion because, as the Court stated in *In re Julianna B*., "the instant case lacks the urgency and the frequency of repetition that

is ordinarily required in order to be excepted from the rule that we do not decide moot cases." *In re Julianna B*., 407 Md. at 667.

APPEAL DISMISSED.
COSTS TO BE PAID BY APPELLANT.