

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1421

September Term, 2013

IN RE: KEYAIRA A.

Wright,
Reed,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: September 14, 2015

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Following an adjudication hearing in the Circuit Court for Prince George’s County, sitting as the juvenile court, Keyaira A. was found to be a Child In Need of Assistance (“CINA”), and it was ordered that she be committed to the care and custody of the Prince George’s County Department of Social Services (“the Department”). Subsequently, appellant, Keyaira A.’s mother, Charlotte A., filed exceptions to the court’s ruling. Appellant’s exceptions were overruled after an exceptions hearing. This appeal followed.

Appellant presents a single question for our review:

Did the court err by finding that appellant neglected Keyaira A.?

For the reasons which follow, we answer this question in the negative. We affirm the judgment of the court.

FACTS AND PROCEEDINGS

On June 7, 2013, the Department filed a CINA petition in which it was alleged that Keyaira A. was a “child . . . in need of assistance as [her] parents [were] unable or unwilling to provide [her] with proper care and attention.”¹ The Department summarized the facts supporting the petition as follows:

On [June 5, 2013,] [Keyaira A.] took herself to Laurel Regional Hospital due to suicidal ideations. [Keyaira A.] was diagnosed with major depressive disorder with psychosis and felt to be in need of hospitalization. Because Laurel Hospital does not have inpatient psychiatric facilities for adolescents it planned to transfer [Keyaira A.] to Sheppard Pratt but needed a parent’s signature to admit her. The psychiatrist talked with [appellant] by phone on [June 5th]; [appellant] said she would come to the hospital after work but

¹ It should be noted that Keyaira A. was born on July 2, 1995. She reached the age of eighteen on July 2, 2013. The court retains jurisdiction until she reaches the age of twenty-one. Md. Code Ann. (2006 Repl. Vol.) § 3-809(b) of the Courts and Judicial Proceedings Article.

failed to do so. [The Department] spoke with [Keyaira A.'s] father^[2] who said he was at work in Virginia and could not come to the hospital. On [June 6, 2013,] the therapist spoke with [appellant] who said to call the father or Protective Services and that she was not coming to the hospital.^[3] [The Department] spoke with [appellant] on [June 7, 2013]; she says she is leaving for an out of town business trip and will not be returning until [June 13th] and will not go to the hospital, participate in a facilitation, or come to the Shelter Care hearing. [Keyaira A.] was previously removed from her parents' care in February 2013 after [appellant] put [Keyaira A.] out of the house and the father was unwilling to care for her . . . ; [that] CINA case was closed at Adjudication and [Keyaira A.] was returned to [appellant's] care.

Accordingly, the Department requested "care and custody of [Keyaira A.] pending further investigation."

That same day, and based on the facts alleged in the Department's petition, the court ordered for Keyaira A. to be placed temporarily in the care and custody of the Department, pending an adjudication hearing, to take place on June 25, 2013.

At the adjudication hearing, the Department requested that the facts alleged in its petition be sustained, with two slight alterations: (1) the portion of the facts that stated "[appellant] said she would come to the hospital after work but failed to do so" was to be replaced with "[appellant] said she would fax the appropriate paperwork to the hospital, and did so[]"; and (2) the fact that "[appellant] stated that [Keyaira A.] ran away from home[]" was to be added. Counsel for Keyaira A. joined in the Department's request.⁴

² Appellant and Keyaira A.'s father had been separated for approximately two years at the time of the events in question; appellant had legal custody of Keyaira A.

³ It was noted in the petition that "Keyaira A. [had] been in shelter care since June 6, 2013, and that her parent . . . [had] been notified of the shelter care."

⁴ Counsel for Keyaira A.'s father noted "[o]n behalf of my client, he will accept those modifications [to the facts alleged] as stated, and will basically agree with what is reported in the [p]etition."

Appellant's counsel noted that appellant generally denied the facts alleged, but was "not seeking a full evidentiary adversarial hearing on those facts[.]" The court then ruled "[b]ased on the allegations in the [p]etition as amended and agreed upon by the parties, the proffers of all the parties and there being no request for adversarial hearing, the [c]ourt sustains the allegations as amended."

Thereafter, in the disposition phase of the hearing, the Department recommended that the court find Keyaira to be a CINA. In support of that recommendation, the Department explained that Keyaira A. and appellant had "inter-personal relationship problems" and that, although Keyaira A.'s parents both expressed that they were "very much vested in caring for and loving [her]," they also expressed that Keyaira A. "present[ed] some problems right now that they [were] unable to manage[.]" The Department also noted that Keyaira A. felt that she was not "getting the proper amount of attention and care in her home as currently constituted."

Appellant's counsel stated that appellant did not object to a CINA finding, but asked that the finding "be based specifically on [Keyaira A.'s] mental health needs[.]" The Department responded to appellant's request as follows:

[THE DEPARTMENT]: Your Honor, as to [appellant's] request that a CINA finding be based solely on [Keyaira A.'s] mental health needs, I would point out that the [p]etition and the allegations in the [p]etition that were just sustained, absolutely show more than the fact that my client has mental health needs at this time.

There was also the fact that [appellant] stated that she did not intend to come to the shelter care hearing. She didn't. Nor did she intend to go to the hospital. And she decided to proffer on [Keyaira A.'s] behalf that she did not do that.

She did not visit Keyaira [A.] when she was in the hospital. And certainly made no, or gave no indication that she intended for Keyaira [A.] to come back home.

I think that there's more here, Your Honor, than just [Keyaira A.'s] needs. And I think that we can also look to the former case to show that there is a history of problems in this parent/child relationship. And that has as much to do with the finding today as [Keyaira A.'s] mental health issues do.

In rebuttal, appellant's counsel asserted that appellant had been unable to visit Keyaira A. because she was out of town, and that as soon as she returned she "immediately contacted the Department" and "made . . . arrangements" for Keyaira A. Moreover, counsel contended that the previous involvements that the family had with the courts were "based on Keyaira's runaway behaviors" which "now have been sufficiently identified to recognize that they are mental health issues[.]" Lastly, appellant's counsel stated that appellant was incapable of caring for Keyaira A. and that "Keyaira [A.] [was] unwilling to stay in [appellant's] house as demonstrated by the statements that she's made to various people."

Ultimately, the court ruled, in pertinent part:

[THE COURT]: . . . Based on the findings made at the adjudication hearing, the evidence presented to the [c]ourt . . . and . . . the proffers of all the parties; the [c]ourt finds that . . . Keyaira A. is a child in need of assistance.

. . . And the [c]ourt is not making a finding that she's a child in need of assistance based solely on mental health needs. There is not enough evidence to make that finding. And given the history of the family^[5] . . . with the

⁵ In the order issued following the adjudication hearing, the court summarized Keyaira A.'s family's history with the courts as follows:

The family has had prior involvement with the Department . . . In Anne Arundel County, a physical abuse finding of Keyaira [A.] was indicated in 2005; in 2010, the parents were indicated for neglect of (continued...)

indicated findings in Anne Arundel County for physical abuse, and child neglect, and child neglect again . . . there's more to this recent diagnosis.

And the [c]ourt would note that there are other, plenty of other respondents with the same diagnosis, but that do not have these same family dynamics. So I believe that it's not just [an inability] to care [for Keyaira A.] because of mental health issues.

The [c]ourt finds that it remains contrary to [Keyaira A.] [*sic*] to be returned home. Therefore, she is committed to the care and custody of the Department.

Additionally, the court's subsequent order noted the finding that "[n]either parent is able to provide the child with proper care and attention."

Following the adjudication hearing, appellant filed exceptions to the court's findings wherein she alleged, in relevant part:

3. That based on the sustained facts and pursuant to Maryland Courts and Judicial Proceedings § 3-819, [appellant], asked that the [c]ourt find [Keyaira A.] to be a [c]hild [i]n [n]eed of [a]ssistance (CINA) based on [appellant's] inability to care for Keyaira [A.'s] significant mental health needs at the time. The [c]ourt, however, refused to make this finding, and instead made a finding that [Keyaira A.] was CINA based on the neglect of [appellant];

4. That [Keyaira A.] has a history of running away from the home, bringing strange men into the family home who had to be removed by the police, and theft of the family's property. [Keyaira A.] continues to refuse to return to the care and custody of [appellant].

Appellant, therefore, requested an overruling of the court's findings and for a finding to be made that Keyaira A. was a CINA based on appellant's inability to handle her "mental health needs[.]"

Keyaira [A.]; and another indicated neglect finding of Keyaira [A.] by her parents in 2010. There were also 2 additional investigations that were unsubstantiated, 1 for physical abuse and 1 for neglect.

On July 31, 2013, a hearing was held on the exceptions filed by appellant. The court made the following relevant conclusions with respect to any possible neglect of Keyaira

A. by appellant, because appellant failed to visit Keyaira A. while she was hospitalized:

[THE COURT]: All right. I[t] appears that . . . There’s a significant difference in how the hospital and [appellant] saw their communication.

On one hand, I see that the e-mail from the hospital to [appellant’s] personal e-mail account went to her at 12:38 [p.m.] on the afternoon of June 5, while [appellant] would have been at work. Then there is a response from [appellant] at 5:04 p.m. But there’s nothing in the original e-mail that indicates that there’s a time limit for a response.

So in [the Department’s] [exhibit] No. 2 the letter from Ms. Trottman, who was the initiator of the e-mail correspondence between the hospital and [appellant] said; she left at 4:30 [p.m.] and [appellant] had said she would be there after work. But there’s no discussion of what time they were talking about.

So, you know, [appellant] may have . . . intended to be there at 6:00 [p.m.]. Ms. Trottman envisioned a response by 4:30 [p.m.]. But there was no discussion that the response needed to come in by 4:30 [p.m.].

It’s also not clear . . . apparently [appellant] never received a response to her e-mail sent to Ms. Trottman at 5:25 [p.m.], saying;

“Here’s the signed form. Do I still need to come to the hospital or will someone from the facility where [Keyaira A. will] be transported to call me with more information?”

So [appellant] didn’t know at that point whether she was suppose[d] to –

* * *

[THE COURT]: -- whether she was suppose[d] to show up at Laurel Hospital or . . . whether these documents meant that [Keyaira A.] would then be transported to Sheppard Pratt, and that [appellant] would be notified to meet them at Sheppard Pratt at some point.

I can't honestly fin[d] that to be neglect, because it seems that it was more a matter of right hand not knowing what the left hand was doing. . . . I can't fault [appellant] for not getting a response to legitimate questions.

* * *

Number 2, we've got a child who was already exhibiting significant mental health problems. If there is neglect here, it seems to me that the neglect was in the parent not seeing to their daughter's mental health needs before she turned eighteen.

What happened here, it seems to me is, the parents were several times, charged with neglect. Had those cases opened and closed, and never took the additional steps to get her the mental health treatment that she clearly needed, if she was showing up at a hospital with suicidal ideations.

Moreover, putting the child out of the home, or telling her that; ^["]I don't feel safe with you in the home,^["] which apparently her father at least did. Well, again that's based on the [Keyaira A.'s] interpretation of events.

Because on the one hand we know that [Keyaira A.] said, ^["][appellant] put me out of the house.^["] On the other hand [appellant] said, ^["]no. I found strange adult males in my home. Found property missing. And was in fear of strangers in my home.^["] I'm not sure that's the same thing.

But the bottom line is, [Keyaira A.'s] mental health needs must be addressed.

. . .

Counsel for Keyaira A. noted that when Keyaira A. had left home, neither of her parents filed a missing person report and, subsequently, when Keyaira A. did return a month later, appellant refused to allow her to stay in the home. Appellant's counsel asserted that appellant had filed a missing person report and, furthermore, appellant explained that on the subject occasion, she got up at 4:00 a.m. and found Keyaira A. and a strange man in the house. Appellant claimed that she then called the police, the police took the man away, and Keyaira A. willingly left with him. Appellant stated that, several days later, Keyaira A. called her and asked if she and the man, her boyfriend, could come

get the items they had left in the home; appellant noted that she allowed Keyaira A. and her boyfriend to collect their things and that, thereafter, they left.

At that point in the hearing, the court found:

[THE COURT]: . . . I'm convinced, frankly, that the parents have tried what they could. That they've had [Keyaira A.] in therapy.^[6] That [Keyaira A. has] been resistant. . . . and that when faced with efforts to attend therapy with a parent, has resisted to a point of leaving the home with the boyfriend . . .

At that point, it's very difficult to call that neglect, because, I mean I can understand a parent's perspective in saying; I don't really want to call the police to go to force her to leave her boyfriend's home and come back to live with us when she is not willing to go to therapy, and seems to be, at least, physically safe where she is.

* * *

So, I think we have a problem. And I don't know, honestly, that it makes a great deal of difference whether this case moves forward based on neglect or based on the mental health of [Keyaira A.]. As long as we can keep the case open, I think that's the most important thing. . . .

Nevertheless, the court subsequently noted:

⁶ The record indicates, generally, that Keyaira A. and appellant did partake in some form of therapy. The most specific mention of this therapy, however, came when Keyaira A. appeared to refer to the fact that it was made available due to the family's previous involvement with the courts:

[KEYAIRA A.]: . . . I feel like I had individual therapy once. And me and my Mom had family therapy when I was in the courts before. When we did have that therapy things were getting better. But when I didn't have it, and the case was closed, and the therapist was gone, because she was, I guess a part of this, things were gone back [sic] bad.

Similarly, appellant's counsel noted, at the exceptions hearing, that "through the course of the various court interactions, [appellant] had been involved in therapy with Keyaira [A.]." Counsel also claimed that "rather than go to therapy to deal with [the conflict between appellant and Keyaira A. after appellant discovered Keyaira A. with her boyfriend in the home], Keyaira [A.] ran away from the home after that incident[.]"

[THE COURT]: . . . certainly from the time that [Keyaira A.] was sixteen, she was out of control and she needed mental health treatment, and wasn't getting it. . .

Later on in the hearing, the court asked appellant why she had not visited Keyaira A. while she was hospitalized at Sheppard Pratt for a period of ten days. Appellant responded by acknowledging that she had been on a business trip from June 7th through 10th and explained that when she returned, she communicated with both Laurel Regional Hospital and Sheppard Pratt in an attempt to locate Keyaira A.⁷ She noted that she had been unable to find Keyaira A., as information about her treatment was not made available because Keyaira A. was, technically, at that time, in the custody of the Department at that time.

At the close of the hearing, the court ruled as follows:

[THE COURT]: All right. I believe there are some factual discrepancies in [the petition] . . . with regard to the dates and times of conversations. But the bottom line remains that neither of the parents, upon notice that [Keyaira A.] had checked herself into a hospital seeking mental health treatment, made any effort to actually come to the hospital.

It is clear that, although [appellant] says [“I thought all I had to do was forward this form,⁷] she didn't once indicate that her intention was to see [Keyaira A.] and make sure that she was safe. In fact, what she says is she believed that [Keyaira A.] was being transported to another facility.

But I am troubled by the fact that apparently both parents work, have – for responsible organizations. And while I didn't hear any mention of health insurance, I am taken aback by the fact that there were no forms introduced that had anything to do with financial responsibility for [Keyaira A.'s] hospitalization.

⁷ Appellant did not explain the discrepancy with respect to how long she told the Department her business trip would last, June 7th through 13th, and its actual length, June 7th through 10th.

And neither parent has suggested in any way, in argument or testimony or evidence of any sort, that they intended to take care of the financial aspects of this child's hospitalization. That's neglect.

You don't turn your child over to the State and say, [^c]you take care of them,^[p] and think that's not neglect. It is. It is neglect. . . . [Appellant] filed a form that just said I give permission, but didn't say, [^c]oh, and where's the registration information? You haven't asked me for her health insurance or something to sign,^[p] because as a minor, [Keyaira A.] can't be held responsible for paying for her medical needs. . . .

[APPELLANT]: We talked about it on the phone. I gave it to her. She has it.

[THE COURT]: . . . There's no evidence here. There is no evidence that's been presented that says that the parents attempted, voluntarily, to handle their child's medical needs in either a financial or emotional basis.

[Appellant] had the opportunity to come and visit [Keyaira A.] rather than maybe going to work on June 6. The day after she reported to the hospital. Locate her then. You could have nipped this in the bud. There would have been no CINA [p]etition filed, if you had shown up the next morning and signed her admission papers and seen [Keyaira A.], and met her doctors.

Because if you did that, you would have been the person that was contacted rather than the Department . . . when she was moved to some other facility. I am overruling the [e]xceptions and signing the Order as written. Thank you.

DISCUSSION

Appellant argues that the finding that she neglected Keyaira A. was erroneous. She asserts that this is so because the evidence showed that “when [she] learned that Keyaira [A.] had checked herself into the hospital for mental health treatment, [appellant] was in communication with the hospital and sent . . . all of the necessary forms to have Keyaira [A.'s] needs taken care of and [for her to be] admitted[.]” Appellant insists that although there was no evidence that her failure to visit Keyaira A. in the hospital affected her mental

health, the court nevertheless concluded that the lack of visitation amounted to a failure to meet the emotional needs of Keyaira A. She contends that it was also erroneous for the court to find that appellant neglected Keyaira A. by failing to take care of the “financial aspect of Keyaira [A.’s] hospitalization,” because there was no evidence which established that appellant had not provided insurance information to the hospital, as she claimed she had done. For those reasons, appellant asserts that the finding that she neglected Keyaira A. could not have been properly sustained and, therefore, it was clearly erroneous and warrants reversal. The appellee-child asserts that the preponderance of the evidence supports the court’s determination that a CINA finding should be based on the mother’s neglect. She contends that the judge “used a process of reviewing, discussing, and commenting on each of the sustained allegations in the petition as well as other documentary evidence relevant to the family’s involvement with social services and the juvenile courts.” They conclude that after engaging in a process that was “the picture of judicial discretion,” the judge came to the conclusion that neglect by the parents was one of the factors in the CINA finding. This conclusion was not an abuse of discretion. We agree.

In child custody cases, we apply the following standards of review to a court’s findings and conclusions:

When the appellate court scrutinizes factual findings, the clearly erroneous standard . . . applies. [Secondly,] if it appears that the [juvenile court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [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.

In re Shirley B., 419 Md. 1, 18 (2011) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

Although the Maryland courts recognize that parents have a fundamental right to raise their children free from State interference, that right “is not absolute and . . . must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect.” *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495-97 (2007) (citation omitted).

The classification “child in need of assistance” is statutorily defined, by Md. Code Ann. (2013 Repl. Vol.), § 3-801(f) of the Courts and Judicial Proceedings Article (“C.J.P.”), as:

(f) *Child in need of assistance.* – “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.

For the purposes of the statute, “neglect” is defined as:

(s) *Neglect.* – “Neglect” means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or individual who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:

- (1) That the child’s health or welfare is harmed or placed at substantial risk of harm; or

(2) That the child has suffered mental injury or been placed at substantial risk of mental injury.

C.J.P. § 3-801(s).

In the case at bar, the evidence indicated that on June 5, 2013, Keyaira A. admitted herself to Laurel Regional Hospital after she had suicidal ideations. Thereafter she was diagnosed with “major depressive disorder with psychosis,” requiring hospitalization. Because Laurel Regional Hospital did not have adequate resources to treat Keyaira A., it was decided that she would have to be transferred to Sheppard Pratt, a move that would require appellant’s consent. Later that day, after appellant was advised of the situation, she signed and faxed the relevant documentation to the hospital. On June 6th, appellant was contacted by a therapist involved in Keyaira A.’s treatment, and appellant told the therapist to call Keyaira A.’s father or “Protective Services” and advised that she would not be coming to the hospital. On June 7th, appellant was contacted by the Department and she advised that she was leaving on a business trip and would be out of town until June 13th. Moreover, appellant, again, noted that she would not be coming to the hospital and would not be “participat[ing] in a facilitation, or com[ing] to the Shelter Care hearing.” Ultimately, appellant did not attempt to visit Keyaira A. during the entirety of her hospitalization, nor was there any evidence that appellant communicated with Keyaira A. during that time.

For her part, appellant claimed, at the exceptions hearing, that she had not visited Keyaira A., during her hospitalization, because: (1) she was unable to locate Keyaira A. even after making phone calls to Laurel Regional Hospital and Sheppard Pratt; (2) she was

out of town on a business trip for several days; and (3) after Keyaira A. was temporarily placed in the custody of the Department, information about her treatment could not be released to appellant.

The court, however, reasoned that Keyaira A. had been placed into the Department’s custody because of a combination of appellant’s inaction and consent. Furthermore, the court found that there was no evidence in the record indicating that, upon hearing of Keyaira A.’s diagnosis and need for hospitalization, appellant had taken the logical action of providing relevant insurance information to Keyaira A.’s caregivers in an effort to secure appropriate treatment.

With respect to the first prong of the definition of “child in need of assistance,” we are persuaded that the court did not clearly err by finding that Keyaira A. had been neglected. The record shows that appellant failed, and at some points refused, to visit Keyaira A. during her lengthy hospitalization for a newly diagnosed mental illness, a condition which came to light after Keyaira A. reported having suicidal ideations. Moreover, it was also established that appellant declined to participate in the necessary shelter care hearing, which resulted in Keyaira A. being temporarily placed into the Department’s custody. In our view, appellant’s conduct, *i.e.*, her deliberate lack of involvement in her daughter’s treatment for a serious mental illness and the corresponding process, constituted a “failure to give proper care and attention” to Keyaira A., under circumstances which indicated Keyaira A. had suffered a mental injury and her health and welfare were at substantial risk. *See* C.J.P. § 3-801(s); *see also* C.J.P. § 3-801(r) (“Mental

injury’ means the observable, identifiable, and substantial impairment of a child’s mental or psychological ability to function.”).

As to the remaining prong of the definition of “child in need of assistance,” C.J.P. § 3-801(f)(2), fulfillment of that condition was not in dispute. The court found, generally, that neither of Keyaira A.’s parents were able to provide her with proper care and attention. Appellant admitted this when she claimed that she was unable to care for Keyaira A. in light of her mental health needs. We are persuaded then that the court’s finding, whether based upon Keyaira A.’s mental illness or on the pattern of neglect established by the record, was not clearly erroneous.

In sum, where we conclude that it was not clearly erroneous for the court to find that appellant neglected Keyaira A. and was unable to properly care for her, we hold that the court did not abuse its discretion by determining that Keyaira A. was a child in need of assistance.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**