

Circuit Court for Calvert County
Case No. C-04-JV-21-000045

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1467
September Term, 2021

IN RE: A.C.

Berger,
Friedman,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: May 18, 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.

In this appeal we are asked to review the juvenile court for Calvert County's determination that sixteen-year-old A.C.¹ is a child in need of assistance (CINA).² All parties agree that A.C. is a CINA, but they disagree as to whether the CINA finding should be based on "neglect" by A.C.'s biological mother, as the Department of Social Services and A.C. argue, or on A.C.'s diagnosed "mental disorder(s)," as Mother argues. Both possible grounds were presented to and considered by the juvenile court. The court, however, only made a finding on the question of neglect and did not make a formal, written finding as to whether A.C. could be found CINA on the grounds of mental disorder. For the reasons below, we remand to the juvenile court to make this second finding.

FACTS

For most of his life, A.C. lived with Mother and his half-sister. Beginning in the fall of 2020, the relationship between A.C. and Mother became increasingly strained. In December of that year, A.C. was hospitalized for suicidal ideations, at which time he also presented with injuries to his lip and neck from a physical altercation with Mother. The Department initiated involvement with the family and recommended mental health treatment for both A.C. and Mother. The Department also recommended that A.C. reside

¹ To protect the identity of the minor involved, we refer to him by initials only.

² A CINA is 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. MD. CODE, COURTS AND JUDICIAL PROCEEDINGS ("CJ") § 3-801(f).

in the basement of the family’s home with his aunt and her husband rather than upstairs with Mother. Although the Department referred Mother to community services that could offer support, those services were not fully accessed, and the intervention was ultimately unsuccessful. In April of 2021, Mother attempted suicide and following her admission to the hospital, A.C. and his half-sister went to live with A.C.’s former stepfather in Texas. The children returned abruptly in August of 2021. When Mother met them at the airport, she and A.C. got into a physical altercation that resulted in A.C. being detained at the airport overnight. Mother returned to pick A.C. up the following morning and on the drive home, she and A.C. got into another physical altercation, resulting in Mother being arrested and charged with assault.³ A.C. then stayed for several weeks with his aunt and her husband in Virginia before Mother asked for A.C. to be returned home. Multiple altercations ensued, and on October 2, A.C. was admitted to the hospital for allegedly having suicidal and homicidal ideations. While a patient on the psychiatric ward, A.C. was diagnosed by the hospital’s psychiatric nurse practitioner with Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD) and prescribed Depakote “for mood stabilization.” According to his healthcare providers, however, A.C. denied having either suicidal or homicidal ideations and was generally cooperative while hospitalized.

On October 8, the hospital determined that A.C. could be discharged to Mother’s care with the recommendation that he receive outpatient psychiatry and counseling

³ The Maryland Judiciary Case Search reflects that Mother’s assault case was subsequently placed on the “stet” docket.

services. Mother, however, declined to take A.C. home, claiming that she did not feel safe with him there. When she provided no alternative resources (friends or family with whom A.C. could stay), the hospital filed neglect charges with the Department. The Department's attempts to work with Mother to find an alternative resource were also unsuccessful. With no place for A.C. to go upon discharge, the Department filed a Petition for Shelter Care and a Finding of Child in Need of Assistance in the Circuit Court for Calvert County. The circuit court, sitting as a juvenile court, held a hearing, at which the Department argued that A.C. should be found a CINA principally because Mother's refusal to pick A.C. up from the hospital constituted neglect. Mother argued that the real issue was A.C.'s chronic mental health issues, and that he should, thus, be found a CINA on the basis of mental disorder rather than neglect. In a written Order of Adjudication and Disposition, the juvenile court sustained the facts and findings in the Department's Petition and found A.C. a CINA because he "had been neglected and the mother is unwilling or unable to provide proper care and attention to [A.C.'s] needs." Mother filed a timely appeal of the juvenile court's Order to this Court.

DISCUSSION

To determine that a child is a CINA, the court must make two distinct findings: (1) that the child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) that 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. MD. CODE, COURTS AND JUDICIAL PROCEEDINGS ("CJ") § 3-801(f). Here we are faced with an unusual case in which all parties agree with the court's determination that A.C. is a CINA but

disagree as to whether the CINA finding should be based on neglect by A.C.’s mother or based on A.C.’s mental health and diagnoses of ADHD and ODD. Under the statute, “neglect” is defined as:

[T]he 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.

CJ § 3-801(s). “Mental disorder” is also defined in this same section:

- (1) “Mental disorder” means a behavioral or emotional illness that results from a psychiatric or neurological disorder.
- (2) “Mental disorder” includes a mental illness that so substantially impairs the mental or emotional functioning of an individual as to make care or treatment necessary or advisable for the welfare of the individual or for the safety of the person or property of another.
- (3) “Mental disorder” does not include mental retardation.

CJ § 3-801(q).

The Department’s Petition asked the court to find that A.C. is a CINA because he was neglected by Mother. Mother argued that the court should find A.C. a CINA based on his diagnoses of ADHD and ODD, which she claims constitute mental disorders that are “the core issue creating discord in the family.” In its Order, the juvenile court found A.C. to be a CINA on the basis of neglect. The juvenile court made no written finding as to

whether A.C.'s diagnoses of ADHD and ODD constitute mental disorders upon which a CINA finding could be based.

Mother now asks us to reverse the neglect finding.⁴ This is problematic. The trial court only found A.C. to be a CINA on the basis of neglect. Thus, to reverse the neglect finding would mean reversing the CINA finding in its entirety, potentially leaving A.C. without the help and services everyone agrees he needs. This would not be in A.C.'s best interests, and we decline to take an action that would so directly contravene the purpose of the CINA statute.⁵ Moreover, our decision to affirm or reverse the juvenile court's finding

⁴ Mother argues that the Department's evidence of neglect, principally predicated on her refusal to take A.C. home from the hospital, is insufficient as a matter of law. According to Mother, her fear for her own and A.C.'s safety if he were to return home were both justified and corroborated; and the weight of the evidence neither demonstrated that she was unwilling to cooperate in identifying other placement resources for A.C., nor that she resisted mental health treatment for A.C. or herself. Rather, Mother argues that the weight of the evidence demonstrates that she "was doing all she could to try and manage A.C.'s behavioral issues but simply could not keep them under control." Mother also points to section 5-714(g) of the Family Law ("FL") Article as support for the argument that the Department's evidence was insufficient to prove neglect. That section provides that "an individual may not be identified as responsible for abuse or neglect *in the centralized confidential database* solely because: (1) a child has been released from a hospital or other facility; (2) the child has been diagnosed with a mental disorder or developmental disability; and (3) the individual has failed to take the child home due to a reasonable fear for the safety of the child or child's family." FL § 5-714(g) (emphasis added). Presumably, Mother is arguing that because these circumstances do not warrant listing on the centralized database, they also cannot form the basis for a finding of neglect. Moreover, Mother argues, a finding that she has neglected A.C. will cause her unwarranted direct and collateral consequences in this case and with regard to her custody of her other child. Because of our resolution of the instant appeal, however, we need not reach these difficult questions, or at least, we need not reach them yet.

⁵ The purposes of the CINA statute are, among other things, "(1) [t]o provide for the care, protection, safety, and mental and physical development of any child coming within the provisions of this subtitle; [and] (2) [t]o provide for a program of services and treatment consistent with the child's best interests." CJ § 3-802(a).

of neglect depends, at least in part, on whether A.C.'s diagnoses of ADHD and ODD constitute mental disorders upon which a CINA finding could be based. This is a factual determination best made in the first instance by the juvenile court. We, therefore, conclude that “the substantial merits of [the] case will not be determined by affirming, reversing[,] or modifying the judgment” of the juvenile court with respect to the neglect finding alone. MD. R. 8-604(d)(1). Rather, we believe that justice will be better served by remanding to the juvenile court to make a formal, written finding as to whether A.C. is a CINA based on mental disorder (or anything else that the juvenile court finds appropriate to consider).⁶

**CASE REMANDED WITHOUT
AFFIRMANCE OR REVERSAL TO THE
CIRCUIT COURT FOR CALVERT
COUNTY FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID ½ BY APPELLANT
AND ½ BY APPELLEE, DEPARTMENT OF
SOCIAL SERVICES.**

⁶ We note that on appeal, the parties also argue about the juvenile court's order granting visitation. Mother claims that it was both error and an abuse of discretion to leave whether and when visitation would occur entirely up to A.C., while A.C. asks us to remand the visitation order with instructions that supervised visitation cannot transition to unsupervised visitation unless the juvenile court “specifically finds that there is no likelihood of further child abuse or neglect by the party.” FL § 9-101. Any resolution of this issue will inevitably depend, at least in part, on whether the neglect finding ultimately stands. If it does, the juvenile court must “determine whether abuse or neglect is likely to occur if ... visitation rights are granted to [Mother]. Unless the court specifically finds that there is no likelihood of further child abuse or neglect by [Mother], the court shall deny custody or visitation rights to [her], except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of [A.C.]” FL § 9-101. Should the juvenile court again find only supervised visitation immediately appropriate, the court's Order should direct that the requisite findings be made before visitation is allowed to transition from supervised to unsupervised.