Circuit Court for Prince George's County
Case # CINA-17-0173

CHILD ACCESS

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED CASES

No. 1748
September Term, 2017

No. 858
September Term, 2018

IN RE: J.H.

Wright,
Kehoe,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: March 20, 2019

T.G. ("Mother"), appeals from an order by the Circuit Court for Prince George's County declining to adjudicate 16-year-old J.H. a child in need of assistance ("CINA"),[1] and instead transferring sole legal and physical custody from Mother to J.H.'s natural father, Ja.H. ("Father"). As we understand it, the gravamen of Mother's complaint is that the juvenile court accomplished the transfer of custody pursuant to the procedure set forth in § 3-819 of the Courts and Judicial Proceedings Article ("CJ"), rather than the procedure set forth in § 8-103 of the Family Law Article ("FL"). Finding no error, we affirm.

BACKGROUND

Pursuant to a 2015 court order, Mother had sole legal and physical custody of J.H. In September 2017, amid allegations that Mother's mental health status was deteriorating, the Prince George's County Department of Social Services ("DSS") filed a petition asserting that J.H. was a CINA. The juvenile court declined to find that J.H. was a CINA, but did find, after a contested adjudicatory hearing, that Mother presented a substantial risk of harm to J.H. and was therefore unfit. The court transferred sole legal and physical custody of J.H. to Father, who was ready, willing, and able to care for J.H. Mother timely appealed the juvenile court's order.[2]

[1] Pursuant to CJ § 3-801(f), a "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."

[2] Case number 1748/17 in this Court involves Mother's *pro se* appeal from the juvenile court's earlier shelter care order, which temporarily placed J.H. with Father pending the outcome of the adjudicatory hearing. By joint motion, the parties asked that

ANALYSIS

Maryland appellate courts review CINA proceedings pursuant to three different, yet inter-related, standards:

> In CINA cases, factual findings by the juvenile court are reviewed for clear error. An erroneous legal determination by the juvenile court will require further proceedings in the trial court unless the error is deemed to be harmless. The final conclusion of the juvenile court, when based on proper factual findings and correct legal principles, will stand unless the decision is a clear abuse of discretion.

In re Ashley S., 431 Md. 678, 704 (2013) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)).

Mother argues that the juvenile court erred in transferring sole legal and physical custody to Father because it had found that both she and Father were ready, willing, and able to provide care for J.H., but then failed to "conduct[] a proper analysis" of whether a custody modification was in J.H.'s best interest. Because Mother challenges the juvenile court's ultimate decision to grant custody to Father, rather than its fact-finding, we must determine only whether the juvenile court abused its discretion in its grant of custody to Father.

As this Court recently pointed out in *In re E.R.*, 239 Md. App. 334, 343 (2018), there are at least two procedures by which a transfer of custody of a minor child may be accomplished. The first procedure, specified in FL § 8-103, requires a noncustodial parent

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that appeal be held in abeyance, as there was a "substantial possibility that the outcome of the adjudicatory hearing ... will render the [shelter care order] appeal moot." This Court granted the joint motion on February 27, 2018. After *sua sponte* lifting the stay in case number 1748/17, this Court consolidated that appeal with the appeal of the custody order, docketed as case number 858/18, by order dated September 19, 2018.

to demonstrate a material change of circumstance and show that an award of custody to the noncustodial parent is in the best interest of the child.[3] *Id.* (discussing FL § 8-103). The second procedure, specified in CJ § 3-819, permits a juvenile court to transfer custody from an unfit or abusive custodial parent to an appropriate, willing, and able noncustodial parent in a CINA proceeding. *Id*. at 344 (discussing CJ § 3-819(e)).[4] It is this second procedural path that the juvenile court utilized here.

I.

To the extent that Mother argues that the juvenile court cannot transfer custody without finding a material change in circumstance and that a transfer is in the child's best interest, that argument is foreclosed by our discussion in *In re E.R.*

II.

Alternatively, to the extent that Mother argues that the procedure for transferring custody under CJ §3-819(e) was misapplied here, we must delve one step deeper.

A.

The first step in transferring custody of a child pursuant to CJ § 3-819(e) requires the juvenile court to find that the custodial parent is unable or unwilling to care for the

[3] FL § 8-103(a) provides: "The court may modify any provision of a deed, agreement, or settlement with respect to the care, custody, education, or support of any minor child of the spouses, if the modification would be in the best interests of the child."

[4] CJ § 3-819(e) provides: "If the allegations in the [CINA] petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child, the court may not find that the child is a child in need of assistance, but, before, dismissing the case, the court may award custody to the other parent."

child. We review this factual determination with great deference and will not overturn a decision absent clear error. *In re Ashley S.*, 431 Md. at 704.

Here, the record amply supports the juvenile court's determination that the continuing deterioration of Mother's mental health made her unfit to care for J.H. As the juvenile court stated, Mother's behavior "places [J.H.] at substantial risk were she to be with [Mother] full time and that is why I am going to place her [with Father] full time because I do not find that under the statute, that that is what the evidence before me has established." Mother does not challenge that finding, or the evidentiary foundation on which it is based. Rather, Mother points to a single statement made by the juvenile court, taken out of context, that she interprets as the court's finding that she was also ready, willing, and able to care for J.H.[5] We decline to exaggerate the importance of this arguably favorable conclusion in the sea of contrary evidence. Therefore, we affirm the circuit court's finding that Mother was an unfit parent to J.H.

B.

Once the juvenile court determined that Mother was unfit, it next had to determine whether J.H. had another parent who was able and willing to care for her. CJ § 3-819(e).

[5] It appears that Mother relies on a single incomplete response the juvenile court made, at the adjudicatory hearing, to Mother's allegation that J.H. "has a mom that has been ready, willing and able since I had her and I'm still here ready, willing and able." The court responded, "And I believe you are ready, willing and able but—" before Mother interrupted and began a discussion of J.H.'s school absences. The court's incomplete thought—with qualifier—does not rise to a conclusion that Mother was ready, willing, and able to care for J.H., especially considering its explicit determination that Mother's behavior put J.H. at substantial risk of harm.

There was no evidence to suggest that Father was either unable or unwilling and, in this appeal Mother offers none. We, therefore, affirm this aspect of the juvenile court's ruling, as well.

C.

Having found the custodial parent unfit and the noncustodial parent ready, willing, and able to undertake the care and custody of the minor child, the juvenile court was prohibited from determining that J.H. was a CINA. CJ § 3-819(e). Instead, the statute permitted the court to transfer custody to the noncustodial parent. *Id*. We see no error in the juvenile court having done so here.

ORDER OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.