

Circuit Court for Baltimore City
Case No. T23151007

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1768

September Term, 2023

IN RE: N.P.

Beachley,
Ripken,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: April 26, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In 2020, the Circuit Court for Baltimore City, sitting as a juvenile court, declared N.P., minor child of A.B. (“Appellant”), to be a child in need of assistance (“CINA”). N.P. was subsequently placed in the care and custody of the Baltimore City Department of Social Services (the “Department”). Approximately three years later, the Department filed a petition for guardianship seeking to terminate Appellant’s parental rights. After Appellant failed to file a timely notice of objection, the court granted the Department’s petition. Thereafter, Appellant filed a notice of objection and moved to vacate the court’s order. Following a hearing, the court denied Appellant’s motion to vacate. Appellant presents a single question for our review: Did the juvenile court err in denying Appellant’s motion to vacate?¹

For reasons to follow, we affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant gave birth to N.P. on February 8, 2020. At the time of N.P.’s birth, both Appellant and N.P. tested positive for cocaine. Subsequently, the Department filed a petition alleging that N.P. was a CINA.² That petition was granted, and, on May 20, 2020, N.P. was committed to the care and custody of the Department.

¹ Rephrased from: “Did the court commit error when it refused to find good cause to allow Ms. B to file a late objection to the department’s petition to terminate her parental rights?”

² Section 3-801(f) of the Courts and Judicial Proceedings Article of the Maryland Code defines a CINA as a child requiring court intervention because: “(1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.”

Approximately three years later, in June of 2023, the Department filed a petition for guardianship seeking to terminate Appellant’s parental rights. On June 29, 2023, a show cause order was personally served on Appellant. In the show cause order, Appellant was informed that a petition for guardianship had been filed and that she had 30 days from the date of service to file a “Notice of Objection” with the court. Appellant was informed that, if the notice of objection was not filed, a court could terminate Appellant’s parental rights to N.P., and N.P. could be adopted by another person. A blank notice of objection form was attached to the show cause order.

On August 1, 2023, the juvenile court held a hearing on the Department’s petition. At that time, Appellant had not filed a notice of objection. As a result, the court found that Appellant had consented to the Department’s petition pursuant to Maryland Rule 11-307. Under that rule, if a notice of objection to a petition for guardianship is not filed within 30 days after service, “the party will be deemed to have consented to the guardianship.” *See* Md. Rule 11-307(b).

On August 10, 2023, the court entered an order granting the Department’s petition for guardianship. One week later, on August 17, Appellant filed a notice of objection. Then, on September 7, Appellant filed a motion asking the court to vacate its order and to accept her notice of objection under the “good cause” exception contained in Rule 11-307(b)(3). Under that exception, “[i]n the event of a late-filed objection, the court may deem the filing timely for good cause shown.” Md. Rule 11-307(b)(3). Appellant argued that good cause existed because although she had been served with the show cause order on June 29, 2023,

“she was not actually able to fill out the Objection paperwork until after the 30 day window had elapsed[.]”

In support of the motion, Appellant submitted two affidavits: one from Appellant, and one from Appellant’s mother. Appellant’s affidavit indicates that when served with the show cause order on June 29, 2023, Appellant also had an open arrest warrant. Appellant claimed that, after being handed the show cause order by the process server, Appellant observed the process server “speaking on the phone” and “describ[ing] [Appellant’s] appearance and clothing to the person the process server was speaking to on the phone.” According to Appellant, “shortly after that, the police arrived[.]” and Appellant was arrested and taken to jail. Appellant claimed that the police confiscated the show cause order and associated paperwork and did not return it to Appellant. Appellant was released from jail on July 19, at which point she moved to Mountain Manor, a substance abuse treatment facility. On August 8, Appellant’s mother visited her at Mountain Manor and delivered mail, which included the show cause order. Appellant claimed that she read the papers and “immediately” filled out the notice of objection, which was mailed on August 10, 2023.

In the second affidavit, Appellant’s mother indicated that, in “late June” of 2023, she received papers in the mail about Appellant’s “rights to [N.P.] getting terminated.” Per the affidavit, after Appellant was arrested, Appellant’s mother visited Appellant in jail and informed Appellant that there were “some papers for her” and that “they were important.” On August 8, Appellant’s mother indicated that she visited Appellant at Mountain Manor

and gave the papers to Appellant.

In October of 2023, the juvenile court held a hearing on Appellant’s motion to vacate. At that hearing, Appellant’s counsel argued that the juvenile court should find “good cause” to accept Appellant’s late-filed objection. Highlighting Appellant’s affidavit, counsel insisted that Appellant was unable to review the show cause order upon being served because she “was arrested about a minute after receiving these papers[,]” and upon her arrest, the police confiscated the papers and did not return them. Appellant’s counsel noted that, when Appellant did receive the show cause order and notice of objection from her mother on August 8, she completed the notice of objection and mailed it to the court two days later.

The juvenile court found that Appellant had failed to establish “good cause” for the court to accept her late-filed objection. In reaching that conclusion, the court noted that, while the term “good cause” had yet to be interpreted in the context of Rule 11-307, it had been interpreted in the context of determining whether a claimant had established good cause for failing to comply with the notice requirement of the Local Government Tort Claims Act. In that context, the court noted, courts considered factors such as: excusable neglect, serious physical or mental injury, a party located out of state, inability of a party to retain counsel in a complex case, ignorance of a statutory requirement, or misleading representations by a local government representative. The court noted further that, in *In re Adoption/Guardianship Nos. T00130003 and T00130004*, 370 Md. 250 (2002) (“*In re Adoption/Guardianship*”), a case that predated the enactment of the “good cause”

requirement contained in Rule 11-307, the Supreme Court of Maryland noted that due process protections would excuse failing to file a timely objection in a guardianship case due to a true physical inability to file, such as if the respondent was in a coma. *Id.* at 260–61.

Applying those principles to the case at hand, the juvenile court found that, although Appellant’s arrest and detention for the first 20 days after being served could be considered excusable, Appellant’s reasons for failing to file the objection within the 30-day window did not amount to a demonstration of “good cause.” The court found that Appellant could have had a family member or attorney file the objection while she was in jail and that Appellant had “10 days outside of jail to meet the statutory requirement.” Moreover, the court determined that Appellant’s incarceration did not amount to the sort of physical disability cited by the Supreme Court of Maryland in *In re Adoption/Guardianship* that would justify a late-filed objection on grounds other than good cause. Based on those findings, the court denied Appellant’s motion to vacate. This timely appeal followed.

Additional facts will be incorporated as they become relevant to this issue.

DISCUSSION

A. Parties’ Contentions

Appellant contends that the juvenile court erred in refusing to find “good cause” to allow Appellant to file a late objection to the Department’s guardianship petition. First, Appellant argues the circumstances surrounding her receipt of the show cause order, *i.e.*, her arrest and subsequent incarceration, amounted to excusable neglect because she “was

unable to view the documents for more than a moment, was unable to process the contents of the documents, and was prevented from keeping the documents with her for reference.” Second, Appellant argues that the court erroneously found that she “had 10 days outside of jail to meet the statutory requirement.” According to Appellant, that finding was erroneous because “she still did not possess the documents” following her release from jail and “had no way of knowing that there was a deadline.” Third, Appellant argues that the court should have found good cause for the late objection because, once Appellant received the show cause order on August 8, 2023, Appellant “promptly responded.” Finally, Appellant contends that the court’s reliance on *In re Adoption/Guardianship* was erroneous because the court mistakenly believed that it could not find good cause to accept Appellant’s objection given that Appellant’s incarceration was not equivalent to the hypothetical disability discussed in that case.

The Department and counsel for N.P. (collectively “Appellees”) argue that the juvenile court properly exercised its discretion in finding that Appellant failed to establish good cause. Appellees argue further that the court properly denied Appellant’s motion to vacate, as the order was in N.P.’s best interest.

B. Standard of Review

Appellate review of a juvenile court’s decision in a CINA proceeding involves three interrelated standards. First, any factual findings made by the court are reviewed for clear error. *In re Yve S.*, 373 Md. 551, 586 (2003). Second, any legal conclusions made by the juvenile court are reviewed de novo. *See id.* Finally, if the court’s factual findings and legal

conclusions are not erroneous, the court’s conclusion will be disturbed only if there is an abuse of discretion. *In re J.J.*, 231 Md. App. 304, 345 (2016). “A court abuses its discretion when ‘no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding rules or principles.’” *In re K.L.*, 252 Md. App. 148, 185 (2021) (quoting *Santo v. Santo*, 448 Md. 620, 325–26 (2016)).

C. Analysis

Prior to 2022, objections to petitions for guardianship seeking to terminate parental rights were governed by Maryland Rule 9-107. *In re Adoption/Guardianship of Audrey B.*, 186 Md. App. 454, 463 (2009). As in the current Rule 11-307, Rule 9-107 required a notice of objection to be filed within 30 days of service. *Id.* However unlike Rule 11-307, Rule 9-107 did not include a “good cause” provision. Md. Rule 9-107 (adopted June 5, 1996). The Supreme Court of Maryland explained in *In re Adoption/Guardianship* that Rule 9-107 was based on section 5-322 of the Family Law Article (“FL”) of the Maryland Code, which provided, in pertinent part, that where a parent was properly notified of a petition for guardianship and failed to file a timely notice of objection, a juvenile court was required to consider the parent to have consented to the guardianship. 370 Md. at 261. The Court held, therefore, that a parent who fails to abide by Rule 9-107 “was deemed by operation of law to have consented to the guardianship.” *Id.* at 259–60.

Consequently, the Court explained, a juvenile court had no authority to consider a late-filed objection absent a violation of due process or “some extraordinary circumstance of such a compelling nature as to make it fundamentally unfair to regard the failure as an

effective consent.” *Id.* at 262. According to the Court, such “extraordinary circumstances” included “a true physical inability to file a timely objection,” such as being in a coma, or “the kind or duress or misrepresentation that would suffice to render the decision not to object involuntary and not the exercise of free will.” *Id.* at 262. Nevertheless, the Court cautioned that the deadline for objecting was “not an arbitrary one,” as it served “an important public purpose,” namely, avoiding impediments to achieving permanence for children placed in foster care resulting from a CINA proceeding. *Id.* at 259–64.

In 2021, the Supreme Court of Maryland amended the Maryland Rules to address discrepancies in the current rules pertaining to the juvenile courts and to clarify the procedural requirements associated with the various types of cases dealt with in the juvenile courts. *See* 208th Report from the Standing Committee on Rules of Practice and Procedure (July 2021). Pursuant to those amendments, which became effective on January 1, 2022, objections to petitions for guardianship seeking to terminate parental rights following a CINA finding were no longer governed by Rule 9-107, but instead were governed by the newly adopted Rule 11-307. *See* 208th Report from the Standing Committee on Rules of Practice and Procedure (July 2021) at 148–51; *see also* Md. Rules 9-101 and 11-301. Consistent with its predecessor, Rule 11-307 provided, in pertinent part, that if a notice of objection to a petition for guardianship was not filed within 30 days after service, “the party will be deemed to have consented to the guardianship.” Md. Rule 11-307(b). In addition, the Rule included a new provision allowing the court to accept a late-filed objection “for good cause shown.” Md. Rule 11-307(b)(3).

As recognized by both the juvenile court and the parties, the Supreme Court of Maryland did not include a definition of “good cause” in the Rule, and our courts have yet to interpret that term in the context of a late-filed objection to a guardianship petition. To fill that gap, the juvenile court examined this Court’s interpretation of the good cause requirement in the context of determining whether a claimant had established good cause for failing to comply with the notice requirement of the Local Government Tort Claims Act (“LGTCA”). We agree that interpretation is helpful and see no reason why it should not be applied in the instant case.

Under the LGTCA, when a party brings a cause of action for unliquidated damages against a local government or its employees, the party is required, by statute, to provide notice of the claim within 180 days after the injury. *Rounds v. Maryland-Nat. Capital Park and Planning Com’n*, 441 Md. 621, 639–40 (2015). Although providing notice is a condition precedent to maintaining such an action, failure to give notice is not an absolute barrier to the claim if the complaining party shows, among other things, good cause for the failure. *Id.* at 640–42. To determine whether a party has shown “good cause” in that context, a court should ask “whether the claimant prosecuted his claim with that degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances.” *Rios v. Montgomery Cnty.*, 386 Md. 104, 141 (2005) (quotation omitted). We have enumerated several factors that may benefit that analysis: 1) excusable neglect or mistake; 2) serious physical or mental injury; 3) location out of state; 4) inability to retain counsel in a complex case; 5) ignorance of the notice requirement; and 6) misleading

representations by a government representative. *Mayor and City Council of Balt. v. Stokes*, 217 Md. App. 471, 486–87 (2014). To be sure, the burden is on the plaintiff to demonstrate “good cause.” *Rounds*, 441 Md. at 645. Moreover, because a court’s application of the good cause exception is discretionary, “we confine our review to determining whether the trial court abused its discretion in making its good cause determination.” *Id.*

Against that backdrop, we hold that the juvenile court did not abuse its discretion in refusing to find good cause to accept Appellant’s late-filed objection.³ As the court noted, the only factor that was applicable to Appellant’s situation was excusable neglect or mistake. There was no evidence that Appellant was located out of state, unable to retain counsel, ignorant of the statute, misled, or suffering from a serious physical or mental injury.

As to whether Appellant’s neglect was excusable, the court found that it was undisputed that Appellant was served with the show cause order on June 29, 2023, and that Appellant failed to file a notice of objection within 30 days of that date. The court found that Appellant’s arrest and detention was not so debilitating that it excused her failure to file. The court concluded that Appellant could have had a family member or attorney file the objection while she was incarcerated and noted that Appellant also had 10 days outside of jail to personally file her objection. The court reasoned that, under the circumstances,

³ Because Rule 11-307 states that a juvenile court “may” accept a late-filed objection for good cause shown, we construe the court’s good-cause determination as discretionary. *See Spencer v. Maryland State Bd. of Pharmacy*, 380 Md. 515, 532 (2004) (noting that “[t]he word ‘may’ connotes a permissive, discretionary function”). As such, we review that determination for abuse of discretion.

Appellant did not demonstrate that she had failed to file her objection for “good cause.”

In our view, none of the court’s findings were erroneous, and the court’s conclusion was reasonable. Even if we accept Appellant’s claim that she was unable to review the paperwork before her arrest and that the paperwork was confiscated by the police and never returned, an ordinarily prudent person in Appellant’s position would have inquired about the paperwork at some point during that person’s subsequent 20-day incarceration. At the very least, Appellant should have inquired into the nature of the paperwork after her mother visited her in jail and informed her that there were “some papers for her” and that “they were important.” Appellant did neither of those things, even after she was released from incarceration. In fact, there is no evidence that Appellant made any attempt to retrieve the paperwork or learn its contents at any point prior to her mother bringing the papers to her at Mountain Manor on August 8, 2023. Additionally, when Appellant did eventually review the paperwork, she took no immediate action to ensure that the notice of objection would be received by the court forthwith. Instead, Appellant waited an additional two days before putting her notice of objection in the mail. Consequently, the court did not receive the notice of objection until August 17, nearly three weeks after the expiration of the 30-day filing deadline. Given those circumstances, the juvenile court did not abuse its discretion in declining to find good cause to accept Appellant’s late-filed objection.

As noted, Appellant argues that the court’s finding that she “had 10 days outside of jail to meet the statutory requirement” was erroneous because “she still did not possess the documents” following her release from jail and “had no way of knowing that there was a

deadline[.]” We discern no inaccuracy in the court’s finding. Appellant was released from jail 20 days after being served; therefore, she had 10 days outside of jail to file her notice of objection. That she claims to have not possessed the documents or known of their contents had no bearing on the veracity of the court’s finding that she was not incarcerated for 10 days during the statutory period.

To the extent that Appellant is claiming that her alleged lack of knowledge regarding the contents of the paperwork somehow excused her neglect in failing to timely file her notice of objection, we remain unpersuaded. As discussed, Appellant had ample opportunity to discover the nature of the documents and to timely file her notice of objection. A factfinder could rationally conclude that had Appellant exhibited reasonable diligence following her arrest, she almost certainly would have become aware of the contents of the show cause order in time to file a notice of objection before the expiration of the 30-day period. Thus, it was reasonable for the court to find that Appellant had failed to carry the burden of showing good cause. *See Rios*, 386 Md. at 141.

We likewise find no error in the court’s reliance on *In re Adoption/Guardianship* and the related determination that Appellant’s incarceration during some of the 30-day window to file an objection did not rise to the level of an “extraordinary circumstance of such a compelling nature” as to render her consent to the order ineffective or deprive her of due process. Despite Appellant’s claims to the contrary, there is nothing in the record to suggest that the court believed it was not permitted to find good cause based on that case,

which was decided prior to the enactment of Rule 11-307.⁴ The record makes plain that the court understood the history of both the case and the Rule, and that the court used the case in its proper context.

For the reasons articulated above, we affirm the judgment of the trial court.⁵

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**

⁴ The Supreme Court’s reference to a parent unable to respond to a petition due to being in a coma in *In re Adoption/Guardianship* was invoked as an example of a circumstance in which a parent’s due process protections would be violated. *See id.* at 260–61. The trial record reveals that the court understood this and referenced *In re Adoption/Guardianship* in the context of determining that Appellant had received due process, and not because the court believed that good cause for a late filing could not exist absent a circumstance as severely restrictive as a coma.

⁵ In Appellant’s brief to this Court, Appellant asserts only that the juvenile court erred in declining to find good cause to consider her late-filed objection to the petition to terminate parental rights. In response, the Department argues that Appellant did not demonstrate that accepting her late-filed objection would be in the best interests of the child. We note that in this case, the termination of parental rights was deemed to have been consensual and thus proceeded by operation of law, not following a contested hearing on the merits. *See* FL § 5-320; *see also In re Adoption of Sean M.*, 204 Md. App. 724, 736 (2012). Our review of the record reveals that the court did not weigh the best interests of the child as part of its evaluation of whether Appellant demonstrated good cause for the court to consider her late-filed objection, but *did* find that the child’s best interests were furthered by the grant of the petition for guardianship. We discern no error in either of these actions.