

Circuit Court for Baltimore City
Case No. 24-T-16-000036

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2191

September Term, 2016

IN RE: D.R.M.H.

Kehoe,
Berger,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: February 15, 2018

*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.

On February 16, 2016, appellant Orlim Martinez filed both a Petition for the Appointment of a Guardian of a Minor Person and a Motion for Findings of Special Immigrant Eligibility in the Circuit Court for Baltimore City. Appellant sought to be appointed the guardian of his younger brother, D.R.M.H., as well as for D.R.M.H. to receive Special Immigrant Juvenile (“SIJ”) status. Following a hearing, the circuit court granted the petition for guardianship but denied the motion for SIJ status. Appellant moved to alter or amend the special immigrant eligibility order, which the court granted in part and denied in part.

Appellant noted an appeal and presents the following issue for our review, which we have rephrased as follows¹:

Did the trial court err in denying appellant’s Motion for Findings of Special Immigrant Eligibility when it determined that the minor child was not neglected under Maryland law?

For the reasons set forth below, we shall reverse the judgment of the circuit court and remand for additional proceedings consistent with this opinion.

FACTS AND PROCEEDINGS

D.R.M.H. was born on September 16, 1997, in Santa Rita, Copán, Honduras. He lived with his mother and father, and starting at age eleven, stopped attending school full-time in order to work on the family’s farm. D.R.M.H. would help harvest beans, corn, and

¹ Appellant’s question for review reads: “Did the trial court err in determining that the minor child was not neglected under Maryland law?”

coffee each weekday from 8:00 a.m. to 4:00 p.m. To continue his education, D.R.M.H. attended school on Saturdays.

On January 1, 2011, D.R.M.H. was walking to a store near his parents' house when he saw his uncle. As D.R.M.H. and his uncle began walking to the store together, they encountered two gun-wielding gang members who appeared drunk. D.R.M.H. became scared, and ran behind a water fountain to hide. He watched as the two gang members shot his uncle eight times, killing him.

Although D.R.M.H.'s parents filed a police report, the police never arrested his uncle's murderers. D.R.M.H.'s parents stopped pursuing the matter when gang members contacted his family, threatening to kill D.R.M.H. Because of the gang's threats, D.R.M.H. hid inside of his parents' house until April of 2011, when his parents decided to send him to live with his sister, Nellie Yolani ("Nellie"), and her husband in a different part of Honduras. Unfortunately, living with Nellie presented its own problems. D.R.M.H. soon learned that Nellie and her husband were in the process of hiding and fleeing from a drug trafficker. During his stay with Nellie, D.R.M.H. did not attend school, and mostly remained inside their house.

Eventually, D.R.M.H. decided to visit his parents, and on his way to their town, he stopped at a supermarket. As he was parking his car, D.R.M.H. saw a man park behind him and exit the vehicle with a gun. Believing that the man was one of his uncle's murderers, D.R.M.H. mounted the curb with his car, and sped away, returning to Nellie's home.

In November 2013, D.R.M.H. decided to return to his hometown to live with his parents because he missed them, and because Nellie’s husband lost his job and was unable to financially support D.R.M.H. After returning home, D.R.M.H. stayed inside his parents’ house every day, afraid that gang members were looking for him. Knowing that his parents could not protect him, D.R.M.H. came to the United States on January 21, 2014, and has since been living with appellant.

As stated *supra*, appellant sought to be appointed as D.R.M.H.’s guardian, and sought SIJ status for D.R.M.H. Although the circuit court granted the motion for appointment of a guardian, it denied the request for SIJ status, finding that the evidence failed to indicate that D.R.M.H.’s parents had neglected him.² Appellant appeals that finding.

STANDARD OF REVIEW

We review a circuit court’s factual determinations in this matter under the clearly erroneous standard, and give due regard to the circuit court’s ability to judge the credibility of the witnesses. *In re Dany G.*, 223 Md. App. 707, 719 (2015). We review *de novo* the circuit court’s conclusions of law. *Id.* at 720. Finally, we review the circuit court’s ultimate conclusions for an abuse of discretion. *Id.*

² Appellant moved to alter or amend the court’s order regarding SIJ status, noting that the court failed to find whether D.R.M.H. was under the age of twenty-one and whether D.R.M.H. was unmarried. In its subsequent order, the court found that D.R.M.H. was under twenty-one and unmarried, but otherwise denied appellant’s motion to alter or amend regarding SIJ status.

DISCUSSION

We begin our analysis with a brief explanation of SIJ status in order to place the issue on appeal into context. SIJ status “was created by the United States Congress to provide undocumented children who lack immigration status with a defense against deportation proceedings.” *Id.* at 712. “The Immigration and Nationality Act of 1990, which established the initial eligibility requirements for SIJ status, was enacted ‘to protect abused, neglected or abandoned children who, with their families, illegally entered the United States.’” *Simbaina v. Bunay*, 221 Md. App. 440, 448-49 (2015) (quoting *Yeboah v. U.S. Dep’t of Justice*, 345 F.3d 216, 221 (3d Cir. 2003)). The Act (“INA”) creates “a special circumstance where a State juvenile court is charged with addressing an issue relevant only to federal immigration law.” *Id.* at 449 (quoting *H.S.P. v. J.K.*, 87 A.3d 255, 259 (N.J. Super. Ct. App. Div. 2014)). To receive SIJ classification, INA, codified at 8 U.S.C. § 1101(a)(27)(j), requires the state court to make several factual findings. These findings include:

- (1) The juvenile is under the age of 21 and is unmarried; 8 C.F.R. § 204.11(c)(1)–(2);
- (2) The juvenile is dependent on the court or has been placed under the custody of an agency or an individual appointed by the court; 8 C.F.R. § 204.11(c)(3);
- (3) The “juvenile court” has jurisdiction under state law to make judicial determinations about the custody and care of juveniles; 8 U.S.C.A. § 1101(a)(27)(J)(i); 8 C.F.R. § 204.11(a), (c) [amended by the Trafficking Victims Protection Reauthorization Act (“TVPRA”) 2008];

- (4) That reunification with one or both of the juvenile’s parents is not viable due to abuse, neglect, or abandonment or a similar basis under State law; 8 U.S.C.A. § 1101(a)(27)(J) [amended by TVPRA 2008]; and
- (5) It is not in the “best interest” of the juvenile to be returned to his parents’ previous country of nationality or country of last habitual residence within the meaning of 8 U.S.C.A. § 1101(a)(27)(J)(ii); 8 C.F.R. § 204.11(a), (d)(2)(iii) [amended by TVPRA 2008].

Dany G., 223 Md. App. at 714-15.

Here, the circuit court found: 1) that D.R.M.H. was under the age of 21 and was unmarried, 2) that D.R.M.H. had been placed under the custody of an individual (appellant) appointed by a state juvenile court, 3) that the court had jurisdiction to make judicial determinations about the custody and care of D.R.M.H., 4) that the evidence did not indicate that reunification with D.R.M.H.’s parents was not viable because the court found that appellant “presented no evidence of abuse, neglect or abandonment[,]” and 5) that it was not in D.R.M.H.’s best interest to return to Honduras. Appellant now argues that the circuit court erred when it found that he failed to establish that reunification with D.R.M.H.’s mother or father was not viable due to abuse, neglect, or abandonment.

To determine whether reunification with the child’s parents is not viable due to abuse, neglect, or abandonment, we apply Maryland law “without taking into account where the child lived at the time the abuse, neglect, or abandonment occurred.” *Id.* at 717. In *Dany G.*, Dany testified at his SIJ status hearing that he was born in Guatemala and, starting at age twelve, he was forced to leave school in order to support his disabled parents. *Id.* at 711. Dany told the circuit court that he would work in crop fields which exposed him to dangerous herbicides from 6:00 a.m. until 1:00 or 2:00 p.m., Monday through

Saturday, with all of his income going toward helping his parents. *Id.* The circuit court denied Dany’s request for SIJ status, finding that although Dany was young when he started working, it could not find that the circumstances constituted neglect. *Id.* at 719.

On appeal, this Court ultimately held that the circuit court had failed to apply the proper legal standard in considering whether Dany had been neglected. *Id.* at 720. In an effort to provide guidance to the circuit court on remand, we discussed the concept of “neglect” under Maryland law. Pursuant to Md. Code (1984, 2012 Repl. Vol.) § 5-701(s) of the Family Law Article (“FL”) and Md. Code (1973, 2013 Repl. Vol.) § 3-801(s) of the Courts and Judicial Proceedings Article (“CJP”), neglect is defined as follows:

“Neglect” means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or other person 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) mental injury to the child or a substantial risk of mental injury.

In light of the statutory definition, the *Dany G.* Court relied on two principles likely sufficient to establish neglect: the child’s lack of education, and the child being forced into labor at a young age. *Id.* at 721. Citing to Md. Code (1978, 2014 Repl. Vol.) § 7-301 of the Education Article (“EA”), we explained that “it is illegal in Maryland for parents to fail to send their child to school.” *Id.* Regarding a child’s employment, the Court looked to Md. Code (1991, 2016 Repl. Vol.) § 3-209 of the Labor and Employment Article (“LE”), and stated, “if a child worked 8 hours a day, 6 days a week in Maryland under dangerous

conditions, a finding of neglect would surely follow. It is illegal for parents in Maryland to force their child into child labor.” *Id.* We concluded that if, on remand, Dany’s testimony indicated such violations, it would “be more than sufficient to establish a finding of neglect in this State.” *Id.*

Here, the record indicates that at age eleven, D.R.M.H. stopped attending school full-time, and instead only attended school on Saturdays. Additionally, when D.R.M.H. lived with Nellie, he claimed that he did not attend school at all. Finally, D.R.M.H. testified to working on the family’s farm from 8:00 a.m. to 4:00 p.m., Monday through Friday. In light of the Court’s analysis in *Dany G.*, the circuit court erred in concluding that appellant “presented no evidence of abuse, neglect or abandonment[.]” We therefore remand this matter to the circuit court to reconsider its finding as to neglect.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY REVERSED AND
REMANDED FOR PROCEEDINGS
CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY APPELLANT.**