

Circuit Court for Prince George's County
Case No. 17-0060, 17-0061, 17-0062,
17-0063, 17-0064

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2205

September Term, 2017

In Re: J.R., F.H., IV, J.S., K.S. and J.R.

Wright,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wright, J.

Filed: August 10, 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.

BACKGROUND

Appellant, Jessica R. (“Mother”), the mother of appellee-children,¹ J.R., F.H., IV, J.S., K.S.,² and J.R. (collectively “the children”), appeals from a judgment of the Circuit Court for Prince George’s County, sitting as the juvenile court, finding Jess. R. to be a Child in Need of Assistance (“CINA”),³ and placing the remaining children in the care and custody of their respective fathers. Appellant presents these questions which we have reworded and condensed for clarity:⁴

1. Did the court err by finding that Jess. R. was a CINA?

¹ Herein appellee-children will be referred to as follows: J.R. (herein “Jess. R.”), F.H., IV (herein “F.H.”), J.S. (herein “Jer. S.”), K.S., and J.R. (herein “Jer. R.”).

² Counsel for K.S. wrote separately for her client asserting that the circuit court erred in not awarding joint custody to Mother and father of K.S. where there was no evidence of abuse or neglect of K.S., and where K.S., who is a thirteen-year-old adolescent, expressed a desire for a fifty-fifty custody arrangement with both parents. The Department objected because K.S. was not an appellant. The brief of K.S. was stricken as to argument but allowed as to the facts presented in the brief.

³ Md. Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article (“CJP”), § 3-801(f):

A child is determined to be a CINA when a court finds:

- (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.

⁴ Did the juvenile court err by declaring Jess. R. a CINA and placing him in foster care, and by changing custody of the other four children from their Mother to their respective fathers prior to dismissing their CINA cases, where the evidence did not support a finding of abuse or neglect because the Mother applied corporal punishment?

2. Did the court err by committing Jer. R., F.H., Jer. S., and K.S. to the care and custody of their respective fathers?

We hold that the circuit court did not abuse its discretion, and thus, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Prior DSS Involvement

The Prince George's County Department of Social Services ("DSS") has known this family well and long before the events giving rise to this appeal. There have been allegations of child neglect and child abuse of Mother towards her children since July 2009.

The first allegation of child neglect occurred in January 2009 after Jer. R., then one year old, was hospitalized after drinking oven cleaner while in the care of his grandmother which resulted in burns to his esophagus. Doctors found a burn mark on his right hand that appeared to be about one month old.

In February 2015, there was an allegation of child abuse involving F.H., then four years old. The report alleged that F.H. was brought to the hospital with "3 red circular bruises on his chest, 1 on the center of his chest, 1 under his shoulder blade, and 1 under his left rib. He also has scratches on his face." F.H. is a "special needs" child and was also non-verbal and needed physical care. The police went to Mother's listed D.C. address, but were unable to find her. After an investigation, a doctor reported that F.H. had "bruising on both legs, bruising under his left butt cheek, bruising on his abdomen, back and chest." The doctor noted that this bruising was inconsistent with normal toddler bruising. Mother denied hitting the child and added that she did not see the marks on him

and blamed the marks on F.H.'s father, Mr. H., whom she said took care of F.H. the weekend before the injuries were found. DSS contacted F.H.'s grandmother and F.H.'s grandmother stated that due to her work schedule, she could not care for the children if they were removed from Mother. However, Mr. H. said he could care for the children if needed. The worker, Ms. W., identified a fungus on F.H.'s head and the hospital prescribed oral medication.⁵

On February 9, 2015, Ms. W. spoke to the children at DSS. The children denied both being physically disciplined and witnessing anyone hit F.H. or Jess. R. On February 12, 2015, Mr. H. came to DSS to be interviewed about F.H.'s bruising. Mr. H. stated that Mother was "lying on him," and that he had not seen the child since the end of January 2015. Mr. H. stated that he did not believe Mother was abusive, but that she would "snatch [the children] up" when they got out of hand. He believed that Mother was more neglectful than she was abusive because she was caring for five children alone. On February 15, 2015, Ms. W. spoke to the principal of F.H.'s school regarding the abuse allegations. The principal said the school had no concerns of abuse, but was concerned with the fungus and Mother's housing issues.

On February 19, 2015, the worker visited Mother and the children at home. The worker spoke to Jer. R. and K.S., who stated that they were happy at the home. Jer. R. stated that Mr. H. was "mean," but denied witnessing Mr. H. hit F.H.

⁵ This fungus was later determined to be ringworm.

In September 2015, the Child Protective Services (“CPS”) received a report of child neglect against F.H., K.S., and Jess. R. K.S. reported that Mother had left the home at 7:00 a.m., and that he was babysitting his younger brothers. He reported that a man broke into the home, and that he hid under the bed with his younger brothers. After K.S. heard the man leave, he walked out of the home with his brothers, where a neighbor found them. The neighbor took them in, and K.S. used the telephone to call his grandmother. K.S. reported that Mother leaves them unattended all the time, and that they were alone during the summer. Upon their arrival, K.S.’s family found only bread and milk in the home and saw that Jess. R., then one year old, consumed two eight-ounce bottles of formula in less than ten minutes.

DSS again investigated Mother because F.H, then six years old, was sent to school with a urine-stained shirt and came to school “very hungry.” DSS closed out the report because the worker assigned to the case did not believe that neglect had occurred. The worker noted that F.H. ate breakfast and lunch at school every day, was fed properly at home, and may have peed himself because he was autistic and was still being potty trained.

B. Current Allegations and Investigation

On March 24, 2017, DSS received another report of physical abuse against Mother. The report alleged that Mother had struck Jer. R. and K.S. with a cord after her boyfriend told her that the children went into the kitchen and took food out of the cabinet. While this incident was being investigated, DSS also opened a sexual abuse case against

Mother because Jer. R. alleged that he and K.S. took photos of their scantily clad mother in front of her dance pole.

On March 28, 2017, the circuit court, sitting as a juvenile court, held a shelter care hearing, pending adjudication, for all the children. The fathers agreed with the order controlling conduct, and Mother argued that neither shelter care nor an order controlling conduct⁶ were necessary because she had not abused her children. DSS created a safety plan ordering that adults would not use corporal punishment or verbal discipline against any of the children, and that Jer. S. would reside with his father until the end of the school year. DSS also ordered Mother to provide Jer. S.'s father with his medical cards,

⁶ **CJP § 3-821. Order controlling conduct of person before court.**

(a) *In general.* – The court, on its own motion or on application of a party, may issue an appropriate order directing, restraining, or otherwise controlling the conduct of a person who is properly before the court, if the court finds that the conduct:

- (1) Is or may be detrimental or harmful to a child over whom the court has jurisdiction;
- (2) Will tend to defeat the execution of an order or disposition made or to be made under this subtitle; or
- (3) Will assist in the rehabilitation of or is necessary for the welfare of the child.

(b) *Application to person not party to petition.* – Subsection (1) of this section shall apply to a person not a party to the petition if the person is given:

- (1) Notice of the proposed order controlling the person's conduct; and
- (2) The opportunity to contest the entry of the proposed order.

clothing, birth certificate, and social security card, and ordered that Mother attend family and domestic violence counseling.

C. Adjudicatory Hearings

Adjudicatory hearings took place on May 15, 2017, June 26, 2017, August 28, 2017, and September 5, 2017, with disposition hearings occurring on October 16, 2017, and December 1, 2017.

At the first adjudicatory hearing on May 15, 2017, counsel for Mother requested a continuance, because Mother had not received the medical documents she requested. Counsel for Jer. S.'s father noted that Mother had not yet produced the health insurance cards for the children. Counsel asked the court to address whether Jer. S. and Jer. R. could receive health insurance. Counsel for the State raised the issue that F.H. and Jess. R. had not yet received Supplemental Security Income benefits from Mother.

Again, on June 26, 2017, counsel for Mother requested another continuance through August 28, 2017, because she was still awaiting records from DSS. Fathers, Sean S., Mr. H., and Jermaine S., objected to a continuance. Counsel for Jermaine S. raised the issue that because Mother had failed to produce the insurance cards, social security cards, and birth certificates, both Jer. S. and Jer. R. had to go to the emergency room and doctor's visits without any health insurance. Counsel for Mother responded that Mother was no longer receiving medical assistance because the children were not in her custody. An unidentified person said "[n]o, she told us she had Kaiser [Insurance]." In response, Mother stated that she did have Kaiser Insurance, but that it was too expensive, and so she had to get medical insurance for the children. Again, counsel for

the DSS raised that Mother had failed to provide medical cards for the children for three months, and that the need for insurance was imminent; Jess. R. had a surgery coming up and still did not have insurance. Again, the circuit court ordered that Mother was to provide F.H.'s father with his birth certificate and any other necessary medical documents by June 27, 2017.

At the August 28, 2017 adjudication hearing, the circuit court heard testimony from Jer. R., K.S., Ms. B., DSS's child protective service investigator, Mother, Mr. S., K.S.'s father, Mr. S., Jer. S.'s father, and Mr. N., Mother's boyfriend. Jer. R., ten years old, testified that Mother "sometimes" hit him. He also testified that the last time Mother hit him was because he and K.S. got in trouble for going into the kitchen and taking food out of the cabinet. He testified that getting in trouble meant "whoopings," and that Mother "whooped" him on his butt and hit his back. When asked what Mother whooped him with, Jer. R. responded "[s]ometimes a belt and sometimes [an] extension cord." He identified that during the event in question Mother hit him with "a brown one . . . where you plug your phone inside of." Jer. R. testified that the "whooping" left him with one black mark. According to Jer. R., this was the only time that Mother hit him with the extension cord. Turning to whoopings by belt, Jer. R. testified that "[w]hen we get a belt, probably like three, when she whoop us we get three, we get three taps." Jer. R. also testified that he had witnessed his Mother hitting K.S. with a belt, but that he never saw marks on K.S. Jer. R. testified that he saw Mother hit F.H. with her hand, and that he saw marks on F.H. as a result. Jer. R. also said that he saw Mother hit Jess. R. and Jer. S. He said he never saw marks on Jer. S.

The last adjudicatory hearing took place on September 5, 2017. The circuit court considered the issue of whether Mother was in contempt for failing to provide the necessary documentation for the children. Mother testified that she had provided Jer. R.'s father with "everything that I have," and that she had complied with the court orders to the best of her ability. She stated that she could not provide the social security cards for the children because she had moved twice since the hearing and had misplaced the cards. The court stated that it would not find her in contempt if everything was resolved.

D. Disposition Hearings

The first disposition hearing took place on October 16, 2017. The circuit court first heard testimony from Ms. G., a resource parent for Jess. R. since March 27, 2017. Ms. G. testified that upon his first visit to the doctor, Jess. R. was not speaking well, had trouble walking, trouble eating, and had a disfigured penis that secreted a white liquid when cleaned. The doctor referred Ms. G. to the urology department, which later would perform reconstruction surgery on Jess. R.'s penis. Ms. G. stated that the doctor told her that Jess. R.'s disfigured penis was likely due to neglect in the healing process. Ms. G. also testified that Jess. R. had received only eight out of twenty-five required immunizations. Mt. Washington Hospital evaluated Jess. R. and referred him for speech, occupational therapy, and physical therapy. Ms. G. testified that during this time Mother only visited Jess. R. twice in June and July, and she had not reached out to request visitation. When questioned by the circuit court about Jess. R.'s present state, Ms. G. testified that "[Jess. R.] has blossomed into a beautiful young little boy. He's speaking well. He's speaking much better than he had when he came into care." Ms. G.'s

testimony was corroborated by Ms. M., the family service worker for Jess. R., who testified that although she had scheduled Mother's visitation for every other Wednesday, Mother had only begun her visits in June.

At the December 1, 2017 hearing, Ms. H., the aunt of Mr. H., testified that when she resided with Mr. H. between 2015 and 2016, she witnessed Mr. H. punching F.H. in the chest with a "physical fist, pow, pow, pow." Ms. H. also testified that she had no concerns about Mother's parenting because "[s]he has a big heart. She loves children. She prepares the meals. She does the motherly in nourishments, and I appreciate that."

The circuit court then heard testimony from DSS. DSS requested that Jess. R. be found a CINA, stay in the care and custody of DSS, and for Mother to have supervised visits. DSS argued that because past behavior is predictive of future behavior, Jess. R. is a CINA because he was vulnerable to abuse and could not self-protect given his young age. DSS requested that the court take judicial notice of Jess. R.'s CINA case.⁷ DSS requested that the other children remain in the care and custody of their respective fathers who were "ready, willing and able to care for the children." DSS did not have any concerns with the father's homes, there were no allegations against the fathers, and the children appeared to be "thriving."

Counsel for K.S. and F.H. stated that K.S. did testify in court that he experienced physical discipline, but did not believe he was abused. She proffered that K.S. did not fear being in his Mother's home, and he wanted to spend his time with both parents

⁷ DSS also noted that "we are all trying to work towards some type of permanency plan for the children."

equally in a joint custody arrangement. She stated that Jer. S. wanted to have visits with Mother, but wanted to remain in the care and custody of his father.

The circuit court found that Jer. R., Jer. S., F.H., and K.S. were not CINA, and placed them in the sole physical custody of their respective fathers.⁸ The court then found that Jess. R. was a CINA, and ordered that Mother take parenting classes.

STANDARD OF REVIEW

We review a juvenile court's CINA determination using three different, yet interrelated, standards of review. The Court must first review the juvenile court's factual findings under a clearly erroneous standard. *In re Adoption of Cadence B.*, 417 Md. 146, 155 (2010); *In re Nathaniel A.*, 160 Md. App. 581, 595 (2005), *cert denied*, 386 Md. 181, 872 (2005); Md. Rule 8-131(c). The juvenile court's factual findings will not be disturbed "if any competent evidence exists in support" of those findings. *In re Ryan W.*, 434 Md. 577, 593-94 (2013) (citation omitted). Second, any legal conclusions are reviewed "without deference" and any legal errors will be remanded, unless the error is harmless. *Id.* (citations omitted).

Finally, the appellate court reviews for abuse of discretion the juvenile court's "ultimate conclusion . . . founded upon sound legal principles and based upon factual

⁸ The circuit court noted "I do believe it's in the children's best interest, number one, to continue to have a relationship with each other and to continue to have a relationship with their Mother." The court further stated about Mother that "I don't believe that she poses a danger to her children in that way. Probably overwhelmed and didn't even recognize it." The "way" the court was speaking of Mother was clearly her continued relationship with the children unburdened by daily physical custody of the children.

findings that are not clearly erroneous.” *Cadence B.*, 417 Md. at 155 (citation omitted). The juvenile court abuses its discretion when its decision under consideration is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Id.* at 155-56 (citing *In Re Yve S.*, 373 Md. 551, 583-84 (2003)).

DISCUSSION

I.

Preliminarily, we must address the DSS’s contention that Mother failed to preserve the issues presented in her brief because she did not raise the issue of whether her corporal punishment was “reasonable” below. We disagree.

Where an issue is not raised, by a party to the case, at a hearing resulting in an order from which appeal is taken, the issue is not preserved for appellate review. *Deyesu v. Donhauser*, 156 Md. App. 124, 134 (2004); *Miller v. State*, 151 Md. App. 235, 259 (2003); *see also In re Billy W.*, 387 Md. 405 (2005) (mother waived, on appeal, her argument regarding admissibility of certain evidence where she failed to object on certain grounds at trial).

In her testimony at trial, Mother testified that she disciplined her children, but that she did not believe it was abuse. While she may not have used the word “reasonable,” the judge ascertained that Mother’s argument was that while she used corporal punishment on her children, her conduct was not so egregious that it crossed into the bounds of abuse. Thus, we find this issue preserved.

II.

Mother argues that she did not abuse or neglect her children, and that the circuit court's CINA determination of Jess. R. and the custody determination as to the remaining children was in error. Specifically, she argues that the discipline was reasonable and exempted from the definition of abuse under Md. Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP") § 3-801(b), and does not concern a substantial risk of death or serious or permanent injury.

Appellee-children respond that the evidence presented at the adjudication and disposition hearings meets the preponderance of the evidence standard. This evidence includes Jer. R.'s testimony that Mother had him take inappropriate sexual pictures of her, Jer. R.'s testimony that mother beat him with an extension cord, and the testimony of Jess. R.'s foster mother regarding the "slew of concerns" she had about him and his lack of immunizations and the treatment needed for his disfigured penis. Second, appellee-children argue that Mother's corporal punishment was not reasonable because the testimony reflected that Mother "used an extension cord to administer discipline after food was taken out of the kitchen."

DSS argues that Mother's conduct was both abuse *and* neglect, and that the circuit court was within its discretion in finding Jess. R. to be a CINA. Allegations in support of a CINA petition must be proven by a preponderance of the evidence. *In re Nathaniel A.*, 160 Md. App. at 595; CJP § 3-817(c). Abuse includes "[p]hysical or mental injury of a child under circumstances that indicate that the child's health or welfare is harmed or is at substantial risk of being harmed," including sexual abuse. CJP § 3-801(b)(2).

Neglect is defined as failure to “give proper attention to a child,” placing the child at “substantial risk of harm.” CJP § 3-801(s). In evaluating whether such a risk exists, the court has “a right-and indeed a duty-to look at the track record, the past, of [a parent] in order to predict what her future treatment of the child may be.” *In re Dustin T.*, 93 Md. App. 726, 735 (1992). That track record includes evidence that the parent has neglected the child’s sibling. *See William B.*, 73 Md. App. 68, 77 (1987) (“The parents’ ability to care for the needs of one child is probative of their ability to care for other children in the family.”). A court “assesses neglect by assessing the *inaction* of a parent over time.” *In re Priscilla B.*, 214 Md. App. 600, 625 (2013) (emphasis in original).

We agree with the appellee-children that although the infliction of a punishment that creates a risk of death or permanent injury would certainly be considered abuse, corporal punishment need not rise to such an egregious level to be considered unreasonable. The statutory definition of abuse establishes boundaries for reasonable corporal punishment; reasonable punishment cannot also amount to abuse. *See Charles County Dept. of Soc. Servs. v. Vann*, 382 Md. 286, 303 (2004) (“[c]hild abuse and reasonable corporal punishment are mutually exclusive; if the punishment is one, it cannot be the other.”). We are not persuaded and hold that the circuit court did not abuse its discretion.

In this case Jer. R. suffered multiple injuries on his back and side that caused him pain for two days. Although the courts did not expressly find that “the nature, extent, and location of the injury indicate that the child’s health or welfare was harmed or was at

substantial risk,” that was not required. There is no requirement that a court “spell out every step” used during consideration. *Wisneski v. State*, 169 Md. App. 527, 556 (2006).

The circuit court credited the testimony of Jer. R. and the social worker in sustaining the allegations of abuse in the CINA petition where there was physical injury to the child under circumstances that indicated that the child’s health or welfare was harmed. CJP § 3-801(b)(2). The court’s decision cannot be said to be clearly erroneous. *In re Nathaniel A.*, 160 Md. App. at 595 (Trial court’s decision that a child is a CINA will not be set aside unless clearly erroneous). We give great deference to the credibility determination of the juvenile court, given its heightened responsibility in child abuse cases. *In re A.N.*, 226 Md. App. 283, 314-15 (2015). “The purpose of a CINA proceedings is to protect children and promote their best interests.” *In re Rachel T.*, 77 Md. App. 20, 28 (1988).

III.

CJP § 3-819(e) states, “[i]f the allegations in the 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 [CINA], but, before dismissing the case, the court may award custody to the other parent.”

Under CJP § 3-819(e), the circuit court awarded custody to the fathers of Jer. R., J.S., K.S., and F.H, and determined that they were not CINA. The court placed them in the physical custody of their fathers, as there was not a finding of abuse or neglect against

any of the fathers, and the court found that each father was willing and able to give proper care and attention to the children and their needs.

Here, the circuit court heard ample testimony, *supra*, of the allegations of abuse and neglect made against Mother and made a determination within its sound judgment.

We hold that the court did not abuse its discretion.

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