

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2305

September Term, 2014

IN RE: CHAKA C.

Wright,
Reed,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: July 6, 2015

*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.

This appeal arises from the Circuit Court for Cecil County, sitting as a juvenile court, finding Chaka C. to be a child in need of assistance (“CINA”). The child’s mother, Ebony C., noted an appeal disputing the circuit court’s CINA finding. For the reasons explained below, we shall affirm the judgment.

FACTS

On July 28, 2014, Ebony C. texted her social worker at the Cecil County Department of Social Services (the Department) that she had given birth to a son, Chaka C. Ebony said she had given birth at home that morning without any medical assistance or medical care but had a pediatric examination scheduled for Chaka in two days time. The Department received a phone call that same night reporting that Ebony had actually delivered Chaka one day earlier and was waiting three days before having Chaka medically examined to ensure that there was enough time “to allow the drugs to exit [his] system[.]” The following day, July 29, the social worker, along with others, took Chaka to the hospital for his first postpartum examination where he tested positive for opiates and was admitted for “feeding difficulty.”

On July 30, an emergency shelter care hearing was held. At the hearing, it was elicited that while at the hospital Ebony had explained Chaka’s positive drug test by relating that she had had a root canal the evening of Chaka’s birth after 36 hours of labor. She said that she had taken opiate pain killers the periodontist had prescribed to her and suggested that the opiates must have been transmitted to Chaka through her breast milk. Ebony, however, was unable to provide the name of the dentist nor the name of the medication. Additionally, Ebony had reported to her social worker that she had not been successful in breast-feeding

Chaka and that following his birth she had fed him formula, which he could not keep down. Shelter care was granted, and Chaka was removed from his mother's care. The Department subsequently filed a juvenile petition alleging that Chaka was a CINA.

On December 17, 2014, after four postponements, an adjudication hearing on the CINA petition was held. At the hearing, Ebony was not present but her counsel stated that Ebony generally denies the allegations contained in the petition. James Leary, Chaka's father, acknowledged through his counsel that at the present time he was unable to care for Chaka.¹ The court made the following findings of fact:

1. Chaka was born at home without any medical assistance. Ebony "received no pre-natal care until about one week prior to" Chaka's birth. She smoked 1 ½ packs of cigarettes per day while pregnant. Ebony did not intend to take Chaka to a doctor for three days after his birth to avoid a positive drug test.
2. The Department took Chaka to a hospital the day after his birth. Chaka tested positive for opiates and was experiencing drug withdrawal symptoms that caused feeding difficulties. Ebony refused vaccinations and generally interfered with hospital staff.
3. Ebony has a substantial child protective service's history in Maryland and Delaware. In April 2014, Ebony's other three children (ages 7, 9, 11) were declared CINAs due to excessive discipline and physical abuse by Ebony. In 2009 the Delaware Family Court found that Ebony physical abused and neglected those three children and granted custody of all three to the maternal grandmother² It is unclear how the children came back in Ebony's care.

¹ Ebony has five children, including Chaka. Leary is the father of the youngest two, Tiffany and Chaka; he has had custody of Tiffany since 2013.

² In 2010, Ebony was "indicated" by the Department for physical abuse of one of her older three children; in 2011, she was "indicated" for physical abuse with the same child; and
(continued...)

4. A psychological evaluation was ordered by the Department in the CINA case involving the oldest three children. The report, which was completed on September 14, 2014, and filed with the court and copies given to counsel, contained “very disturbing” findings. The report “essentially conclude[s] that the mother is a serial child abuser, who needs to be under psychiatric care, and substance abuse treatment, and who poses an acute and chronic risk to the welfare and safety of any children in her care, with little prognosis for improvement in the mother’s condition.”

The court determined that Chaka was a CINA because he had been neglected and neither parent was able to care for him. Chaka was placed in the custody of the Department. Ebony timely filed this appeal.

DISCUSSION

Ebony argues on appeal that the court erred in finding Chaka a CINA and placing him under an order of protective supervision with the Department. Specifically, she argues that some of the juvenile court’s factual findings were clearly erroneous and its conclusion in finding Chaka a CINA was an abuse of discretion. The Department and Chaka’s attorney

²(...continued)
in 2012, she was “indicated” for neglect for lack of supervision for two of the three older children.

In 2013, she was “indicated” as to her fourth child because the child was standing between her and Mr. Leary when Ebony bit and stabbed him with a knife. In 2014, Ebony was charged with several crimes in Cecil County stemming from the abuse of one of the three older children (two counts each of child abuse, neglect of a minor, and assault) and trial was scheduled for November 17, 2014. Ebony failed to appear for trial, and a warrant was issued.

disagree. They argue that the juvenile court committed no error in finding Chaka a CINA based on Ebony's inability to safely care for him.

Maryland courts apply three different interrelated standards of review in reviewing CINA cases.

When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8–131(c)] applies. [Secondly,] [i]f it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

In re Yve S., 373 Md. 551, 586 (2003)(citations omitted)(some brackets added). An abuse of discretion occurs “where 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 Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)(citations and quotation marks omitted).

A “child in need of assistance” is defined as 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 . . . are unable or unwilling to give proper care and attention to the child and the child's needs.” Md. Code Ann., Cts. & Jud. Proc. (CJ) Art., § 3-801(f). The statute defines “neglect” as:

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). The purpose of CINA proceedings are “to protect children and promote their best interests.” *In re Rachel T.*, 77 Md.App. 20, 28 (1988). An allegation that a child is a CINA must be proven “by a preponderance of the evidence.” CJ § 3-817(c).

Appellant argues that, contrary to the juvenile court’s finding that she had had no pre-natal care, she had in fact been to the emergency room three or four times at the beginning of her pregnancy and had an ultrasound in April 2014 because she had felt very ill. Additionally, she had seen an obstetrician a week before Chaka was born at the suggestion of the Department who made the appointment. That Ebony went to the emergency room at the beginning stages of her pregnancy, not to measure the progress of her pregnancy, but because she was ill, is not adequate pre-natal care. Moreover, evidence that Ebony saw an obstetrician a week before Chaka was born at the Department’s insistence and with its assistance, also fails to show adequate pre-natal care. Given the inadequate pre-natal care, both in quality and quantity, we find no error in the juvenile court’s finding that Ebony essentially had no pre-natal care.

Appellant also argues that the opiates in Chaka’s system because she had recently had a root canal for which she was prescribed pain medication “may have demonstrated a momentary lapse of judgment, [but] was not an indicator that [she] had a drug problem that would put Chaka at risk.” The juvenile court was free to reject Ebony’s explanation that Chaka had opiates in his system because of medication she took for a root canal she had the evening she gave birth to Chaka. Given that Ebony could not provide confirmation of the dental procedure or the name of the dentist and medication, the court was free to infer that Ebony’s decision to delay medical care for Chaka was intentional to hide substance use. We do not find that inference clearly erroneous.

Appellant concludes that although her choices “regarding her pregnancy and Chaka’s birth and aftercare may not have been conventional, they did not rise to the level of neglect.” She argues that “[a]voiding routine medical treatment during pregnancy in favor of care on an as needed basis might not be typical, but, in an otherwise normal pregnancy, it does not rise to the level of neglect.” We can readily dismiss this argument. In addition to the above, there were several other findings that clearly supported the juvenile court’s decision to declare Chaka a CINA. Ebony had a substantial prior DSS history involving the abuse and neglect of her four other children, three of whom were removed from her care because of physical abuse by her for which she was criminally charged. The court had the right, and the duty, to look at Ebony’s “track record” to determine whether keeping Chaka in her care created a substantial risk of harm to him. *See In re Andrew A.*, 149 Md. App. 412, 422

(2003)(the court “has a right – and indeed a duty – to look at the [mother’s] track record” to predict whether the child would be placed at risk of harm if in her care)(citation and quotation marks omitted) and *In re Priscilla B.*, 214 Md. App. 600, 627-28 (2013)(the court appropriately looked to the family’s DSS history as it bore on the determination of whether the child was or was not receiving care in the present). Additionally, the court could and did rely on the information in Ebony’s “very disturbing” psychological report that concluded that she was a “serial child abuser” with serious but untreated mental health and substance abuse issues. In this context, we cannot find that the court abused its discretion in rejecting Ebony’s “unconventional” choices argument.

Under the circumstances presented, we are persuaded that the court’s findings of fact were not clearly erroneous and it did not abuse its discretion in declaring Chaka a CINA. Accordingly, we shall affirm the judgment.

JUDGMENT AFFIRMED.

**COSTS TO BE PAID BY
APPELLANT.**