

Circuit Court for Prince George's County
Case No. CAD16-41064

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2495

September Term, 2017

M.F.R.V.

v.

J.R.M., *et al.*

Graeff,
Beachley,
Kenney, James A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: March 15, 2019

*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.

M.F.R.V., appellant, filed, in the Circuit Court for Prince George’s County, a complaint for custody of his younger brother, J.V., and a motion requesting the court to make the necessary “factual findings” to enable J.V. to apply for special immigrant juvenile (“SIJ”) status based, in part, on a claim that J.V.’s parents had neglected him. Following an evidentiary hearing, the circuit court granted appellant’s complaint for custody but, declaring that appellant had failed to present sufficient evidence of neglect, denied the motion for factual findings related to J.V.’s SIJ status. In this appeal, appellant presents two questions for our review:

1. Did the circuit court err in concluding that appellant had failed to present sufficient evidence of neglect?
2. Did the circuit court, in denying appellant’s motion, err in refusing to issue findings related to J.V.’s SIJ status?

As we will explain, we answer appellant’s first question in the affirmative and reverse the judgment regarding SIJ status and remand for further proceedings. For that reason, we need not directly address the second question.

BACKGROUND

J.V. was born in Guatemala on July 10, 2000. When he was 15-years-old, his parents, who remained in Guatemala, arranged for his unauthorized emigration to the United States. After coming to the United States and staying in a foster home, J.V. went to live with appellant at appellant’s home in Maryland.

In 2016, appellant filed a complaint for custody of J.V. and a Motion for Special Immigrant Juvenile Findings, asking that the circuit court enter an order with factual

findings to enable J.V. to petition the United States’ government for SIJ status. At that time, J.V. was in “removal proceedings” in the Baltimore Immigration Court.

At the hearing on appellant’s custody complaint and motion for SIJ findings, J.V. testified that he was 17-years-old, unmarried, and had been living with his brother in Riverdale, Maryland, after coming to the United States. He explained that, prior to coming to the United States, he had gone to school in Guatemala but he stopped going when he was 14-years-old because “it wasn’t easy to go and [his] parents could not afford to pay for the school.” No longer in school, he “began working with [his] father in construction.” He worked “from 7:00 to 5:00” six days a week; he received no training or safety equipment; and although he was never injured while working, some of his coworkers had been injured.

He left Guatemala for the United States when he was 15-years-old with “some people” whom he did not know guiding him. When asked whether his parents knew that he was leaving, J.V. responded in the affirmative, stating that “they [were] the ones that [sent him] here.” Upon entering the United States, J.V. was detained at the border and sent to “a foster home.” Eventually, he was sent to live with appellant.

J.V. further testified that, at the time of the hearing, he was in tenth grade at a local public high school with grades of “A’s and B’s.” He planned to graduate and “go to a university.” He explained that, were he to return to Guatemala, he would “have to work” and not be able to go to school. For that reason, and because “too many gangs” made it “very dangerous,” J.V. did not want to go back to Guatemala. He testified that he felt

“safe” with his brother, who provided him with food and clothes. When asked if his parents sent him money, he responded, “No.”

Appellant testified that he was 26-years-old; that he had lived with his parents until he “was 16 or 18-years-old”; and that he came to the United States in 2010. After coming to the United States, appellant talked to J.V. on the phone “several times a week.” During one of those conversations, J.V. told him that he was not going to school anymore because his parents could “not afford it.” Appellant did not want J.V. to go back to Guatemala because “there are no opportunities for schooling.”

At the conclusion of the hearing, the circuit court granted appellant’s petition for custody but denied his motion for SIJ findings. Regarding its denial of appellant’s motion for SIJ findings, the court explained:

The reason I’m going to deny the Motion for Special Immigrant Juvenile finding, is because under the statute its says neglect means the leaving of a child unattended or other failure to give proper care and attention to a child by a parent or the person who has permanent or temporary care or custody, or responsibility for supervision of the child under circumstances that indicate that the child’s health or welfare is harmed or placed in substantial risk of harm. Or ... substantial risk of mental injury.

I don’t find that the parents neglected [J.V.] There was an agreement that he come to the United States for a better opportunity. But also, as his brother said, he decided not go to school, because his parents could not afford it. That isn’t, in itself, neglect. And there was no indication that he was forced not to go to school or forced to go in construction. He said he started with his father, but he didn’t go because of financial reasons, he didn’t continue to go to school.

* * *

So based on the facts as I have heard them from testimony, I don’t – I cannot find that there is sufficient evidence to establish neglect ... under the

Maryland Family Law Article. And therefore I have no choice but to deny the motion for a Special Immigrant Juvenile finding.

The circuit court then issued a written order denying appellant’s motion without making any findings related to J.V.’s SIJ status. This timely appeal followed.

DISCUSSION

Contending that the circuit court erred in its determination that J.V. had not been neglected by his parents, appellant maintains that the evidence that J.V.’s parents allowed him to leave school at age 14 and to work a full-time job in construction, was sufficient, under Maryland law, to establish that his parents had neglected him. In addition, the court’s findings of fact that J.V. “decided” to stop going to school and that J.V. and his parents had an “agreement” regarding his emigration to the United States were clearly erroneous. Appellant also contends that the court abused its discretion in failing “to address all of the evidence demonstrating neglect,” including the fact that J.V.’s parents sent him to the United States with unknown individuals and failed to support him financially.

In reviewing a trial court’s decision in an SIJ case, we apply three, interrelated standards. First, “[w]e review the trial court’s factual determinations under a clearly erroneous standard,” asking whether those findings “are marked by a lack competent and material evidence in the record to support the decision.” *In re Dany G.*, 223 Md. App. 707, 719 (2015). “Conclusions of law,” however, “receive no deference and are reviewed *de novo*.” *Id.* at 720. We review the court’s ultimate conclusions under the abuse of discretion standard, “which asks whether the decision is off the center mark and beyond the fringe of what is deemed minimally acceptable.” *Id.*

“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) (citations omitted). Congress created SIJ status to “provide undocumented children who lack immigration status with a defense against deportation proceedings.” *In re Dany G.*, 223 Md. App. at 712.

To be eligible for SIJ status, a juvenile must obtain “an SIJ-predicate order” from a State court, *Simbaina*, 221 Md. App. at 449, that includes specific factual findings regarding the juvenile’s eligibility for SIJ status. *In re Dany G.*, 223 Md. App. at 713-14. The required findings are: that the juvenile is under 21-years-old and unmarried; that the juvenile is dependent on the court or has been placed under the custody of a court-appointed agency or individual; that the court has jurisdiction under State law to make a determination about the care and custody of the juvenile; 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); and that it is not in the juvenile’s best interest to be returned to his parents’ country of nationality or last habitual residence. *Id.* at 714-715. With an SIJ-predicate order, the “child may file with [the United States Citizenship & Immigration Services] for SIJ-status” and, if that petition is granted, the child “may then apply for adjustment to lawful permanent resident status[.]” *Simbaina*, 221 Md. App. at 450 (citation and quotations omitted).

Under the Immigration and Nationality Act of 1990, “a State juvenile court is charged with addressing an issue relevant only to federal immigration law.” *In re Dany G.*, 223 Md. App. at 713 (citations and quotations omitted). Simply put, “[t]he federal statute directs the circuit court to enter factual findings that are advisory to a federal agency determination[.]” *Simbaina*, 221 Md. App. at 451. In doing so, the circuit court “is not ‘rendering an immigration determination,’ because the ultimate decision regarding the child’s immigration status ‘rests with the federal government.’” *Id.* at 452 (citations omitted). As “the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child’s best interests,” *id.* at 451-52 (citations omitted), the State court is only advising the federal government as to the child’s SIJ status.

In considering a request for an SIJ-predicate order, “trial courts should bear in mind that Congress established the requirements for SIJ status knowing that those seeking the status would have limited abilities to corroborate testimony with additional evidence.” *In re Dany G.*, 223 Md. App. at 715. For that reason, “[i]mposing insurmountable evidentiary burdens of production and persuasion is therefore inconsistent with the intent of the Congress.” *Id.* at 715-16. Moreover, because federal law does not define “abuse, neglect, or abandonment,” State courts must apply State law definitions of those terms “without taking into account where the child lived at the time the abuse, neglect, or abandonment occurred.” *Id.* at 717.

In Maryland, “neglect” is defined as “the leaving of a child unattended or other failure to give proper care and attention to a 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.” Md. Code, Cts. & Jud. Proc. § 3-801(s); *Accord* Md. Code, Fam. Law § 5-701(s). In its determination of whether a child has been neglected, “a court may and must look at the totality of the circumstances[.]” *In re Priscilla B.*, 214 Md. App. 600, 621 (2013). “Although neglect might not involve *affirmative* conduct (as physical abuse does, for example), the court assesses neglect by assessing the *inaction* of a parent over time.” *Id.* at 625 (emphasis in original). Moreover, “the court may find either neglect or abuse if the child is merely *placed at risk* of significant harm.” *In re Dustin T.*, 93 Md. App. 726, 735 (1992) (emphasis in original). It “need not wait until the child suffers some injury before determining that he is neglected.” *In re Nathaniel A.*, 160 Md. App. 581, 596 (2005).

Against that backdrop, we hold that the circuit court erred in not finding neglect and thus abused its discretion by denying appellant’s motion for SIJ findings. Several of the factual findings relied on by the circuit court in its determination of no neglect were not supported by the record evidence. The first such finding was that “there was an agreement that [J.V.] come to the United States for a better opportunity.” That conclusory finding was not supported by any evidence, as neither J.V. nor appellant testified as to any “agreement” by J.V. related to his emigration to the United States. In fact, the only testimony on that issue was that his parents “sent” him to the United States.

The circuit court was clearly erroneous in finding, based on appellant’s testimony, that J.V. had “decided not to go to school” while in Guatemala. Appellant testified that he

talked to J.V. on the telephone and that J.V. stated that “he was not going to anymore” school because his parents could not afford it. And, J.V. testified that going to school was difficult and his parents could not afford to send him. He wanted to continue his education and, if he went back to Guatemala, he would not be able to do so because he would “have to work.” The testimony of both appellant and J.V. does not indicate that J.V. “decided not to go to school.” At most, it indicates that he had little or no choice in the matter.

More importantly, the court, in concluding that J.V. had not been neglected, appeared to ignore evidence that supported a finding of neglect under Maryland law. A child between the ages of 5 and 18 is ordinarily required to attend school, and any person who has legal custody or care and control of such a child is required to see that that child attends school.¹ Md. Code, Education § 7-301(a-1)(1) and (c). And, “[a]ny person who has legal custody or care and control of a child who is 5 years old or older and under 16 *who fails to see* that the child attends school or receives instruction under this section is guilty of a misdemeanor[.]” Md. Code, Education § 7-301(e)(2) (emphasis added). By allowing him to quit school at 14-years-old, had it occurred in Maryland, J.V.’s parents would have violated Maryland law, which almost certainly would have resulted in a finding of neglect, regardless of whether J.V. agreed with his parents’ decision. *See In re Dany G.*, 223 Md. App. at 721 (“We are also mindful that if parents in Maryland allow or force their child to leave school at the age of 12, this factor would lead to a finding that the child was neglected.”).

¹ Section 7-301 contains several exceptions to the compulsory-education requirement, none of which are applicable here. Md. Code, Education § 7-301(a).

J.V.’s testimony indicates that he stopped attending school primarily because his parents could not afford to continue sending him, but that would not have been an issue had they been living in Maryland. *See* Md. Code, Education § 7-101(a) (“All individuals who are 5 years old or older and under 21 shall be admitted free of charge to the public schools of this State.”). That does not mean, nor do we imply, that J.V. was neglected solely because his parents were financially unable to continue sending him to school in Guatemala. *See In re Priscilla B.*, 214 Md. App. at 604 (noting that “poverty does not render parents unfit or children unsafe.”).

In addition, J.V.’s parents allowed him to work approximately eight-hours per day, six days per week, “in construction,” where he received no training or safety equipment and where some of his fellow employees had sustained work-related injuries. In Maryland, a person under the age of 18 ordinarily “may not be employed or allowed to work ... in, about, or in connection with ... construction[,]” Md. Code, Lab. & Empl. § 3-213(b)(4)(i), and a child under the age of 16 ordinarily “may not be employed or allowed to be employed ... more than ... 23 hours in a week when school is in session for 5 days; or 40 hours in a week when school is not in session.”² Md. Code, Lab. & Empl. § 3-211(a)(1)(iv). Had J.V.’s parents permitted him to do such work and to work such hours in Maryland, they would have been complicit in the violation of Maryland law. Md. Code, Lab. & Empl. § 3-216(b)(2) (stating that it is a misdemeanor for a person to “knowingly ... allow a minor to be employed in violation of a provision of this subtitle.”). And, at the very least, doing

² Both statutes contain several exceptions, none of which are applicable here. *See* Md. Code, Lab. & Empl. §§ 3-203, 3-211(b), and 3-213.

so almost certainly would have resulted in a finding of neglect, regardless of whether J.V. had agreed to the arrangement. *See In re Dany G.*, 223 Md. App. at 721 (“[I]f a child worked 8 hours a day, 6 days a week in Maryland under dangerous conditions, a finding of neglect would surely follow.”); *See also* Md. Code, Lab. & Empl. § 3-202 (“The policy of the State is . . . to protect [minors] from occupations that will be injurious to their mental, moral, or physical welfare.”).

Finally, and perhaps most glaringly, the circuit court, in finding the evidence of neglect insufficient, ignored the fact that J.V.’s parents sent a fifteen year old boy from his home country of Guatemala to the United States with “people” whom he did not know guiding him. That resulted in J.V. being caught at the border and being placed in foster care, which would support a finding that his parents had either left him unattended or had failed to provide proper care and attention such that J.V.’s health or welfare was placed at substantial risk of harm. Md. Code, Cts. & Jud. Proc. § 3-801(s).

Not only did J.V.’s parents endanger his health and welfare when they sent him to a foreign country with unknown individuals, but they appear to have also abandoned their “common law and statutory duty to support their minor children.” *Corby v. McCarthy*, 154 Md. App. 446, 482-83 (2003); *See also* Md. Code, Fam. Law § 5-203(b)(1) (“The parents of a minor child . . . are jointly and severally responsible for the child’s support, care, nurture, welfare, and education[.]”). As J.V. testified, his parents did not send him any money. It was appellant who provided J.V. with shelter, food, and clothes.

In sum, the circuit court relied on unsupported findings of fact and ignored other evidence that would have clearly, if not overwhelmingly, supported a finding of neglect in Maryland. Therefore, looking at the totality of the circumstances, we hold that the court erred and abused its discretion in denying appellant’s motion for SIJ findings. Accordingly, we reverse the court’s judgment and remand the case for the court to enter a judgment and SIJ finding consistent with this opinion.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
REVERSED; CASE REMANDED FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION; COSTS TO BE
PAID BY PRINCE GEORGE’S COUNTY.**