Circuit Court for Baltimore City
Petition No. 818207001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2550

September Term, 2018

IN RE: D. N., III

Nazarian,
Arthur,
Shaw Geter,

JJ.

Opinion by Arthur, J.

Filed: May 16, 2019

On July 26, 2018, a magistrate in the Circuit Court for Baltimore City issued an order recommending that D.N. III, age six, be placed in shelter care. Although Maryland Code (1974, 2013 Repl. Vol.), § 3-815(c)(4) of the Courts and Judicial Proceedings Article appears to say that a child may remain in shelter care for no more than 60 days,[1] D.N. remains in shelter care today, more than nine months later. He will turn seven later this month.

This appeal concerns an interlocutory order that the circuit court entered in these protracted shelter-care proceedings. For the reasons discussed below, we are required to dismiss the appeal, because it is not allowed by law. Md. Rule 8-602(b)(1).

The original shelter-care order granted authority to the Baltimore City Department of Social Services ("DSS") and D.N.'s paternal grandmother ("Grandmother") to consent to "routine and evaluative medical care, including outpatient mental health care and dental care." D.N.'s father ("Father") moved for immediate judicial review, but on August 7, 2018, the circuit court issued an order that continued D.N. in shelter care and affirmed that DSS and Grandmother could consent to healthcare decisions on the child's behalf.

On August 9, 2018, Father moved to reconsider the order of August 7, 2018. In that motion, Father asserted that DSS and Grandmother should have the authority to consent to medical care for D.N. only if the child's parents were unavailable. Father

[1] Section 3-815(c)(4) states: "A court may not order shelter care for more than 30 days except that shelter care may be extended for up to an additional 30 days if the court finds after a hearing held as part of an adjudication that continued shelter care is needed to provide for the safety of the child."

added that he had bona fide religious objections to immunization and that, in accordance with those objections, he had chosen not to vaccinate D.N. He expressed his concern that DSS or Grandmother had made a medical appointment to vaccinate the child, and he asked the court to prevent the child from being vaccinated.

On August 17, 2018, the circuit court amended the shelter-care order to state that DSS and Grandmother could exercise their authority only if the parents are unavailable. On August 23, 2018, the court granted Father's request for an order staying the vaccinations, pending a hearing that was scheduled for August 27, 2018.[2]

In anticipation of the scheduled hearing, D.N.'s mother ("Mother") filed an opposition to Father's motion to reconsider the scope of the authority granted to DSS and Grandmother and to stay the vaccinations.

From the record before us, it is not entirely clear what happened at the scheduled hearing on August 27, 2018, but it appears that the circuit court asked the parties to submit written arguments on two issues: (1) how a parent establishes a bona fide religious objection to having his or her child vaccinated; and (2) how a court should resolve a dispute, in which both parents have legal custody over a child, and one parent is in favor of vaccination, but the other opposes vaccination on religious grounds.

The court conducted an evidentiary hearing on Father's motion for reconsideration on October 9, 2018. As a result of that hearing, the court issued an order, dated October 10, 2018, in which it purportedly denied Father's motion.

[2] The parties have informed us that D.N. received some, but not all, of his scheduled vaccinations before the court entered that order.

For purposes of the present case, the court's brief order has three components. First, the order reiterates the earlier grant of authority to DSS and Grandmother to consent to "routine and evaluative medical care, including outpatient mental health and dental care." Second, the order grants DSS and Grandmother the authority to consent to vaccinations, but at Mother's request, it stipulates that they may consent only to what the order calls "non cocktail vaccinations."[3] Third, the order lifts the stay on vaccinations that the court had imposed on August 23, 2018.

Father noted a timely appeal from the order. In addition, he moved to stay the order. The circuit court denied the motion to stay, and Father does not appear to have asked this Court to enter a stay pending appeal.

Father's appeal raises a number of questions of constitutional and statutory interpretation.[4] In considering those questions, we questioned whether the case had

[3] The order did not define "non cocktail" vaccinations, but the parties agree that it refers to what are commonly called "combination vaccinations." "Combination vaccines take two or more vaccines that could be given individually and put them into one shot." https://www.cdc.gov/vaccines/hcp/conversations/downloads/fs-combo-vac.pdf (last viewed May 10, 2019). "Children get the same protection as they do from individual vaccines given separately—but with fewer shots." *Id.*

[4] Father's brief poses the following questions:

> 1. Did the Department, or the court, have the authority to conduct an inquiry into the father's religious beliefs as a pre-requisite [sic] for determining whether D.N., III could be immunized over his father's objection and did the court possess the authority to grant the Department authority to consent to vaccinations?
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> 2. Assuming *arguendo* that the court properly considered whether [Father] possessed a bona fide religious objection to vaccinations, did the judge err as a matter of law, by conducting an impermissible inquiry into

become moot because D.N. had received all of his scheduled vaccinations. Consequently, we asked the parties whether D.N. had received his vaccinations. The parties responded that even though the circuit court did not stay the decision to permit DSS and Grandmother to consent to vaccinations, D.N. has not received his vaccinations, because none of them are available in "non cocktail" form.

In these circumstances, it is obvious to us that a decision in this case will have no practical effect. Whether we affirm or reverse the circuit court's decision, the result will be the same: D.N. cannot be vaccinated. If we affirm the decision, D.N. cannot be vaccinated, because the order does not allow him to receive any vaccinations that anyone can actually get. But if we reverse the court's decision, D.N. cannot be vaccinated either, because Father's objections will prevail.

A ruling in this appeal could serve only as an advisory opinion as to the merits of the circuit court's interlocutory order. This Court, however, does not give advisory opinions. *See, e.g., Green v. Nassif*, 401 Md. 649, 655 (2007). Moreover, Maryland's appellate courts observe an established policy to refrain from unnecessarily addressing

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> the validity of the father's religious beliefs that rendered the application of Md. Code, Health-General, § 18-403, a facially neutral statute, to require [sic] excessive entanglement of the courts into an individual's rights under the First Amendment to the United States Constitution and pursuant to Article 36 of the Maryland Declaration Rights?
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> 3. Assuming *arguendo* that [Father] was obligated to demonstrate that he had a bona fide religious objection to vaccinating D.N., III did he adequately demonstrate that his objection was deeply held, sincere, and based on his religious beliefs?

constitutional issues, such as when no actual controversy exists. *See Mercy Hosp., Inc. v. Jackson*, 306 Md. 556, 565 (1986).

For these reasons, we are obligated to dismiss the appeal on the ground that it is not allowed by law. *See* Md. Rule 8-602(b)(1). Whether we describe the appeal as moot (in the sense that it presents only an academic controversy) or unripe (in the sense that the order poses no present threat to Father's objections to immunization), or whether we conclude that that Father is not aggrieved by the order (because it has no practical effect on his rights), there is no live controversy before us. Furthermore, because the order does not, "in some special way, *significantly* interfere with [Father's] ability to carry out the obligations inherent in custody," it is doubtful whether it is immediately appealable under § 12-303(3)(x) of the Courts and Judicial Proceedings Article. *See Frase v. Barnhart*, 379 Md. 100, 118 (2003) (emphasis added). The appeal is dismissed.

APPEAL DISMISSED; COSTS TO BE PAID BY APPELLANT.