

Circuit Court for Baltimore County
Case No. 03-C-18-004575

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2662

September Term, 2018

R.R., ET AL.

v.

D.F., ET AL.

Fader, C.J.,
Friedman,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: July 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.

We are asked to determine whether the Circuit Court for Baltimore County properly dismissed a complaint for custody of the minor B.F. (“Child”) filed by his maternal grandmother and step-grandfather, the appellants R.R. and T.O. (“Grandparents”). At the time Grandparents filed their complaint, Child had been (1) removed from the care of his father, D.F. (“Father”), (2) adjudicated a child in need of assistance (“CINA”) by the Circuit Court for Baltimore County, sitting as a juvenile court (the “Juvenile Court”), (3) committed by the Juvenile Court to the appellee, the Department of Social Services for Baltimore County (the “Department”), and (4) placed in the care of his paternal great aunt, A.S., under an order of protective supervision.¹ Unhappy with the proceedings in the Juvenile Court, and with that court’s denial of their motion to intervene in those proceedings, Grandparents filed this separate custody action. Because we agree that the circuit court lacked jurisdiction over this collateral attack on the CINA proceedings, we will affirm.

BACKGROUND

Grandparents’ Attempts to Intervene in the CINA Proceedings

When Child was in the custody of Father, before the CINA proceedings began, Grandparents had sought and obtained an order awarding them regular visitation with Child. During the CINA proceedings, the Department investigated R.R. as a placement

¹ A “child in need of assistance” is one who (1) requires court intervention because the child has been abused or neglected or has a developmental disability or mental disorder and (2) his or her “parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” Md. Code Ann., Cts. & Jud. Proc. § 3-801(f) (Repl. 2013; Supp. 2018).

resource but chose not to place Child with her due to “concerns about [R.R.’s] prior CPS history” and her “living circumstance.” Displeased, and wanting to resume the pre-CINA visitation arrangement, Grandparents moved to intervene in the CINA proceedings, arguing that they “are fit and proper persons to have the custody of [Child] and it is in the best interest of [Child] to grant them custody.”

The Department, Father, and counsel for Child opposed intervention. The Juvenile Court denied the motion without a hearing and Grandparents sought reconsideration. After a hearing, the Juvenile Court denied the motion for reconsideration. Grandparents did not appeal the denial of their motion to intervene, their motion for reconsideration, or a second motion to intervene that they filed several weeks later.

Grandparents’ Complaint for Custody

On May 4, 2018, more than a month after the Juvenile Court denied their motion for reconsideration, Grandparents filed their complaint for custody in the Circuit Court for Baltimore County (the “Equity Court”),² naming as defendants Father, the Department, and A.S. In their complaint, Grandparents identify the prior visitation order, the circumstances that led to the Department’s involvement with Child and the CINA proceedings, and Child’s commitment to the Department and placement with A.S. Grandparents then allege that Father is unfit to have custody of Child and that exceptional circumstances exist such that it is in Child’s best interest that Grandparents be awarded legal and physical custody.

² We use the term “Equity Court,” following § 1-201(b) of the Courts Article, to distinguish the role of the Circuit Court for Baltimore County in this custody case from the role of that court sitting as a juvenile court presiding over the CINA case.

The Department moved to dismiss the custody complaint, asserting that the Equity Court did not have jurisdiction in light of the CINA proceedings. Child’s counsel joined the Department’s motion, arguing that Grandparents’ custody complaint was an attempt to circumvent the Juvenile Court’s denial of their motion to intervene. Grandparents filed an opposition to the motion, in which they argued that the Equity Court had concurrent jurisdiction over the dispute.

Grandparents later filed a motion in the Equity Court to “consolidate for motions hearing” (1) their second motion to intervene in the CINA proceedings, (2) the Department’s motion to dismiss the custody action, and (3) a motion they had filed in the custody action to stay the CINA proceedings. Grandparents were apparently unaware that the Juvenile Court had entered an order two days earlier denying their second motion to intervene in that case. The Department opposed the motion to consolidate.

On August 28, the Equity Court, without holding a hearing, issued a one-page order denying the motion to stay and granting the motion to dismiss. The order identified § 1-201(b)(5) of the Family Law Article, which we discuss further below, as the reason for the denial of the motion to stay the CINA action.

Grandparents appeal from the court’s grant of the motion to dismiss.

DISCUSSION

Grandparents argue that the Equity Court erred in granting the Department’s motion to dismiss for three reasons: (1) Rule 2-311(f) precluded the court from granting the motion without holding a hearing, (2) the Equity Court did not lack jurisdiction over the custody

complaint, and (3) if § 1-201(b)(5) of the Family Law Article precludes the Equity Court from exercising jurisdiction, it is unconstitutional because it denies Grandparents access to the courts to pursue their third-party custody claim.

We review a circuit court’s grant of a motion to dismiss de novo. *Blackstone v. Sharma*, 461 Md. 87, 110 (2018). “[W]here [an] order involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court’s conclusions are ‘legally correct’” *L.W. Wolfe Enters., Inc. v. Md. Nat’l Golf, L.P.*, 165 Md. App. 339, 344 (2005) (quoting *Walter v. Gunter*, 367 Md. 386, 392 (2002)).

I. GRANDPARENTS’ REQUEST FOR A HEARING DID NOT COMPLY WITH RULE 2-311(F).

Rule 2-311(f) provides:

A party desiring a hearing on a motion . . . shall request the hearing in the motion or response under the heading “Request for Hearing.” The title of the motion or response shall state that a hearing is requested. Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

Grandparents contend that the circuit court erred in granting the Department’s motion to dismiss without affording them a hearing, in violation of Rule 2-311(f). Grandparents, however, did not comply with the requirements of that Rule. Grandparents’ opposition to the motion (1) did not request a hearing, (2) did not include a heading “Request for Hearing,” and (3) did not state in the title of the document that a hearing was requested. Instead, on the same day they filed their opposition, Grandparents filed a

separate document titled “Request for Hearing,” which asks the court to “set the above referred to case for hearing on all open Motions.” Their request was thus not in compliance with Rule 2-311(f) and did not trigger the requirement that the circuit court hold a hearing before ruling on the motion to dismiss.

Even if Rule 2-311(f) were properly triggered, we would conclude that the court’s failure to hold a hearing was harmless in light of our conclusion, explained below, that the Equity Court lacked jurisdiction over Grandparents’ complaint. Because dismissal of the complaint was “mandated by law,” remanding the case for a hearing on the motion to dismiss “would be an exercise in futility and a waste of judicial resources.” *Morris v. Goodwin*, 230 Md. App. 395, 410-11 (2016); *see also Darby v. Marley Cooling Tower Co.*, 190 Md. App. 736, 745-46 (2010) (determining that even if the court erred by not holding a hearing when requested under Rule 2-311(f), that error is harmless where the appellate court “ruled as a matter of law that [appellant] had no legally protected interest in the continuation of the appeal”).

II. BECAUSE THE CUSTODY COMPLAINT AROSE FROM THE CINA PROCEEDINGS, THE JUVENILE COURT HAD EXCLUSIVE ORIGINAL JURISDICTION OVER THE CUSTODY COMPLAINT.

When interpreting a statute, “[w]e assume that the legislature’s intent is expressed in the statutory language and thus our statutory interpretation focuses primarily on the language of the statute to determine the purpose and intent of the General Assembly.” *Phillips v. State*, 451 Md. 180, 196 (2017). Thus, “we begin ‘with the plain language of the statute, and ordinary, popular understanding of the English language

dictates interpretation of its terminology.” *Blackstone*, 461 Md. at 113 (quoting *Schreyer v. Chaplain*, 416 Md. 94, 101 (2010)).

The core issue on appeal is whether the Equity Court had concurrent jurisdiction over the custody dispute. Three interrelated statutes cited by the parties are relevant to that analysis. The first two address the jurisdiction of juvenile courts. First, § 3-803(a)(2) of the Courts Article gives a juvenile court “exclusive original jurisdiction over . . . [p]roceedings arising from a petition alleging that a child is a CINA.” Second, § 3-803(b)(1) of the Courts Article provides that “[t]he [juvenile] court has concurrent jurisdiction over . . . [c]ustody, visitation, support, and paternity of a child whom the court finds to be a CINA[.]” Where “there is a proceeding pending in another court of competent jurisdiction,” the juvenile court “may decline to exercise jurisdiction.” Cts. & Jud. Proc. § 3-803(b)(3)(i). In such a circumstance, the juvenile court is required to “communicate with the other court expeditiously to determine the more appropriate court to take further action.” *Id.* § 3-803(b)(3)(ii).

The third statute, § 1-201(b)(5) of the Family Law Article, addresses the jurisdiction of “[a]n equity court.” That subsection provides an equity court with jurisdiction over “custody and guardianship of a child except for a child who is under the jurisdiction of any juvenile court and who previously has been adjudicated to be a child in need of assistance.”

The Department, relying on § 3-803(a)(2) of the Courts Article and § 1-201(b)(5) of the Family Law Article, contends that the Juvenile Court’s jurisdiction over custody of Child is exclusive and that the Equity Court has no jurisdiction in light of the CINA

proceedings. Grandparents acknowledge these provisions, but argue that § 3-803(b)(1) makes the Juvenile Court’s jurisdiction concurrent with that of the Equity Court and, therefore, requires the Juvenile Court to engage in the communication required by § 3-803(b)(3) to determine the most appropriate forum in which to proceed.

We agree with the Department that the Equity Court lacked jurisdiction over Grandparents’ complaint, which is a blatant collateral attack on the CINA proceedings that were already pending in the Juvenile Court. Grandparents admit that they only filed the custody complaint in the Equity Court once they were denied intervention in the Juvenile Court, as an alternative mechanism to seek the same relief. The gravamen of Grandparents’ complaint is their disagreement with the determination of the Juvenile Court to commit Child to the Department and the Department’s placement of him with A.S. without providing visitation to Grandparents.³ The relief Grandparents seek in their custody action is, in effect, for the Equity Court to undo that determination of the Juvenile Court. Under § 3-803(a)(2) of the Courts Article, however, the Juvenile Court has exclusive original jurisdiction over such proceedings.

Grandparents disagree with that interpretation of § 3-803(a)(2), which they contend provides exclusive jurisdiction to a juvenile court only until a child is adjudicated CINA. They base that claim on the fact that § 3-803(a)(2) provides exclusive jurisdiction over

³ Grandparents’ complaint observes that they had regular visitation with Child “[u]ntil the time when the Department of Social Services intervened.” At the hearing on the motion for reconsideration of their motion to intervene in the Juvenile Court proceedings, Grandparents acknowledged that their goal was not custody of Child, but a return to the visitation schedule they had enjoyed before the CINA proceedings.

only “[p]roceedings arising from a petition alleging that a child is a CINA,” and, they contend, CINA proceedings no longer arise from a petition making allegations once a court has sustained the allegations and found a child to be CINA. Although creative, we find no merit in that argument. CINA proceedings, all of which necessarily arise originally from a petition alleging a child is a CINA, do not end at adjudication if the allegations are sustained. *See, e.g., In re O.P.*, 240 Md. App. 518, 549 n.10 (2019) (describing the various stages of a CINA proceeding, including “the obligation to hold periodic review hearings” after the juvenile court has determined a child to be a CINA); Cts. & Jud. Proc. § 3-816.2 (requiring the juvenile court to hold a hearing every six months to review “the status of each child under its jurisdiction,” including children the court found to be CINAs); § 3-820 (setting out procedures for removing a CINA from placement). Under the plain language of § 3-803(a)(2), a juvenile court’s exclusive original jurisdiction applies to all of the proceedings arising from the CINA petition, not just the portion of the proceedings that lead up to adjudication.

Moreover, § 1-201(b)(5) of the Family Law Article, which defines the jurisdiction of an equity court for purposes of custody or guardianship of a child, expressly exempts “a child who is under the jurisdiction of any juvenile court and who previously has been adjudicated to be a child in need of assistance.” There is no dispute that this exception applies to Child, who, at the time the Equity Court dismissed the action, remained under the jurisdiction of the Juvenile Court and had been adjudicated a CINA. Cts. & Jud. Proc.

§ 3-804(b) (“If the court obtains jurisdiction over a child, that jurisdiction continues in that case until the child reaches the age of 21 years, unless the court terminates the case.”).

Grandparents argue, in effect, that § 3-803(b)(1)(i) of the Courts Article undoes both (1) the Juvenile Court’s exclusive jurisdiction pursuant to § 3-803(a)(2) and (2) the exclusion of the Equity Court’s jurisdiction under § 1-201(b)(5). Grandparents’ reliance on § 3-803(b)(1)(i) is misplaced for two reasons. First, their complaint levels a collateral attack aimed directly at the CINA proceedings and the determinations made by the Juvenile Court in those proceedings. It is not a separate, independent dispute that happens to overlap with the CINA proceedings and, therefore, might proceed on a parallel track. The subject matter of their complaint thus falls within the exclusive original jurisdiction of the Juvenile Court under § 3-803(a)(2), not its concurrent jurisdiction under § 3-803(b)(1)(i).⁴

Second, and equally dispositive, Grandparents have not identified any grant of jurisdiction to the Equity Court over this case, concurrent or otherwise. Although they ground their claim of concurrent jurisdiction in § 3-803(b), that provision does not purport to be a *source* of jurisdiction for any court other than a juvenile court. Section 3-803(b) identifies circumstances in which a juvenile court’s jurisdiction over proceedings can be concurrent with “another court of competent jurisdiction.” It does not identify what other

⁴ Although it is not at issue in this proceeding, we observe that there is a possible error in the cross reference contained in § 3-803(b)(1)(ii) of the Courts Article. As originally enacted in Chapter 415 of the 2001 Maryland Laws, that provision contained a cross-reference to what was then § 3-819(d) of the Courts Article. Under Chapter 151 of the 2002 Maryland Laws, a new provision was inserted into the law as § 3-819(d), and the provision originally numbered subsection (d) became (and still remains) numbered subsection (e). No corresponding change was made to § 3-803(b)(1)(ii) at the time or since.

courts might have jurisdiction or purport to grant jurisdiction to them. Here, as previously explained, § 1-201(b)(5) expressly *exempts* custody proceedings involving a child who has been adjudicated a CINA from the jurisdiction of an equity court. Grandparents have not identified any other provision that might provide or restore such jurisdiction. For that reason as well, the Equity Court lacked jurisdiction over the custody complaint and was legally correct in dismissing it.

III. GRANDPARENTS DID NOT PRESERVE THEIR CONSTITUTIONAL CLAIM.

Grandparents argue, for the first time on appeal, that § 1-201(b)(5) is unconstitutional both as applied to them and on its face because it “is a restriction on the Appellants’ right of access to the courts and that restriction . . . is unreasonable.” The essence of their claim is that they have a right to have a court consider their claims regarding custody of Child. “Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.” Md. Rule 8-131(a). Grandparents did not raise their constitutional claim before the Equity Court and we decline to address it for the first time on appeal. Furthermore, the proper

place to make their constitutional claim would be in the CINA proceeding, before the court with exclusive original jurisdiction over the subject matter, not before the Equity Court.⁵

**ORDER OF THE CIRCUIT COURT FOR
BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANTS.**

⁵ Grandparents contend that they had “no other alternative” than to file this custody action once the Juvenile Court had denied their motion to intervene. They, however, did have another alternative if they believed they have a right to be heard with respect to the disposition of the CINA proceedings, which was to appeal the denial of their motion to intervene. We take no position as to the likelihood of success of that appeal. Our resolution of this appeal, however, confirms that an appeal in the CINA proceeding was the proper forum in which to raise their disagreement with the Juvenile Court’s rulings.