

Circuit Court for Prince George's County
Case No. CINA-18-0052, -0053, and -0054

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3199

September Term, 2018

IN RE: J.N., F.N., AND R.N.

Berger,
Leahy,
Shaw Geter

JJ.

Opinion by Shaw Geter, J.

Filed: September 25, 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.

Following a disposition hearing in the Circuit Court for Prince George’s County, the circuit court, sitting as the juvenile court, declared J.N., F.N., and R.N. (collectively the “Children”) to be Children in Need of Assistance (“CINA”). In this appeal, the Children’s guardian and maternal grandmother, G.D., appellant, presents the following question for our review:

Did the juvenile court err in finding the Children to be CINA?

For reasons to follow, we answer appellant’s question in the negative and affirm the judgments of the court.

BACKGROUND

R.N., J.N., and F.N. were born to O.N. (“Mother”) in 2004, 2009, and 2014, respectively. Beginning in 2009, the Prince George’s County Department of Social Services (the “Department”) received several reports that Mother had neglected R.N. and J.N. At the time of those reports, Mother, R.N., and J.N., were living with appellant. In 2010, R.N. and J.N. were found to be CINA. As a result of those proceedings, R.N. and J.N. were placed in foster care. Ultimately, both children were returned to appellant’s home under her care. In 2012, appellant obtained legal guardianship of R.N. and J.N.

In 2014, following the birth of F.N., Mother was “indicated” for neglect after it was reported that she “did not allow the charge nurse to give medical treatment to [F.N.]” and that she was “involuntary admitted to the psychiatric unit at the hospital.” To avoid having F.N. placed in foster care, appellant agreed to care for the child. Appellant later became F.N.’s legal guardian.

That same year, the Department received an “Alternative Response referral” based on “concerns related to [appellant] leaving the children home with [Mother] unsupervised.” According to the Department, Mother had been “diagnosed with schizophrenia, was not taking medication and was causing conflict in the home which interfered with providing care and attention to the children.” Appellant thereafter signed a “safety plan” in which she agreed “not to allow [Mother] to be left alone with the children.”

In 2016, the Department received an “Alternate Response referral” that F.N. had been found walking “in the middle of the street on the yellow double lines, pushing a buggy.” Later that same year, R.N.’s step-father was “indicated” for sexual abuse of R.N. Not long after, Mother was “indicated” for sexual abuse of J.N. Following the latter incident of sexual abuse, appellant signed a safety plan in which she agreed that Mother “had to leave the family’s home.”

In March of 2018, the Department filed a petition asking the juvenile court to declare all three children to be CINA. In that petition, the Department alleged that appellant had neglected the Children. Specifically, the Department alleged that appellant had violated the terms of several safety plans by permitting the Children to have continued contact with Mother. Following a hearing on the Department’s petition, the juvenile court concluded that it was contrary to the Children’s welfare to remain in appellant’s home. The court found that appellant had “signed a safety plan in December of 2016” and that she “violated the Department’s safety plan by allowing [Mother], who has severe mental health issues back into the home around the children.” The court also found that, in January of 2018, “it

was found that [appellant] violated the safety plan again” and that the Children “have had frequent contact/visits with [Mother.]” The Children were then placed in shelter care under the care and custody of the Department, and an adjudicatory hearing was scheduled for April 6, 2018.

Adjudicatory Hearing on April 6, 2018

At that adjudicatory hearing, Mother’s counsel informed the juvenile court that Mother was not present, and counsel asked that the matter be continued. After hearing argument from the parties, the court decided to start the adjudication hearing immediately but “finish the balance of it on a different day.” The court then heard argument as to whether the Children should remain in shelter care.

In so doing, the court took judicial notice of three prior CINA cases involving Mother. In two of those CINA cases, both of which occurred in 2010, R.N. and J.N. were found to be CINA after the Department reported that appellant’s home, in which Mother resided, “was filthy with bugs;” that Mother was “mentally ill and does not take her medication;” that Mother and J.N. were sleeping in the home’s basement on a “burned” and “bloody” mattress; and that, although appellant resided in the home’s upper level, “emergency placement could not be made because the upstairs is also unsuitable.” Those cases were ultimately closed in 2013. In that time, custody and guardianship of R.N. and J.N. had been awarded to appellant. In addition, appellant had signed a safety plan agreeing not to leave Mother alone with either child.

In the third CINA case, which occurred in 2017, the Children’s youngest sibling, O.D.,¹ who was born in February of 2017, was found to be CINA after the Department reported that, in 2016, Mother had sexually abused J.N. in appellant’s home. Following an investigation into those allegations, the Department returned “a disposition of ‘Indicated Sexual Abuse’ by [Mother] toward [J.N.]” In addition, the Department had appellant sign a safety plan “stating that [Mother] cannot live in the family home or have contact with her biological children due to the sexual abuse and Mother’s long history with CPS.”

The juvenile court also took judicial notice of a related criminal case in which Mother had been charged, in March of 2017, with having committed, with respect to J.N., third-degree sexual offense, second-degree assault, and fourth-degree sexual offense. In the application for statement of charges, it was reported that, on two separate occasions, Mother had touched J.N. inappropriately while the two were at appellant’s home.

At the conclusion of the hearing, the juvenile court found that the Children should continue to reside in shelter care. The court noted that there were concerns regarding Mother’s access to the Children dating back to 2011 and that, in that time, “instead of making sure that the children were not having contact with the mother and were being taken care of and were being protected from abuse and neglect by the mother, the children have instead had all these instances of it.” The court also noted that it did “not believe that [appellant] is either capable of or willing to make sure that the children do not have contact with the mother, especially when she is having her mental health crises and she’s not stable

¹ O.D. is not part of the instant appeal.

in any way, shape or form.” The balance of the adjudicatory hearing was then postponed and rescheduled for a later date.

Adjudicatory Hearing on May 30, 2018

At the continued adjudicatory hearing, Nicole Miller, a social worker with the Department, testified that she first came into contact with the Children and their family in February of 2017 after she had been assigned as the foster care worker for the Children’s youngest sibling, O.D. Ms. Miller testified that, on December 27, 2017, she went to appellant’s home for an “unscheduled visit” and observed Mother “in the home.” At the time of the visit, appellant was not at home, despite the fact that, according to Ms. Miller, Mother “was not supposed to be left unsupervised with [O.D.]” Ms. Miller also observed that, at the time of the visit, Mother “appeared to be kind of in a frantic state” and “seemed confused.” Ms. Miller testified that, following her visit, she filed a report with Child Protective Services (“CPS”).

Toiyika Lucas, an investigator with CPS, testified that, on December 29, 2017, after receiving a report regarding Mother’s presence in appellant’s home, Ms. Lucas went to appellant’s home to speak with appellant. Ms. Lucas testified that, upon going to appellant’s home and knocking on the home’s front door, she was greeted by “a young lady,” who informed Ms. Lucas that appellant “was not home.” Ms. Lucas then went inside the home, where she encountered the Children and two of Mother’s adult siblings. After investigating the home further, Ms. Lucas discovered that Mother was locked in one of the home’s bathrooms. Ms. Lucas then went outside of the home and called the police. Mother

exited the home shortly thereafter, at which point Ms. Lucas attempted to explain the situation to Mother. According to Ms. Lucas, Mother had difficulty “understanding what was going on” and was “very loud” and “aggressive.” Ms. Lucas then spoke with appellant via telephone, and appellant agreed that the Children “would stay at [an] uncle’s house until the family [was] able to get [Mother] out of the home.” During that conversation, appellant also agreed to meet with the Department “to discuss and address the concerns.”

In January of 2018, the Department held a meeting with appellant, at which appellant signed a safety plan agreeing that Mother could not have any contact with the Children.

R.N., who at the time was 13 years old, testified that, in February of 2018, Mother visited her at her uncle’s house and then took her to get her “hair done.” R.N. further testified that, following that encounter, she had another encounter with her Mother at her uncle’s house. During that encounter, Mother and the uncle got in “a physical argument” and the police were called.

Following the adjudicatory hearing, the juvenile court sustained several allegations in the Department’s CINA petition, including: that the Department had received a report that appellant had violated the Department’s safety plan by allowing Mother into the home around the Children; that Mother had “mental health issues;” that there were “sexual abuse allegations against [Mother] relative to one of the child[ren];” that, on December 29, 2017, Mother was found locked in a bathroom in appellant’s home; that appellant agreed not to have the Children around Mother and to attend a meeting “to address safety concerns;” that

Mother “had been around the children, contrary to the safety plan;” that the Children had “visits and contact with [Mother];” that, on March 4, 2018, the Children were at their uncle’s house with Mother, who got into a fight with the uncle and called the police; and that there was “an extensive history – CPS history.” Following those findings, the court scheduled a disposition hearing to determine whether the Children were CINA.

Disposition Hearing

At the disposition hearing, the juvenile court admitted into evidence, in part,² several reports authored by the Department regarding, among other things, the Children’s history with the Department and the circumstances that led to the Department’s filing of the CINA petition. In addition, Sylvana Kwentua, a clinical supervisor with the Department, testified that, in the course of her duties, she had multiple contacts with appellant and the Children and had been to appellant’s home on several occasions. Ms. Kwentua reported that she had spoken to appellant several times about “services” regarding O.D. but that “those services were not followed through.” Ms. Kwentua explained that, in “most” of her conversations with appellant, appellant would tell Ms. Kwentua “that she’s looking,” but Ms. Kwentua would never receive “feedbacks back” from appellant. Ms. Kwentua also explained that the Department had considered holding various meetings due to appellant’s “lack of follow through.” According to Ms. Kwentua, the Department held such a meeting

² Certain portions of the Department’s reports were not sustained by the juvenile court, and thus, were not considered. Consequently, none of those portions will be considered by this Court in the instant appeal.

and “outlined things that . . . [appellant] needed to follow up on and they still never took place.”

At the conclusion of the hearing, the juvenile court, citing “all of the evidence in both the merits hearing and this disposition hearing,” found the Children to be CINA. Although the court found that it did “not believe that violation of a safety plan in and of itself renders a child CINA,” the court declared the Children to be CINA based on the allegations it had previously sustained following the adjudicatory hearing, namely, that appellant repeatedly permitted Mother to have contact with the Children despite agreeing, via multiple safety plans, not to do so. The court also found that the Department had engaged in reasonable efforts “to prevent or eliminate the need for removal of the [Children],” including “work[ing] for some time with the family to address concerns about the [Children’s] care” and “working with the family to find relatives and try to avoid an out-of-home placement.”

DISCUSSION

Appellant contends that the juvenile court erred in finding the Children to be CINA. Appellant maintains that the court’s finding was erroneous because the court never found that appellant had either abused or neglected the Children and because there “was no evidence or testimony” to support a finding that appellant was unable or unwilling to provide proper care and attention to the Children. Appellant also maintains that the Department’s primary allegation against her was “that she violated a safety plan by allowing [Mother] to have access to the Children.” Appellant contends, however, that that

allegation did not support a finding of neglect because “the Department presented conflicting instructions and information” regarding the contact Mother was allowed with the Children; because the Department was required, but failed, to follow up “on Mother’s criminal matter to revisit the access;” because the Department’s safety plan was “unreasonably restrictive;” and because, following the implementation of the safety plan, “there was only one occasion in which R.N. was left with Mother unsupervised.” Appellant also contends that the prior CINA proceedings involving R.N. and J.N. did not support a finding of neglect because, after the children were removed from Mother’s care, appellant became “a placement resource for them” and was awarded custody.

Appellate review of a juvenile court’s decision regarding child custody involves three interrelated standards. First, any factual findings made by the juvenile court are reviewed for clear error. *In re Yve S.*, 373 Md. 551, 586 (2003). Second, any legal conclusions made by the juvenile court are reviewed *de novo*. *Id.* Finally, if the court’s ultimate conclusion is “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 J.J.*, 231 Md. App. 304, 345 (2016), *aff’d* 456 Md. 428 (2017) (citations omitted). “A decision will be reversed for an abuse of discretion only if it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Id.* (citations and quotations omitted).

Section 3-801(f) of the Courts and Judicial Proceedings Article of the Maryland Code defines “child in need of assistance” as “a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” When a petition is filed alleging that a child is a CINA, the circuit court must hold an adjudicatory hearing to determine whether the allegations in the petition are true. Md. Code, Cts. & Jud. Proc. §§ 3-801(c) and 3-817(a). If such a determination is made, the court must then hold a disposition hearing to determine, among other things, whether the child is a CINA. Md. Cod, Cts. & Jud. Proc. § 3-819. An allegation that a child is a CINA must be proven by a preponderance of the evidence. *In re Nathaniel A.*, 160 Md. App. 581, 595 (2005).

As noted, a child may be found to be a CINA if it is proved that the child has been neglected. “‘Neglect’ means leaving 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).

“In determining 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). Moreover, in evaluating whether a “substantial risk of harm” 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 J.J.*, 231 Md. App. at 346 (citations omitted). In other words, a court “need not wait until the child suffers some injury before determining that he is neglected,” but rather, based on a parent’s past conduct, may find the child “to be at risk and, therefore, a CINA.” *In re Nathaniel*, 160 Md. App. at 596–97 (citations and quotations omitted). As this Court has explained:

It makes sense to think of “neglect” as part of an overarching pattern of conduct. 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. To the extent that inaction repeats itself, courts can appropriately view that pattern of omission as a predictor of future behavior, active or passive: it has long been established that a parent’s past conduct is relevant to a consideration of the parent’s future conduct. Reliance upon past behavior as a basis for ascertaining the parent’s present and future actions directly serves the purpose of the CINA statute. Differently put, courts should be most reluctant to “gamble” with an infant’s future; there is no way to judge the future conduct of an adult excepting by his or her conduct in the past.

In re Priscilla B., 214 Md. App. at 625–26 (internal citations and quotations omitted) (emphasis in original).

Against that backdrop, we hold that the juvenile court did not err in finding the Children to be CINA. When appellant first became R.N. and F.N.’s legal guardian in 2012, both children had already been declared CINA as a result of Mother’s neglect, which was due, in part, to Mother’s ongoing mental health issues and the fact that the family home, in which appellant also lived, was “filthy with bugs.” Then, in 2014, when appellant became F.N.’s legal guardian, Mother was again indicated for neglect after she refused medical

treatment for F.N. and was later involuntarily admitted to a psychiatric unit. That same year, after the Department expressed concerns regarding appellant leaving the children home with Mother unsupervised, appellant signed a safety plan in which she agreed not to allow Mother to be left alone with the Children. Despite the execution of that safety plan, and despite Mother’s history of mental illness and neglect, appellant continued to allow the Children to be with Mother unsupervised.

In 2016, the Department investigated several incidents involving the Children, including an incident in which F.N. was found “in the middle of the street on the yellow double lines, pushing a buggy;” another incident in which R.N.’s step-father was ultimately “indicated” as having sexually abused her; and a third incident in which Mother was ultimately “indicated” as having sexually abused J.N. Regarding the incident of sexual abuse involving Mother, it was reported that, on two separate occasions, Mother had touched J.N. inappropriately while the two were at appellant’s home. Following that incident, appellant signed another safety plan, this time agreeing that Mother had to leave the family’s home.

Nevertheless, appellant continued to permit Mother to visit with the Children at the family home. On one occasion, a social worker with the Department came to the family home and observed Mother in the home. After that incident was reported to CPS, an investigator with CPS returned to the family home on a subsequent date and found Mother locked inside one of the home’s bathrooms. After sending the Children to stay at their uncle’s house, appellant met with the Department and signed another safety plan, this time

agreeing that Mother could not have any contact with the Children. Shortly thereafter, Mother went to the uncle's house and took R.N. to get her hair done. Not long after that, Mother again went to the uncle's house while the Children were there. During that visit, Mother got into a fight with the uncle and the police were called.

In light of the above facts, it is clear that appellant failed to give proper care and attention to the Children such that the Children's health or welfare was harmed or placed at substantial risk of harm. Throughout her long history of involvement with the Department, appellant consistently allowed Mother to have access to the Children despite repeated instances of neglect and other damaging behavior involving Mother, who suffered from well-known and well-documented mental health problems that adversely affected the Children. Moreover, the Department repeatedly expressed its concerns about Mother's access to the Children, and, based on those concerns, appellant repeatedly agreed to various remedial measures, including limiting or prohibiting Mother's access to the Children and having Mother move out of the family home. Nevertheless, appellant continued to allow Mother unauthorized access to the Children, which subjected the Children to a substantial risk of harm. In fact, on at least one occasion, appellant's failure to act resulted in actual harm, as Mother was found to have sexually abused J.N. in appellant's home.

It is equally clear, based on the same evidence, that appellant was unable or unwilling to give proper care and attention to the Children and their needs. In short, appellant's contention that there was "no evidence" to support that finding is belied by the record. Accordingly, the juvenile court did not err in finding the Children CINA.

Appellant appears to argue that, because the various pieces of evidence presented at the disposition hearing were not, by themselves, sufficient to support a finding that the Children were CINA, the juvenile court’s finding was erroneous. Appellant is mistaken. As noted, in determining whether a child is a CINA, a court is required to consider the totality of the circumstances, which the court did in the instant case. Specifically, the court properly examined appellant’s track record of inaction, particularly as it related to Mother’s continued access to the Children, and determined, quite reasonably, that the Children were CINA. And, as discussed, that finding was supported by the evidence.

We likewise disagree with appellant’s contention that certain alleged defects in the safety plans or purported lack of follow through from the Department somehow excused her failure to abide by the safety plans. To begin with, the juvenile court expressly found that the Department had engaged in reasonable efforts to prevent or eliminate the need for removal of the Children, and appellant presents no argument to suggest that that finding was erroneous. Moreover, even if the safety plans presented “conflicting instructions and information” or were “unreasonably restrictive,” the fact remains that the Department consistently voiced its concerns regarding Mother’s access to the Children, and appellant consistently disregarded those concerns and placed the Children at a substantial risk of harm. Those factors, when considered in conjunction with all the other circumstances, established that the Children had been neglected and that appellant was unable or unwilling to give proper care and attention to their needs. Accordingly, the juvenile court did not abuse its discretion in finding the Children to be CINA.

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