

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1316

September Term, 2014

IN RE: SHAUNTIA D.

Krauser, Chief Judge,
Leahy,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Rodowsky, J.

Filed: July 14, 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.

Presented here is an appeal from an order of the Circuit Court for Prince George's County, sitting as a juvenile court, that modified, after an emergency review hearing, the placement of the appellant, Shauntia D. She contends that the court erred or abused its discretion by refusing to allow a licensed graduate social worker to testify as an expert. For the reasons set forth below, we shall affirm.

Background Facts and Procedure

When she was fourteen years old, Shauntia, on June 1, 2013, attacked another girl, without provocation, by repeatedly punching her and kicking her in the head. Previously, she had been suspended from school "on numerous occasions" for fighting, insubordination, and skipping classes, according to her social history. Pending disposition she was sheltered at the Psychiatric Institution of Washington from July 13 to July 30, 2013, and then released to her mother. Shauntia returned to placement at the Waxter Children's Center on September 18, 2013.

Shauntia entered an *Alford* plea to involvement in second degree assault on October 11, 2013. The court (Woodward, J.) ordered a predisposition investigation. Shauntia's mother, Karen G., told the investigator that her daughter "requires long-term in-patient intensive therapy."

On October 17, Shauntia briefly went AWOL.

The disposition hearing before the court (Dawson, J.) was held on November 14, 2013. The Department of Juvenile Services (DJS) had recommended placement in a therapeutic group home. Counsel for Shauntia submitted that nothing more than community

based psychological treatment was required. The court ordered a "Level B" commitment, but "not a group home."¹

In a memorandum dated December 9, 2013, DJS advised the court that Shauntia was awaiting a response from the Carter Center in Chestertown, Maryland, a level A facility and that she had been accepted at a level B facility in Iowa. At the review hearing on December 13, 2013, the court continued the current commitment.

By December 30, 2013, DJS learned that Shauntia had been accepted at the Carter Center. That agency recommended to the court that appellant's commitment be amended "to reflect a hardware secure program such as the Carter Center" in an effort to keep her in State, closer to her family. By an order dated January 6, 2014, the court (Woodward, J.) implemented the recommendation. At the hearing preceding that order, DJS explained that

¹The form, "Disposition Order (Commitment)," of November 14, 2013, explains the "Classification of Facilities."

"A. _____ Secured Facility (Enhanced, or The Young Women's Facility, Young Women's Drug Program, NIA Program, New Directions).

"B. X Non Community Residential Facility NOT A GROUP HOME (Youth Centers, Mountain Manor, Schaeffer House, O'Farrel, Residential Treatment Centers, or other Private Staff Secure Facilities, or Community Supervision Program, Bowling Brook, Vision Quest, Glen Mills, RICA-Edit, RICA-Re-Direct). ...

"C. _____ Foster, Group Home or other community based residential treatment (Safe Passages Day Treatment Program - with graduated sanctions, to include electronic monitoring and/or detention upon review)."

reunification would be "a little more possible," if appellant remained in Maryland and she expressed, through her counsel, her preference to remain in Maryland.

At a brief review hearing on February 6, 2014, the court (Dawson, J.) continued the commitment at the Carter Center where Shauntia physically had been placed on January 9, 2014. Thereafter, on April 17, 2014, Shauntia dismissed an appeal that she had noted from the orders of October 11 and November 14, 2013.

Internally to DJS, Shauntia's placement was re-evaluated at the Carter Center and by the Central Review Committee. The agency concluded that placement in a residential treatment center was in her best interest. On July 15, 2014, DJS advised the court of that conclusion and requested that the commitment be amended, on an emergency basis, to authorize placement at a staff secure program, such as Good Shepherd Center - Female where an admission date of July 21, 2014, had been scheduled. The requested modification would drop the level of commitment from A to B.

The court (Dawson, J.) heard the application on July 22, 2014. Shauntia was represented by an attorney from the Office of the Public Defender who advised the court that the defense wished to take testimony from Ms. Angela Chou, because the defense opposed the DJS recommendation. A recess was taken to clear the docket of another matter.

Ms. Chou testified that she is an employee of the Public Defender's Office. She is a forensic social worker. She holds a bachelor's and a master's degree in social work and is certified by the State of Maryland as a Licensed Graduate Social Worker. In her two years

of full-time work for the Public Defender, she has done "disposition planning, sentencing planning, mitigation work, waivers and transfers, [and] assistance with finding resources" in a variety of cases, including juvenile.

With respect to Shauntia's case, Ms. Chou had received and reviewed that morning a confidential psychiatric evaluation, a psychological evaluation dated April 30, 2014, and the "FRCCRC" referral form. She had also met briefly with Shauntia in October 2013 when the latter was at the Waxter Children's Center.

Thereafter, for ten pages of transcript, defense counsel sought to elicit from the witness her opinion whether placement of Shauntia at Good Shepherd, as opposed to continued placement at the Carter Center, was in the respondent's best interest. We present an initial sampling.

"[DEFENSE COUNSEL]: Your Honor, at this time I would ask to, the Court to recognize Ms. Chou as an expert in Licensed Social Work.

"[THE STATE]: Your Honor –

"THE COURT: Denied.

"[THE STATE]: – if the State may –

"THE COURT: Denied. She is a Licensed Graduate Social Worker. I understand the different levels, the different qualifications. Okay."

On further voir dire, the defense put on the record the documents reviewed by Ms. Chou. The examination continued.

"Q Based on your opinion as a professional would you agree that the recommendation of the Department is an appropriate recommendation.

"THE COURT: That's not a proper question –

"[THE STATE]: Objection.

"THE COURT: – Counsel. Sustained.

"BY [DEFENSE COUNSEL]:

"Q Based on your review what is your feelings as a professional as to the recommendation –

"THE COURT: Feelings are not relevant –

"[THE STATE]: Objection.

"THE COURT: – Counsel. Feelings are not relevant.

"BY [DEFENSE COUNSEL]:

"Q When you reviewed the opinion of the Department did you notice any inconsistencies therein?

"[THE STATE]: Objection.

"THE COURT: Sustained.

"BY [DEFENSE COUNSEL]:

"Q When you reviewed the Department's recommendation are there more than one dates listed therein?

"[THE STATE]: Objection.

"THE COURT: Sustained.

"BY [DEFENSE COUNSEL]:

"Q When you reviewed the Department's recommendation do you agree with their outcome?

"[THE STATE]: Objection.

"THE COURT: Sustained.

"BY [DEFENSE COUNSEL]:

"Q Is it in your opinion the best interest of Shauntia to return to a level B placement, or any other placement other than where she's at?

"[THE STATE]: Objection.

"THE COURT: Counsel, let me just stop you, her opinion is not relevant."

Testifying for DJS was Ms. Celia Anazado, Shauntia's case manager. She explained that the primary services offered at the Carter Center are behavioral, whereas Good Shepherd is a residential treatment center that does "a lot of mental health." DJS requested modification because "the psychologist and the psychiatric doctors" who evaluated Shauntia recommended residential treatment. The recommendation by DJS to the court, Ms. Anazado said, "has to be based on the recommendation of the psychologist and psychiatrist." In Shauntia's case, the Central Review Committee was called upon because "she was constantly having a lot of numerous incident reports at" the Carter Center. For example, the psychiatric report (*i.e.*, the confidential report that is not in our record) said, per Ms. Anazado, that Shauntia "has multiple issues, like mutilating herself, cutting herself, and those are psychiatric needs."

The appeal now before us is from the order of commitment to Good Shepherd.²

Questions Presented

Appellant, in essence, asks:

Did the juvenile court

- I Err by refusing to recognize Ms. Chou as an expert; or
- II Abuse its discretion by failing to recognize that the Rules of Evidence need not be strictly adhered to in a modification hearing?

As we shall see, the two questions blend.

Legal Background

Maryland Rule 1-101(e) provides that Title 5, the Rules of Evidence, apply "to all actions in the courts of this State, except as otherwise provided by statute or rule." Maryland Rule 5-101(c) provides:

"In the following proceedings, the court, in the interest of justice, may decline to require strict application of the rules in this Title, other than those relating to the competency of witnesses:

....

"(7) Modification hearings under Rule 11-116." (Juvenile Causes - Modification or Vacation of Order.)

Social Worker Hierarchy

²The record further reflects that DJS advised the court that, as of August 20, 2014, there were no negative reports about Shauntia from Good Shepherd. On September 9, 2014, DJS advised the court that there had been "a few behavioral incidents" that had been handled and that Shauntia was "on track" in relation to the permanency plan of return to her mother. The court (Dawson, J.) approved the report.

The State, through the Board of Social Work Examiners, licenses four levels of social workers: bachelor, graduate, certified and certified-clinical. Maryland Code (1981, 2014 Repl. Vol.), § 19-101(d)(1)-(4) of the Health Occupations Article (HO). A graduate license requires a master's degree from an approved program. HO § 19-302(c). A certified license requires a master's degree and, thereafter, "2 years as a licensee with supervised experience of at least 3,000 hours ... with a minimum of 100 hours of periodic face-to-face supervision in the practice[.]" HO § 19-302(d). A certified clinical license requires a master's degree, 12 academic credits in clinical course work (with a minimum of 6 obtained in the master's program), and "2 years as a licensee with supervised experience of at least 3,000 hours, of which 1,500 hours are in face-to-face client contact, after receiving the master's degree with a minimum of 144 hours of periodic face-to-face supervision in the assessment, formulation of a diagnostic impression, and treatment of mental disorders and other conditions and the provision of psychotherapy under the terms and conditions that the Board determines by regulation." HO § 19-302(e). The Court of Appeals has held that a licensed clinical social worker is qualified to make a risk and safety assessment of a juvenile, *In re Adoption/Guardianship of Tatianna B.*, 417 Md. 259, 9 A.3d 502 (2010), and to opine that a juvenile has attention deficit hyperactivity disorder, *In re Adoption/Guardianship No. CCJ14746*, 360 Md. 634, 759 A.2d 755 (2000).

The "practice [of] social work" by a licensed graduate social worker includes "[f]ormulating a diagnosis, under the direct supervision of a licensed certified social worker-

clinical," HO § 19-101(m)(2)(ii), and "[t]reatment of mental disorders and the provision of psychotherapy under the direct supervision of a licensed certified social worker-clinical." HO § 19-101(m)(2)(iv).

Discussion

I

Maryland Rule 5-101(c) does not eliminate the Rules of Evidence at a juvenile causes modification hearing; it gives the court a discretion to apply those rules or to "decline to require strict application" thereof. The rule with which we are concerned is Rule 5-702, reading:

"Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony."

Here, the issue before the court was whether Shauntia should stay at the Carter Center or be moved to Good Shepherd where she could receive treatment that was not available at the Carter Center. Appellant tells us that "Ms. Chou would have testified as to the *proper* treatment and placement for Appellant." Appellant's Brief and Appendix at 13 (emphasis added). This necessarily involves a diagnosis of Shauntia's problems, as well as an opinion on the proper treatment.

If, as appellant contends, the court should have relaxed the requirements of Rule 5-702, there nevertheless remains a standard of reliability that the proof must meet. Thus, in a permanency planning hearing, where the Rules of Evidence may be relaxed, reliable hearsay has been allowed. *See In re Billy W.*, 387 Md. 405, 875 A.2d 734 (2005). And, in a restitution hearing, subject to a similar evidentiary relaxation, medical and dental bills were admitted, without authentication as business records, to prove the truth of the information contained therein. *See In re Delric H.*, 150 Md. App. 234, 819 A.2d 1117 (2003). In the case before us, where the excluded testimony is an opinion, we conclude that at a minimum, the court, in its discretion, must find that the opinion "will assist the trier of fact to understand the evidence" and that the expert testimony is appropriate on the particular subject. Rule 5-702.³

DJS's request for modification was to be decided by the court. There was no lay jury that might require some explanation of matters beyond ordinary lay experience. The judge had considerable experience in juvenile matters generally and had handled aspects of Shauntia's case previously. He was in the best position to know if he would be assisted by Ms. Chou's opinion on the disposition. Apparently, he did not think so.

More fundamentally, Ms. Chou was proffered to express her opinion on the proper treatment of Shauntia but, as a licensed graduate social worker, she is not permitted, without

³In our view, it is immaterial whether the court in the instant matter exercised its discretion to exclude at the first level, under Rule 5-101(c), or in a relaxed application of Rule 5-702.

being directly supervised by a licensed certified social worker-clinical, to formulate a diagnosis or to treat mental disorders. HO § 19-101(m)(2)(ii) and (iv). There is no evidence that a clinical social worker directly supervised the formulation of Ms. Chou's opinion that was arrived at on the morning of trial.

That the court did not abuse its discretion is forcefully illustrated by its comments after defense counsel had concluded his summation by stating: "What this [the commitment modification] would amount to is uprooting, that would not be therapeutic for Shauntia."

The court replied:

"Thank you. Young lady, please stand. I can't think of anything that may be more disturbing than to see a person who is [in] need of services at a place that cannot provide the service, keep her there for another six months, then uproot her, then say wait, no, well, she cannot be successfully discharged because she has substantial issues that everybody knew six months earlier, but because there were those that said don't move her and let her stay there where none of the issue[s] that she needs to have addressed are being addressed, and I believe this young lady may have some behavior issues, but currently her mental, psychological issues are keeping those behavioral issues from being addressed because they are primary now, and she's not getting the help that she needs there. And the Court believes that a residential treatment center would be appropriate, ... and the Court will in fact amend the order to a level B so the Respondent can in fact be placed at the appropriate residential treatment center because the Court believes it's in the best interest of the minor child for her to get the psychological, emotional and mental health. The Court amends the order."

II

Appellant also contends that the court abused its discretion by failing to recognize that it had a discretion to decline to require strict compliance with the Rules of Evidence. The argument is not supported by the record.

"[DEFENSE COUNSEL]: Your Honor, strict adherence to Title [5] is not required in this type of hearing. This is not a trial.

"THE COURT: Yes, it is.

"[THE STATE]: Your Honor –

"[DEFENSE COUNSEL]: No, Your Honor, this is a modification hearing.

"THE COURT: The Rules of Evidence would still adhere.

"[DEFENSE COUNSEL]: I don't believe that that's correct, Your Honor, and in looking at Title [5] –

"THE COURT: Excuse me, you're the one that offered the witness.

"[DEFENSE COUNSEL]: Yes.

"THE COURT: Rules of Evidence don't apply in a confrontation hearing?

"[DEFENSE COUNSEL]: Title [5] does not apply to this type of hearing, Your Honor.

"THE COURT: Okay. This is a request to modify a court's order.

"[DEFENSE COUNSEL]: Yes, that's correct.

"THE COURT: Okay. Anything else?"

For the foregoing reasons, we enter the following mandate.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY, SITTING AS A JUVENILE
COURT, AFFIRMED.**

**COSTS TO BE PAID BY THE
APPELLANT.**