

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2515

September Term, 2014

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IN RE: SHAYLA B., AYANNA B., &  
CHASITY B.

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Woodward,  
Kehoe,  
Arthur,

JJ.

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Opinion by Woodward J.

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Filed: August 24, 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.

Appellant, Lorraine W. (“Mother”), appeals the judgment of the Circuit Court for Howard County, sitting as a juvenile court, that awarded custody of Chasity<sup>1</sup> (DOB: 05/25/00), Ayanna (DOB: 04/30/03), and Shayla (DOB: 02/14/06) (collectively, “the children”), to Charles B. (“Father”), the father of the children.

On September 18, 2014, the children were removed from Mother’s custody and placed in shelter care. The juvenile court held two shelter care hearings where all parties consented to the continuation of shelter care. On November 5, 2014, the juvenile master held a hearing to address the allegations raised in the amended child in need of assistance (“CINA”) petitions filed by the Howard County Department of Social Services (“the Department”).<sup>2</sup>

At the conclusion of the hearing, the juvenile master found that the children were not CINA. The master recommended that custody be awarded to Father and that the CINA

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<sup>1</sup> Chasity is spelled “Chasity” and “Chastity” throughout the record. Because the appeal and the CINA petition are captioned “In re: Chasity,” we will use this spelling.

<sup>2</sup> A child in need of assistance (“CINA”) is defined as:

a child who requires court intervention because:

- (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and
- (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.

petition be dismissed. The parties consented to the entry of an immediate order, so that the children could be removed from shelter care and Father could enroll them in school.<sup>3</sup>

Mother, however, reserved her right to file exceptions.

On November 12, 2014, Mother filed exceptions and requested a hearing. On January 15, 2015, the circuit court held a hearing on Mother's exceptions to the master's written report and recommendation. At the conclusion of the hearing, the court denied Mother's exceptions, thereby leaving the November 5, 2014 order in effect.

Mother noted a timely appeal of that decision and presents a single question, which we have rephrased, as follows:<sup>4</sup>

Did the circuit court abuse its discretion in awarding custody of the children to Father?

For the reasons that follow, we shall affirm the judgment of the juvenile court.

### **BACKGROUND**

The events that led to the Department's involvement began during the 2013-2014 school year. During the fall of 2014, Patricia Kelly, the pupil personnel worker at Running Brook Elementary School ("Running Brook"), where Shayla attended school, contacted

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<sup>3</sup> The master's proposed order was signed by a judge and filed the same day.

<sup>4</sup> Mother's question, as presented in her brief, is as follows:

Did the court err by awarding custody to the father where the facts sustained against the mother were insufficient to provide the basis for a CINA finding, and accordingly the court lacked jurisdiction to enter the order?

Mother because Shayla had already been absent for more than 15% of the school year. On January 28, 2014, Mother withdrew Shayla from Running Brook to start homeschooling, but Mother did not comply with the homeschool program requirements. In August, Mother withdrew Shayla from the homeschool program, but did not re-enroll Shayla at Running Brook, as was required. When the school year began on August 25, 2014, Shayla was not enrolled.

According to Chasity, Mother left her and her sisters unattended on the evening of September 3, 2014, through the morning of September 4, 2014. On the morning of September 4, Chasity called her aunt from school and asked her to pick up Shayla at the house. Chasity explained that she had to get to school that morning and she did not have anyone else to watch Shayla. Around 4:30 p.m. that day, Mother called Running Brook looking for Shayla. Shayla, however, was not enrolled and, therefore, was not at the school. Mother remarked, “apparently I left her with a very irresponsible individual,” and hung up the phone.

On September 5, 2014, Kelly stopped by Mother’s house to talk to Mother about enrolling Shayla in school. Kelly noticed that Mother’s speech was slurred and that she was disoriented about the time of day. After they had been talking for some time, Mother asked what time it was, and Kelly responded 8:00. Mother thought that it was 8:00 a.m. and called for Chasity and Ayanna to come downstairs to leave for school. The girls came downstairs and responded that it was “8:00 at night on a Friday evening.”

Shayla was enrolled in school the following Monday, September 8, 2014. The Department became involved that same day in response to allegations of neglect and supervision issues. On September 10, 2014, Shayla was left at school and there was no one to pick her up, so Kelly picked Shayla up at school and took her to a neighbor's house. The neighbor was willing to watch Shayla, but had not known ahead of time that Shayla would be coming to her house.

On September 11, 2014, Sarah Lough, the Department's assigned caseworker, interviewed the children at their schools. After meeting with the children, Lough was concerned about "mom being available to the girls for supervision and basic care." Lough explained that the "lack of contact with mom and the interviews with the children" led the Department to remove the children from Mother's home on September 18, 2014.

Lough was unable to contact Mother prior to the removal of the children, even though she stopped by Mother's house on September 11 and 12, 2014, left her business card on the front door, and sent certified and regular mail letters to Mother requesting her to make contact. Around 5:00 p.m. on the day of removal, Mother called Lough, and Lough explained that there were two specific instances that were cause for concern. "The first instance where the children were left behind at the home" overnight on the evening of September 3, 2014, "and the second instance where Shayla was not retrieved from school" on September 10, 2014. Lough was also concerned that Mother was not able to articulate a suitable supervision plan for the children for when she was out of the home.

Lough ultimately recommended that the court award custody of the children to Father. Lough's custody recommendation was based on her "time and efforts to work with [Mother] to maintain stability with the kids while they're in her care." Lough had the opportunity to visit Father's new home and concluded that it was an appropriate living arrangement. As a result, Lough testified that, in her opinion, Father was "ready, willing and able" to take custody of the children.

Mother testified on her own behalf and addressed the Department's concerns. Mother explained that she was hospitalized overnight from September 3 to 4, 2014, for dehydration, but stated that she had made arrangements for an adult to watch the children. Mother, however, admitted that she was ill on a regular basis and that she needed help and assistance in caring for the children from Father and from the Department. Mother also stated that she had problems sleeping, was tired all the time, and took medication for her anxiety. Mother testified that she did not have a steady job and that her current source of income came from Father's child support payments and Ayanna's disability.

In response to the Department's concerns regarding Shayla's schooling, Mother explained that she decided to homeschool Shayla in January 2014 because it was unsafe for Shayla, who had asthma, to walk to school in the severe winter weather conditions. Mother stated that she requested school bus transportation for Shayla, but never received approval. Mother admitted that she missed the scheduled homeschool meeting and that she did not provide documentation of Shayla's work, but explained that she contacted the office to let

them know that she was unable to attend because she was sick. Finally, on September 10, 2014, the day when Shayla was left at school, Mother stated that Chasity was supposed to pick Shayla up from school, but Chasity had overslept.<sup>5</sup>

At the conclusion of the hearing, the juvenile master sustained the following allegations from the Department's amended CINA petitions:<sup>6</sup>

- a. On or about September 3, 2014 the [children] were left without any adult supervision overnight and for at least 24 hours. The children did not know where their mother was, nor could they report that she had made any plan for them or provided them with a way to contact her in an emergency. After bringing her younger sister to a neighbor's home, [Chasity] went to school that day and when informed of the situation, school personnel made arrangements for the children with emergency contacts.
- b. [Shayla] had not been enrolled in school as of the September 3<sup>rd</sup> date. However, [Mother] called the elementary school looking for her youngest child later that day.<sup>[7]</sup> Mother seemed confused and was informed [that the] child was not enrolled. Mother explained [that the] child had a dislocated shoulder and [M]other was concerned about leaving her with an 'irresponsible person'.

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<sup>5</sup> Lough testified that this statement was made by Mother; Mother never stated this in her testimony.

<sup>6</sup> The amended petitions each included paragraphs 2a-2j, but the master only found, by a preponderance of the evidence, that paragraphs 2a-2d had been established at the hearing. The master also found that the background information in paragraph 1 had been established, with the exception that Father had a new address.

<sup>7</sup> It is clear from the testimony in the record that Mother's call to the school occurred on September 4, 2014.

- c. [Shayla] was withdrawn from Running Brook ES in January 2014 by her mother who stated [that] she was providing [Shayla] with a home school program. [Shayla] was re-enrolled in school in September 2014. [Mother] has not been able to document any participation in a home school program for the period of time [that Shayla] was not enrolled in school.
- d. [Shayla] was not picked up from school on September 10, 2014 and the school was unable to make contact with [M]other. The school transported [Shayla] to a neighbor's home. [Chasity] had gone to the library after school.

The juvenile master also observed: “This is a situation where you have a mom who is struggling with some mental health issues, with some physical health issues, some medical treatment issues, some financial issues.” Based on the sustained factual findings against Mother, the master recommended that custody of the children be awarded to Father, that the children were not CINA, and that the CINA petition be dismissed. The master further found “that there are extraordinary circumstances in the case that would necessitate the entry of an immediate order,” and that the entry of the immediate order “will be in the children’s best interest.” All parties consented to the immediate order with the understanding that the order would not impact the right to file exceptions.

Mother subsequently filed exceptions and requested a hearing. The exceptions hearing was held on January 15, 2015. After considering the arguments of the parties and the master’s findings, the juvenile court determined that there was sufficient evidence to sustain the master’s findings, that the master’s findings against Mother constituted neglect,

and that it was in the children’s best interest to be in the custody of Father. As a result, the court denied Mother’s exceptions.

### **STANDARD OF REVIEW**

“When reviewing a master’s report, both a trial court and an appellate court defer to the master’s first-level findings (regarding credibility and the like) unless they are clearly erroneous.” *McAllister v. McAllister*, 218 Md. App. 386, 407 (2014) (citation omitted). “On the other hand, the reviewing courts give less deference to ‘conclusory or dispositional’ findings . . . .” *Id.* (citations omitted). “Finally, while the circuit court may be guided by the master’s recommendation, the court must make its own independent decision as to the ultimate disposition, which the appellate court reviews for abuse of discretion.” *Id.* (citations and internal quotation marks omitted).

In addition, “it is within the sound discretion of the [trial court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion.” *Reichert v. Hornbeck*, 210 Md. App. 282, 304 (2013) (alterations in original) (quoting *In re Yve S.*, 373 Md. 551, 585-86 (2003)). “Such broad discretion is vested in the [trial court] because only [it] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child . . . .” *Reichert*, 210 Md. App. at 304 (alterations in original) (quoting *Yve S.*, 373 Md. at 586). Accordingly, the trial court “is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition

will best promote the welfare of the minor’ child.” *Reichert*, 210 Md. App. at 304 (quoting *Yve S.*, 373 Md. at 586). “[W]hen the trial court makes a custody determination, it is required to evaluate each case on an individual basis in order to determine what is in the best interests of the child.” *Reichert*, 210 Md. App. at 304.

### **DISCUSSION**

Mother argues that the juvenile “court erred by transferring custody because the allegations sustained against the mother, neither severally, nor jointly, constituted a sufficient basis for determining that the girls would have been CINAs absent their father’s presence in the case.” Mother does not dispute that she had medical issues that caused her to leave the children at home unattended, but she contends that Chasity was old enough to supervise her siblings and further, that this incident did not rise to the level of neglect. The Department and the children respond that the court did not err in awarding custody to Father, because the court sustained allegations of neglect against Mother and Father was “available and willing” to care for the children.

Both parties agree that custody of the children in this case was awarded to Father pursuant to Section 3-819(e), which provides:

If the allegations in the petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child, the court may not find that the child is a child in need of assistance, but, before dismissing the case, the court may award custody to the other parent.

Md. Code (2006, 2013 Repl. Vol.), § 3-819(e) of the Courts and Judicial Proceedings (I) Article.

In interpreting the language of Section 3-819(e), Mother argues that the sustained allegations in the petition must be sufficient to support a CINA finding before the court may award custody to the other parent. Even if we agree with Mother’s interpretation of the statute, the allegations sustained against Mother, taken as a whole, constitute neglect.<sup>8</sup>

The Department presented several instances where one or more of the children were left unattended by Mother. The court credited Chasity’s testimony that the children were left alone unattended overnight on September 3, 2014, and found that Chasity “was without a plan to care for her younger sister, Shayla.” A second incident occurred on September 10, 2014, when Shayla was left at school without any arrangements for her care and Mother was not able to be contacted. The court concluded that leaving Shayla at school with no

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<sup>8</sup> Neglect, as it relates to a child being found CINA, is defined as:

the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or individual who has permanent or temporary care or custody or responsibility for supervision of the 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.

CJP § 3-801(s).

arrangements placed her health and safety at risk of harm and made “the inference that the other two, the eleven-year-old and the fourteen-year-old, are placed at risk; their safety, health and welfare are being placed at risk.” *See In re: Nathaniel A.*, 160 Md. App. 581, 597 (“Appellant’s inability to appropriately care for Nathaniel is predictive of her ability to care for Madeline.”), *cert. denied*, 386 Md. 181 (2005).

The juvenile court also expressed concern about Mother’s failure to ensure that Shayla received proper schooling. The court noted that Mother had removed Shayla from school in order to homeschool her, but that “there’s been indication that [M]other had not complied with the home-school program,” even though Mother was aware of the program’s requirements. The court further observed that Mother had not re-enrolled Shayla in school as of September 4, 2014, when school had started at the end of August 2014.

Finally, the juvenile court looked at the totality of the incidents involving Mother and concluded that “[Mother] was experiencing health—physical health and mental health problems that clearly impacted her ability to properly care for these children.” The court carefully reviewed each allegation of neglect that the master sustained against Mother and determined that there “was clearly enough evidence before the Master, based on the testimony, to sustain the findings against [Mother] which rise to the level of neglect.” Thereafter, the court considered the master’s findings of fact, which are not in dispute, and what was in the children’s best interest before awarding custody of the children to Father. Based on the record before this Court, we conclude that there was sufficient evidence to

support a finding of neglect against Mother, and the juvenile court's decision to award custody of the children to Father was not an abuse of discretion.

**JUDGMENT OF THE CIRCUIT COURT  
FOR HOWARD COUNTY AFFIRMED;  
APPELLANT TO PAY COSTS.**