

Circuit Court for Montgomery County
Case Nos. 06-I-16-000146 & 06-I-16-000147

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2147

September Term, 2016

IN RE: J.B. & K.B.

Beachley,
Shaw Geter,
Thieme, Jr., Raymond G.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: June 26, 2017

*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.

This appeal arises from an order by the Circuit Court for Montgomery County, sitting as a juvenile court, which adjudicated J.B. (born March 2006) and K.B. (born November 2008) children in need of assistance (“CINA”),¹ and placed them with their natural mother, P.A. (“Mother”), under an order of protective supervision. Mother noted a timely appeal of the juvenile court’s order, and asks us whether the juvenile court erred in declaring J.B. and K.B. as CINA.

We perceive no error and affirm the juvenile court’s decision.

FACTS AND LEGAL PROCEEDINGS

J.B. and K.B. came to the attention of the Montgomery County Department of Health and Human Services, Child Welfare Services (“the Department”), in November of 2015 when Mother left the children in the care of their maternal grandmother, F.Y. (“Grandmother”). The Department learned that J.B. needed eyeglasses, as well as medical care for Turner syndrome.² Because she was not a parent, Grandmother was unable to obtain necessary medical care for J.B.

¹ Pursuant to Md. Code (1973, 2013 Repl. Vol., 2016 Supp.), § 3-801(f) of the Courts and Judicial Proceedings Article (“CJP”), a “child in need of assistance” means “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.”

² Turner syndrome is a condition which affects only females. It results when the X chromosome is missing or partially missing. Turner syndrome can cause various medical issues, including: short height, failure to begin puberty, infertility, heart defects, and other learning and social disabilities. “Nearly all girls and women with Turner syndrome need ongoing medical care from a variety of specialists.” <http://www.mayoclinic.org/diseases-conditions/turner-syndrome/basics/definition/con-20032572> (last visited June 23, 2017).

On September 15, 2016, Grandmother notified the Department that the children had been living with her since mid-August when Mother was evicted from her apartment. The Department filed a CINA petition for the children, seeking to remove them from Mother’s home, and to have them both declared CINAs. The next day, the court held a hearing on the petition. The court denied the request for shelter care, ordered that the children be placed in their Mother’s care, and scheduled an adjudicatory hearing for November 14, 2016. At the November 14, 2016 adjudicatory hearing, the juvenile court heard testimony from: Elise Burgess (“Burgess”), the children’s former school principal; Fern Miller (“Miller”), the children’s former school guidance counselor; Mother; Ilana Kein (“Kein”), a Department social worker assigned to investigate the Department’s concerns for neglect; and K.B., Sr. (“Father”)³.

Concerns from the Principal and Guidance Counselor

At the time of the adjudicatory hearing, Burgess worked as the principal at Sally K. Ride elementary school, which J.B. and K.B. attended during the 2015-16 school year.⁴ Burgess recognized that J.B. was entitled to a 504 plan⁵ based on J.B. having Turner syndrome, but was unable to pursue a 504 plan because Mother would not provide the

³ Although Father participated in the matter before the juvenile court, he did not note an appeal from the juvenile court’s ruling.

⁴ The children started at a new school the following year.

⁵ A 504 Plan serves to provide a child who has a disability identified under the law, and who is attending an educational institution, accommodations intended to ensure his or her academic success and access to the learning environment. <http://mdod.maryland.gov/education/Pages/Section-504-Plans.aspx> (last visited June 23, 2017).

required physician diagnosis. Burgess also noted that J.B. was in need of eyeglasses. Burgess spent several weeks trying to work with J.B.'s family to arrange a visit to the doctor so that J.B. could obtain eyeglasses, but Burgess struggled to contact Mother, often having to call Mother three or four times before Mother would respond.

Burgess also noted behavioral issues with K.B. during the 2015-2016 academic year. These included him throwing a pencil at another child, hiding in the classroom cubbies, screaming while curled in a fetal position, and walking out of the classroom and hiding. At some point during the year, Mother requested a parent-teacher conference with Burgess, during which Mother, believing him to be qualified, asked to have K.B. advanced to the next grade. Burgess disagreed. Mother told Burgess that other children in the classroom were impacting K.B.'s behavior. The school assigned a counselor to work with K.B., but his behavior did not improve. Burgess was unable to have any productive conversations about K.B.'s behavioral issues with Father or Grandmother.

Miller, the school counselor assigned to J.B. and K.B. during the 2015-16 school year, observed that K.B. was resistant to completing his work or listening to his teacher. K.B.'s teacher often had to call Miller to remove K.B. from the classroom to the guidance office, where he typically sat in silence. Like Burgess, Miller also had difficulty contacting Mother to discuss K.B.'s behavioral issues.

Concerns Regarding Mother and Father

At the adjudicatory hearing, the Department treated Mother as a hostile witness. Mother told the court that she had obtained eyeglasses for J.B. approximately three to four months after the school recommended that she do so. She stated that she had tried to obtain

the eyeglasses before then, but that she lacked insurance and could not pay for them. Mother denied that K.B. had any behavioral problems at school, other than one issue for which she met with the teacher; his other behaviors, she said, were “typical boy behavior.”

Mother testified that the reason she would leave the children with Grandmother for extended periods of time was due to her employment with Done Right Merchandizing. Her job required her to travel to various locations on the East Coast and work from Sunday through Thursday. On those occasions, she would leave the children with Grandmother, and Father helped care for the children while Mother was away. At the time of the adjudicatory hearing on November 14, 2016, Mother had recently started a new job with regular hours at a nearby department store, and Grandmother was no longer watching the children.

Mother also informed the court about her relationship with her boyfriend, K.S., which she characterized as “off and on.” She admitted that K.S. physically assaulted her on August 6, 2016, and that she went to the hospital to treat her injuries. Mother, however, dismissed the incident as “a bad night.” When the assault took place, the children were with their father. When J.B. returned home, she wanted to contact the police, but Mother refused. Mother told the court that she and K.S. had broken up after the incident of abuse, but they had since reconciled and were pursuing marriage.

Finally, Mother testified that since moving to Frederick, J.B. was “doing great” at her new school. She added that Father had begun providing more child support and had “finally stepped up” for the children.

During Father’s testimony, he admitted that he had tried to commit suicide in 2012,

which led to a one-week hospitalization but no follow-up care. Because Father was providing care to his eighty-two year old grandfather, who smoked cigarettes, Father believed that it would not be best for his children to live with him. He also stated that Mother had recently been doing a better job caring for the children, that he was cooperating with her, and that he did not want his children to go into the foster care system. Father believed that the children should remain with Mother, but he was willing to take custody of the children if it would keep them out of foster care.

Concerns from the Department

At the adjudicatory hearing, the juvenile court accepted Kein as an expert in the field of social work. Kein testified that she became familiar with J.B. and K.B. in November of 2015 when the Department received a report of concerns of neglect regarding the children, the condition of Mother's home when the children were with her, and Mother's failure to delegate appropriate resources to Grandmother when Mother left the children with Grandmother for extended periods of time. When Kein first met the children, they were mostly living with Grandmother, although Mother lived in the same general area.

Kein was initially concerned about J.B.'s Turner syndrome and how it would affect her eyesight, as well as her health, learning and social functioning. In mid-January, Kein learned that J.B.'s school was concerned by the fact that J.B. still had neither a 504 plan nor eyeglasses. Despite multiple attempts to contact Mother between mid-January and May of 2016, Mother did not meet with Kein.

By May of 2016, J.B. still had not yet obtained her glasses even though Kein had

made multiple attempts to contact Mother with an offer to pay for them.⁶ In addition to Kein's concerns regarding J.B.'s access to glasses and health care for Turner Syndrome, she was also concerned about K.B.'s behavioral problems at school. Compounding these issues was the fact that Mother consistently avoided and evaded Kein's efforts to meet with or speak to her.

Between November 2015 and June 2016, Kein called Mother approximately nine times and visited her home once a month—these efforts never resulted in a face-to-face meeting and led to only two phone conversations. Even when Kein left letters detailing a June 2016 court order, in which the juvenile court ordered a home assessment and an investigation into allegations of parental unfitness, Mother did not respond. During that same time period, Kein met with the children approximately five times, either at Grandmother's house or at school; Mother was never present during those meetings.

Kein finally spoke with Mother on September 23, 2016. She told Mother her concerns about the children, as well as her concerns regarding domestic violence and told Mother about services the Department could provide her. Mother assured Kein that K.S., the person who had abused her, was no longer in her life, but Kein determined that to be untrue after speaking with the children in November 2016. Following her conversation with Mother, Kein walked the children home from school, hoping to speak with Mother again. On that occasion, Mother refused to grant Kein entry, yelled at her through her front

⁶ Ms. Kein's testimony directly contradicted Mother's statement that she had obtained eyeglasses for J.B. within three to four months after the school alerted her.

door, and told Kein to come back another time.⁷ Kein followed up with Mother by sending her an e-mail advising Mother that, per the order of protective supervision in place, a care plan for the children was required immediately. Mother did not respond.

Finally, Kein testified that she was willing to consider Father as a resource, but that at the time of the hearing, the Department had been unable to conduct an evaluation of his home. Kein felt that the best place for the children was with Grandmother, away from the domestic violence in Mother's home, with visitation with Mother and Father.

The December 15, 2016 Hearing

At the conclusion of the November 14, 2016 hearing, the juvenile court continued the matter until December 15, 2016, in order to allow Grandmother to testify. Grandmother testified that during the past year, J.B. and K.B. had lived with her and her 17-year-old son, who has Down syndrome, for weeks or months at a time, except for some weekends when they were with Father. During that time, Mother would occasionally visit to see her children for a few hours.

Grandmother had difficulty enrolling the children in school and obtaining medical care for them when they were sick because Mother did not grant her permission to do so. On one occasion, Grandmother was unable to have K.B. treated for an eye infection because she lacked Mother's permission to obtain treatment. Additionally, although J.B.'s school had wanted to provide services to J.B., and Grandmother believed she needed them, J.B. could not receive the services because Mother had not requested them. Grandmother

⁷ Mother testified that she calmly told Kein that she was then engaging in a telephone job interview and asked her politely to return another time.

always struggled to contact Mother, and occasionally would wait up to two weeks before Mother would respond to Grandmother's phone calls or text messages.

Grandmother told the juvenile court that she requested and was granted temporary custody of the children after voicing her concerns over K.S. living with Mother and the children in a one bedroom apartment, especially after Grandmother went to Mother's apartment and heard Mother and K.S. fighting loudly in front of the children. Grandmother stopped seeking custody of the children when Mother obtained a "decent" two-bedroom apartment in which the children could live.

In closing, attorneys for Mother and Father argued that the Department had not proven by a preponderance of the evidence that the children were CINA based on the parents' neglect. Both parents were, in their own opinion, ready and willing to care for the children without court involvement.

The Juvenile Court's Decision

The juvenile court, relying on the record, amended the CINA petition to conform to the testimony given at the hearings. The court found that the petition established, by a preponderance of the evidence, that J.B. and K.B. had been subject to a pattern of neglect by Mother and Father. The court referenced the fact that J.B.'s special needs had not been addressed by Mother and that Grandmother had been unable to obtain medical care for the children while they stayed with her because of Mother's refusal to grant permission or provide Medical Assistance cards. The court also referenced Mother's poor decision making, including Mother's refusal to cooperate with Grandmother while leaving the children with Grandmother for weeks at a time, as well as Mother's reunion with K.S., who

had abused Mother so badly that she required a hospital visit. Moreover, the court found that Mother was virtually impossible to contact, refused to cooperate with the Department, was belligerent to the court, and blamed everyone but herself for the children’s problems.

With regard to Father, the court found that although the case had been progressing for over a year, Father had not “stepped up.” The court concluded that although Father was willing to help care for the children, he was unable to do so given his own living situation and mental health issues. Based on these findings, the juvenile court found the children CINA. Although the court was inclined to place the children with Grandmother, it set another hearing for December 19, 2016 to permit Mother the opportunity to appear and make a statement before rendering a final decision.

At the December 19, 2016 hearing, Mother denied ever neglecting her children. She further denied requiring protective supervision to raise them. Given the court’s concern about her volatile relationship with K.S. and the children’s reports of ongoing issues between the couple, Mother agreed that K.S. would not be permitted in her home for the foreseeable future. She further agreed to cooperate with and be more responsive to the Department and the children’s school.

The court expressed its continued concern that Mother had not once accepted responsibility for her failures or taken responsibility for her actions. Nonetheless, the court permitted the children to remain with Mother, with the requirements that she maintain consistent communication with the Department and the children’s school, obtain appropriate and timely medical care for the children, participate in full psychological and substance abuse evaluations and follow all treatment recommendations, and participate—

along with Father and the children—in family therapy when therapeutically appropriate. The court also ordered Mother to obtain a pediatrician and dentist for the children within two weeks of the court’s order and an endocrinologist for J.B. within five weeks. Finally, the court ordered that there be no contact between the children and K.S., and that K.S. not enter their home. The court granted Father unsupervised, and at a minimum, once weekly visitation. The court filed its written adjudication and disposition order on December 22, 2016. As noted, Mother timely appealed the CINA determination.

STANDARD OF REVIEW

We review CINA proceedings pursuant to three different, yet inter-related standards:

In CINA cases, factual findings by the juvenile court are reviewed for clear error. An erroneous legal determination by the juvenile court will require further proceedings in the trial court unless the error is deemed to be harmless. The final conclusion of the juvenile court, when based on proper factual findings and correct legal principles, will stand unless the decision is a clear abuse of discretion.

In re Ashley S., 431 Md. 678, 704 (2013) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)).

We review Mother’s challenge to the court’s CINA determination for an abuse of discretion. The Court of Appeals has noted:

[q]uestions within the discretion of the trial court are much better decided by the trial judges than by appellate courts, and the decisions of such judges should only be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred. In sum, to be reversed the decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.

In re Adoption of Cadence B., 417 Md. 146, 155-56 (2010) (quoting *Yve S.*, 373 Md. at 583-84). The juvenile court is vested with such broad discretion because “only [the trial judge] sees the witnesses and the parties, [and] hears the testimony . . . [the 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.” *Baldwin v. Baynard*, 215 Md. App. 82, 105 (2013) (quoting *Yve S.*, 373 Md. at 586); *see also In re Priscilla B.*, 214 Md. App. 600, 623 (2013) (quoting *In re Danielle B.*, 78 Md. App. 41, 69 (1989) (noting that “[t]he duties of a juvenile court judge are very broad and pervasive”)).

DISCUSSION

Mother argues that the juvenile court abused its discretion in adjudicating J.B. and K.B. CINA because the court had no factual basis upon which to find that Mother had neglected the children or was likely to neglect them in the future.

Before adjudicating a child CINA, the juvenile court must determine, by a preponderance of the evidence, that the child requires court intervention because he or she has been abused or neglected, has a developmental disability, or has a mental disorder and that the child’s parents, guardian, or custodian are unable or unwilling to give the child and the child’s needs proper care and attention. Md. Code (1973, 2013 Repl. Vol., 2016 Supp.), §§ 3-801(f), 3-817(c) of the Courts and Judicial Proceedings Article (“CJP”).

Section 3-801(s) of the CJP article defines “neglect” as follows:

(s) *Neglect*. — “Neglect” means 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.

As we explained in *In re Priscilla B.*, 214 Md. App. at 625–26:

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.” *In re Adriana T.*, 208 Md. App. 545, 570, 56 A.3d 814 (2012) (citations omitted). Differently put, “[c]ourts 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.” *McCabe v. McCabe*, 218 Md. 378, 384, 146 A.2d 768 (1958). And of course, we need not and will not wait for abuse to occur and a child to suffer concomitant injury before we can find neglect: “The purpose of [the CINA statute] is to protect children —not wait for their injury.” *In re William B.*, 73 Md. App. 68, 77–78, 533 A.2d 16 (1987).

In determining if a parent has neglected a child, the juvenile court “may and must look at the totality of the circumstances.” *Id.* at 621.

Mother argues that there was insufficient evidence presented at the hearings to justify a CINA adjudication based on parental neglect. We disagree.

The evidence at the hearings was undisputed that during the year leading up to the November and December 2016 CINA hearings, Mother traveled extensively for her job, often leaving the children with Grandmother for weeks at a time, with no definitive plan to retrieve them. During those periods of absence, she neglected to provide Grandmother

with the children’s Medical Assistance cards or with temporary guardianship so that Grandmother could seek medical attention for the children. The importance of this failure was highlighted by the fact that K.B. suffered an eye infection that went untreated during Mother’s absence, and that J.B.’s Turner syndrome, which required ongoing medical care by an endocrinologist, also went untreated.

Moreover, J.B. was unable to read a large poster five feet away from her, and required glasses, but it took Mother several months to procure them. Although Mother claimed that she had no insurance and was unable to pay for the glasses, Kein testified that the Department had offered her funds for the glasses, and that Mother did not respond to numerous attempts to contact her. In addition, Mother conceded that the children had not visited a pediatrician or dentist since 2014, and J.B. had not seen an endocrinologist since at least that time, even though Mother acknowledged that she knew a visit to that specialist was necessary at least once a year.

Mother also neglected the children’s educational needs. As a result of Mother’s absence, Grandmother was unable to enroll the children in school for the 2015-16 school year before school began in August 2015. In addition, although J.B.’s principal and school counselor believed J.B. was entitled to, and would benefit from, a 504 plan, Mother failed to provide the required doctor’s diagnosis of the child’s Turner syndrome and otherwise did not complete the necessary paperwork.

When confronted with K.B.’s escalating behavioral problems at school, Mother insisted that most of his actions—including throwing objects at other children, walking out of the classroom and hiding, and screaming while in the classroom—were “typical boy

behavior.” She further claimed that K.B. was advanced and that his behavior would improve if the school moved him up a grade, notwithstanding the principal’s assurance that such action was not appropriate.

The court found that Mother was difficult to reach and did not respond to phone calls, emails, or text messages from Grandmother, the Department, or the children’s school. She exhibited belligerence to the children’s school administrators, the Department’s caseworkers, and the juvenile court. Further, despite being in danger of losing custody of her children, Mother failed to appear at one of the scheduled CINA hearings, citing unspecified car troubles.

The juvenile court, having heard the testimony and having viewed the demeanor of the parties (noting on the record Mother’s belligerence to the court), found by a preponderance of the evidence that Mother had demonstrated a pattern of neglecting her children. Additionally, the court found that Father was not able to care for the children, and had not risen to the occasion to help provide for them. We cannot say that the court’s factual findings were clearly erroneous or that its ultimate decision adjudicating J.B. and K.B. CINA and placing them with Mother under an order of protective supervision was an abuse of its discretion.

**ORDER OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY,
SITTING AS A JUVENILE COURT,
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**