Circuit Court for Prince George's County
Case No. CAD16-45076

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 44

September Term, 2017

REYNA DE LA PAZ DE TREJOS GARCIA

v.

ISRAEL ANTONIO TREJOS PANAMENO

Berger,
Friedman,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.
Dissenting Opinion by Friedman, J.

Filed: March 12, 2018

This appeal arises from an order of the Circuit Court for Prince George's County, Maryland, denying Reyna de la Paz de Trejos Garcia ("Mother"), appellant, legal custody of Adriana Emperatriz Trejos Garcia ("Daughter"). According to her complaint, Mother is the biological parent of Daughter, and Daughter has had no contact with the father, Israel Antonio Trejos Panameno ("Father"), appellee, since Daughter was two years old. Mother also asked the circuit court to find that Daughter is entitled to Special Immigrant Juvenile Status ("SIJ Status"). Although Father admitted the truth of Mother's allegations, the circuit court denied Mother's request for custody and found that Daughter was not entitled to SIJ Status. Mother timely appealed.

On appeal, Mother presents two questions for our review, which we have rephrased as follows:

1. Whether the circuit court erred in declining to grant custody of Daughter to Mother.

2. Whether the circuit court erred in finding that Daughter is not entitled to SIJ Status.

For the reasons discussed herein, we shall dismiss Mother's appeal for mootness.

FACTS AND PROCEEDINGS

Daughter was born in San Miguel, El Salvador, on March 30, 1996. Mother moved to the United States soon after Daughter was born, leaving Daughter in the care of her maternal grandmother. During this time, Mother maintained contact with Daughter and gave her financial support. When Daughter was two years old, Father left El Salvador, and he has not contacted or supported Daughter since then. In 2016, when Daughter was twenty

years old, Daughter witnessed the murder -- apparently gang-related -- of four men. Thereafter, Daughter received numerous death threats, causing her to flee El Salvador. Daughter arrived in the United States on August 14, 2016, where she was detained by Customs and Border Patrol for about five weeks. After passing a credible fear interview, she was released to the custody of Mother.

On December 13, 2016, Mother filed a complaint for custody in the Circuit Court for Prince George's County, Maryland. In her complaint, Mother alleged the facts stated above, requested sole custody of Daughter, and asked the court to determine that Daughter was entitled to SIJ Status. Mother argued that Daughter had been abandoned by a parent -- Father -- and would have a better life in the United States than in El Salvador. In response, Father admitted the truth of all allegations and asked the court to award custody of Daughter to Mother.

The custody hearing was held on February 6, 2017, with the circuit court sitting as a juvenile court. Mother and Daughter both testified, and their testimony largely confirmed the allegations in Mother's complaint. Father was not present. At the end of the hearing, the circuit court found that Daughter was a minor under Maryland law and that Mother was the biological mother of Daughter. The circuit court denied, however, that Daughter was entitled to SIJ Status:

> The testimony is that the father was not involved in her -- minor child's life. That the Plaintiff left the minor child in the care of the father when minor child was a very young child. The testimony is that the -- El Salvador is her country of native origin. And assessing the testimony, the Court does not find that the minor child was of -- subject of abuse, abandonment,

> or neglect. And, therefore, will deny the request for Special Immigration [sic] Juvenile Status.

The circuit court did not make an explicit ruling on the issue of custody, and Mother apparently believed that she had been awarded custody of Daughter. Thereafter, Mother filed a motion asking the court to reconsider its finding that Daughter was not entitled to SIJ Status. A few weeks after the hearing, Mother discovered, upon reviewing the docket, that the court had denied her request for legal custody of Daughter. On March 9, 2017, the circuit court denied Mother's motion for reconsideration.

DISCUSSION

Mother argues that the circuit court abused its discretion in denying her request for custody of Daughter "without providing any reason, analysis, or finding regarding the Daughter's best interest." Mother goes on to argue that the circuit court erred in finding that Daughter was not entitled to SIJ Status.[1] We will not reach the merits of Mother's claims, however, because Daughter is no longer a child for the purposes of the underlying custody proceeding. The circuit court, therefore, no longer has jurisdiction over Mother's case, and we must dismiss the present appeal for mootness.

A. The Circuit Court Cannot Exercise Jurisdiction Over Mother's Claims Because Daughter Is No Longer a "Child" Under Maryland Law.

[1] More specifically, Mother makes the following claims: (1) the circuit court declined to find that Daughter was abandoned in the face of overwhelming uncontested evidence to the contrary; (2) the circuit court did not make any finding as to whether Daughter had been placed under the custody of Mother; (3) the circuit court did not make any finding as to whether it was in Daughter's best interest to be returned to El Salvador.

The jurisdiction of a court of equity in custody proceedings is circumscribed by statute. *See* Md. Code (1984, 2012 Repl. Vol., 2016 Supp.), § 1-201 of the Family Law Article ("Fam. Law"). An equity court "has jurisdiction over . . . custody or guardianship of an immigrant *child* pursuant to a motion for Special Immigrant Juvenile factual findings[.]" Fam. Law § 1-201 (emphasis added). For the purposes of such a proceeding, a "child" is an unmarried individual under the age of twenty-one years. Fam. Law § 1-201. As we explained in a prior case,

> circuit courts that have jurisdiction over custody and guardianship are able to make the necessary predicate order findings [for SIJ Status] *until the child reaches the age of 21* based upon events occurring before the child was 18 years old.

In re Dany G., 223 Md. App. 707, 716 (2015) (emphasis added). An equity court's jurisdiction over such matters ends, therefore, when the child in question turns twenty-one.

In the present case, Daughter turned twenty-one on March 30, 2017. Daughter is no longer a child, therefore, for the purposes of the underlying custody proceeding. Indeed, Daughter is an adult for most purposes under Maryland law. *See* Md. Code (2014), § 1-401 of the General Provisions Article ("Gen. Prov.") (setting the age of majority at eighteen years). If we were to remand the case, as Mother would have us do, the circuit court would be obliged to dismiss it for lack of jurisdiction.

Mother argues that "the trial court below retains equitable jurisdiction." To be sure, "a court of equity, having obtained jurisdiction over a controversy, will retain jurisdiction in order to administer complete relief." *Jacham Enterprises, Inc. v. Hoffman*, 233 Md. 432,

438 (1964).[2] This broad formulation of equitable principles does not, however, negate the age-based jurisdictional limits that the General Assembly has placed on custody proceedings in courts of equity.

Further, the circuit court can no longer "administer complete relief" in the present case. An equity court is authorized to "direct who shall have the custody or guardianship of a *child*." Fam. Law § 1-201 (emphasis added). Legal custody is "the right and obligation to make long range decisions" about a child's life, along with "the right and obligation to provide a home" for the child. *Santo v. Santo*, 448 Md. 620, 627 (2016). These rights and obligations generally terminate when the child reaches the age of eighteen years. *See* Fam. Law § 5-203.[3] As we have explained, the age limit is a little higher -- twenty-one years -- for the purposes of the present proceeding. Fam. Law § 1-201. Because Daughter has passed all of these age limits, we can say conclusively that Mother's parental rights and obligations have ended. Now that Daughter is an adult, she has the right to make her own

[2] In *Jacham Enterprises, Inc.*, the Court of Appeals considered whether the trial court could grant injunctive relief in a contract dispute after it had already entered a final decree. *Supra*, 233 Md. at 438-39. The Court of Appeals ultimately held that the petition for injunctive relief did not really reopen the case because it "had the purpose of enforcing the decree and not modifying or rescinding it." *Id.* at 439. Critically, the holding in *Jacham Enters., Inc.* has nothing to do with the power of an equity court to make a custody determination involving an individual who has turned twenty-one.

[3] The major exception is that an unmarried child who is enrolled in secondary school (and who is not emancipated) has the right to receive support and maintenance until she turns nineteen. Gen. Prov. § 1-401.

"long range decisions" and to live where she pleases. The circuit court may not, therefore, place Daughter in the legal custody of Mother or anyone else.[4]

Mother cites *Ross v. Hoffman*, 280 Md. 172 (1977), for the proposition that equity courts have "continuing" jurisdiction over custody proceedings. In that case, the Court of Appeals held that the circuit court's grant of custody to a non-consanguineous third party, rather than the biological mother, was not an abuse of discretion. *Id.* at 192. Notably, the child in *Ross* was ten years old at the time the opinion was reported, and there was no challenge to the jurisdiction of the circuit court. *Id.* at 181. When read in context and without ellipses, the portion of *Ross* quoted by Mother is entirely consistent with our holding in the present case:

> The court [of equity] may direct who shall have the custody of a *child*, decide who shall be charged with its support and maintenance, and determine who shall have visitation rights. This jurisdiction is a continuing one, and the court may from time to time set aside or modify its decree or order concerning the *child*.

Id. at 174 (emphasis added). The point of this passage is that the jurisdiction of an equity court does not necessarily terminate when the court enters an order or decree. It does not

[4] Mother argues that the circuit court can grant partial relief by making the requested SIJ Status findings. One of the predicate findings, however, is that "[t]he juvenile is dependent on the court or has been placed under the custody of an agency or an individual appointed by the court." *In re Dany G.*, *supra*, 223 Md. App. at 715; 8 C.F.R. § 204.11; 8 U.S.C. § 1101(a)(27)(J). Without making a custody determination, the circuit court cannot grant *any* of the relief requested by Mother, and Daughter cannot obtain SIJ Status.

follow, however, that the court retains its "continuing" jurisdiction after the child reaches adulthood.

Indeed, in matters of family law, Maryland courts have been careful to remain within the jurisdictional limits set by the General Assembly. The Court of Appeals has held, for example, that a trial court may not modify a child support agreement after the child in question reaches the age of majority. *Brodsky v. Brodsky*, 319 Md. 92, 100 (1990). Likewise, this Court has held that a circuit court's modification of a child support agreement ceases to have any effect after the child reaches the age of majority, regardless of whether the child was a minor when the modification was made. *Corry v. O'Neill*, 105 Md. App. 112, 120 (1995). Indeed, we have made it clear that "the [trial] court's jurisdiction over the support of a child and the protection of the child's best interests extends only during the child's minority." *Id.*

Mother also cites *In re Darren M.*, 358 Md. 104 (2000). In that case, the Court of Appeals held that a *nolle prosequi* entered in a criminal case in district court did not bar the State from bringing subsequent charges in a juvenile court because the district court never acquired jurisdiction. *Id.* at 112-13. Curiously, Mother erroneously cites *In re Darren M.* as the source of the following statement:

> In many circumstances, once a court lawfully acquires jurisdiction over a case, that jurisdiction may continue despite subsequent events, even though those events would have prevented jurisdiction from attaching in the first place.

This passage is actually taken from *Thompson v. State*, 278 Md. 41, 48 (1976), a drunk driving case.[5] We need not go into the details of either *In re Darren M.* or *Thompson* because the circumstances, procedural postures, and statutes involved are very different from those in the present case. As we have explained, Maryland courts have declined to apply the principle of "continuing jurisdiction" in matters of child support. It is not enough, therefore, for Mother to invoke the general principle. Mother has failed to advance a single case supporting the retention of jurisdiction over a child custody dispute after the child in question turns twenty-one.

Although Mother did not cite *Kramer v. Kramer*, 26 Md. App. 620 (1975), that case is worth mentioning as an example of "continuing jurisdiction" in the context of a child support agreement. In *Kramer*, we held that an equity court had retained jurisdiction over a child support agreement even though the child was no longer a minor at the time of the award. *Id.* at 625. Our holding in *Kramer*, however, was very much rooted in the unusual circumstances of that case. When the divorce proceedings in *Kramer* were initiated, the age of majority was twenty-one years. *Id.* at 634. Shortly after the complaint was filed, the age of majority was lowered to eighteen years. *Id.* In holding that the circuit court had jurisdiction, we noted that the legislative act contained an exemption clause for "any event or happening" prior to the effective date. *Id.* at 635-36. More importantly, *Kramer* was

[5] In *Thompson*, the Court of Appeals held that the circuit court retained jurisdiction over criminal charges arises from a drunk driving incident even though the State subsequently dropped the charge that originally triggered the circuit court's jurisdiction. *Supra*, 278 Md. at 46-48.

decided before *Corry* and *Brodsky* drew a firm jurisdictional line at the age of majority in matters of child support.

B. The Circuit Court Cannot Determine Mother's Custody Rights Nunc Pro Tunc.

Contrary to Mother's assertions, we cannot simply order a *nunc pro tunc* determination of Mother's custody rights. As Mother acknowledges, "the purpose of a *nunc pro tunc* entry is to correct a clerical error or omission as opposed to a judicial error or omission." *State v. Johnson*, 228 Md. App. 489, 512 (2016), *cert. granted*, 449 Md. 410 (2016), *and aff'd*, 452 Md. 702 (2017), *cert. denied*, 138 S. Ct. 207 (2017). Here, Mother is not seeking a correction of a clerical error, but a reversal of the circuit court's judgment on the grounds that the court abused its discretion.

To be sure, in *Martinez v. Sanchez*, No. 61, Sept. Term 2017, we vacated a trial court's SIJ Status findings and ordered the court to enter a revised order *nunc pro tunc*. In that case, however, the trial court had already granted sole custody to one parent and found that the child was eligible for SIJ Status. Slip op. at 4-5. The trial court's only error was that it struck out the "particular supporting factual findings" in its order, apparently in the belief that conclusory findings would suffice. *Id.* at 9. Although the trial court's mistake was not, strictly speaking, a clerical error, on remand the court could rely on the factual findings and legal conclusions that it had already made in order to correct its error *nunc pro tunc*. The trial court was not required to make findings where no findings were made, or to grant custody where no custody was granted. Here, by contrast, the circuit court would have to reach entirely different legal conclusions in order to grant Mother the relief

that she is requesting. Such a proceeding would be much closer to a correction of judicial error than the proceeding in *Martinez*. Furthermore, there was no jurisdictional issue in *Martinez* because the child in that case was still under the age of twenty-one.

Mother cites *In re Miles*, 269 Md. 649 (1973), for the proposition that "courts of equity have authority to grant nunc pro tunc relief to avoid impairing system [sic] of justice." What *In re Miles* shows, however, is that even if *nunc pro tunc* relief were available in the present case, it would not allow Mother to circumvent the circuit court's lack of jurisdiction. In *In re Miles*, four juveniles were tried and convicted at the age of seventeen in the Circuit Court of Baltimore City. *Id.* at 651. At the time, the age limit for the Baltimore City juvenile court was sixteen years, whereas the age limit for other juvenile courts in Maryland was eighteen years. *Id.* at 652. In 1971, the age disparity was declared unconstitutional; subsequently, the Court of Appeals held that a hearing to waive juvenile court jurisdiction was required for any defendant who had been convicted under the age disparity. *Id.* at 652-54. The convictions of the four juveniles were vacated, and their cases were remanded to the juvenile court for a waiver hearing. *Id.* at 654. By that time, however, the juveniles had reached the age of twenty-one, placing them beyond the jurisdiction of the juvenile court. *Id.* Nevertheless, the juvenile court proceeded with waiver hearings for two of the defendants. *Id.*

On appeal, the defendants argued that the juvenile court had no jurisdiction over them. *In re Miles*, *supra*, 269 Md. at 654. Without jurisdiction, they argued, the juvenile court could not hold the waiver hearings that would allow the cases to be transferred to a

non-juvenile court. *Id.* Thus, the defendants argued, they could not be re-tried for their crimes in any court. *Id.* The Court of Appeals disagreed, observing that "[s]ociety has a fundamental right to have transgressors stand before the bar of justice upon the merits of the cause." *Id.* at 655. Although the juvenile court lacked jurisdiction, the Court of Appeals noted that "the courts of equity of this state are well equipped to resolve the question whether waiver would have been appropriate when the hearing would ordinarily have taken place if the appellees had been brought before the Juvenile Court in the first place." *Id.* Accordingly, the Court of Appeals remanded the case to an equity court "in order that the chancellor may determine whether waivers should or should not have been ordered." *Id.* at 657.

Mother's reliance on *In re Miles* is misplaced. Far from using *nunc pro tunc* proceedings to circumvent a jurisdictional problem, the Court of Appeals explicitly declined to remand the appellants' cases to the juvenile court. *In re Miles*, *supra*, 269 Md. at 654-55. Instead, the Court of Appeals found it necessary to identify a court that could properly exercise jurisdiction over adult defendants. *Id.* at 655-57. Consequently, even if *nunc pro tunc* proceedings were allowed in the present case, such proceedings could only be entertained by a court of competent jurisdiction.[6] As we have discussed *supra*, an equity

[6] Additionally, the holding in *In re Miles* is quite narrow and fact-specific. *Nunc pro tunc* hearings were necessary in *In re Miles* because the original juvenile criminal convictions had been vacated due to the retroactive effect of *Long v. Robinson*, 316 F. Supp. 22, 24 (D. Md. 1970), *aff'd*, 436 F.2d 1116 (4th Cir. 1971). *In re Miles*, *supra*, 269 Md. at 652. Indeed, the Court of Appeals called the circumstances "odd." *Id.* at 658. We are not persuaded, therefore, that the unusual exercise of *nunc pro tunc* authority in *In re*

court cannot exercise jurisdiction to award custody of Daughter to Mother because Daughter is no longer a child under Fam. Law § 1-201. We cannot, therefore, remand the case for a *nunc pro tunc* determination of Mother's custody rights.[7]

Because the circuit court would not be able to exercise jurisdiction over Mother's case on remand, we hold that Mother's appeal is moot. "A case is moot when there is 'no longer an existing controversy when the case comes before the Court or when there is no longer an effective remedy the Court could grant.'" *State v. Dixon*, 230 Md. App. 273, 277 (2016) (quoting *Suter v. Stuckey*, 402 Md. 211, 219-20 (2007)). Appellate courts "do not sit to give opinions on abstract propositions or moot questions, and appeals which present nothing else for decision are dismissed as a matter of course." *La Valle v. La Valle*, 432 Md. 343, 351-52 (2013) (citing *State v. Ficker*, 266 Md. 500, 506-07 (1972)); *see also Dixon*, *supra*, 230 Md. App. at 277 ("As a general rule, courts do not entertain moot controversies."). For the reasons we have discussed *supra*, any opinion we might advance

Miles is applicable to a custody proceeding or request for SIJ Status findings in a court of equity.

[7] We are also not convinced that a *nunc pro tunc* proceeding under these circumstances would constitute a substantive custody placement as required by federal law. One of the predicate findings for SIJ Status is that "[t]he juvenile is dependent on the court or has been placed under the custody of an agency or an individual appointed by the court." *In re Dany G.*, *supra*, 223 Md. App. at 714-15. Unlike the other predicate findings, this is not merely a finding of fact; it requires the court to make a substantive judgment with regard to dependency or custody. A *nunc pro tunc* custody determination for a twenty-one year old, however, would only have force on paper. It would not actually alter the parental rights or obligations of the parties. Although the Administrative Appeals Office accepted *nunc pro tunc* findings in *Matter of F-N-T-M*, 2017 WL 3034841 (AAO 2017), the trial court in that case had already made a dependency determination before the child turned 21, and the *nunc pro tunc* order merely added factual detail to the original findings.

as to the circuit court's decision in this matter would be purely advisory. We, therefore, dismiss Mother's appeal for mootness.[8]

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

[8] We understand that Daughter passed a credible fear interview upon entry to the U.S. and that her petition for asylum is pending before an Immigration Judge. Nothing in our opinion should be construed to prejudice Daughter in that proceeding or any other proceeding under state or federal law. Indeed, based on our reading of the record, we would conclude that Daughter came to the U.S. to preserve her life and would likely be killed or severely injured if she were returned to El Salvador.

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In circumstances where "the Juvenile Court may be powerless to act … [t]here is nothing new about the notion that such a determination can be made by a court [of equity] untrammeled by the jurisdictional limitations hedging about the Juvenile Court." *In re Miles*, 269 Md. 649, 655 (1973). Because I would remand this case to the circuit court, sitting in equity, to make the findings the juvenile court should have made the first time around, I dissent.

I begin with some background information that I view as necessary to fully understand the issue in the present case. As a prerequisite for SIJ status, a state juvenile court must make five specific findings and issue a predicate order stating whether the child is eligible for the special status. 8 U.S.C. § 1101(a)(27)(J); *Simbaina v. Bunay*, 221 Md. App. 440, 455 (2015); *In re Dany G*, 223 Md. App. 707, 713-14 (2015). Because the federal government has plenary power over immigration, the state court's findings are advisory and assist the federal government in determining the immigration status of the applicant. *Simbaina*, 221 Md. App. at 451-52 (discussing the role of state courts in SIJ proceedings as nonjudicial and noting that "the federal statute directs the circuit court to enter factual findings that are advisory to a federal agency determination"). To apply for SIJ status, the applicant must include the state court's predicate order with his or her application to USCIS. *In re Dany G*, 223 Md. App. at 715. The required findings are:

> (1) The juvenile is under the age of 21 and is unmarried;
>
> (2) The juvenile is dependent on the court or has been placed under the custody of an agency or an individual appointed by the court;

> (3) The 'juvenile court' has jurisdiction under state law to make judicial determinations about the custody and care of juveniles;
>
> (4) That reunification with one or both of the juvenile's parents is not viable due to abuse, neglect, or abandonment or a similar basis under State law;
>
> (5) It is not in the 'best interest' of the juvenile to be returned to his parents' previous country of nationality or country of last habitual residence …

Id. at 714-15 (quoting 8 C.F.R. § 204.11(a)-(d)). In the event that the applicant is over the age of 18, the circuit court makes the findings retrospectively, "based upon events occurring before the child was 18 years old." *Id.* at 716. The federal government specifically delegated the power to make these factual findings to state courts, and "it is incumbent on the circuit court to make its own independent factual findings regarding whether [a child] fulfills the requirements." *Simbaina*, 221 Md. App. at 459. Thus, when a request for preliminary findings is properly before the circuit court, the court is required to make specific rulings as to the child's eligibility for SIJ status. *Id.*; *Martinez v. Sanchez*, __ Md. App. __, No. 61, Sept. Term 2017, slip op. at 9 (2018) (holding that specific factual findings are necessary, vacating, and remanding with instructions to enter a revised order *nunc pro tunc* to the date of the original order).

That is not what happened here. Mother properly filed a complaint for custody in the circuit court and requested that the court find that Daughter was eligible for SIJ status.[9]

[9] Though requests for SIJ findings often arise in the context of a complaint for child custody, "the federal statute places no restriction on what is an appropriate proceeding"

At the time Mother filed the request and at the time of the hearing, Daughter was under the age of 21. Both Mother and Daughter testified that Daughter had not had contact with or received support from Father since Father left Daughter when she was two years old. Mother also presented evidence that if Daughter returned to El Salvador, her life would be in danger. Prior to ruling, the circuit court summarized the testimony and evidence provided by the parties, all of which supported a determination that Father abandoned Daughter at a young age, and expressly acknowledged that "the testimony is that the father was not involved in her – minor child's life." The circuit court, inexplicably reversing course, then tersely denied the request for SIJ status in an oral ruling. Stunned by the sudden reversal (and perhaps thinking he had misheard), counsel asked the court to state the basis for its ruling (as required by law), but the court refused, stating "that's my ruling, Sir." Though the issue of Daughter's eligibility for SIJ status was properly before it, the circuit court failed to make the factual findings it was required to make under both state and federal law. 8 U.S.C. § 1101(a)(27)(J); *Simbaina*, 221 Md. App. at 455; *Martinez*, slip op. at 9.

I view the circuit court's inaction as reversible error. *Simbaina*, 221 Md. App. at 458-59 (reversing for failure to make the required findings and remanding with instructions that "the circuit court should evaluate [applicant's] request under the SIJ standards"). Congress has tasked state courts with an important role in the SIJ application process.

and requests for findings can arise in a variety of contexts. *Simbaina*, 221 Md. App. at 455-58. The majority frames the determination of custody as a prerequisite for obtaining SIJ status. I note that there is no prescribed order in which the court must make its findings. All that is required of the circuit court when a request for SIJ findings is properly before it is that it specifically rule on each of the five eligibility criteria. *Id.* at 457.

When, as here, the circuit court fails to appreciate that role and disregards its obligation to make the required factual findings when properly requested by an applicant, the circuit court not only harms the applicant, but also undermines federal immigration law. Perhaps most unfortunate though, is that the effect of the circuit court's error, at least in the majority's view, is to completely deprive Mother and Daughter of any relief.

I must emphasize that if the circuit court had complied with its obligation to make the specific findings bearing on Daughter's eligibility for SIJ status, no matter which way it came out, our review of this case would present no problem for the majority. They could review the findings and affirm or reverse. We would not face this jurisdictional conundrum.[10] It is only because the trial court did nothing and we must remand that this problem arises. The majority holds that because Daughter has now turned 21, on remand the juvenile court will no longer have jurisdiction to consider her eligibility for SIJ status. It reasons that because Daughter is no longer a "child," as defined by the Family Law Article § 1-201, the juvenile court would now be powerless to make a child custody determination (as it should have done in the first instance), and without a custody determination, Daughter cannot obtain SIJ status.

[10] We note that counsel for Mother represented to us that the proceedings in the federal system are not moot as provided by the "Transition Rule" in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, which provides "an alien … may not be denied special immigrant status … based on age if the alien was a child on the date on which the alien applied for such status." 8 U.S.C. § 1232(d)(6). Thus because the application for SIJ status was filed before Daughter turned 21, she remains eligible in the federal system.

I cannot agree with the majority that in this situation, where Mother fully complied with the application requirements for SIJ status, that the circuit court's failure to make the requisite findings must deprive Mother of the remedy she properly sought. Thus, while I agree with the majority that the juvenile court can no longer exercise jurisdiction over Daughter for the purposes of making a child custody determination, I disagree that this necessitates dismissal of the appeal. Instead, I would hold that the circuit court sitting in equity would have competent jurisdiction to make the necessary findings regarding Daughter's SIJ eligibility. Therefore, instead of remanding the case to the juvenile court, which no longer has jurisdiction, I would remand to the circuit court sitting in equity to make the findings that the juvenile court should have made when the case was properly before it to begin with.[11]

I base my conclusion primarily on the fact that, in Maryland, courts of equity have broad jurisdiction to fashion remedies when justice requires it. *In re Heilig*, 372 Md. 692, 713 (2003). Historically, the jurisdiction of equity courts "grew out of the necessity of granting relief in cases where the rigidity of legal rules worked an injustice, or the limited remedies of the common law were inadequate." *Boyle v. Maryland State Fair, Inc.*, 150 Md. 333, 345 (1926) (discussing the "considerable discretion" afforded to a court of equity to weigh the conflicting interests and rule in favor of the party with the better equity).

[11] Family Law Section 1-201 lists some of the topics over which an equity court has jurisdiction. This list is not exhaustive and there are many traditional equity proceedings not listed. *See, e.g., Ver Brycke v. Ver Brycke*, 379 Md. 669, 697 (2004) (noting that "the parties' characterization of their claims does not determine equity jurisdiction; rather … equity jurisdiction is determined either by whether the parties' claims have historically sounded in equity or by the kind of remedy the parties sought.").

Maryland cases have particularly recognized the broad jurisdiction of equity courts to address novel issues in the interest of fairness and justice. *Manning v. Potomac Electric Power Co.*, 230 Md. 415, 422 (1953) (equity jurisdiction developed to grant relief when "the law courts could not, or would not, render a complete and adequate remedy"); *Heilig*, 372 Md. at 713 (recognizing that "[e]very just order or rule known to equity courts was born of some emergency, to meet some new conditions, and was, therefore, in its time, without a precedent" in holding that a circuit court has equity jurisdiction to consider an uncontested petition to change an individual's legal sexual identity).

In light of the case law establishing the broad scope of equity jurisdiction, I would hold that we could properly remand this case to the circuit court sitting in equity, rather than to the juvenile court, to make the factual findings bearing on Daughter's SIJ eligibility. This course of action is not without precedent. In fact, it is exactly what the Court of Appeals ordered in *In re Miles*, 269 Md. 649, 655 (1973). In *Miles*, when the Court concluded that remanding the case to a juvenile court to conduct a waiver hearing was inappropriate because the defendants had turned 21, it further reasoned that "[i]t does not follow, because in these circumstances the Juvenile Court may be powerless to act, that other courts are similarly impotent." *Id.* As an alternative solution, the Court of Appeals ordered the case remanded to a court of equity to determine whether, at the time the waiver hearing should have taken place if the defendants were brought before the juvenile court, a waiver would have been granted. *Id.* Despite the fact that waiver hearings are committed to the jurisdiction of the juvenile court, the Court of Appeals stressed that "[t]here is nothing new about the notion that such a determination can be made by a court

untrammeled by the jurisdictional limitations hedging about the Juvenile Court." *Id.* (citing *Kent v. United States*, 383 U.S. 541 (1966)).

The majority reads *Miles* as a case about an unusual exercise of *nunc pro tunc* relief, and writes that its holding "quite narrow and fact-specific." Slip op. at 10 n.6. I disagree with this characterization. Although the Court of Appeals recognized the circumstances in *Miles* as odd, it did not include any language limiting the application of the holding to identical factual situations. *Miles*, 269 Md. at 658. Further, while I do not challenge the majority's reasoning that typically *nunc pro tunc* relief is used to correct a clerical error or mistake, slip op. at 8, I don't think *Miles* is so limited. In my view, the *Miles* Court exercised its discretion to provide a solution to a problem created the by legislature's lack of instructions for how to transition to a new system of waiver hearings for juvenile defendants. *Miles*, 169 Md. at 652-54. By remanding the case to an 'adult' equity court rather than the juvenile court, which lacked jurisdiction, the *Miles* Court fashioned an appropriate remedy as required by the novel circumstances involved in the case. The Court's conclusion that an equity court was "well equipped" to conduct a proceeding typically only held in the juvenile courts, to me, was not simply an unusual exercise of *nunc pro tunc* authority, but rather a necessary recognition that at times when technical rules create jurisdictional problems, a case may be remanded to a court of equity to make retroactive determinations necessary for the administration of justice.[12]

[12] *Miles* was decided before the circuit court consolidation in Baltimore City, when five separate courts of unique jurisdiction made up the Supreme Bench of Baltimore City, each with its own judges. *See* HISTORIES OF THE BENCH & BAR OF BALTIMORE CITY 37

I read the Court's holding in *Miles* as indicative of equity's broad jurisdiction and thus, in my view, we can apply the same remedy to the present case that the Court of Appeals applied in *Miles*. Both situations involve proceedings typically committed to the exclusive jurisdiction of the juvenile courts: a waiver hearing in *Miles*, and a custody hearing with request for SIJ findings in the present case. In both cases, the individual requiring a hearing under the jurisdiction of the juvenile court turned 21 before the case was heard on appeal. In *Miles*, the Court relied on equity's jurisdiction to solve a problem created by the legislature. Here, we face an even greater responsibility to fix a problem that the court system has itself created by failing to perform its duties as required by law. Because the *Miles* Court held that a court of equity was "well equipped to resolve the question whether waiver would have been appropriate when the hearing would ordinarily have taken place," I would hold that a court of equity is similarly well equipped to determine whether Daughter is eligible for SIJ status, as the juvenile court should have determined when the hearing first took place. *Miles*, 269 Md. at 655.

I, therefore, dissent.

(John Carroll Byrnes ed., 1997). Thus, at that time, *Miles*' relief was quite extraordinary: it assigned a task only performed by juvenile judges in the juvenile court to an "adult" equity judge in "adult" equity court, who had, presumably, never conducted such a proceeding. *Miles*, 269 Md. 655-57. The relief I propose here is less extraordinary now, as all circuit court judges rotate among docket assignments and preside over juvenile, equity, and common law cases. Md. Code Cts. & Jud. Proc. ("CJ") § 1-501; CJ § 3-8A-03; CJ § 3-803. Thus, there would be less concern here than there was in *Miles* about assigning this specialized task to a circuit court sitting in equity, given that we may assume that modern circuit court judges have at least some familiarity with all types of proceedings.