

Circuit Court for Cecil County
Case No. C-07-JV-24-000010

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 999

September Term, 2024

In Re: Z.J.

Graeff,
Tang,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: January 21, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

Z.J., the minor child of S.J. (“Mother”) and R.J. (“Father”), was found, by the Circuit Court for Cecil County, sitting as the juvenile court, not to be a Child in Need of Assistance (“CINA”). As a result, the court placed the child in the care and custody of Mother. Father appealed and raises a single question, which we have slightly rephrased for clarity:

Did the juvenile court err or abuse its discretion when it denied Father’s request to postpone the adjudication and disposition hearing to obtain counsel?

For the reasons that follow, we hold that the juvenile court did not err or abuse its discretion in denying Father’s request for a postponement and proceeding to adjudication and disposition with Father unrepresented by counsel. Accordingly, we affirm.

I.

BACKGROUND

On February 8, 2024, the Cecil County Department of Social Services (the “Department”) removed Z.J. from Father’s custody. The following day, February 9, the juvenile court issued an order sustaining the finding that it was contrary to the child’s welfare for him to remain in Father’s home. According to the order, this decision was made because Father had left the hospital where the child, who was seven years old at the time, was being treated for a fractured arm. As a result, the child’s necessary medical care was delayed.

The court continued the child in shelter care¹ and scheduled the adjudication and disposition hearing for March 19.²

Juvenile Petition & Summons

On March 13, the Department filed a juvenile petition, requesting that the court find that the child was in need of assistance, that he had been neglected, and that his parents were unable or unwilling to give proper care and attention to the child and his needs. The petition included a “Notice of Right of Counsel” advising the parents of the following:

You are advised of the right to be represented by counsel at any hearing in this matter; you are also advised that upon showing of financial inability to employ counsel, an attorney may be appointed for you in certain cases. **Call the CINA Division of the Public Defender’s Office at (410) 996-2850.**

The court issued a summons requiring the parents to appear at the adjudication and disposition hearing scheduled for March 19. The court advised the parents that a postponement of the hearing would not be granted if they failed to contact an attorney to represent them:

You may hire a lawyer to represent you. If you do so, be sure to show this summons to the lawyer. If you cannot afford a lawyer, promptly contact the Office of the Public Defender. A postponement will NOT be granted because you fail to contact a lawyer.

¹ Mother indicated that she was not able to care for the child at the time. Later, on June 7, the Department placed the child with Mother pending adjudication.

² CINA cases proceed in two phases. *In re T.K.*, 480 Md. 122, 135 (2022). “First, the juvenile court holds an adjudicatory hearing ‘to determine whether the allegations in the [CINA] petition, other than the allegation that the child requires the court’s intervention, are true.’” *Id.* (alteration in original) (quoting Md. Code Ann., Cts. & Jud. Proc. (“CJP”) § 3-801(c)). “Second, unless the CINA petition is dismissed, the court must ‘hold a separate disposition hearing . . . to determine whether the child is [in need of assistance].’” *Id.* (alteration in original) (quoting CJP § 3-819(a)(1)).

Postponement of the March 19 Hearing

On March 19, the parents appeared at the adjudication hearing without counsel. The Department stated that the parents had been served with the juvenile petition and summons that day. Father requested a continuance to obtain counsel. The court advised the parents of their right to legal representation and asked if they wished to hire a lawyer by applying to the Office of the Public Defender or by obtaining private counsel. Father expressed his desire to hire private counsel, while Mother indicated that she might consider seeking legal representation. The court found good cause to postpone the hearing to allow the parents time to secure counsel, whether through private representation or by applying to the Office of the Public Defender. The court then rescheduled the hearing for April 16 and continued the child in shelter care.

Postponement of the April 16 Hearing

By April 16, an attorney from the Office of the Public Defender had entered his appearance on Mother's behalf. Since the attorney had just met Mother on the morning of April 16 and only entered his appearance a few days prior, Mother requested a continuance. The court found good cause to grant the postponement, rescheduled the hearing for June 20, and continued the child in shelter care. Father did not attend the hearing on April 16.

June 20 Hearing & Denial of Father's Postponement Request

On June 20, Mother, her attorney, and the child's attorney appeared at the adjudication hearing, while Father appeared without counsel. The attorney for the Department was delayed in traffic and had not yet arrived. While waiting for the attorney's

arrival, the court sought to “get things lined up” so that when the attorney for the Department was present, they could address Father’s appearance without counsel.

The court asked Father if he intended to proceed with the hearing without an attorney. Initially, he indicated that he would, but then he expressed a desire to have legal representation. The court inquired what steps Father had taken to secure an attorney for the hearing. Father, who had stated earlier that he was “homeless,” replied, “I’ve actually been trying, but I’ve actually been busy doing a lot of other things at the same time.” Although he currently had a phone, he indicated that at some point, he had lost his phone and “didn’t have a current number to give them so they [could] contact me.” He further explained that he had a court date in another matter two days prior and experienced the same issue.

The court inquired about representation by the Office of the Public Defender. The attorney representing Mother, who worked at that office, explained that Father would need to apply for representation. The attorney noted that since a public defender was already assigned to represent Mother in this case, the office would need to find a panel attorney to represent Father, which could not be done that day. Anticipating Father’s postponement request, Mother objected to any postponement of the hearing, and the child’s attorney noted that the hearing had already been postponed numerous times.

Since the court was waiting for the Department’s attorney to arrive, it asked Mother’s counsel to find out the process for appointing a panel attorney for Father. The court indicated it would assess how the parties wanted to proceed and hear any objections to any postponement requests once the Department’s attorney arrived.

When the attorney for the Department arrived, the attorney indicated that the parties could not get the case “worked out.” The attorney stated that Father had a “preliminary motion,” which the court and other parties understood to be a request to postpone the hearing. The Department opposed the request, arguing that Father was previously informed of his right to counsel and had ample time to apply to the Office of the Public Defender. Additionally, the attorney believed Father had not yet applied to the Public Defender’s Office. Counsel for the child also opposed the postponement request, expressing concerns that the child should not have to remain in the care of the Department any longer than necessary, especially since the hearing was already postponed twice. Mother also opposed the postponement request, asserting that Father was already advised of his right to counsel when the child was removed from his care over four months prior.

Father explained that he had not secured a lawyer because he had been “going through a lot on my own, by myself, with no help, asking and seeking for help, but I keep getting turned down because of the situation I went through that got my son taken out.”

The court asked if Father had formally applied to the Office of the Public Defender. Father responded that he had. He said he was told that, since Mother already had representation from the office, the office “couldn’t find me one at the moment. And when I called today, the lady said, if I can ask for a postponement, she will find somebody for the next” hearing.

When asked about his last visit to the Office of the Public Defender, Father stated that he had been there the previous week because he had a court date for an unrelated case two days prior. He said that he obtained representation for that hearing and that the office

“was going to call me back to see if I was going to get one for today. But I never got a phone call.”

After hearing from the parties, the court denied Father’s postponement request. It explained:

[I]f the public defender is representing one of the parties, they got a panel that represented you out. . . . [T]his is the third time around, if I’ve got it right. You were advised a number of times to get a lawyer. It doesn’t sound like you’re a rookie in terms of applying to the public defender. I find you do not have [a] meritorious reason why you don’t have an attorney here today, so this hearing’s going to go forward today.

* * *

I just find you have no meritorious reason, after three times, you’re not a rookie, you know, et cetera, et cetera. I understand you have [sic] difficult situation with apparently homelessness and ability to contact and get around et cetera, . . . there comes a point where . . . other people’s interests are more important, particularly this child’s interest as to what the disposition ought to be, if any.

The court proceeded with the adjudication and disposition hearing, a summary of which is not necessary. Father chose not to give an opening statement and declined to testify, but he cross-examined witnesses. After a recess, Father did not return, as he had to go to work. Ultimately, the court found that Father neglected the child, determined that the child was not in need of assistance, and granted Mother sole legal and physical custody of the child. *See* CJP § 3-819(e) (“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.”).

II.

DISCUSSION

A.

Parties' Contentions

Father argues that the juvenile court erred by refusing to grant him a postponement to obtain counsel. He points out that Maryland statutory law entitles a party in a CINA case to assistance from an attorney and entitles an indigent party to assistance from the Office of the Public Defender.³ *See* CJP § 3-813; Md. Code Ann., Crim. Proc. (“CP”) § 16-204(b)(1)(v) (2008, 2018 Repl. Vol.). Furthermore, Father explains that a CINA case implicates a parent’s fundamental and due process rights. Therefore, he claims that denying his request for a postponement to secure such legal representation violated his due process rights.⁴

The Department argues that the court did not abuse its discretion in denying Father’s postponement request and that the court’s ruling comported with the right to due process.

³ No one disputes that Father was entitled to representation by the Office of the Public Defender.

⁴ Although Father filed an appendix with his brief, his statement of facts and references to the record in the argument section of his brief do not contain citations to any part of the appendix (or pages of the record, or transcripts contained in the record) as required under Maryland Rule 8-504(a)(4). It is not the role of an appellate court to dig through the record to find evidence in support of a litigant’s factual assertions. *See, e.g., Rollins v. Cap. Plaza Assocs., L.P.*, 181 Md. App. 188, 201–02 (2008). “[T]he Maryland Rules ‘are not guides to the practice of law but precise rubrics established to promote the orderly and efficient administration of justice and . . . are to be read and followed.’” *Id.* at 197 (alteration in original) (citations omitted). Nonetheless, we exercise our discretion to address Father’s arguments.

Mother contends that Father lacked meritorious reasons for not securing an attorney before the June hearing, thereby waiving his right to counsel due to his inaction. Additionally, she asserts that the court did not abuse its discretion in denying Father’s postponement request. The child adopts the Department’s and Mother’s positions.

B.

Analysis

“A CINA case is a civil proceeding.” *In re Ashley E.*, 158 Md. App. 144, 164 (2004). A parent is entitled to due process in a CINA proceeding because a CINA case may alter the parent-child relationship. *In re Alijah Q.*, 195 Md. App. 491, 523 (2010). The enactment of CJP § 3-813, which provides for the right to counsel in CINA proceedings, underscores the importance of the right to counsel in these cases by making the right available to indigent persons through the Office of the Public Defender. *Alijah Q.*, 195 Md. App. at 519 (citing CP § 16-204(b)(1)(v), which states that the Office of the Public Defender shall provide representation for indigent parties in “a proceeding involving children in need of assistance under § 3-813 of the Courts Article”).

While this statutory right deserves protection, it is not necessarily the equivalent of a constitutional right. *Id.* The due process afforded to a parent in a CINA proceeding is “less than that owed a parent at a [termination-of-parental-rights] hearing,” where the State seeks to sever the parent-child relationship permanently. *In re Blessen H.*, 163 Md. App. 1, 16, 18 (2005). This level of due process is also “less than that owed an individual who faces the loss of personal liberty,” such as a criminal defendant, probationer, or an alleged juvenile delinquent. *Id.* at 17–18. Furthermore, a parent’s right “must be balanced against

the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect.” *In re Adoption of Ta’Niya C.*, 417 Md. 90, 103 (2010) (citation omitted).

We hold that Father was afforded the requisite due process. In March 2024, Father was informed in writing of his right to counsel through the juvenile petition served on him, and he was also notified in person during the hearing on March 19. The court postponed the adjudication hearing initially scheduled for that date to give Father time to obtain legal representation. The hearing was again postponed at the rescheduled hearing on April 16 at Mother’s request. The further postponement to June 20 gave Father more time to secure counsel.

Father explained that he did not have legal representation because he had been “busy doing a lot of other things at the same time.” Despite being “busy,” homeless, and without a phone at one point, Father managed to obtain representation from the Office of the Public Defender for an unrelated matter and visited that office a week before the June hearing for that case. Although he stated he had applied for representation for the CINA case, Father’s other comments suggested that he did not follow up or prioritize obtaining counsel until about a week before, and again on the morning of, the June hearing.

Although Father’s rights are important and should be preserved, these rights are not considered in isolation without regard to the child’s best interests. “A key purpose of the CINA law is to ‘achieve a *timely*, permanent placement for the child consistent with the child’s best interests[.]’” *In re Ashley S.*, 431 Md. 678, 712 (2013) (alteration in original) (emphasis added) (quoting CJP § 3-802(a)(7)). To that end, the CINA statute and the

Maryland Rules establish specific timelines for various stages of a CINA proceeding. Under Maryland Rule 11-213(b)(2)(A), an “adjudicatory hearing shall be commenced within 30 days after the date on which the court ordered continued shelter care.” “For good cause, the court may extend the time for the hearing for a period not to exceed an additional 30 days.” Md. Rule 11-213(b)(2)(B). Additionally, the disposition must occur either the same day as the adjudication or, if good cause for delay is shown, within thirty days of the adjudication. CJP § 3-819(a)(2)–(3). In other words, the statute contemplates the resolution of the initial phases of a CINA proceeding within ninety days of the court’s order continuing shelter care.

Here, the court ordered continued shelter care in February 2024. By June 20, the adjudication hearing had not yet occurred within the time prescribed by Rule 11-213(b)(2). If the court had granted another postponement, the adjudication would have been further delayed and resolution of the proceeding would have occurred far more than ninety days after the court ordered continued shelter care. In denying the request for postponement, the court acknowledged the need to balance Father’s rights with the child’s best interests regarding the appropriate disposition of the child’s placement. Neither the statutory right to counsel nor the principles of due process required postponing the adjudication and disposition hearing any further beyond the previously granted postponements to give Father additional time to obtain counsel under these circumstances.

We also hold that the court did not abuse its discretion in denying Father’s postponement request. As noted, a CINA case is a civil proceeding. Maryland Rule 2-508(a) governs requests for continuances in civil cases and provides: “On motion of any

party or on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require.” The decision of whether to grant a continuance is within the sound discretion of the trial court. *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006). “Abuse of discretion . . . has been said to occur where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles.” *Alexis v. State*, 437 Md. 457, 478 (2014) (alteration in original) (citation and internal quotation marks omitted).

As previously explained, Father was informed of his right to counsel in writing and in person. The court had already postponed the adjudication hearing twice, providing Father with over four months from the court’s order continuing shelter care to obtain legal representation. Father was not inexperienced in applying for representation with the Office of the Public Defender, as he had secured counsel for an unrelated matter. Moreover, Father’s reasons for not obtaining counsel in this case suggested that he had not focused on securing representation until about a week before the June hearing. For these reasons and those stated earlier, the juvenile court did not err or abuse its discretion in denying Father’s request to postpone the June 20 hearing and proceeding to adjudication and disposition with Father unrepresented by counsel.

**JUDGMENT OF THE CIRCUIT COURT
FOR CECIL COUNTY AFFIRMED. COSTS
TO BE PAID BY APPELLANT.**