Circuit Court for Cecil County
Case No. C-07-JV-22-000120

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2001

September Term, 2023

IN RE: J.R.

Wells, C.J.,
Shaw,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: August 26, 2024

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

Parents (Ms. C. or "Mother" and Mr. R. or "Father") separately appeal an order of the Circuit Court for Cecil County, sitting as a juvenile court, terminating their parental rights to their minor child, J.R. Mother raises a single question in her appeal, which we have slightly rephrased for clarity: Did the juvenile court abuse its discretion when it denied Mother's attorney's request for a postponement? Father raises two questions in his appeal, which we have slightly rephrased for clarity:

1. Did the juvenile court err in finding J.R. a child in need of assistance?
2. Did the Cecil County Department of Social Services make reasonable efforts to assist Father in reunification?

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

BACKGROUND FACTS

CINA[1] finding

J.R. was born on September 12, 2018, and is the biological child of Mother and Father. About a month after his birth, the Cecil County Department of Social Services ("CCDSS") received a referral and opened an investigation concerning medical neglect of J.R. After several home visits by the CCDSS that raised concerns of substance abuse, domestic violence, and inappropriate conditions of the home for a child, both parents signed a safety plan and agreed to drug testing. The CCDSS subsequently asked the parents to sign a second safety plan after, in violation of the first safety plan, Father failed his drug

[1] A "child in need of assistance" is "a child who requires court intervention because: (1) [t]he child has been abused, has been neglected . . . ; and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Md. Code Ann., Courts & Judicial Proceedings Article ("CJP") § 3-801(f). "CINA" is the acronym for "child in need of assistance." CJP § 3-801(g).

test and the parents admitted they were avoiding contact with the CCDSS. Only Mother signed the second safety plan, to which she agreed, among other things, that she would reside at a stated residence, Father was not to have unsupervised contact with child, and Mother was to contact the CCDSS "if [J.R.] will be residing anywhere other than [the stated residence]."

About a month later, workers from the CCDSS visited Mother and observed Mother with a black eye and J.R. not in her care. It was subsequently learned that two weeks earlier, Mother had left J.R. with her step-brother and wife in Pennsylvania. Due to new concerns about the parents' substance abuse and domestic violence, and because of the violation of the second safety plan, the CCDSS removed J.R. from Mother's care, immediately placed him in shelter care, and filed a petition for continuation of shelter care and a CINA petition.

On December 21, 2018, the parents and their attorneys were present at the shelter care hearing.[2] The parents signed an order controlling conduct ("OCC"), after which J.R. was placed in Mother's sole care pending a CINA hearing.

About two weeks later, on January 9, 2019, the CCDSS removed J.R. from Mother's care and placed him with a foster family (where he has remained to this day) because both parents had violated the OCC. Among other things, Mother and J.R. spent the night at a hotel with Father, and Mother placed child in the care of a woman, whom Mother did not know her last name, address, or phone number.

[2] The parents have appeared with their respective counsel at all hearings, except where noted.

On January 15, 2019, the court began a CINA hearing that, after multiple postponements for good cause, was concluded on May 7, 2019.[3] On that day, the court ruled that J.R. was Father's biological child; sustained the CINA allegations that the parents had repeatedly violated the safety plans and the OCC by a preponderance of the evidence; and found J.R. to be a CINA due to neglect. The court ordered J.R. to be placed in the custody of the CCDSS, set the permanency plan for reunification, and ordered parents to participate in treatment/counseling services, including drug and alcohol, psychological, parenting, and domestic violence evaluations.

Separately, the parents appealed the CINA determination. On appeal, we affirmed the juvenile court's finding that J.R. was a CINA due to the parents neglect which placed him at "a substantial risk of harm[.]" *See In re J.R.*, 246 Md. App. 707, 754, *cert. denied*, 471 Md. 272 (2020). However, we vacated and remanded the dispositional order to commit J.R. to CCDSS custody based on a procedural defect – the juvenile court did not hold a "separate" adjudication and dispositional hearing as required by statute. *Id*. at 756-57. *See* CJP § 3-801(f)(2) and (m)(2).

On remand, the juvenile court held a separate disposition hearing in January 2022. Finding J.R. to be a CINA and both parents unwilling or unable to care for J.R., the court

[3] Part of the reason for the postponements was to determine paternity of J.R., as it was learned Mother was married to another man, R.C., when she gave birth to J.R. This gave rise to the marital presumption that R.C. was J.R.'s father. The presumption was eventually rebutted by DNA genetic testing that revealed that there was a ninety-nine percent probability that J.R. was Father's biological child.

committed J.R. to the custody of the CCDSS, who continued his placement in his foster care home. Supervised visitation was granted to both parents.

Change of permanency plan from reunification to termination of parental rights and adoption

Between April and August 2022, several legal events occurred: the juvenile court held an uncontested guardianship review hearing; Father filed a pro se appeal that we dismissed as untimely; the CCDSS held a family team decision meeting; and Father requested and was granted two postponements of a permanency plan review hearing.

On September 20, 2022, the court held a permanency plan review hearing. No party objected to the facts set forth in the CCDSS report, which requested a change of permanency plan from reunification to adoption by, or custody and guardianship by, a non-relative. The court granted the CCDSS's requested change. The CCDSS subsequently filed a petition for guardianship with the right to consent to adoption or long-term care short of adoption, which, if granted, would terminate the parental rights ("TPR") of Mother and Father (the "TPR Petition"). Each parent separately filed an objection to the petition.

The guardianship proceeding was postponed twice at Father's request and proceeded to trial on October 25 and 26, 2023. Neither parent appeared at the hearing, but both of their attorneys were present. The court heard testimony from J.R.'s foster care worker, who has been involved in his case since December 2018, and J.R.'s foster mother. After taking evidence and hearing the parties' arguments, the court issued an oral opinion from the bench and a subsequent written order and accompanying opinion granting the TPR petition. The court found both parents "unfit to care for" J.R., and that "extraordinary

circumstances exist that would make continuation of the parental relationship with either parent . . . detrimental to the best interest of the child[.]" Both parents separately appealed the juvenile court's TPR ruling.

We shall provide additional facts where necessary to address the questions raised.

Standard of review

We apply "three different levels of review" to a juvenile court's findings in a CINA proceeding. *In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 733 (2014). We apply the clearly erroneous standard to factual findings; reviewing matters of law for error, unless the error is harmless; and apply the abuse of discretion standard to the juvenile court's ultimate conclusion. *In re Ashley S.*, 431 Md. 678, 704 (2013) (citing *In re Yve S.,* 373 Md. 551, 586 (2003)). An abuse of discretion occurs where "'the decision under consideration [is] well removed from any center mark imagined by the reviewing court[.]'" *In re Shirley B.*, 419 Md. 1, 19 (2011) (quoting *In re Yve S.*, 373 Md. at 583-84). We are mindful that "'[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.'" *Id*. (quoting *In re Yve S.*, 373 Md. at 583-84).

DISCUSSION

Mother's Appeal

Mother raises a single argument on appeal, that the juvenile court abused its discretion when it denied her attorney's request for a postponement of the TPR hearing because Mother was not present. Mother argues that the court abused its discretion

because: 1) Mother's counsel was "forced to proceed in a contested posture without knowing [M]other's position"; 2) Mother now has "an involuntary termination" of her parental rights on her record; and 3) the denial was not in J.R.'s best interest because he lost "the protection afforded by a post-adoption contact agreement that would enable him to retain ties" with Mother in the future. Both the CCDSS and J.R.'s attorney respond that the juvenile court did not abuse its discretion in denying Mother's request for a postponement.

CINA and TPR hearings are civil proceedings. *See In re Ashley E.*, 158 Md. App. 144, 164 (2004). Md. 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 whether to grant a continuance "is committed to the sound discretion of the [trial] court." *Abeokuto v. State*, 391 Md. 289, 329 (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) (quotation marks and citation omitted). The burden of demonstrating an abuse of discretion on a motion for a postponement is on the party challenging the ruling. *State v. Taylor*, 431 Md. 615, 646 (2013).

The Maryland Supreme Court has articulated three circumstances where an abuse of discretion may be found, when: 1) mandated by law, 2) "counsel was taken by surprise by an unforeseen event at trial, when he had acted diligently to prepare for trial," or 3) "in the face of an unforeseen event, counsel had acted with diligence to mitigate the effects of

the surprise[.]" *Touzeau v. Deffinbaugh*, 394 Md. 654, 669-70 (2006). Maryland's case law is "clear and consistent, that, even in contested adoption and TPR cases . . . the best interest of the child remains the ultimate governing standard." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 496 (2007).

The TPR hearing on October 25, 2023, began at 9:30 a.m., and although both parents' attorneys were present, neither parent was present. When asked by the court of their clients' whereabouts, Mother's attorney proffered that she had not had any contact with Mother "since April of this year." She related that she had just learned from Father that three weeks ago, he had taken Mother to the hospital because she was having trouble walking. Father's attorney proffered that she last spoken to Father "briefly" on October 3, but she did not know his whereabouts and did not know why he was not at the hearing. She proffered, "I have made the efforts [to contact Father] that I can make, and every effort that I could except for going to the last – his address." The court recessed to give the attorneys time to reach their clients.

When the court reconvened an hour later, neither Father's nor Mother's attorney had been able to reach their clients and they requested a postponement. Mother's attorney stated that Mother had made "contradictory statements in the past about fighting versus allowing the foster parents to adopt[.]" She advised that she had represented Mother for about two years, and Mother does not respond to "phone calls, letters, or text messages[and t]he only means that I have had of communicating with her is direct messages on Facebook." She added that she had advised Mother of the TPR trial date, but she had not heard anything from her. Although each parents' attorney asked for more time, they were

unable to proffer when they might have contact with their client. The CCDSS argued that the court should deny the postponement requests as both parents knew of the hearing date for over six months, since both were present at the review hearing on April 18th when the TPR hearing was scheduled.

The court stated that it was reviewing the postponement request through the lens of the best interest of the child. The court noted that the case has been going on for almost five years and that the child was five years old. The court noted the important goal of achieving permanency for the child and that no reason had been proffered as to why neither parent was present. The court added that its staff had checked the local detention center but neither parent was present. The court then denied the motions for postponement.

We find no error by the juvenile court. It considered the lack of Mother's proffer of an explanation for her absence and the length of time J.R. has been in foster care. The TPR hearing had already been postponed twice, and J.R. was five years old at the time of the hearing, having been in foster care since he was four months old. The primary basis for the postponement request was Mother's failure to communicate with her attorney for the last six months. Mother was aware of the TPR date for six months, and she was represented by counsel who defended the TPR objection Mother had filed, presenting evidence and argument against termination of Mother's parental rights. Under these circumstances, Mother's failure to communicate with her attorney for six months even though her attorney had repeatedly attempted to contact her across different channels of communication, without more, cannot be the justification for postponing a TPR hearing as it ran counter to J.R.'s best interest in permanency. *See In re Adoption of Jayden G.*, 433

Md. 50, 82 (2013) ("A critical factor in determining what is in the best interest of a child is the desire for permanency in the child's life."). Accordingly, we find no abuse of discretion by the juvenile court in denying Mother's request to postpone the TPR hearing.

Father's appeal

I.

Father first argues on appeal that the juvenile court erred in finding J.R. a CINA, asserting that Mother's violation of the OCC was an insufficient basis for a CINA finding, and no "real" neglect or abuse was documented, as there was no finding that J.R. was left in an unsafe or hazardous environment when Mother left him with her family in Pennsylvania. The CCDSS responds that Father has failed to preserve this argument for our review. Counsel for J.R. likewise responds that any arguments regarding J.R.'s status as a CINA are untimely and barred by res judicata because we considered and rejected these claims in our prior opinion. We agree that this argument is not properly before us.

As stated above, in 2020 we affirmed the juvenile court's finding that J.R. was a CINA because he was placed at "a substantial risk of harm" by the parents' neglect. We remanded, however, for the juvenile court to hold a separate dispositional hearing. *See In re J.R.*, 246 Md. App. at 754; Md. Rule 8-604(d)(1) ("The order of remand and the opinion upon which the order is based are conclusive as to the points decided."). On remand, the juvenile court held a separate disposition hearing. After again finding J.R. a CINA and that both parents were unable to care for him, the court committed J.R. to the CCDSS for foster care placement. *See* CJP §§ 3-801(f)(2) (setting forth the determinations to find a child a CINA) and (m)(2) (setting forth the determinations required in a disposition

hearing). Four months after the court's ruling, Father filed an appeal, which we dismissed as untimely, as the appeal was filed outside the thirty-day requirement for an appeal. *See* Md. Rule 8-202(a) (stating that "the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken"). Under the circumstances, the finding that J.R. was a CINA is not properly before us.

II.

Father next argues that the CCDSS made no "real effort to assist and facilitate any kind of bond" between himself and J.R. Father argues that the lack of a bond was due to the CCDSS: violating Father's parental rights by removing J.R. from his parents' care, failing to provide services to Father while he was incarcerated at the Cecil County Detention Center, and failing to ensure that Father was able to participate in a family making decision team meeting on June 2, 2022. The CCDSS and child's attorney argue that the juvenile court properly found that the Department made reasonable efforts toward reunification, but Father made little to no effort to participate in the services offered.

TPR law

A juvenile court may terminate parental rights at a guardianship proceeding if, after considering several factors, it finds by clear and convincing evidence "that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the rights of the parent is in a child's best interests[.]" Md. Code Ann., Family Law Article ("FL") § 5-323(b). In making its decision, the juvenile court "shall give primary consideration to the health and safety of the child and

consideration to all other factors needed to determine whether terminating a parent's rights is in the child's best interests," including:

> (1)(i) all services offered to the parent before the child's placement . . . ;
>
> (ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent;
>
> * * *
>
> (2) the results of the parent's effort to adjust the parent's circumstances, condition, or conduct to make it in the child's best interests for the child to be returned to the parent's home, including:
>
> (i) the extent to which the parent has maintained regular contact with:
>
> 1. the child;
>
> 2. the local department to which the child is committed; and
>
> 3. if feasible, the child's caregiver;
>
> * * *
>
> (3) whether:
>
> (i) the parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect; [and]
>
> * * *
>
> (4)(i) the child's emotional ties with and feelings toward the child's parents[.]

FL § 5-323(d).

Here, the juvenile court analyzed each of the above four statutory factors after taking evidence and hearing testimony from both the CCDSS's foster care worker, Ms. Dillard, and J.R.'s foster mother, Mrs. R., each of whom had been involved with J.R. since he was a few months old. As to the first factor, the court heard testimony from Ms. Dillard, who

testified that J.R.'s parents were offered services to help them safely care for J.R. but both parents repeatedly refused to participate. Specifically, she drafted service agreements that she personally presented to the parents that they refused to sign because "they didn't feel as though they needed them[.]" She provided the parents with access to a parenting education course that they never completed, psychological evaluations that they declined to schedule, substance abuse evaluations and drug screens, which they did not complete, and domestic violence and anger management courses, which she was unable to schedule because the parents did not maintain contact with the CCDSS. In its written order, the court specifically found that "each parent" was offered "visitation with the minor child[,]" referred to "parenting classes, mental health assessment and treatment, anger management classes, substance abuse treatment, housing and employment resources, and psychological evaluations" and that the efforts made by the CCDSS to engage and assist the parents "was reasonable under the circumstances."

As to the second factor, the juvenile court heard testimony from Ms. Dillard that, even though the parents refused to sign a written visitation agreement, supervised visitations began in May of 2019, at once a week for two hours. She testified that the parents participated in visitation sporadically, either arriving late and leaving early or cancelling. The parents participated in some virtual visits during COVID, but after October 2021, neither parent showed up for visitation. The court found that "[n]either parent cooperated with the [CCDSS] to any significant extent in an effort to adjust his or her circumstances." The court noted that neither parent availed themselves of any offered services, never signed any service agreements, did not enroll or complete any of the

programs offered by the CCDSS, did not maintain contact with the CCDSS, nor did they appear at the TPR hearing. The court stated that the most significant effort made by the parents was to visit the child but that visitations were "sporadic at best[,]" noting that Ms. Dillard testified that the parents attended 88 out of 139 scheduled visits and for most visits they were either late or left early.

As to the third factor, the juvenile court found that J.R. had been declared a CINA because he was not safely or consistently cared for in a safe environment, noting that he had been found with various caregivers at various locations without notice to the CCDSS and that the parents had repeatedly violated the terms of two safety plans and an OCC.

As to the fourth factor, the court considered the lack of emotional ties between J.R. and his parents. The court found that J.R. has been in foster care with Mr. and Mrs. R. for almost all of his life where he is comfortable and happy. Based on Ms. Dillard's and Mrs. R.'s unrebutted testimony, the court found that "[t]he relationship that the minor child has with his biological parents has diminished significantly due to the infrequent visits and the fact that he has been with his foster family for most of his life."

We reject Father's argument that the CCDSS caused the lack of bond between himself and J.R. As the juvenile court found, the CCDSS made many efforts to strengthen the bond between J.R. and his parents, neither of whom cooperated "to any significant extent in an effort to adjust his or her circumstances." We reject Father's contentions that the CCDSS failed to provide services while he was incarcerated and to ensure that he was able to participate in a family team decision meeting in June 2022. First, it is unclear from Father's brief when he was incarcerated – he states only that he was incarcerated for about

six months, from June 4, 2020, until November 30, 2020, and sometime thereafter his bail was revoked. According to Father, he did not attend the June 2022 family team meeting because the detention center's driver was in a training session. Father pointed to nothing in the record to bolster this claim, however.

J.R. is five years old and has been in foster care for most of his life. The fact that visitation was limited while Father was incarcerated for at least six months of those five years, and he did not attend the June 2022 meeting through no fault of the CCDSS, does not render the CCDSS's efforts to facilitate reunification inadequate. Under the circumstances, we find no abuse of discretion by the court in applying the four factors required before terminating Father's parental rights.

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