

Circuit Court for Montgomery County
Case No. C-15-JV-23-000361

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2037

September Term, 2023

IN RE: D.H.

Nazarian,
Ripken,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: September 9, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

After adjudication and disposition hearings, the Circuit Court for Montgomery County, sitting as juvenile court, declared D.H. a Child In Need of Assistance (“CINA”). D’s mother, S.H., (“Mother”) moved for a new CINA hearing without explaining why another hearing was warranted, and the court denied her motion. Mother appeals the denial and asserts now that her counsel failed to submit D’s medical records at the adjudication hearing to rebut the allegation of medical neglect. We affirm.

I. BACKGROUND

In August 2023, the Montgomery County Department of Health and Human Services (“Department”) initiated CINA proceedings in the juvenile court as to D, an eight-year-old child. Counsel represented Mother at adjudication and disposition hearings on October 2 and 4, 2023. In an Adjudication and Disposition Order entered on October 18 (“CINA Order”), the court found, among other things,¹ that Mother had never taken D to a pediatrician, and the court declared D a CINA.

Afterward, at Mother’s request, her attorney withdrew from the case as counsel of record. On November 7, 2023, Mother moved *pro se* for a new hearing using a court-prepared form. On the form, Mother wrote, “New trial be kindly granted,” but didn’t say why the motion should be granted, include exhibits with her motion, or ask for a hearing. The court denied Mother’s motion without a hearing on November 22.

¹ Failure to take D to a pediatrician was one of six findings the court made in the CINA Order.

On December 19, 2023, Mother appealed the court’s denial of her motion.² In her notice of appeal, Mother states that her former counsel failed to submit D’s medical records as evidence at the adjudication hearing. She claims that this failure led to an incorrect CINA declaration premised on medical negligence. Mother asks us to reverse the CINA declaration or to order a new hearing.

That same day, Mother also asked the juvenile court for a transcript of the adjudication hearing “for the purpose of appeal.” On February 8, 2024, the court approved Mother’s motion and ordered that the hearing transcript be provided to her.³ By March, transcripts of the adjudication and disposition hearings were still missing from the record. As a result, on March 18, 2024, we limited the scope of appeal to review of the court’s November 22 order denying Mother’s motion for a new hearing. Our order cautioned that Mother’s appeal could be dismissed if the record remained incomplete:

Due to the limited scope of this appeal, the transcript of the October 2 and October 4, 2023 hearings are likely not necessary for review in this Court. The appellant is cautioned, however, that should the Panel assigned to the consideration of this appeal determine that the October 2 and October 4, 2023 hearing transcripts are necessary to the consideration of the issues on appeal, and if the record in this appeal is not corrected by the inclusion of those transcripts, the appeal may be dismissed pursuant to Maryland Rule 8-602(c)(4) for the

² The Department’s original CINA petition concerned D and D’s sibling. The CINA order dismissed the petition with respect to the sibling, and Mother notes her appeal only as to the court’s declaration of D as a CINA.

³ On February 20, Mother returned to the court and asked for the transcript of one witness’s testimony from the October 2 hearing. Mother said she needed the transcript “for [her] own use.” The court did not find good cause and denied Mother’s request on February 28.

appellant's failure to file the necessary transcript.

II. DISCUSSION

Mother's informal brief challenges certain findings in the CINA Order but doesn't contest the juvenile court's denial of her motion for a new hearing.⁴ Instead, she claims to have new evidence—D's medical records—that could disprove the allegation of medical neglect, and she argues that this evidence warrants either reversal of the CINA Order or a new CINA hearing.

Because the record on appeal does not include transcripts of the hearings leading up to the CINA Order, we issued an order limiting the scope of our review to the juvenile

⁴ Mother does not present a question for our resolution. She states her disagreement with the following findings in the CINA Order:

It was stated that [D's sibling] was taken to forensic exam twice, and that mother admitted to offering a bribe of \$3k to the caseworker, and that both children . . . never seen (sic) any medical doctor.

The Department listed the Questions Presented in its brief as:

1. In failing to address the sole issue before this Court—whether the juvenile court's denial of her request for a new trial was proper—has Mother waived her challenge to the juvenile court's denial of her motion for a new trial?
2. Did the juvenile court properly exercise its discretion when it denied Mother's bare request for a new trial?

D.H. listed the Question Presented in their brief as:

1. Did the trial court properly exercise its discretion in denying [Mother's] request for a new trial after [Mother] failed to state the grounds on which the motion was based with particularity and failed to provide the trial court with copies of the medical records and an affidavit?

court’s denial of Mother’s motion for new trial. Consistent with our order, we recast the issue before us: whether Mother preserved her ability to argue that new evidence warranted a new CINA hearing. But first, we respond to Mother’s dispute with the CINA Order.

A. Mother’s Challenge To The CINA Order Is Untimely and Unreviewable.

Mother’s request that we reverse the CINA Order is untimely and we decline to consider it. A party must note their appeal “within 30 days after entry of the judgment or order from which the appeal is taken.” Md. Rule 8-202(a). The thirty-day requirement is a binding rule, *Rosales v. State*, 463 Md. 552, 568 (2019), and dismissal is appropriate when an appellant fails to comply with that rule. Md. Rule 8-602(b)(2). In this case, Mother noted her appeal on December 19, 2023, more than thirty days after entry of the CINA Order on October 18. Because the Department challenges the timeliness of Mother’s appeal, we will enforce the time requirement unless there’s good cause to overlook it, which here there isn’t. *See Tallant v. State*, 254 Md. App. 665, 674 (2022) (opting not to dismiss appeal for untimeliness where State raised no challenge).

Even if we were to consider Mother’s motion for a new trial as a motion to vacate under Maryland Rule 11-218, her appeal of the CINA Order still would be untimely. A CINA declaration may be vacated if the court finds that action to be in the best interest of the child. Md. Rule 11-218(a)(1). A motion to vacate a CINA declaration is a post-judgment motion in a civil action. Md. Rule 8-202(c). And like other civil actions, when a party moves to vacate a CINA declaration within ten days after entry of judgment, the period for appealing the judgment tolls until a decision is made on the motion and, at

that point, the thirty-day period for appealing refreshes. Md. Rule 11-218(d); Md. Rule 8-202(c). This new notice also brings both the order denying the motion and the original CINA declaration before us. *See B&K Rental & Sales Co. v. Universal Leaf Tobacco Co.*, 319 Md. 127, 130–31 (1990) (timely post-judgment motions deprived original judgment of its finality and opened the door for appellate review of it and all earlier orders in the case).

The appeal period isn't extended, though, if the motion to vacate is filed more than ten days after entry of the CINA declaration. *See Pickett v. Noba*, 122 Md. App. 566, 570 (1998) (“If parties file a [post-judgment motion] more than ten days after judgment, the time for filing an appeal will not be stayed.” (citing Md. Rule 8-202(c); *Stephenson v. Goins*, 99 Md. App. 220, 221–22 (1994))). Here, Mother filed her motion with the juvenile court on November 7, 2023, more than ten days after entry of the CINA Order on October 18. As a result, the original thirty-day period for appealing the CINA Order continued to run and elapsed on November 17.

B. Mother’s Argument For Relief Based On New Evidence Is Not Preserved.

In her notice of appeal, Mother claims that her former counsel failed to submit D’s medical records as evidence at the CINA hearings. In her brief, she goes on to claim that the medical records had not been sent in time for the hearings:

Medical records weren’t available to present during trial in rebuttal to the claims of both children not seeing any doctors in their lives, [D] had been seen in Pennsylvania and by the It (sic) time the records were sent by the doctor’s office it was too late & the records were not admitted into the trial exhibits.

Mother argues that “if a new trial was granted, [and] the judge was able to see [D’s] medical records as evidence that medical care was provided, then a CINA case would not be open [and D] would not be found” a CINA.

Unfortunately, Mother has not preserved the issue of whether her motion for a new hearing should have been granted based on new evidence. In general, we do not decide an issue “unless it plainly appears by the record to have been raised in or decided by the trial court,” Md. Rule 8-131(a). A party can forgo their right to appeal ““by acquiescence in, or recognition of, the validity of the [court] decision . . . or by otherwise taking a position . . . inconsistent with the right of appeal.”” *In re Nicole B.*, 410 Md. 33, 64 (2009) (quoting *Osztreicher v. Juanteguy*, 338 Md. 528, 534 (1995)); see also *Health Servs. Cost Rev. Comm’n v. Lutheran Hosp. of Md., Inc.*, 298 Md. 651, 664 (1984) (“[The Court of Appeals] has consistently held that a question not presented or argued in an appellant’s brief is waived or abandoned and is, therefore, not properly preserved for review.”). The principal purpose of this rule is to ““ensure fairness for all parties and to promote the orderly administration of the law.”” *In re J.R.*, 246 Md. App. 707, 754–55 (2020) (quoting *Jones v. State*, 379 Md. 704, 713–14 (2004)).

We can see from the record that Mother never gave the circuit court a chance to consider whether new evidence warranted another CINA hearing on the question of medical neglect. Under Maryland Rule 11-218(b)(2), a motion to vacate an order entered in a CINA proceeding “shall set forth concisely and with particularity the relief sought and the grounds for that relief.” See also Md. Rule 11-104(d) (motions in juvenile causes must

state the basis for being entitled to the relief requested). A motion that relies on facts outside the record must be supported by an affidavit and include any documents that form the basis for the motion. Md. Rule 11-104(e). Mother’s motion for a new trial did not offer any argument or evidence demonstrating why the motion should be granted, nor did she include any exhibits. Her motion comprised of five words: “New trial be kindly granted.” On appeal to this Court, Mother suggests that she has D’s medical records, but she did not reference or share those records with the juvenile court when she filed her motion, nor does she suggest here that she was precluded from offering them in the circuit court in the first instance.

As such, we decline to consider Mother’s argument. Our discretion to review an unpreserved claim is “rarely exercised and only when doing so furthers, rather than undermines, the purposes of the rule.” *In re J.R.*, 246 Md. App. at 755 (quoting *Robinson v. State*, 410 Md. 91, 104 (2009)). We have exercised our discretion to review unpreserved CINA claims in situations where the issue was fully briefed and argued by all parties and where we saw an opportunity to provide guidance and aid juvenile courts in fulfilling statutory requirements. *See id.* at 755; *see also In re M.H.*, 252 Md. App. 29, 49–51 (2021). In the present case, the issue hasn’t been briefed fully. Nor is this a situation where we can offer meaningful guidance to the juvenile court. The court decided Mother’s motion based on the information before it, which was nothing more than an ask. We decline to review

Mother's new argument on appeal, and since she hasn't challenged the basis on which the circuit court denied her motion, we affirm the judgment.

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