Circuit Court for Montgomery County
Case Nos. 6-Z-17-33 & 6-I-16-56

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2069

September Term, 2019

IN RE: J.T.

Meredith,
Arthur,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 23, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellants T.N. ("Mother") and I.M. ("Father") individually appeal a November 21, 2019 Order (the "Order") from the Circuit Court for Montgomery County, sitting as a juvenile court, reducing their visitation rights with their daughter, J.T. Also before the Court is a Motion to Dismiss this appeal as moot, filed by the Appellee, the Montgomery County Department of Health and Human Services ("DHHS" or the "Department").

On May 26, 2016, shortly after being born, J.T. was determined by the juvenile court to be a child in need of assistance ("CINA") and was committed to the care and custody of the Department. The Department eventually sought to terminate the parental rights of Mother and Father, which was granted by the juvenile court in November 2018 (Cir. Ct. No. 6-Z-17-33). Mother and Father both appealed (App. Ct. No. 2811-2018). One month later, in a December 6, 2018 Order, the court directed that Mother's visitation with J.T. be reduced (Cir. Ct. No. 6-I-16-56). Mother appealed that change as well (App. Ct. No. 3098-2018). Those two appeals were consolidated.

On June 21, 2019, this Court issued *In re: Adoption/Guardianship of J.T.*, 242 Md. App. 43 (2019). The reported opinion held that the juvenile court erred in terminating the rights of Mother and Father and remanded to the juvenile court for further proceedings. It also directed that Mother's visitation schedule "return to two times per week, the frequency Mother earlier enjoyed before it was reduced at the request of DSS."[1] *Id.* at 47. After our opinion, the Department facilitated visitation for Mother once weekly, for two hours.

[1] As the Department points out, Mother's previous visitation schedule was actually two hours per week, rather than two visits per week.

Father visited with J.T. via the WhatsApp video chat application once weekly, for fifteen to thirty minutes, during Mother's visitation.

About four months later, on October 24, 2019, the Department filed a Motion to Clarify Visitation, which actually sought a reduction in visitation. The Motion asked the court to reduce visitation between Mother and J.T. to twice monthly for two hours, instead of weekly visits of two hours, and to reduce Father's video chat visitation proportionately. Mother and Father filed a joint response asking the court to deny the Department's motion and to wait until J.T.'s next permanency plan review hearing, which was scheduled for December 10, 2019, to hear the matter. J.T., through counsel, also filed a response asking the juvenile court to deny the motion.

On November 21, 2019, the juvenile court, without a hearing, issued its Order allowing the Department's request to reduce Mother and Father's visitation schedules. The juvenile court did not make any findings of fact, but rather concluded that the Order "would be in the best interest" of J.T.

First, we address the Department's motion to dismiss. "A case is moot when there is no longer an existing controversy between the parties at the time it is before the court so that the court cannot provide an effective remedy." *Coburn v. Coburn*, 342 Md. 244, 250 (1996). The Court of Appeals, in a case similarly focused on the periodic reviews common in CINA cases, stated, "[an] appeal is not moot because a controversy is alive when the subsequent review hearing order may have been influenced by an error made in the earlier review [] order." *In re Joseph N.*, 407 Md. 278, 304 (2009). Here, visitation was

substantially reduced—from weekly to twice monthly by the Order. At J.T.'s next permanency plan review, the court further reduced visitation to once monthly.[2] Not only does the subsequent reduction in visitation fail to render the Order's reduction moot, but it highlights the impact of the Order on cases going forward. The November 21 order set the status quo at twice per month, which then likely made the next reviewing court more comfortable in reducing the visitation to once per month, as part of a gradual reduction. In other words, it influenced the subsequent review hearing, and so here, as in *Joseph N.*, a controversy is alive.

Our decision on the merits is governed by *In re M.C.*, 245 Md. App. 215 (2020). There we held that the juvenile court abused its discretion in changing a parent's visitation terms with her child, a CINA, without a hearing, based solely on conflicting proffers. *Id.* at 229. We stated, "a court abuses its discretion by not receiving testimony as to material, disputed allegations when requested by a party unless the disputed allegation is immaterial to whether the child is in serious immediate danger or if modification is required for the safety and welfare of the child." *Id.* at 231–32 (relying on *In re Damien F.*, 182 Md. App. 546, 584 (2008). Here, the parents, in their reply to the Department's motion to clarify visitation, argued that there should be no visitation reduction "without the . . . opportunity for a hearing." Moreover, J.T., through counsel, requested that the court deny the motion, and consider the issue at her next permanency plan review hearing.

[2] This appeal is currently pending before this Court.

The allegations here are disputed, and material. The Department, in its motion, stated that J.T. "has decompensated due to the more frequent visits and mother's behavior during those visits." It submitted a supporting memorandum from J.T.'s social worker, in which she detailed her observations of J.T. during meetings with Mother, and J.T.'s actions that she perceived as "decompensation." Mother and Father disagreed with those observations, asserting that it is normal for three-year-olds to have tantrums from time to time, and that the Department's supporting memorandum also mentioned J.T.'s positive reactions to visits with Mother. The parents also submitted their own exhibits in support of their argument.

For the reasons discussed above, the appropriate remedy in this appeal is to remand the case to the juvenile court with instructions to vacate the November 21, 2019 Order, and return the parents' visitation to pre-order levels (specifically, weekly visits of two hours for Mother, which include Father's weekly video visits of fifteen to thirty minutes) pending our issuance of an Opinion and Mandate in Case No. 2372.

APPELLEE'S MOTION TO DISMISS IS DENIED. THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS VACATED AND CASE REMANDED TO THAT COURT TO MODIFY ITS VISITATION ORDER AS DIRECTED IN THIS OPINION. MONTGOMERY COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES TO PAY THE COSTS.