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RECENT DEVELOPMENT

IN RE T.K.: A CUSTODIAL PARENT MAY PRESENT EVIDENCE TO CHALLENGE FACTUAL FINDINGS BEFORE THEIR CHILD IS REMOVED FROM THEIR CUSTODY.

By: Patricia Ziff

In a case of first impression, the Supreme Court of Maryland¹ held that before a juvenile court awards custody of a child to a noncustodial parent pursuant to a CINA proceeding, a custodial parent has the right to an evidentiary hearing. *In re T.K.*, 480 Md. 122, 133, 279 A.3d 1010, 1016 (2022) (citing Md. Code Ann., Cts. & Jud. Proc. § 3-819(e)). However, the right to an evidentiary hearing exists only if there is a factual dispute, based on the evidence already presented, over the noncustodial parent’s ability and willingness to care for their child. *Id.* Courts must use the best interest of the child standard when awarding custody. *Id.*

In January 2021, a magistrate judge heard a Child in Need of Assistance (“CINA”) petition against T.K.’s mother (“Mother”) for neglect and an inability and unwillingness to care for her son, T.K. T.K.’s father (“Father”) was present, although his paternity regarding T.K. was not established. Mother stipulated to some, but not all, of the facts in the Department of Social Services (“Department”) CINA petition. After the hearing, the court found the facts that Mother had stipulated to were proven based on a preponderance of the evidence.

The following month, while T.K. was still living with Mother, the juvenile court met to consider altering T.K.’s custody arrangements. Father, whose paternity was now established, presented himself as a parent who was able and willing to care for his child. The Department proffered that it had “cleared” Father, but Mother argued that she should be allowed to present evidence against Father challenging the Department’s proffer and that the court should conduct a best interest analysis. Ultimately, the court dismissed the CINA case and granted Father custody of T.K. without hearing Mother’s testimony and evidence.

Mother appealed the juvenile court’s decision to the Appellate Court of Maryland, which affirmed. The court agreed that a child’s best interest is “paramount,” but held that Mother did not have a right to present evidence against Father about his ability to care for T.K. The Supreme Court of

¹ At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland and the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Maryland granted *certiorari* to determine what standard should apply to discretionary custody changes under section 3-819(e) of the Maryland Code, Courts and Judicial Proceedings (“the statute”), and whether in such cases where a parent may lose custody, if that parent should have an opportunity to present evidence.

The Supreme Court of Maryland prefaced its analysis with a review of the CINA statutory scheme. *In re T.K.*, 480 Md. at 135-36, 279 A.3d at 1017-18. CINA proceedings enable the court to change a child’s custodial arrangements to protect a child from abuse and neglect. *Id.* at 132, 279 A.3d at 1015 (citing Md. Code Ann., Cts. & Jud. Proc. §§3-801-3-830). These proceedings begin with a CINA petition, which alleges two conditions: (1) a “child has been abused or neglected” and (2) the child lives with parents, guardians, or custodians that cannot and will not properly care for the child. *Id.* at 147, 279 A.3d at 1024. A juvenile court will use a preponderance of the evidence standard when reviewing these allegations. *Id.* at 132, 279 A.3d at 1015.

If the court finds that the allegations are true and the child is in need of assistance, the court may change a child’s custodial arrangement. *In re T.K.*, 480 Md. at 135, 279 A.3d at 1017. If the child is not in need of assistance, the court must dismiss the petition. *Id.* However, if the court sustains petition allegations against only one parent, the court may use the statute to dismiss the case, find that the child is not in need of assistance, and award custody to the other parent, provided the other parent is able and willing to care for the child. *Id.* at 136, 279 A.3d at 1017-18 (citing Md. Code Ann., Cts. & Jud. Proc. §3-819(e)). A juvenile court can use this section of the code to remove a child from a custodial parent when the Department knows very little about the noncustodial parent. *Id.* at 1362, 279 A.3d at 1016.

Before deciding the correct standard to apply when juvenile courts make discretionary custody changes pursuant to the statute, the court emphasized the core idea that parents have a right to raise their own children free from State intrusion. *In re T.K.*, 480 Md. at 131, 279 A.3d at 1015. However, the court qualified that State intrusion on this basic parental right sometimes is warranted and a CINA proceeding is the means the State uses to do so. *Id.* at 132, 279 A.3d at 1015. The court held that the best interest of the child standard is “transcendent” and “dispositive” in all cases that relate to the custody of children. *Id.* at 150-51, 279 A.3d at 1026 (citing *In re Adoption of Ta’Niya C.*, 417 Md. 90, 112, 8 A.3d 745, 747 (2010); *In re Yve S.*, 373 Md. 551, 570, 819 A.2d 1030, 1041 (2003)).

The court then turned to the second issue: whether a parent, who may lose custody under the statute, should have an opportunity to present evidence that the non-custodial parent was not fit to care for the child. *In re T.K.*, 480 Md. at 152, 279 A.3d at 1027. The court found nothing in the statutory language

preventing a juvenile court from holding an evidentiary hearing. *Id.* The court noted that not all cases would require an evidentiary hearing, especially if parties had stipulated to allegations or if the adjudicatory hearing included evidence. *Id.* at 152, 279 A.3d at 1027. However, given the high stakes of losing custody, the Department and court agreed that in most cases a juvenile court should hear evidence from parties. *Id.* The court reasoned that when the parties have a factual dispute or have made conflicting proffers, an evidentiary hearing could and should be allowed. *Id.* at 153, 279 A.3d at 1028. This reasoning was especially relevant as Mother did not present evidence she thought necessary to the juvenile court's decision, and the juvenile court deferred to the Department's findings. *Id.* at 154, 279 A.3d at 1028-29.

The court also clarified the definition of evidence by distinguishing evidence from proffers. *In re T.K.*, 480 Md. at 152-53, 279 A.3d at 1027. Placing a witness under oath and enforcing the rules of evidence would produce better results than a proffer. *Id.* at 153, 279 A.3d at 1027. The court found two errors in the Department, Father, and T.K.'s argument that the juvenile court had not erred by relying on their counsels' undisputed proffers. *Id.* at 152, 279 A.3d at 1027. First, "proffers are not evidence," and, second, Mother did contradict Father's proffers. *Id.*

Justice Hotten dissented from the decision believing that the statute already served a child's best interest by awarding custody to the parent that met two conditions: first, they had not been involved in abuse or neglect, and second, they were able and willing to care for their child. *In re T.K.*, 480 Md. at 163, 279 A.3d at 1033 (Hotten, J., dissenting). Justice Hotten also noted that here, the juvenile court found that Mother had neglected T.K., and the Department had established Father both wanted to care for his son and was able to do so. *Id.* at 162, 279 A.3d at 1033 (Hotten, J., dissenting). Further, under the statute, the juvenile court still has an option to not make a custody change. *Id.* at 163, 279 A.3d at 1034 (Hotten, J., dissenting). In short, Justice Hotten found the prerequisites flexible enough to ensure the child's best interest and preserve the juvenile court's discretion. *Id.* at 165, 279 A.3d at 1035 (Hotten, J., dissenting).

In this case, the Supreme Court of Maryland held that the best interest standard remains paramount, and a parent faced with losing custody must be afforded an opportunity to present evidence that would better inform a change in custody. Maryland's statutory scheme, specifically section 3-819(e) of the Maryland Code, Courts and Judicial Proceedings, allows a juvenile court to change the custody arrangements of a child when the CINA allegation are sustained against only one parent and the other noncustodial parent is willing and able to care for the child. However, when a custodial parent has evidence that may show that the noncustodial parent is not the better choice, the

custodial parent can present evidence to the juvenile court. This evidence adds information to a custody decision and potentially safeguards both children's and parents' rights. A child's best interests are undoubtedly better served when parents can present evidence and the courts do not rubber-stamp an administrative agency's custody recommendation.