



2009

Recent Developments: In re Najasha B.: When a Child Objects to the Department of Social Services' Unilateral Withdrawal of a CINA Petition, the Juvenile Court Must Hold an Adjudicatory Hearing to Consider the Child's Allegations of Abuse or Neglect

Joshua Beale

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>



Part of the [Law Commons](#)

Recommended Citation

Beale, Joshua (2009) "Recent Developments: In re Najasha B.: When a Child Objects to the Department of Social Services' Unilateral Withdrawal of a CINA Petition, the Juvenile Court Must Hold an Adjudicatory Hearing to Consider the Child's Allegations of Abuse or Neglect," *University of Baltimore Law Forum*: Vol. 40 : No. 1 , Article 10.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol40/iss1/10>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized editor of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

RECENT DEVELOPMENT

IN RE NAJASHA B.: WHEN A CHILD OBJECTS TO THE DEPARTMENT OF SOCIAL SERVICES' UNILATERAL WITHDRAWAL OF A CINA PETITION, THE JUVENILE COURT MUST HOLD AN ADJUDICATORY HEARING TO CONSIDER THE CHILD'S ALLEGATIONS OF ABUSE OR NEGLECT.

By: Joshua Beale

The Court of Appeals of Maryland held that, when a child objects, the Department of Social Services (“DSS”), notwithstanding the consent of the child’s parents, has no unilateral right to dismiss a Child In Need of Assistance (“CINA”) petition prior to the statutorily required adjudicatory hearing. *In re Najasha B.*, 409 Md. 20, 972 A.2d 845 (2009). Specifically, the court stated that the policy of the CINA Subtitle is to empower the juvenile courts with the authority necessary to protect and advance a child's best interests, regardless of which party commences a petition. *Id.* at 33, 972 A.2d at 852.

On January 31, 2008, while conducting a drug raid on the home of Najasha B.'s parents, Baltimore City Police recovered marijuana. Five-year-old Najasha was found in the home without adult supervision. Attempts to locate her parents were unsuccessful, and no known relatives were willing to provide care for her. Najasha was subsequently placed in emergency shelter care.

Najasha's parents attended the emergency shelter care hearing on February 1, 2008, where the Circuit Court for Baltimore City, sitting as a juvenile court, denied the DSS’s emergency shelter care request. The court granted custody to Najasha's parents, provided that no illegal substances were present in the home and that the DSS could make unannounced visits.

On May 9, 2008, the DSS filed a motion requesting that the juvenile court dismiss the CINA petition. The DSS explained that no further court intervention was necessary because matters prompting the petition were already resolved. Najasha's counsel objected, arguing that Najasha was not attending school on a regular basis. The juvenile court overruled the objection and granted the DSS's dismissal request.

Najasha's counsel filed a timely Notice of Exception and Request for Hearing. On June 23, 2008, the juvenile court held a *de novo* exception hearing. Najasha's counsel was unable to persuade the juvenile court that an adjudicatory hearing was a statutory requirement under section 3-817(a) of the Courts and Judicial Proceedings Article of the Maryland Code. Again, the court dismissed the exception, stating that an adjudicatory hearing was not required when the DSS no longer wished to pursue a petition. Najasha appealed the decision to the Court of Special Appeals of Maryland. The Court of Appeals of Maryland, on its own initiative, issued a writ of certiorari.

The central issue in this case was the underlying procedural effect of section 3-817(a) of the Courts and Judicial Proceedings Article, which provides: "After a petition is filed under [the CINA Subtitle], the court shall hold an adjudicatory hearing." *In re Najasha B.*, 409 Md. at 27, 972 A.2d at 849 (quoting MD. CODE ANN., CTS. & JUD. PROC. § 3-817(a) (2006)). The court examined the purpose of the statute, the role of the court in CINA cases, and the rights of the child. *Id.* at 33, 972 A.2d at 852.

Najasha's parents contended that any alleged improper dismissal by the lower court was harmless because Najasha had another mechanism for invoking the protection of the court: filing a separate complaint. *Id.* at 37, 972 A.2d at 855. The Court of Appeals of Maryland rejected this argument, however, concluding that requiring Najasha to file a separate complaint would needlessly encumber Najasha's access to the juvenile court and would conflict with the purpose of the CINA Subtitle. *Id.* at 38, 972 A.2d at 855. This was consistent with a similar ruling from Illinois, which held that a child is entitled to a hearing on a CINA petition when the child objects to its dismissal. *Id.* at 35, 972 A.2d at 853 (citing *In re J.J.*, 566 N.E.2d 1345, 1349 (Ill. 1991)). Furthermore, a California court ruled that if dismissal was granted, the ensuing re-application procedure for judicial review would be "circuitous and [a] waste of resources . . . where [DSS] has already made clear it will not pursue the . . . petition." *Id.* at 37, 972 A.2d at 855 (quoting *Allen M. v. Superior Court*, 8 Cal. Rptr. 2d 259, 263 (Cal. Ct. App. 1992)).

Next, DSS argued that it had a common law right, as the moving party, to dismiss the petition. *In re Najasha B.*, 409 Md. at 38, 972 A.2d at 855. Urging the court to recognize a plaintiff's absolute right to discontinue a suit at any point, the DSS contended that the dismissal by the lower court recognized a unilateral right to withdraw a petition once it was filed. *Id.* at 38, 972 A.2d at 855 (citing *Ex parte Skinner & Eddy Corp.*, 265 U.S. 86 (1924)). In rejecting the DSS's argument,

the court noted that the Maryland Rule permitting voluntary dismissal does not apply to Juvenile Causes under Title 11. *Id.* at 38, 972 A.2d 855 (citing Md. Rule 1-101(b)). Coupled with the lack of authority in either Title 11 or the CINA Subtitle granting the DSS a unilateral right to dismissal, the court concluded that the provisions better display "clear constraints on DSS's autonomy to act in CINA proceedings." *Id.* at 39, 972 A.2d at 856.

Najasha's parents asserted that it would be in violation of DSS's professional responsibility if it proceeded with an adjudicatory hearing, knowing that it no longer had a good faith argument that Najasha needed protection under the CINA Subtitle. *Id.* The court was not persuaded by this argument, however, noting that the DSS, without violating any professional responsibilities, could argue at the adjudicatory hearing that court intervention was no longer in the child's best interest. *Id.* at 40, 972 A.2d at 856. While maintaining its professional integrity, the DSS would also comply with its statutory obligation to serve the child's best interests by allowing the child, through counsel, to present facts supporting the petition. *In re Najasha B.*, 409 Md. at 40, 972 A.2d at 856.

The DSS also argued that because Najasha did not raise, in the original petition, the argument that her parents were not taking her to school, she should have been precluded from raising it in an adjudicatory hearing. *Id.* at 40, 972 A.2d at 857. According to the DSS, this would expand the purpose of the adjudicatory hearing clearly outlined in the CINA Subtitle. *Id.* at 41, 972 A.2d at 857. The court acknowledged that, although Najasha made reference to the new argument of poor school attendance in the Exception Notice, it was not her only grounds for an exception to the dismissal. *Id.* In rejecting the DSS's argument regarding the purpose of the CINA Subtitle, the court focused on the fact that Najasha continually advocated her original position, taking exception generally to the dismissal, by stating that the adjudicatory hearing was a statutory requirement. *Id.*

This decision commands that, from the outset of an allegation of abuse or neglect, there must be a more purposeful and genuine effort on the DSS's part in filing a CINA petition. *In re Najasha B.* specifically expanded children's rights by mandating an adjudicatory hearing in a CINA petition, despite the DSS's or even the parents' agreement that CINA protection is no longer warranted. While this may make for unnecessary and inefficient adjudicatory hearings, especially from the standpoint of the DSS, the ruling clearly marks the DSS's role as the court's agent as contemplated by the statutory provisions under Title 3-802 of the Courts and Judicial Proceedings

Article. As opposed to a separate party moving for relief in civil matters, the DSS cannot unilaterally revoke a CINA petition over the objection of a child. Further, practitioners representing a child in a CINA proceeding can be assured that, upon an objection to a motion to dismiss, a requested adjudicatory hearing will be granted, regardless of any circumstances that have changed since the original filing of the CINA petition.