

**IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
STARK COUNTY, OHIO**

FELIX JOEL JIMENEZ
GUIFARRO

Plaintiff - Appellant

-vs-

NIXI NICOLE MENDOZA MEJIA

Defendant - Appellee

Case No. 2025CA00148

Opinion And Judgment Entry

Appeal from the Court of Common Pleas,
Juvenile Division, Case No. 2025JCV00283

Judgment: Reversed and Remanded

Date of Judgment Entry: September 15, 2026

BEFORE: Andrew J. King; Craig R. Baldwin; David M. Gormley, Judges

APPEARANCES: PATRICK ESPINOSA, for Plaintiff-Appellant.

King, P.J.

{¶ 1} Plaintiff-Appellant, Felix Joel Jimenez Guifarro ("father"), appeals the August 12, 2025 judgment entry of the Stark County Juvenile Court. Defendant-Appellee is Nixi Nicole Mendoza Mejia ("mother"). We reverse and remand the matter to the juvenile court.

FACTS AND PROCEDURAL HISTORY

{¶ 2} The parties are the parents of Z.M. born September 2017, in Honduras. The child resides in Canton, Ohio, with father; mother lives in Honduras.

{¶ 3} On March 21, 2025, father filed in the juvenile court a complaint for legal custody. He alleged mother was in Honduras and had abandoned the child. Father requested a finding that the child was a neglected child and sought permanent sole legal custody so that he could file for legal permanent residency with the United States Citizenship and

Immigration Services ("USCIS"). Father desired to obtain Special Immigrant Juvenile ("SIJ") status for the child under the Immigration and Nationality Act ("INA").

{¶ 4} A hearing before the trial court was held on August 6, 2025. By judgment entry filed August 12, 2025, the trial court found the child was not a neglected child as father has provided continuous care for the child since birth and continues to provide for the child's needs. The trial court awarded father legal custody of the child as it was in the child's best interest to do so, but did not make the requisite findings to constitute an SIJ determination.

{¶ 5} Father filed an appeal with the following assignments of error:

I

{¶ 6} "THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED AS A MATTER OF LAW BY REFUSING TO MAKE SIJ PREDICATE FINDINGS AND BY FAILING TO APPLY THE ANALYTICAL FRAMEWORK REQUIRED UNDER *MATTER OF J.A.S.* WHERE THE COURT IMPROPERLY ACTED AS A 'GATEKEEPER' AND DECLINED TO MAKE FACTUAL FINDINGS RESERVED EXCLUSIVELY FOR THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, USCIS."

II

{¶ 7} "THE TRIAL COURT ERRED AS A MATTER OF LAW BY MISAPPLYING THE STATUTORY DEFINITIONS OF ABANDONMENT AND NEGLECT UNDER R.C. 2151.011 AND 2151.03, WHERE UNDISPUTED EVIDENCE ESTABLISHED THAT THE CHILD'S MOTHER FAILED TO PROVIDE CARE, SUPPORT, PROTECTION, OR PARENTAL INVOLVEMENT FOR A PROLONGED PERIOD."

I, II

{¶ 8} In his two assignments of error, father claims the trial court erred in refusing to make SIJ predicate findings and in misapplying the statutory definitions of abandonment and neglect relative to mother. We agree.

{¶ 9} Our standard of review of legal questions is *de novo*; our standard of review on factual findings is abuse of discretion. *Pelaez v. Moreno*, 2025-Ohio-5532, ¶ 7-8 (10th Dist.). "Abuse of discretion" means an attitude that is unreasonable, arbitrary or unconscionable. *Huffman v. Hair Surgeon, Inc.*, 19 Ohio St.3d 83, 87 (1985). Most instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary. *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990). An unreasonable decision is one backed by no sound reasoning process which would support that decision. *Id.* "It is not enough that the reviewing court, were it deciding the issue *de novo*, would not have found that reasoning process to be persuasive, perhaps in view of countervailing reasoning processes that would support a contrary result." *Id.*

{¶ 10} Under the Immigration Act of 1990, Congress established an SIJ immigrant classification "to provide humanitarian protection for abused, neglected, or abandoned alien children eligible for long-term foster care." USCIS Policy Manual, Vol. 6, Part J, Ch. 1(A); 8 C.F.R. 204.11. In 2008, under The Trafficking Victims Protection and Reauthorization Act ("TVPRA"), Congress amended the statute and "[r]emoved the need for a juvenile court to deem a child eligible for long-term foster care and replaced it with a requirement that the juvenile court find that reunification with *one or both parents* is not viable due to abuse, neglect, abandonment, or a similar basis under state law." (Emphasis added.) USCIS Policy Manual,

Vol. 6, Part J, Ch. 1(B). An SIJ classification "may lead to permanent residency" under 8 U.S.C. 1101(a)(27)(J). *Young Zheng v. Pogash*, 416 F.Supp.2d 550, 552 (S.D.Tex. 2006).

Under this statute, the term "special immigrant" means in pertinent part:

(J) an immigrant who is present in the United States—

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence.

{¶ 11} Under 8 C.F.R. 204.11(b)(4), classification as a special immigrant juvenile must meet certain requirements including being "the subject of a juvenile court order(s) that meets the requirements under paragraph (c) of this section." Subsection (c) governs juvenile court order(s) and states:

(1) Court-ordered dependency or custody and parental reunification determination. The juvenile court must have made certain judicial

determinations related to the petitioner's custody or dependency and determined that the petitioner cannot reunify with their parent(s) due to abuse, neglect, abandonment, or a similar basis under State law.

(i) The juvenile court must have made at least one of the following judicial determinations related to the petitioner's custodial placement or dependency in accordance with State law governing such determinations:

(A) Declared the petitioner dependent upon the juvenile court; or

(B) Legally committed to or placed the petitioner under the custody of an agency or department of a State, or an individual or entity appointed by a State or juvenile court.

(ii) The juvenile court must have made a judicial determination that parental reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a similar basis under State law. The court is not required to terminate parental rights to determine that parental reunification is not viable.

(2) Best interest determination.

(i) A determination must be made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions that it would not be in the petitioner's best interest to be returned to the petitioner's or their parent's country of nationality or last habitual residence.

(ii) Nothing in this part should be construed as altering the standards for best interest determinations that juvenile court judges routinely apply under relevant State law.

{¶ 12} "Placing the petitioner 'under the custody of' a natural person or entity may encompass legal or physical custody. . . . A qualifying court-appointed custodial placement could be with one parent, if reunification with the other parent is found to be not viable due to that parent's abuse, neglect, abandonment, or similar maltreatment of the petitioner." USCIS Policy Manual, Vol. 6, Part J, Ch. 2(C)(1). "The USCIS has made it clear that a finding that reunification with one parent is not viable is sufficient for purposes of the SIJ application." *In re J.A.S.*, 2022-Ohio-2508, ¶ 21 (5th Dist.).

{¶ 13} Under a best interest determination, a juvenile court is to "consider the factors that it normally takes into account when making best interest determinations, and the record should reflect the factual basis for the juvenile court's determination." USCIS Policy Manual, Vol. 6, Part J, Ch. 2(C)(3). This section of the policy further states:

if the court places the child with a person in the United States under state law governing the juvenile court dependency or custody proceedings, and the order includes facts reflecting that the caregiver has provided a loving home, bonded with the child, and is the best person available to provide for the child, this would likely constitute a sufficient factual basis in support of a qualifying best interest determination to warrant DHS consent. The analysis would not change even if the chosen caregiver is a parent.

{¶ 14} "Trial courts should make factual findings with regard to each of the requirements, i.e., best interest and whether reunification with one or both parents is not viable due to abuse, neglect, or abandonment." *In re J.A.S.* at ¶ 24.

{¶ 15} We note Ohio has not enacted any statutes relative to a juvenile court's role under the federal law.

{¶ 16} In ruling on father's complaint, the trial court found under state law the child "has not been declared dependent by a juvenile court" and "has never been committed to or placed under the custody of an agency or department of a State." Judgment Entry filed August 12, 2025. The trial court further found "the child is not abandoned, abused or neglected, under ORC §2151.011 [abandoned], ORC §2151.03 [neglected], ORC §2151.031 [abused], or ORC §2151.04 [dependent]" as the child "is currently in the custody of Father, who has provided continuous care for the child since birth, and who is able to continue to provide for the child's needs." *Id.* The trial court concluded because the federal statute was cumulative, it was precluded "from making all the findings requested" by father, i.e., best interest as to returning the child to "the petitioner's or their parent's country of nationality or last habitual residence." *Id.*; 8 C.F.R. 204.11(c)(2)(i). Father did not request any other findings of fact or conclusions of law.

{¶ 17} In support, the trial court cited the case of *Gonzalez v. Rodriguez*, 2018-Ohio-2410 (10th Dist.), and this court's decisions in *Calel v. Tzun*, 2024-Ohio-409 (5th Dist.), and *Calel v. Calel*, 2024-Ohio-410 (5th Dist.), which are all similar to the facts sub judice. The *Calel* cases cited and quoted the *Gonzalez* case. In the *Gonzalez* case, the trial court found there was no dependency finding and the child was never committed to or placed under the custody of

an agency or department of a State because the child resided with mother. *Gonzalez* at ¶ 5. The *Gonzalez* court rejected mother's argument that the trial court's allocation of custody to her amounted to the child being "placed under the custody of * * * an individual or entity appointed by a State or juvenile court located in the United States." *Id.* at ¶ 12. The court reasoned mother's "interpretation of the language of the statute suggests that a juvenile need only be in the custody of any 'individual,' but the plain language of the statute requires that an individual or entity be 'appointed' by a juvenile court." *Id.*

{¶ 18} This court's *Calel* cases followed *Gonzalez* and treated an award of legal custody to a parent as falling outside of 8 U.S.C. 1101(a)(27)(J)(i). But almost two years after this court's opinions in *Calel*, the Tenth District overruled its decision in the *Gonzalez* case in *Pelaez v. Moreno*, 2025-Ohio-5532 (10th Dist.). The reading the *Calel* cases adopted is also difficult to reconcile with this court's opinion in *In re J.A.S.*, 2022-Ohio-2508 (5th Dist.), and the USCIS Policy Manual, both of which treat custody in one parent as a qualifying placement when reunification with the other parent is not viable. We will not continue to apply *Gonzalez*.

{¶ 19} The *Pelaez* court cited several cases from other states and the USCIS Policy Manual and held that legal custody awarded to a parent qualifies as "an individual . . . appointed by a State or juvenile court." *Pelaez* at ¶ 13-16; *Velasquez v. Miranda*, 321 A.3d 876 (Pa. 2024); *Amaya v. Rivera*, 135 Nev. 208 (2019); *Kitoko v. Salomao*, 2019 VT 45; *De Guardado v. Menjivar*, 901 N.W.2d 243 (Minn.App. 2017); USCIS Policy Manual, Vol. 6, Part J, Ch. 2(C)(1); 8 U.S.C. 1101(a)(27)(J)(i); 8 C.F.R. 204.11(c)(1)(i)(B). The *Pelaez* court also found that the juvenile court's finding that because legal custody of the child was awarded to one parent it could not determine that "reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law" was

erroneous. *Id.* at ¶ 19. The court held a juvenile court "may apply the R.C. 2151.011(C) [abandonment] presumption to only one parent, however, even if the other parent's actions do not qualify. Again, the question is whether there is a 'basis found under State law' to find that 'reunification . . . is not viable due to . . . abandonment' under state law." (Citations omitted.) *Id.* Lastly, the *Pelaez* court found that the juvenile court erred in failing to make a best interest finding under R.C. 3109.04(F)(1) in the context of the SIJ findings. *Id.* at 20. In the case sub judice, the trial court found it was precluded from determining best interest because of its predicate findings.

{¶ 20} The institutional concern noted when this court decided the *Calel* cases — that these filings ask a state juvenile court to supply predicates for a federal administrative classification — may well remain. *See, Calel* cases, 2024-Ohio-409 (5th Dist.) and 2024-Ohio-410 (5th Dist.) (King, J. concurring). But that question is not before us. Father invoked the juvenile court's custody jurisdiction under Ohio law. The assignments of error ask whether the juvenile court, having taken that jurisdiction, misapplied 8 U.S.C. 1101(a)(27)(J) and the Ohio definitions of abandonment and neglect. We decide only those questions and thus hold as follows.

{¶ 21} The trial court erred in concluding that legal custody awarded to father was not a placement "under the custody of . . . an individual . . . appointed by a . . . juvenile court." 8 U.S.C. 1101(a)(27)(J)(i); 8 C.F.R. 204.11(c)(1)(i)(B). Father's fitness to care for the child is why that placement was in the child's best interest. That finding does not take the order outside the statute.

{¶ 22} The trial court also erred in treating father's care as a complete answer to whether reunification with mother was viable and whether it would be in the child's best

interest to be returned to Honduras. Those are different questions. *In re J.A.S.*, 2022-Ohio-2508, at ¶ 21, 24 (5th Dist.). R.C. 2151.011(C) may be applied to one parent. The juvenile court may not refuse to make the SIJ findings because it has already found that the child is safe with father. We remand for the trial court to determine, as to mother and under Ohio law, whether reunification is not viable due to abandonment, neglect, or a similar basis, and to make the best interest determination as required under 8 U.S.C. 1101(a)(27)(J) and 8 C.F.R. 204.11(c).

{¶ 23} For the reasons stated in our accompanying Opinion, the award of legal custody to father is affirmed. But the judgment is reversed insofar as it refused to make SIJ predicate findings; the matter is remanded for further proceedings consistent with this opinion.

{¶ 24} Costs to Appellee.

By: King, P.J.

Baldwin, J. and

Gormley, J. concur.