

Circuit Court for Howard County  
Case No.: C-13-JV-23-000017  
Case No.: C-13-JV-23-000018

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

Nos. 31, 32

September Term, 2023

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IN RE: C.J. and CL.J.

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Friedman,  
Zic,  
Curtin, Yolanda L.  
(Circuit Judge, Specially Assigned),

JJ.

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Opinion by Curtin, J.

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Filed: November 16, 2023

\* This is an unreported opinion. It may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

The Circuit Court for Howard County, sitting as a juvenile court, adjudicated C.J. and CL.J.<sup>1</sup> to be children in need of assistance (“CINA”)<sup>2</sup> and committed them to the Howard County Department of Social Services (the “Department”) for continued placement in foster care. Appellants, M.S. (“Mother”) and J.J. (“Father”), filed a timely appeal of that determination. In this appeal, Mother and Father have raised the following questions for our review, which we have consolidated and rephrased for clarity:

1. Did the juvenile court err by finding both children CINA and committing them to the Department?
2. Did the juvenile court abuse its discretion when it ordered Mother and Father to submit to psychiatric and psychological evaluations?
3. Did the juvenile court fail to hold a separate adjudication and disposition hearing; and if so, does the error warrant reversal?

For the reasons explained below, we shall affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Mother and Father are the parents of two young children, C.J. and CL.J. When the Department became involved with the family, C.J. was 20 months old and CL.J. was three months old. Prior to the children’s placement in foster care, Mother and Father lived

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<sup>1</sup> The children have the same C.J. initials. In the briefs, the parties are not consistent with the initials used to refer to the children. Similarly, the February 15, 2023 transcript also refers to the children using different initials. For consistency and clarity, throughout this opinion we shall use the initials C.J. to refer to the oldest child, and CL.J. to refer to the youngest child.

<sup>2</sup> A CINA means a child, who has been either abused, neglected, has a developmental disability or mental disorder and a parent, guardian or custodian is unable or unwilling to provide proper care and attention to the child and the child’s needs. Md. Code Ann., Cts. & Jud. Proc. § 3-801(f) (2020).

together in Maryland and then in Georgia. At some point, Mother and Father returned to Maryland and began to live separately, but both took part in caring for the children. Mother lived in an Airbnb with the children at an unknown location, and Father was living in Odenton, Maryland with his parents. On January 24, 2023, the Department sought emergency shelter care<sup>3</sup> for the children.

### **The Department’s Initial Contact with the Parents**

On January 19, 2023, the Department received a referral regarding child neglect. Specifically, the referral alleged medical neglect of C.J. and CL.J. by their parents. It was alleged that C.J. was severely underweight and the same size as his three-month-old sister, CL.J. Additionally, C.J. was not under the care of a pediatrician and he had previously been diagnosed with failure to thrive. On that same day, Social Worker Whitney Bell responded to the home of the children’s maternal grandmother in Elkridge, Maryland, in an attempt to lay eyes on the children and to do a welfare check. Mother was not at the residence. Ms. Bell attempted further contacts with Mother through email exchanges, but Mother would not provide any information about C.J.’s whereabouts. The case was then assigned to Child Protective Services (“CPS”) Social Worker Octavia Smith.

Ms. Smith sent emails to Mother to introduce herself, but Mother would not respond. In an attempt to see C.J., Ms. Smith sent law enforcement welfare checks to the homes of maternal grandmother and Father, and she also went to their residences; however, Ms. Smith and law enforcement were unsuccessful in locating C.J. Sometime later,

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<sup>3</sup> Shelter care is the temporary placement of a child outside the home before a CINA disposition. Md. Code Ann., Cts. & Jud. Proc. § 3-801(bb).

Howard County police officers again responded to maternal grandmother's residence, but Mother was not there.

On January 24, 2023, Ms. Smith received information that C.J. was at Father's residence in Odenton. Ms. Smith went to Father's residence and spoke to his parents. Father was not there nor was C.J. While Ms. Smith was at the residence, C.J.'s paternal grandfather made calls to Father to have him return to the residence, but Father did not return to the residence. C.J.'s paternal grandmother allowed Ms. Smith to see the basement where Father stays when the children are with him. The basement had only two small couches pushed together, no bed or crib, no food for C.J., and only one sippy cup. While at Father's residence, Ms. Smith received notification that Mother and Father were now in Howard County.

In an effort to see the family, Ms. Smith returned to maternal grandmother's home. While there, the maternal grandmother contacted Mother to get her to come to the residence, but Mother would not do so. While there Ms. Smith learned that Mother, Father, and the children were together.

After determining that the children needed to be assessed and that the parents took steps to evade CPS, Ms. Smith received authorization to shelter the children. As Ms. Smith wrapped up her contact with the children's maternal grandmother, she learned that Mother and Father were in Anne Arundel County. Eventually, law enforcement located the family in a vehicle at a Dunkin Donuts in Odenton. When Ms. Smith went to the Dunkin Donuts, Mother and Father prevented her from seeing the children. Even without access to the children, Ms. Smith was able to see that both children were in the vehicle and she noticed

that C.J. was very small. It was not until EMTs were called to assist that Mother allowed the children to be removed from the vehicle. The children were taken by ambulance to Howard County General Hospital.

### **The Children’s Medical Examinations and Prior Medical History**

a. C.J.

At the hospital, the children were medically assessed. C.J. received a diagnosis of failure to thrive, developmental delay of gross and fine motor functions, and speech and language developmental delays. C.J. was determined to be severely underweight. At 20 months old he weighed only fifteen pounds. He was wearing clothing for a zero-to-three month old child. He was unable to ambulate or stand. He was given a cup to drink from but he did not know how to drink from a cup. He was able to drink apple juice from a bottle. He had only two teeth, and the treating physician was “cautious with introducing whole solid foods for concerns for oral-motor dysphagia,”<sup>4</sup> and recommended to start with “soft pureed foods to monitor for swallowing.” In providing a history of C.J.’s eating, Mother indicated that C.J. was only given applesauce pouches, fruits, avocados, and gluten-free waffles. She further indicated that C.J. did not drink cow’s milk.

The physician who assessed C.J., told Ms. Smith, and noted in the medical records, that C.J.’s failure to thrive was a result of severe medical neglect, and that solid foods had to be cautiously introduced. C.J. was referred for occupational and physical therapy, gastroenterology for failure to thrive, pediatric well check examinations and for continuity

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<sup>4</sup> Dysphagia means difficulty with swallowing. Merriam-Webster Dictionary <http://merriam-webster.com/dictionary/dysphagia> (last visited Oct. 29, 2023).

of care, and speech evaluation and therapy with Infants and Toddlers Program. The treating physician also concluded that the failure to thrive was “likely from nutritional neglect vs. endocrine/GI disorder.” The physician noted in the medical records that for C.J. to gain weight, he needed to be on a certain number of calories per day and recommended to “optimize food intake with pediasure along with 16oz. cow’s milk formula.”

The Department requested from the parents all prior medical records for both children, but the parents would not respond to the Department’s request. In the course of investigating the case, the Department, through its own efforts, obtained prior medical records. The records revealed that C.J. was born premature at 34 weeks. He was admitted to the NICU for management of problems related to his early birth, including feeding intolerance, and he remained at the NICU for 11 days. The records also showed that C.J. has not received any vaccinations.

Medical records also established that C.J. was previously taken to the hospital in October 2021. Initially, his parents took him to the emergency room for nasal congestion. At that time, he was five months old and he weighed seven pounds and 12.7 ounces. Although C.J. was noted as having nasal congestion, the treating physician had greater concern for C.J.’s severe failure to thrive. Even with taking into consideration the fact that he was born premature, C.J. was below the growth chart. Although the treating physician raised concerns to the parents about C.J.’s weight, the parents believed that C.J. was doing well because he had doubled his birth weight. At the time, the parents revealed that C.J.

was seen by a naturopath,<sup>5</sup> who, according to the parents, believed C.J.’s weight gain was appropriate. At this hospital visit, C.J. was diagnosed, among other things, with failure to thrive and poor weight gain.

As part of the follow-up medical plan for the October 2021 emergency room visit, the parents were told that C.J. needed to have “close follow up with [a gastroenterologist and a primary care pediatrician] with in person visits for weight check.” After the October 2021 hospital visit, the parents took C.J. to Annapolis Pediatric Gastroenterology on two occasions: November 4, 2021 and December 9, 2021. Those records revealed that C.J.’s

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<sup>5</sup> In the Health Occupation Article, naturopathic medicine is defined as, and includes:

(k)(1) ... [T]he prevention, diagnosis, and treatment of human health conditions, injury, and disease using only patient education and naturopathic therapies and therapeutic substances recognized by the Council of Naturopathic Medical Education.

(2) “Naturopathic medicine” includes:

(i) Counseling;

(ii) The practice of the mechanical sciences of healing, including mechanotherapy, articular manipulation, corrective and orthopedic gymnastics, hydrotherapy, electrotherapy, and phototherapy;

(iii) The practice of the material sciences of healing, including nutrition, phytotherapy, treatment by natural substances, and external applications; and

(iv) Prescribing, dispensing, or administering nonprescription and prescription drugs and devices listed in the formulary.

Md. Code Ann., Health Occ. § 14-5F-01(k) (2021).

weight still had not caught up to where it should be for a child his age. Aside from the two subsequent visits, there were no other medical records to show that C.J. had received any other follow-up care with a gastroenterologist or with a pediatrician.

b. CL.J.

CL.J. was also medically assessed on January 24, 2023. At that time, she was three months old. Her development and weight, of 11 pounds and 15.20 ounces, were within expected milestones for a three-month-old child. CL.J.'s prior medical records revealed that she was also born premature, at 36 weeks. There were no other medical records establishing that she had been seen or treated by a pediatrician. She did not have any vaccinations.

### **Shelter Care Hearing**

On January 24, 2023, after the children were medically assessed, the Department removed the children from the care of Mother and Father and placed the children in emergency shelter care with a foster family. On January 25, 2023, the Department filed a CINA Petition and Request for Shelter Authorization. The petition set forth the entire history of the Department's attempts to make contact with the parents, the parents' steps to evade CPS, the results of C.J.'s medical assessment, and that both children were extremely hungry when fed by workers at the hospital. The juvenile court held a shelter hearing, and both parents were present. The parents were advised about their right to legal representation, and both declined to have counsel and elected to proceed with the hearing. Mother testified at the hearing. She testified that she had been living at an Airbnb, but she would not provide the address.



After considering the allegations in the petition and the testimony offered, the juvenile court found that “continuation of the [children] in the [parents’] home was contrary to the [children’s] welfare and that it is not possible to return the [children] to the home and placement for the [children] is required to protect them from serious immediate danger.” The juvenile court also found that the Department had made reasonable efforts prior to placement to prevent the removal of the children but the parents failed to comply with all efforts.

The juvenile court continued the children in shelter care, placed the children in the temporary care and custody of the Department, granted the parents visits with the children, and set an adjudication hearing for February 15, 2023.

### **The Adjudication and Disposition Hearing**

On February 15, 2023, a remote adjudication hearing was convened before a juvenile magistrate. Similar to the shelter hearing, Mother and Father appeared without counsel. The magistrate advised them of their right to counsel and both elected to proceed without representation.

At the hearing, the Department presented the testimony of Ms. Smith, who testified about the initial referral that was made, and the exhaustive steps she, other workers, and law enforcement took in trying to make direct contact with Mother and Father in order to see the children, but the parents would not cooperate. In addition, Ms. Smith testified that when she and other social workers were at the hospital with the children, the physician told her that C.J. had previously been diagnosed with failure to thrive and the current diagnosis was also failure to thrive. The physician further expressed that the failure to thrive was

due to severe medical neglect. Regarding CL.J., the physician also determined medical neglect because CL.J. had not received any vaccinations and had not been under the care of a pediatrician.

Regarding her own observation of C.J., Ms. Smith testified that although C.J. was 20 months old and CL.J. was three months old, C.J. appeared similar in size to his younger sister. To further show their similarity in size and weight, the Department offered into evidence a photograph of the children laying side by side. Ms. Smith testified that the weight difference between the children was only two pounds.

Ms. Smith also testified that she reached out to the parents to request documents and information helpful for the investigation, particularly prior medical records and follow-up medical appointments, but neither Mother nor Father responded to her requests. Moreover, she testified that the parents had been evasive and uncooperative, even to the point that Mother would not provide her home address.

Since the children were placed in foster care, C.J. had gained two to three pounds. Ms. Smith expressed concern that if the children were returned to the parents, she believed they would not take the children to medical appointments, that C.J. would not continue to gain weight, and that the parents would likely leave the State, again. Ms. Smith also was asked during questioning if she recommended any services for the family and she indicated that both parents should undergo a psychiatric evaluation. She made this recommendation “to understand [the parents’] views and beliefs” because Ms. Smith “did not believe that the parents [had] a sense of reality when speaking” with the Department and “what is law and what’s not.”

In addition to the testimony of Ms. Smith and the photograph of the children, the Department offered into evidence the medical records from the night the children were assessed at Howard County General Hospital, recent pediatric records for both children from their time in foster care, University of Maryland medical records related to the children’s birth, and C.J.’s medical records related to the October 2021 failure to thrive diagnosis.

Mother and Father also testified at the hearing. During their testimony, both parents read from a letter, which they described as “the unauthorized administration” of their estate. Mother referred to herself as the “executor” of her estate, and alleged that the Department had violated her “estate in a matter that is deemed to be treasonous and poisonous to the well-being of [her] heirs,” and that the Department had kidnapped her heirs. She testified that the children should be returned to the estate. During Father’s testimony, Mother interjected and attempted to assist him. When he finally spoke, he stated:

Allocution of Court in curry of prisoners as to whether he has any legal case to show why judgment should not be pronounced against him on verdict of construction. Conviction Black’s Law Dictionary fourth edition. Octavia Smith, LMSWCPS Social Worker, and Suzzanne Glorioso, LCSWC SPS given—

...

This meeting has been adjourned and I would love for [C.J. and CL.J.] to be returned to estate.

Neither parent addressed the concerns raised by the Department or the medical findings related to C.J.

At the conclusion of the adjudication hearing, the magistrate gave all the parties an opportunity to provide a closing argument. Both the Department and the children’s attorney requested that the children be found CINA and placed in the care of the Department.

When Mother went to provide her closing argument, she attempted to play a recording she made of a conversation she had with a doctor. When the magistrate informed Mother that she could not do that and explained to Mother that wiretap laws prohibited the recording of a person without their explicit consent, Mother continued to interrupt the magistrate. Mother again asked for the children to be returned to the estate. During his closing argument, Father argued that “fraud has been discovered on the Court.”

After the magistrate provided the parties with the opportunity for a closing argument, she began to make her findings on the record. The magistrate found that “based on the evidence presented today, I do find that the facts in the Petition are sustained. It’s more than a preponderance of the evidence. There is photographic evidence, there are medical records, it’s very concerning. The facts in the Petition are sustained and –.” Before the magistrate could finish what she was saying, Mother interrupted the proceedings:

[Mother]: This is hearsay. This is hearsay because how do you know that the source from the referrals is even credible? In the Constitution, we are supposed to –

Magistrate: Ma’am, you had a chance to speak.

[Mother]: We’re supposed to face our accuser.

Magistrate: Well I understand you have your own interpretation.

[Mother]: Is there corpus delecti?

Magistrate: It is now my change [sic] to talk and I do find that they are Children in Need of Assistance.

[Mother]: Is there corpus delecti?

Magistrate: Because –

[Mother]: Is there an injured party?

Magistrate: I'm not answering questions here.

[Mother]: Is there an injured party?

Magistrate: Have you seen the picture?

[Mother]: Is there an injured party?

Magistrate: All right ma'am, we're going to have to mute you if you don't let me finish.

[Mother]: Is there Title Four funding –

Because of Mother's continuous interruptions, the magistrate had Mother muted on the remote platform to avoid further interruptions. The magistrate then continued and stated:

I find there is not a parent that [the children] cannot be returned to their [sic] home. It is not in their best interest and the evidence sustained the finding that continuation in the parents' home is not in their best interest. They are unable or unwilling to provide sufficient nutritional resources, and medical care for the children and it is my job to ensure that I make decisions that I find to be in the best interest of the children. And that's my decision.

So I'm going to recommend that the children remain in the care and custody of the [Department] with limited guardianship. That the parents have supervised visits with the children as can be arranged and directed by [the Department]. And that both parents submit to a psychiatric and psychological evaluation

and follow all treatment recommendations and sign all releases.

The magistrate then set in a review hearing to occur in July. At the conclusion of the hearing, the magistrate also issued a written CINA Adjudication/Disposition Findings and Order.

In her written findings, the magistrate noted that the parents elected to proceed without counsel at the shelter hearing and the adjudication hearing. She summarized the testimony of Ms. Smith and the efforts undertaken by the Department to contact the parents. Regarding C.J., the magistrate found that he was extremely small. He weighed only 15 pounds; had not met any milestones; and had been diagnosed with failure to thrive twice, once in 2021, with no follow-up, and again in 2023. She also found that he was developmentally delayed and could not sit up, walk, or speak. She noted the photo showed a “shockingly small [C.J.] next to his sister,” but that since placement in foster care, C.J. had gained weight. Regarding CL.J., she found that there were concerns that she had not received vaccinations.

Regarding Mother and Father, she found the parents did not cooperate with the Department, that Mother told Ms. Smith she only gives C.J. certain foods, and that the parents do not want the children vaccinated. The magistrate also noted the transient nature of the parents. Lastly, the magistrate noted the parents’ testimony. The magistrate found that neither one “addressed the needs of the children but rather seemed to address some alleged intrusion on property rights.” The magistrate noted that both parents referred to the children as part of an estate. Specifically as to Father, the magistrate found that he was

hesitant, was directed by Mother, he “had an unusual affect” and “his speech was halting and disjointed.” She concluded that “both parents appeared to be thought disordered and/or delusional to an extent that would effect [sic] their ability to adequately parent at this time.”

The magistrate further found that:

Both parents are unable to provide proper care for their children. The children are at substantial risk of harm if returned to their parent’s care. The parents believe in conspiracy theories, they do not believe in medical care, they refuse to consent to vaccinations and have no fixed address. [C.J.] is severely underweight, malnourished and extremely developmentally delayed. He is diagnosed as Failure to Thrive and requires significant medical intervention.

Similar to her oral opinion, the magistrate recommended that the children be found CINA, that the children remain in the care and custody of the Department and in foster care, and, among other things, that Mother and Father submit to a psychiatric and psychological evaluation and to follow all treatment recommendations.

Neither parent filed exceptions to the magistrate’s findings, conclusions, or recommendations.<sup>6</sup> On February 28, 2023, the magistrate’s findings, conclusions, and recommendations were adopted by court order.

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<sup>6</sup> In accordance with Courts and Judicial Proceedings Section 3-807(c)(1), any party may file exceptions to a magistrate’s findings, conclusions and recommendations. If a party fails to file timely exceptions, a court shall adopt the magistrate’s findings, conclusions, and recommendations and enter an order, unless otherwise ordered by the court. Md. Code Ann., Cts. & Jud. Proc. § 3-807(d)(2); Md. Rule 11-103(g).

## DISCUSSION

### I. Parties' Contentions

Mother contends that the juvenile court committed error by finding both children CINA and by ordering her to undergo a psychiatric or psychological evaluation. Mother first contends that the children did not meet the definition of CINA and that the removal of the children was in error. In particular, while not conceding the specific medical findings that were made about C.J., she argues that CL.J. was healthy and had no medical issues like her brother. According to Mother, the only concern raised about CL.J. was the lack of vaccination. In addition, Mother argues that she was willing and able to care for the children and that removal of the children from her care was based on speculation. According to Mother, the medical records do show that she took C.J. to follow-up medical appointments after the October 2021 failure to thrive diagnosis and that C.J.'s small size could have been from a possible genetic condition. According to Mother, once the Department was able to assess the children, determine the services they needed, and found CL.J. to be healthy, the children should have been returned to Mother.

Mother's second contention is that there were insufficient facts to require her to undergo a psychiatric and psychological evaluation and follow all recommendations. Mother argues that in the Department's CINA petition, it made no allegations against Mother regarding mental health issues that may affect her parenting. Consequently, there were no findings to be made by the magistrate to substantiate the Department's request for the evaluation. In seeking such a request, the Department simply noted that it wanted the parents to undergo psychiatric and psychological evaluations to understand the parents'



views and beliefs. In ordering the evaluations, Mother argues that the juvenile court simply did so based on the magistrate’s finding that the “parents appeared to be thought-disordered and/or delusional.” Since the Department did not allege in its petition that Mother’s mental health was the reason to remove the children, Mother argues that the juvenile court’s order was based on speculation and bias, and it was unreasonable.

For his part, Father also raises two contentions. First, he contends that the juvenile court committed reversible error by failing to have a separate and distinct disposition hearing. Although he acknowledges that neither parent filed exceptions to the magistrate’s findings and recommendations, he argues that the CINA statutory framework requires the juvenile court to hold a separate and distinct disposition hearing from the adjudication. Father asserts that the magistrate did not hold a separate disposition hearing. Instead, the magistrate concluded that the children were CINA without affording the parents the opportunity to obtain counsel and present additional evidence to determine if the parents were capable of providing care to the children.

Second, and similar to Mother, Father contends that the juvenile court erred in finding both children to be CINA, since the evidence was lacking regarding any abuse or neglect related to CL.J. Specifically, Father points out that C.J. was diagnosed with failure to thrive and additional medical and therapeutic interventions were recommended for him. CL.J., however, was healthy and did not require any additional health related services. Father argues that the medical findings made regarding C.J. should have no impact on CL.J.

Collectively, the local department and children’s attorney (the “Appellees”) contend that the juvenile court acted within its broad discretion in finding both children to be CINA,

and there was sufficient evidence to support the juvenile court’s findings and conclusions. First, there was ample evidence for the juvenile court to conclude that C.J. had been neglected by his parents and that they were unable to provide him with proper care. C.J. was severely underweight, malnourished, developmentally delayed, and had a prior diagnosis for failure to thrive in which there was a lack of follow-up by the parents. Even if, as Mother contends, C.J.’s failure to thrive was not due to the parents’ dietary and health care choices, the parents failed to take appropriate action after receiving the failure to thrive diagnosis in October 2021.

Moreover, the Appellees further argue that although CL.J. did not have the same medical and developmental delays as her brother, the collective evidence related to C.J.’s failure to thrive, malnourishment, and lack of follow through regarding his October 2021 failure to thrive diagnosis, plus the parents’ unwillingness to cooperate with the Department, was sufficient evidence to find that CL.J. was also a CINA. As argued by the Appellees, the care of one child is probative of a parent’s ability to care for another child. Since CL.J. was only three months old, had not seen a pediatrician, and like C.J., had not been vaccinated, the Appellees contend that the juvenile court did not need to wait until harm fell on CL.J. for the juvenile court to take appropriate action.

Second, the Appellees argue that there was sufficient evidence, and the juvenile court acted within its broad discretion, to order the parents to undergo a psychiatric and psychological evaluation. The magistrate personally observed the parents’ conduct during the hearing and heard their testimony. Specifically, the magistrate observed that Mother was disruptive during the proceedings and that Father had an unusual affect. During the

parents’ testimony, they referred to the children as their “heirs,” they demanded that their heirs be returned to the estate, and Mother alleged that the Department had kidnapped the children.

Lastly, the Department<sup>7</sup> contends that the magistrate was unable to hold a separate and distinct hearing due to Mother’s outbursts, and even if it was error on the part of the magistrate to move into the disposition after the outbursts, the error was harmless. At the adjudication hearing, the Department points out that neither parent responded to the Department’s allegations raised in the CINA petitions. Instead, the parents focused on property rights and their estate when referring to the children. Although the Department recognizes that for good cause a disposition hearing may be held on a different date, the Department argues that “neither parent has proffered what they would have said during a separate disposition hearing that would have led to a different outcome in this case, nor could they.” Thus, the Department argues that even assuming the magistrate erred by not holding a separate hearing, the error was harmless because holding a separate hearing would have only provided the parents with a chance to engage in the same testimony and behavior unrelated to the children’s health and well-being.

## II. Standard of Review

This Court has previously explained the three standards of review that apply in CINA proceedings:

There are three distinct but interrelated standards of review applied to a juvenile court’s findings in CINA proceedings. The juvenile court’s factual findings are reviewed for clear

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<sup>7</sup> The children’s brief did not address this issue.

error. Whether the juvenile court erred as a matter of law is determined without deference; if an error is found, we then assess whether the error was harmless or if further proceedings are required to correct the mistake in applying the relevant statute or regulation. Finally, we give deference to the juvenile court’s ultimate decision in finding a child in need of assistance, and a decision will be reversed for abuse of discretion only if well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.

*In re J.R.*, 246 Md. App. 707, 730-31, *cert. denied* 471 Md. 272 (2020) (internal quotation marks and citations omitted).

### III. Analysis

#### **A. The juvenile court did not abuse its discretion in concluding that both children were CINA.**

The Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions that concern the care, custody, and control of their children. *Burak v. Burak*, 455 Md. 564, 624 (*relying on Troxel v. Granville*, 530 U.S. 57, 66 (2000)). This right, however, is not without limitations as a “state has a wide range of power for limiting parental freedom and authority in things affecting a child’s welfare . . . .” *In re Nathaniel A.*, 160 Md. App. 581, 594 (2005) (*quoting Prince v. Com. Of Mass.*, 321 U.S. 158, 167 (1944)). Under Maryland law, to ensure a child’s welfare, the state is entrusted with the power:

(1) To provide for the care, protection, safety, and mental and physical development of any child coming within the provisions of this subtitle;

(2) To provide for a program of services and treatment consistent with the child’s best interests and the promotion of the public interest;

- (3) To conserve and strengthen the child’s family ties and to separate a child from the child’s parents only when necessary for the child’s welfare;
- (4) To hold parents of children found to be in need of assistance responsible for remedying the circumstances that required the court’s intervention;
- (5) Except as otherwise provided by law, to hold the local department responsible for providing services to assist the parents with remedying the circumstances that required the court’s intervention;
- (6) If necessary to remove a child from the child’s home, to secure for the child custody, care, and discipline as nearly as possible equivalent to that which the child’s parents should have given;
- (7) To achieve a timely, permanent placement for the child consistent with the child’s best interests; and
- (8) To provide judicial procedures for carrying out the provisions of this subtitle.

Md. Code. Ann., Cts. & Jud. Proc. § 3-802(a) (2020).<sup>8</sup> Therefore, when a child is deemed to be CINA, both the State and the court are required to take action to safeguard a child’s safety and wellbeing. *Id.*

CINA means:

- (f) ... a child who requires court intervention because:
  - (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and
  - (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.

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<sup>8</sup> Unless otherwise noted, all references to Courts and Judicial Proceedings Article are to the 2020 volume.

Md. Code. Ann., Cts. & Jud. Proc. § 3-801(f). The local department’s burden to prove that a child is CINA is by a preponderance of the evidence. Md. Cod. Ann., Cts. & Jud. Proc. § 3-817(c).

In their briefs, the parents challenge the magistrate’s factual findings that the children were neglected and that the parents were unable and unwilling to provide the children with the care they needed. Before the juvenile court, however, neither parent filed exceptions to any of the magistrate’s recommended findings and conclusions. “A party’s failure to timely file exceptions forfeits any claim that the [magistrate’s] findings of fact were clearly erroneous.” *Barrett v. Barrett*, 240 Md. App. 581, 587 (2019) (internal quotations and citations omitted). Consequently, we are not required to address the challenges now raised by the parents regarding the magistrate’s factual findings. *In re J.R.*, 246 Md. App. at 749.

Nonetheless, even if exceptions had been filed, there was substantial evidence for the juvenile court to find that the parents had neglected the children and were unwilling or unable to give proper care and attention to the children’s needs. Therefore, the juvenile court did not abuse its discretion in finding both children to be CINA and continuing the children in foster care.

*1. Neglect finding regarding the children.*

The statutory definition of neglect includes a “failure to give proper care and attention to a child by any parent . . . who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate . . . the child’s health or welfare is harmed or *placed at substantial risk of harm.*” Md. Code Ann., Cts. &

Jud. Proc. § 3-801(s)(1)(i) (emphasis added). There was ample evidence to support the juvenile court’s neglect finding as to both children.

At 20 months of age, C.J. only weighed 15 pounds, barely more than his three-month-old sister. The medical examination revealed that C.J. was developmentally delayed, unable to stand or ambulate, and his speech was delayed. At the hospital, he had to be fed with a bottle because he did not know how to use a cup. Mother reported that he only ate applesauce pouches, fruits, avocados and gluten free waffles. She further indicated that C.J. did not drink cow’s milk. Based on the medical evaluation that was done of C.J. at the hospital, the treating physician concluded that he was malnourished and diagnosed C.J. with, among other things, failure to thrive.

Moreover, prior medical records from October 2021 also indicate that when C.J. was five months old, he was diagnosed with failure to thrive, and it was recommended that his parents follow-up with a gastroenterologist and a pediatrician to monitor his weight. While the medical records do show that the parents took C.J. to a couple of follow-up visits with Annapolis Pediatric Gastroenterology, those records revealed that C.J.’s weight was still below expectations. Despite the Department’s efforts to obtain medical records from the parents regarding any other subsequent medical care related to C.J.’s October 2021 emergency room visit, the parents failed to cooperate and did not provide medical records. Consequently, there were no other medical records to show that C.J. received follow-up medical care as recommended to address his failure to thrive and to monitor his weight.

In addition to the medical records, the local department presented the testimony of CPS Social Worker Ms. Smith, who testified regarding her observations of C.J. She

testified that C.J. appeared small and underweight in comparison to his much younger sister. At the hospital, she observed both children were very hungry and needed to be fed. She also presented testimony regarding the challenges she faced in getting the parents to cooperate and the active steps the parents took to prevent the Department from seeing the children, especially C.J.

Lastly, a photograph of the children was offered into evidence to provide a side-by-side comparison of the children. Ms. Smith described how the children appeared identical in size and weight, even though C.J. was 20 months old and CL.J. was three months old.

Neither parent at the adjudication hearing, nor in their briefs, raises a serious challenge to the juvenile court’s neglect finding regarding C.J. At the adjudication hearing, the parents did not offer any testimony or documents to contradict the medical findings related to C.J., or the testimony of Ms. Smith regarding her observations and interactions with the parents. In her brief, Mother argues that the reasons for C.J.’s “small size remained unknown and could have been caused by a number of issues, malnutrition being only one possibility.” Yet, the parents presented no other evidence that would permit the juvenile court to reach any conclusion other than neglect.

Regarding CL.J., it is true that she was healthy and appeared to be of normal weight and size for a three-month-old child. Mother and Father argue in their briefs that because CL.J. did not have the same medical findings as C.J., it was error for the juvenile court to also find that CL.J. was neglected. Moreover, Mother argues that the juvenile court’s only basis for finding that CL.J. was neglected was because she had not been vaccinated. Mother contends that she has the right to decline to vaccinate her children.



The issue of a parent’s right to vaccinate a child was not an issue raised by the parents before the juvenile court, nor is it an issue this Court needs to decide.<sup>9</sup> “Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]” Md. Rule 8-131(a). Consequently, Mother’s vaccination argument was not preserved for appellate review. Even if this argument had been preserved, Mother would not prevail.

In reviewing the juvenile court’s oral and written opinion, the neglect finding was not based on the children’s lack of vaccination. Although the magistrate briefly mentions in her report that neither child was vaccinated, the majority of the magistrate’s written factual findings focused on: the evidence related to C.J.’s failure to thrive; the parents’ lack of cooperation with the local department; the parents’ testimony, which did not address the needs of the children but rather their property interest in the children; and the parents’ failure to follow up on C.J.’s October 2021 failure to thrive diagnosis. Thus, although the Department did note in its CINA petitions that the children were not

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<sup>9</sup> At the adjudication hearing neither parent testified about why the children had not been vaccinated. The only evidence presented was the testimony of Ms. Smith who indicated the parents do not believe in vaccinations. In her brief, Mother noted that she and Father maintain certain religious practices through the Science Temple of America. Although she did not argue in her brief that her decision to not vaccinate the children was based on her religious beliefs, Mother argued that a parent’s freedom of choice in parenting a child, includes the right to have the child participate in religious practices. At the adjudication hearing there was no evidence presented related to the parents’ religion or that because of their faith the children were not vaccinated. In fact, when the Department asked Ms. Smith a question about the parents’ religious faith, Mother objected and the magistrate sustained the objection.

vaccinated, and the magistrate found that neither child had been vaccinated, that determination was not the controlling basis for a neglect finding as to CL.J.

The definition of neglect includes not only that a child has been harmed, but, as relevant here, whether the child has been “placed at a substantial risk of harm.” Md. Code Ann., Cts. & Jud. Proc. § 3-801(s)(1)(i). As correctly pointed out by Appellees, a “judge need not wait until the child suffers some injury before determining that he is neglected. This would be contrary to the purpose of the CINA statute. The purpose of the act is to protect children—not to wait for their injury.” *In re William B.*, 73 Md. App. 68, 77-78 (1987). Thus, while CL.J. may have been healthy at three months old, waiting for some harm to befall her would be contrary to the purpose and intent of the CINA statute.

Moreover, “the parents’ ability to care for the needs of one child is probative of their ability to care for other children in the family.” *Id.* at 77. Mother and Father’s failure to provide C.J. with nourishment and follow-up medical care the first time he was diagnosed with failure to thrive is probative evidence of their ability to provide the necessary medical care and attention to CL.J. There was also evidence that no medical records existed to confirm that CL.J. had been seen or treated by a pediatrician. Thus, there was substantial evidence to support the juvenile court’s conclusion that CL.J. was at a substantial risk of harm and, therefore, also neglected.

Accordingly, we conclude that the juvenile court was not clearly erroneous in its factual determination that the parents had neglected both children.

*2. The juvenile court did not err in finding that the parents are unable and unwilling to give proper care and attention to the children.*

A CINA determination is based on two findings. First, and relevant in this case, that a child has been neglected, and second, that a parent is “unable or unwilling to give proper care and attention to the child and the child’s needs.” Md. Code. Ann., Cts. & Jud. Proc. § 3-801(f). The evidence here supports the juvenile court’s finding that the parents were unable and unwilling to provide the proper care and attention to the children and their needs.

Throughout the Department’s involvement with the parents, neither parent has been cooperative. They evaded the Department’s attempt to see the children for a wellness check and they were unresponsive to the Department’s request for additional medical records related to the children. At the proceedings before the lower court, Mother refused to provide her address, both parents failed to address the needs of the children, and both viewed the children as property of their estate and demanded the return of their property. The parents were focused on the property rights they had regarding the children and never addressed C.J.’s failure to thrive, his developmental delays, or any medical care regarding both children. Rather than address the Department’s allegations of neglect, the parents instead alleged that the Department had committed fraud and had kidnapped the children.

The juvenile court concluded that:

Both parents are unable to provide proper care for their children. The children are at substantial risk of harm if returned to their parent[s]’ care. The parents believe in conspiracy theory, they do not believe in medical care, they refuse to consent to vaccinations and have no fixed address. [C.J.] is severely underweight, malnourished and extremely

developmentally delayed. He is diagnosed as Failure to Thrive and requires significant intervention.

The juvenile court’s findings were supported by the evidence, and therefore we find no clear error in its conclusion that the parents were unable and unwilling to provide the necessary care to the children.

Accordingly, we conclude that there was substantial evidence to support the juvenile court’s determinations that the parents had neglected the children and were unable and unwilling to provide the necessary care to the children. Consequently, the juvenile court did not abuse its discretion in its ultimate determination that C.J. and CL.J. were CINA and that they were to remain in the care and custody of the Department.

**B. The juvenile court did not abuse its discretion in ordering the parents to submit to a psychiatric and psychological evaluation.**

When a child is determined to be a CINA, a juvenile court has wide discretion to effectuate the CINA statutory scheme. In an effort to provide “for the care, protection, safety, and mental and physical development of any child” deemed CINA, a juvenile court may hold parents “responsible for remedying the circumstances that required the court’s intervention.” Md. Code Ann., Cts. & Jud. Proc. §§ 3-802(a)(1), (4). To that end, a court “may direct the local department to provide services to a child, the child’s family . . . to the extent that the local department is authorized under State law” and such services must be to “protect and advance a child’s best interest.” *Id.* § 3-802(c). Unless aggravating

circumstances exist,<sup>10</sup> a local department is required to provide parents with services in an effort to reunify children with their parents and have the children return safely to their home. *See* Md. Code Ann., Cts. & Jud. Proc. § 3-812 and § 3-816.1.

Here, the parents’ behavior raised serious concerns for the juvenile court. Both took active steps to evade the Department, and both viewed the children as property of their estate. They described the Department’s actions as fraudulent and they alleged that the children had been kidnapped by the Department. The transcript of the CINA hearing reflects that Mother was disruptive and would not allow the magistrate to continue with the hearing, and that Father simply repeated the same things as Mother. Neither acknowledged nor expressed any concern regarding C.J.’s significant medical issues and developmental delays. The parents’ behavior certainly suggested, as the magistrate noted in her written opinion, that “both parents appeared to be thought disordered and/or delusional to an extent that would effect [sic] their ability to adequately parent at this time.”

The record supports that the juvenile court had a factual basis to require the parents to undergo psychiatric and psychological evaluations, and the fact that the CINA petitions did not allege that either parent had a mental disorder did not prevent the juvenile court from ordering those services. The parents’ inability to focus on the health of the children, rather than the odd property references they made throughout the hearing, was evidence

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<sup>10</sup> Courts and Judicial Proceedings Section 3-812(b) includes a list of aggravating circumstances that if present may allow a court to rule that the local department need not engage in any reasonable efforts towards reunification. Such conduct includes chronic or severe physical abuse, chronic and life-threatening neglect, sexual abuse, and torture, of a child, a sibling, or another child in the household. Md. Code Ann., Cts. & Jud. Proc. § 3-812(b)(1).

that the parents did not rationally understand the need for the Department to take action to ensure the safety and well-being of the children. Therefore, the juvenile court did not abuse its discretion in concluding that the parents should submit to a psychiatric and psychological evaluation.

**C. The juvenile court’s determination that the children were CINA, without first pausing to engage in a separate disposition hearing, was harmless error and does not warrant reversal.**

Father also challenges the CINA finding on the grounds that the juvenile court did not hold a separate and distinct disposition hearing, and that the failure to do so is reversible error. In support of his position, he relies on *In re J.R.*, 246 Md. App. 707 (2020). Father argues that the CINA statutory framework mandates that a separate disposition hearing be held and that by not holding a separate hearing, the parents were not given an opportunity to present evidence regarding their current living condition. Additionally, the magistrate did not further explore the parents’ ability to provide care for the children. Consequently, Father believes that by not holding a separate disposition hearing, the juvenile court absolved the Department of their burden of proof in a disposition hearing.

There are two hearings involved before a CINA determination is made. First an adjudication hearing and second a disposition hearing. Md. Code Ann., Cts. & Jud. Proc. §§ 3-817(a), 3-819(a). At the adjudication hearing, the juvenile court determines “whether the department’s factual allegations in the CINA petition are true.” *In re O.P.*, 470 Md. 225, 236 (2020). If the allegations are proven, then the juvenile court “holds a separate disposition hearing to determine whether the child is, in fact a CINA and, if so, the nature of any necessary court intervention.” *Id.* While the CINA statutory framework requires the

adjudication and disposition to be separate hearings, there is no requirement for the hearings to be held on separate days. Specifically, Courts and Judicial Proceedings § 3-819 requires the disposition hearing to be held on the same day as an adjudicatory hearing unless the hearing is delayed for good cause, but that delay cannot be more than 30 days from the adjudicatory hearing. *Id.* at §§ 3-819(a)(2), (3). There are different outcomes that can result from the evidence presented at the disposition hearing:

The court may find that the child is not a CINA and dismiss the case. Alternatively, the court may determine that the child is CINA, in which case it may take one of three actions: (1) decide not to change the child's current custody; (2) commit the child to the custody of a parent, relative, or another suitable individual; or (3) commit the child to the custody of the local department of social services[.]

*In re O.P.*, 470 Md. at 236-37 (internal citations omitted). *See also* Md. Code Ann., Cts. & Jud. Proc. § 3-819(b)(1).

Contrary to Father's assertion, the record does not support a conclusion that at any time the juvenile court absolved the Department of its burden of proof to establish that the children were CINA. The Department presented evidence on the parents' neglect and their inability to provide proper care to the children. At no time during the hearing, or in setting forth findings and conclusions, did the juvenile court absolve the Department of its burden. We do, however, agree with Father that there was no separate disposition hearing. It was clear from reviewing the transcript of the adjudication hearing that no separate disposition hearing was held. Consequently, the juvenile court committed legal error by not adhering to the statutory framework that requires a separate adjudication and disposition hearing. Nonetheless, we conclude that the error was harmless.

In the case of *In re J.R.*, this Court held that it was legal error for the juvenile court to have combined the adjudication and disposition hearing and that the error was not harmless. 246 Md. App. at 756. In that case, the local department had filed a shelter care and CINA petition after unsuccessful attempts to have the parents adhere to safety plans. Similar to this case, the allegations against the parents concerned medical neglect, which included J.R.’s inadequate weight gain. *Id.* at 719. At the adjudication hearing, the juvenile court heard from the Department, received evidence regarding two unsuccessful safety plans, and took judicial notice of a prior shelter care hearing. *Id.* at 728. Neither parent presented evidence nor gave testimony. Thereafter, the juvenile court sustained the allegations in the petition and found that:

Parents have repeatedly violated the terms of Safety Plans, and an Order Controlling Conduct that was imposed by the court, with the parents agreement at the Shelter Care hearing; Child has been left with various caregivers at various locations, without notice to the department, which was conducting an active investigation into the welfare of the child, and Parents have demonstrated an unwillingness to cooperate with the Department in regard to care of the child.

*Id.* at 729. The juvenile court then made its CINA determination and ordered the parents to participate in several counseling services. *Id.* Thus, there was no clear indication when the adjudication hearing ended and the disposition hearing started. *Id.* at 756.

In concluding that the juvenile court’s error was not harmless, the Court in *In re J.R.* noted that “the [parents] were not given the opportunity to present evidence as to why they would be able to provide J.R. with the proper care and attention, nor did the court outline specific findings as to why the court felt the need for removal.” *Id.* at 757. Further, the



dispositional order required the parents to participate in several treatments and evaluations; however, the juvenile court “made no findings as to the basis for these services being ordered. As a consequence, the dispositional order [did] not correspond with the record.”

*Id.* The Court therefore vacated the dispositional order and remanded the case back to the lower court to hold a dispositional hearing to determine if the parents were unable to care for J.R. *Id.*

Unlike *In re J.R.*, here, after the Department presented its evidence, the parents testified at the adjudication hearing. Prior to their testimony, they were fully aware of the CINA allegations and the Department’s position that the children should not be returned to the parents’ care. When given the opportunity to address the allegations raised in the CINA petition or challenge the positions taken by the Department and the children’s attorney, the parents elected not to do so during their testimony and closing arguments.

Instead, each time the parents spoke, they continued with the same nonsensical assertions that the children were property of their estate, and they demanded the children’s return. Rather than address the allegations and concerns raised, they both read a letter about the “unauthorized administration” of their estate. Again, they alleged that the Department had committed fraud and had kidnapped the children, and they demanded that the children be returned to their estate.

Lastly, and unlike *In re J.R.*, where it was unclear when the adjudication hearing ended and the disposition hearing started, the hearing transcript clearly shows that the magistrate intended to provide her findings related to the adjudication. Yet, shortly after beginning to deliver her oral opinion, Mother interrupted the proceedings to the point that

the magistrate had to mute Mother. Thus, it was clear from the transcript that it was Mother’s behavior that prevented an orderly progression from the adjudication hearing to the disposition hearing.

While it is true that no separate disposition hearing was held, the juvenile court’s CINA conclusion was supported by the record, as detailed in the findings made by the magistrate. Those findings included the sustained CINA allegations, the magistrate’s observations of the parents during the hearing, and the testimony of the parents. All this supported that the parents were unable and unwilling to provide for the care of the children and that the children could not be safely returned to the parents’ care.

“A reversible error must be one that affects the outcome of the case, the error must be substantially injurious, and it is not the possibility, but the probability, of prejudice that is the focus.” *In re Adoption/Guardianship of T.A., Jr.*, 234 Md. App 1, 13 (2017) (*quoting In re Yve S.*, 373 Md. 551, 618 (2003)) (internal quotation marks omitted). Father, aside from alleging in his brief that a separate disposition hearing would confirm the parents current living situation, advanced no other reason that would have warranted the children to be placed in the care of their parents. Mother also did not advance in her brief a reason that would have resulted in a different outcome. The juvenile court’s conclusion that the parents were unable and unwilling to provide proper care to the children was not based on the parents’ living situation. C.J. was twice diagnosed with failure to thrive and significantly developmentally delayed. At 20 months old, C.J. weighed just two-pounds less than his three-month-old sister. Neither parent responded to the Department’s allegations, even after Ms. Smith testified that the children should not be returned to the

parents, nor did the parents provide the Department with medical records to confirm that C.J. had been followed by a pediatrician to monitor his weight, nor that CL.J. had ever been seen by a pediatrician.

In this case, the outcome would not have been different had the magistrate paused and announced that she was moving to the disposition hearing. The parents would have continued with the same unresponsiveness to the serious concerns raised by the Department and the children’s attorney regarding the parents’ inability to provide proper care to the children. Therefore, we conclude that the juvenile court’s error in not holding a separate and distinct disposition hearing was harmless.

**ORDERS OF THE CIRCUIT COURT  
FOR HOWARD COUNTY, SITTING AS  
A JUVENILE COURT, AFFIRMED.  
APPELLANTS TO PAY THE COSTS.**