

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2460

September Term, 2015

IN RE: O.F.

Eyler, Deborah S.,
Wright,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: July 14, 2016

Mr. F. (“Father”) and Ms. F. (“Mother”) (collectively “the F.s”), the appellants, challenge an order of the Circuit Court for Carroll County, sitting as the juvenile court, finding their adoptive daughter,¹ O.F., to be a child in need of assistance (“CINA”)² and granting custody to the Carroll County Department of Social Services (“the Department”). The Department and O.F. are appellees in this Court.

The F.s present four questions,³ which we have combined and rephrased as one: Did the juvenile court err or abuse its discretion in finding that O.F. was a CINA because Mr. F. had physically and sexually abused her and because Ms. F. had neglected to

¹ Mr. F. did not legally adopt O.F. because he was not permitted to do so under Ukrainian law.

² A child in need of assistance is “a child who requires court intervention because: (1)[t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2)[t]he child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” Md. Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article (“CJP”) § 3–801(f).

³ The questions as posed by the F.s are:

I. Did the court trespass on the liberty rights of Appellants in substituting its view of measures appropriate in the “care, nurture, and well-being” of their child?

II. May a court allocate or bar performance of parents’ duties to their children according to gender?

III. Is the right to due process notice abridged by the court declaring parental child abuse for conduct, neither pled nor otherwise claimed, and expressly disavowed as abuse by Petitioner?

IV. Did the court err in finding physical abuse when relying, without articulation, upon disputed testimony from a witness under psychological treatment for “perceived trauma,” a belief that “facts” have occurred as contrasted with their actual occurrence, and finding current abuse proved by prior lawful corporal punishment to siblings?

protect her from that abuse? For the following reasons, we answer that question in the negative and shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

The F.s have been married for over 30 years. At all relevant times, they lived in a house in Mt. Airy. At the time of the CINA hearing, Mr. F. was 64 and Ms. F. was 58. They have two biological sons: G.F., age 27, and B.F., age 23. In 2008, the F.s adopted three children from the Ukraine: a 12-year-old daughter, O.N.F.; her 9-year-old biological brother, An.F.; and a 9-year-old daughter, Al.F. In 2010, they adopted another daughter, O.F., then age 12.⁴

The investigation that gave rise to the filing of the CINA petition commenced five years later, when O.F. was 17 years old. On the morning of Friday, March 13, 2015, Ms. F. caught O.F. sending text messages to a friend when she was supposed to be doing school work. Ms. F. confiscated O.F.'s cell phone. Ms. F. found evidence on O.F.'s phone that she also had been communicating with a boy that the family did not know. Ms. F. called a family meeting, which began around 11 a.m. O.F., Mr. F, Ms. F., Al.F., An.F., and O.N.F. all were present at the meeting at various times. According to O.F., during the course of the meeting, Mr. F. became extremely angry. He yelled at her and

⁴ Mr. F. was not permitted to legally adopt Al.F., An.F., or O.F. because the age difference between him and the children exceeded the limit set by Ukrainian law. Ms. F. legally adopted all three children, and Mr. F. consented to their adoptions. He is named as their father on their amended birth certificates.

struck her with his hand and a wooden paddle. He also pulled her hair and kicked her. Ms. F. did not do anything to stop the beating.

After the family meeting was over, O.F. sent a text message to her closest friend, Nadya, using her iPod.⁵ Nadya was 27 years old and lived with her parents in Ijamsville, Frederick County. O.F. told Nadya she had to get out of her house and asked if Nadya would pick her up. At an arranged time that afternoon, O.F. climbed out of a first floor window in her parents' bedroom and left the F.s' house. Nadya picked her up nearby and they drove to her family's house. O.F. told Nadya and Nadya's parents about the beating. Nadya's parents called the police and then drove O.F. to the Maryland State Police barracks in Westminster to file a report.

At the barracks, O.F. met with Trooper Melissa Haut, f/k/a Melissa Bender, and Trooper Fiorentino.⁶ O.F. told them that Mr. F. had beaten her with a paddle that looked like a wooden rolling pin with no handles. Trooper Haut observed raised red welts on O.F.'s arms, back, right shoulder blade, stomach, and thigh. The shape of the welts was consistent with the type of object described by O.F. Trooper Haut took photographs of the injuries.

⁵ O.F. explained that she could use her iPod to send text messages when she had wireless internet reception.

⁶ The record does not reflect Trooper Fiorentino's first name.

O.F. also reported to Trooper Haut that Mr. F. sometimes touched her in ways that made her uncomfortable. She explained that Mr. F. often helped her to take showers. He also touched her buttocks.

That night, Trooper Haut went to the F.s' house with a warrant and arrested Mr. F. on a charge of second degree assault. The Carroll County State's Attorney's Office ultimately entered a *nolle prosequi* on that charge.

An after-hours social worker for the Department spoke to Ms. F. by telephone on March 13, 2015. Ms. F. consented to O.F. remaining at the home of Nadya's parents until Monday, March 16, 2015.

On that day, April Jordan-Graham, a child protective services ("CPS") investigator for the Department, was assigned to O.F.'s case. She interviewed O.F. at the Carroll County Advocacy and Investigative Center ("CCAIC"), along with State Trooper Danielle Barry. The CCAIC is an office of the Maryland State Police. Jordan-Graham explained that when the Department and the State Police are conducting parallel investigations into allegations of physical child abuse and/or child sexual abuse, the Department ordinarily interviews victims in conjunction with the State Police at CCAIC.

During the interview, O.F. repeated her account of the physical assault. She said that Mr. F. had pulled her hair, slapped her face, kicked her, and then had hit her with the rolling pin. She reported that this was not the first time that Mr. F. had beaten her. On a prior occasion a few months earlier, he had broken a paddle while beating her. She described that paddle as being wrapped in black duct tape. Ms. F. was present during the

March 13, 2015 incident and prior incidents, but did not intervene. O.F. also had observed Mr. F. strike her siblings with a paddle.

O.F. reported that Mr. F. had been sexually abusing her since 2010. The first incident of sexual abuse had taken place in the Ukraine, while her adoption was being finalized. She was staying in a hotel with Mr. and Ms. F. and was sharing a bed with them. While Ms. F. was asleep, Mr. F. digitally penetrated O.F.'s vagina as she lay next to him in bed. After she was adopted, Mr. F. would stand in the master bathroom with her and help her shower. That shower was enclosed in glass. While she showered, Mr. F. would wash her whole body with a washcloth. He sometimes put his fingers in her vagina while he washed her. He continued to help her shower on a daily basis until, when she was around 14 years old, she asked him to stop.

O.F. explained that she slept in the F.s' bedroom along with Al.F. and O.N.F. The F.s slept in a king size bed with Mr. F. on the right and Ms. F. on the left. There was a queen-size bed that was pushed up against the right side of the F.s' bed. There was a queen-size futon that was pushed up against the foot of the king-size bed. She sometimes slept next to Mr. F. in the queen-size bed and she sometimes slept in the queen-size futon at the foot of the bed. When she slept next to Mr. F., he often put his hands inside her underwear and digitally penetrated her.

On one occasion, when O.F. was about 14 years old, Mr. F. told her to go in a bedroom, take off her clothes, and get on the bed face down. He came up behind her and

she heard him unzip his zipper. He penetrated her vagina with his penis. It did not go all the way in. He did not ejaculate.

Whenever O.F. rejected Mr. F.'s sexual advances, he would tell her that she was acting as if she did not love him anymore. Sometimes he became angry. On one occasion, he pointed a "long gun" at her head. Ms. F. was present during that incident. O.F. believed that Ms. F. was scared of Mr. F. Mr. F. often screamed at Ms. F. Ms. F. was not allowed to physically discipline her or any of her siblings. Only Mr. F. could do that.

After the interview, Jordan-Graham contacted Ms. F. and arranged to meet with her later that day. Later, Ms. F. called back and said she would not be attending the meeting. She advised Jordan-Graham that the Department should continue to shelter O.F.

On March 17, 2015, the Department filed in the circuit court a CINA petition. It alleged that on March 13, 2015, Mr. F. hit O.F. with a rolling pin, "leaving several bruises that were visible to the Department," and that O.F. had disclosed that she had been "frequently physically abused by Mr. [F.], including an incident when he held a gun to her head." O.F. also disclosed that she was being sexually abused by Mr. F.

Also on that day, a shelter care hearing was held and a magistrate recommended that temporary custody of O.F. be granted to the Department pending an adjudication and disposition hearing. By order entered April 2, 2015, the circuit court adopted the shelter care report.

Meanwhile, on March 19, 2015, Trooper Barry obtained and executed a search warrant at the F.s' house. In a gun safe in the basement of the home, she found a wooden rolling pin with no handles. The police also seized a wooden paddle that was wrapped in black duct tape. That paddle was on a shelf in the living area of the home. Trooper Barry observed that the configuration of the F.s' bedroom was exactly as described by O.F. during her interview.

Trooper Barry interviewed O.N.F., Al.F., and An.F., at the CCAIC. All three children denied that Mr. F. had struck O.F. on March 13, 2015, or that he ever had physically or sexually abused her or them. Trooper Barry observed that all three children seemed very nervous during the interviews, and she did not believe they were telling her the truth.

On April 21, 2015, a CINA adjudication hearing was held before a magistrate. The magistrate recommended that the allegations of the CINA petition be sustained and set the matter in for disposition. A disposition hearing was held on May 26, 2015, and June 12, 2015. At the conclusion of the disposition proceeding, the magistrate issued a written report recommending that O.F. be adjudicated a CINA and be committed to the custody of the Department.

The F.s noted timely exceptions to the magistrate's report and recommendation.⁷

⁷ The Department argued that the F.s' exceptions were untimely with respect to the CINA adjudication. The circuit court rejected this argument. The Department does not make this contention in the instant appeal.

On October 5, 2015, the Department filed an amended CINA petition to include the locations of the bruises sustained by O.F. and supplementing the allegation that O.F. was being sexually abused by alleging that Mr. F. had digitally penetrated O.F.'s vagina "while he was bathing her and when sleeping next to her in bed" and had "insert[ed] his penis into her vagina" approximately three years earlier.

A *de novo* adjudication and disposition proceeding was held before a judge over five days in October and November, 2015. At that hearing, the Department called 6 witnesses: O.F.; Trooper Haut; Trooper Barry; Jordan-Graham; Kelly Evans, a licensed certified professional counselor who had been treating O.F. since she entered foster care; and Amelia Libernini, a Department caseworker who had been assigned to O.F. after she entered foster care. In their case, the F.s each testified and called 10 witnesses: G.F.; K.F., who had been G.F.'s girlfriend at the time of the March 13, 2015 incident and was now his wife; B.F; O.N.F.; Al.F; An.F.; Nadya; William Burkett, D.D.S.; Rochelle Dyer, a nurse practitioner who had treated O.F.; and Lannette Rice, a friend of the F.s from church.

In addition to testifying consistent with the above stated facts, O.F. described being very isolated in the F.s' home. From the time she was adopted, she was homeschooled. Ms. F. worked outside the home during the day and O.F. did her school work on the computer. Her adopted siblings also were homeschooled. O.F. worked at a family-owned laundromat a few days a week. This is where she met Nadya. She also

attended church with her family and participated in the church youth group. She was not very close with her siblings.

O.F. shared a bedroom with Al.F. Nevertheless, she always slept in the F.s' bedroom. She felt pressured to do so. When she expressed a desire to sleep in her own bedroom, Mr. F. told her she was behaving like she didn't "want to be part of the family."

Mr. F. bathed O.F. on a daily basis for a year after she was adopted. Ms. F. helped her bathe "maybe like twice." Mr. F. stood outside the shower and remained clothed, but helped her to wash herself with a washcloth. He washed her entire body, including her breasts, buttocks, and genitals. O.F. told Mr. F. she did not want him to help her to bathe. Mr. F. stopped bathing O.F. around the time she turned 13. When she was "15 going on 16," however, O.F. got in trouble with Mr. F. He told her that he would bathe her again to help them to "re-start [their] relationship."

Evans testified that she worked at Families Connected and had been O.F.'s treating therapist since April 2015. She met with O.F. once a week for cognitive behavioral therapy. She had diagnosed O.F. with an Adjustment Disorder, unspecified, meaning that O.F. had difficulty acclimating to her environment. Evans explained that she was working with O.F. to process her history both in the Ukraine and with the F.s and to work on "assertiveness." During therapy, O.F. had expressed a lot of anger towards Ms. F. because she thought her mother should have protected her. She also was very hurt that Ms. F. did not believe her allegations of sexual abuse. O.F. had begun attending family therapy with Ms. F. and was making progress in her relationship with her mother.

O.F. was “fearful” of Mr. F. and did not want to have any contact with him. Evans did not feel that it would be clinically appropriate for O.F. to have contact with him.

O.F. felt “let down” by her adoption because she had “waited her whole life [to be adopted] . . . [a]nd then it was an equally bad or worse situation for her.” Evans recommended that O.F. continue in weekly therapy and that she remain in her foster home. Evans opined that O.F. was happy with her foster family, was well taken care of, and had formed relationships. If O.F. was to be returned to the F.s’ home, she would experience a great deal of “anxiety and depression” and would feel “unvalidated [sic] and scared.”

On cross-examination and re-direct examination, Evans clarified that, in her role as therapist, she presumed that O.F.’s allegations of physical and sexual abuse by Mr. F. were true. Even if those allegations were untrue, however, she would not recommend that O.F. be returned to the F.s’ home at this time because the “perceived trauma” would remain and it would be detrimental to O.F.’s mental health to make her return.

Trooper Haut and Trooper Barry testified about their roles in the investigation into the March 13, 2015 assault charge and the investigation into the allegation of child sexual abuse. Trooper Barry stated that the latter investigation remained “open.”

Trooper Barry further testified about her observations in the F.s’ home when she was executing the search warrant. In the master bedroom, she observed three beds: a king-size bed with a queen-size bed “budded up against” it on the right side and a queen-size futon at the foot of the bed. The futon was configured as a couch at that time, but

Trooper Barry could see that it could be flattened into a bed. The “rolling pin” implement seized at the F.s’ home was in a locked gun safe along with long guns.

On cross-examination, Trooper Barry was asked about her interviews with O.N.F., Al.F., and An.F. On re-direct, Trooper Barry explained that An.F. initially had told her that “no one gets hit or any type of physical discipline” in the F.s’ home. After Trooper Barry told An.F. that it “was not against the law to physically discipline . . . children,” An.F. admitted that “physical discipline [was] implemented when certain house rules [were] not followed [and] . . . that [Mr. F.] becomes very angry, aggressive, throws things when he is mad.”

Jordan Graham testified about her CPS investigation, which resulted in findings of indicated physical abuse and indicated sexual abuse by Mr. F. and a finding of unsubstantiated neglect by Ms. F.

Libernini testified that when O.F. entered care, the Department learned that she had been homeschooled through an unaccredited online program known as Monarch. As a result, she was well behind her grade level (10th grade). The Department enrolled O.F. in a public high school. She also took night school classes and summer school classes. The Department anticipated that O.F. would be able to enter the 12th grade in the fall of 2016 and graduate in 2017, when she was 19.

The Department also arranged for O.F. to be evaluated by a pediatrician and a dentist. The pediatrician administered vaccines that O.F. had not received. The dentist filled two cavities, performed a root canal, and referred O.F. to an oral surgeon for

evaluation of her wisdom teeth. The oral surgeon recommended that her wisdom teeth be removed. Upon Ms. F.'s request, O.F. was evaluated by another dentist, Dr. Burkett, in Mt. Airy and he took the position that removal of O.F.'s wisdom teeth was unnecessary at that time. The Department had not yet decided how to proceed.

The Department attempted to assist O.F. in obtaining her State I.D. During that process, they learned that O.F. was not a U.S. Citizen and she did not have a Green Card.

The Department facilitated mental health evaluations and therapy for O.F. Ms. F. advised Libernini that she suspected O.F. might have an eating disorder. As a result, the Department referred O.F. to the Center for Eating Disorders at Sheppard Pratt. After a telephone intake at Sheppard Pratt, however, the hospital determined that O.F. was not in need of further evaluation. Ms. F. also advised Libernini that she believed that O.F. was exhibiting symptoms of reactive attachment disorder and oppositional defiant disorder. The F.s never sought any treatment for O.F. for these conditions, however.

More recently, Ms. F. told Libernini that O.F. needed to be placed in residential treatment or a therapeutic group home. Libernini said she had not "observed or seen any behaviors" indicating that O.F. needed a higher level of treatment. O.F.'s therapist and foster parents were of the same opinion as the Department.

In late July 2015, O.F. and Ms. F. began attending family therapy sessions with another therapist at Families Connected. Thereafter, they began exchanging emails periodically and having supervised contact outside of the family therapy sessions. More recently, they began having unsupervised visits on the weekends. O.F. told Libernini that

while she was happy to be seeing her mother, she sometimes felt she was not allowed to “express . . . her feelings” during those meetings.

O.F. consistently told Libernini that she did not want to have any contact with Mr. F. and expressed concern that he might attend her visits with Ms. F. She said that she didn’t think her mom could “protect her.” If the Department forced her to return to the F.s’ home, O.F. said she would run away.

O.F. was doing well in her foster home. Libernini explained that there were more rules for O.F. than for a typical foster child because Mr. F. and Ms. F. had asked the foster parents to follow through with certain restrictions they had in place at their home. As a result, O.F.’s use of social media was limited and she was required to come home immediately after school each day. On one occasion, she violated some of the social media rules by engaging in a conversation with someone on Snapchat, which the F.s deemed inappropriate. As a result, O.F. was no longer allowed to use her iPod or her cell phone and was not permitted to attend the homecoming dance at her new school. While O.F. did not like these restrictions, she was tolerating them.

The Department explored with the F.s the possibility of Mr. F. moving out of the home to facilitate reunification of O.F. with the rest of the family. While Mr. F. had initially expressed a willingness to move out, Ms. F. subsequently told Libernini that that “wasn’t an option.”

Libernini recommended that O.F. continue in individual and family therapy; continue having unsupervised visits with Ms. F.; continue at her current school; and

remain in foster care. The Department had “safety concerns’ if O.F. were to be returned to the F.s’ home both because the CPS investigation had substantiated her allegations of physical and sexual abuse and because O.F. had threatened to run away.

O.F.’s siblings testified that they all had been paddled by Mr. F., but that physical discipline was used very infrequently. They each described having been paddled on their buttocks while fully clothed.

G.F. and B.F. testified that their adopted siblings had had very poor hygiene and poor table manners when they arrived in the F.s’ home. They required assistance with bathing as a result. They further testified that they slept in the king-size bed with their parents until G.F. was about 11 and B.F. was about 7. Thereafter, they slept in a shared bedroom on the main floor of the home and, after their siblings were adopted, in a bedroom apartment in the basement of the home.

When O.N.F., Al.F., and An.F. were adopted, they all slept in the family bedroom. An.F. stopped sleeping in the F.s’ bedroom when he was about 12 or 13. (Ms. F. testified that after he reached puberty, they no longer felt it was appropriate for him to sleep in the family bed.) An.F. moved into the basement apartment bedroom with G.F. and B.F. at that time.

O.N.F., Al.F., and, upon her adoption, O.F., all slept in the family bedroom, however. At the time of the CINA proceedings, O.N.F., who was 21, no longer slept exclusively in the F.s’ bedroom. She continued to sleep there one or two nights each

week, however. O.N.F., Al.F. and An.F. testified that they also had received help bathing in the months after they were adopted.

Ms. F. testified that she is a licensed clinical social worker. She works full time for the Maryland Department of Juvenile Services. She met Mr. F. while they both were working for Sheppard Pratt Hospital in Baltimore, she as a social worker and he as a mental health worker.

Ms. F. explained that her training and experience working with troubled juveniles equipped her to take care of her adoptive children, all of whom had been traumatized by their upbringing in orphanages. O.F. had had the most difficulty adjusting to her adoption. She was more “detached” and oppositional than her siblings and never fully bonded with the F.s. Ms. F. did not seek out any type of treatment for O.F., however, until March 14, 2015, the day after O.F. left the F.s’ house. On that date, Ms. F. contacted Sheppard Pratt to find out if she could have O.F. admitted for residential treatment.

With respect to discipline, Ms. F. testified that while Mr. F. did use physical discipline, it was just “simple spanking” and was “[v]ery seldom” used. Mr. F. had spanked O.F. a couple of times, but he had not done so in years and he never had beaten her.

Ms. F. explained that she and Mr. F. routinely held family meetings with their children to discuss logistical matters and discord in the family. On March 13, 2015, she called a family meeting to discuss the “ongoing problem” of O.F. breaking rules

regarding the use of her phone. The meeting began around 11 a.m. and included her, Mr. F., O.F., O.N.F., and Al.F. Her three sons were not present. During the meeting, Ms. F. left and went to pick up An.F. at work. When they returned, the meeting was “finishing up.” O.F. was very angry, according to Ms. F., and she later learned that Mr. F. had told O.F. that she could no longer have contact with Nadya.

Ms. F. testified that she and Mr. F. “showed” all of their adoptive children “how to bath[e].” The children had not learned proper hygiene in the Ukraine and needed help learning how to clean themselves. She specified that An.F., who was 9 at the time of his adoption, needed help learning how to clean his penis properly. The three girls needed help learning how to clean their genitals and washing their hair. She and/or Mr. F. actually bathed their adoptive children for “under a year.” On cross-examination, Ms. F. was asked why Mr. F. needed to help his daughters bathe. Ms. F. responded that Mr. F. had experience bathing adults as a licensed professional nurse for many years and was better equipped than she was for that role.

In his testimony, Mr. F. denied striking O.F. on March 13, 2015. He acknowledged that he had “assist[ed] in showering” his adopted children for the “first year that all of [his] children arrived.” He said that he and Ms. F. worked together to “instruct[] them on proper hygiene.” He denied having ever touched their genitals.

On cross-examination, Mr. F. was asked whether he thought O.F. was “lying” about the events of March 13, 2015. He responded that she has a “problem with lying” and that what she says happened that day “didn’t happen.” He said he never had seen the

photographs of O.F.'s injuries that were taken by Trooper Haut on March 13, 2015. Counsel for the Department showed Mr. F. the photographs, which had been admitted into evidence earlier in the hearing. She asked Mr. F. if he could explain how O.F. sustained the injuries. He replied, "I do not know." He stated that he was the only member of the family with a code to open the safe in the basement where the rolling pin implement was found by the police.

On November 25, 2015, the juvenile court entered its CINA adjudication and disposition order. It found by a preponderance of the evidence that the following pertinent allegations of the amended CINA petition were sustained:

- The Department received a report of physical abuse on March 13, 2015
- Mr. F. was arrested and charged with second degree assault, but that charge resulted in the entry of a *nolle prosequi*
- During an interview of March 16, 2015, O.F. reported to Jordan Graham that Mr. F. had hit her with "an object that resembles a rolling pin."
- At that time, O.F. had "several bruises that were visible to the Department on her upper left thigh, buttocks, upper right shoulder, and lower arms."
- O.F. disclosed to the Department that she was "frequently physically abused" by Mr. F.
- Ms. F. was present during the March 13, 2015 beating and did not intervene.
- Ms. F. declined to attend a meeting with the Department on March 16, 2015.

The court found unsustainable the allegations in the CINA petition that Mr. F. held a gun to O.F.'s head, that he digitally penetrated her vagina while bathing her and when sleeping next to her in bed, and that he inserted his penis in her vagina.

The court made the following additional factual findings:

- All of the children slept in the F.s' bedroom on a "regular basis" and when O.F. slept there, she slept on the queen-sized bed next to Mr. F.
- "For at least the first year that the adopted children lived with the [F.'s], Mr. and Mrs. [F.], at times together, and at times individually, assisted the children with their bathing and/or showering. This assistance included demonstrating proper hygiene techniques and washing the children's bodies." (Emphasis in original.)
- "At times, [Mr. F.] washed the children, including the female children, when [Ms. F.] was not in the bathroom."
- O.F. was "as young as thirteen (13) years of age, and possibly as old as fifteen (15) or sixteen (16) years of age, when Mr. [F.] stopped assisting her with her shower/bathing."
- "Each child was, on occasion, struck by [Mr. F.] with a wooden paddle or rolling pin as a form of discipline."
- "On March 13, 2015, [Mr. F.] struck [O.F.] with a paddle or rolling pin in the presence of [Ms. F.]."
- O.F. showed Trooper Haut bruises on her buttocks, legs, and back.
- March 13, 2015, was the first time that O.F. had made allegations of physical or sexual abuse by Mr. F.
- On March 19, 2015, the police found a rolling pin in "a locked safe" in the F.s' home and only Mr. F. knew the combination to unlock the safe.
- O.F. does want a relationship with Ms. F., but does not want a relationship with Mr. F.

Based upon these factual findings, the court found that Mr. F. had “committed physical abuse and sexual abuse against [O.F.]” Specifically, the court found that Mr. F. had beaten O.F. on March 13, 2015, and that the beating left bruises that remained visible three days later, on March 16, 2015. The court found O.F.’s testimony about the beating credible. The court noted that the photographs taken by Trooper Haut on March 13, 2015, corroborated O.F.’s testimony. Her version of events also was supported by the evidence that a rolling pin was found in the locked gun safe. The court disbelieved Mr. F.’s testimony that he kept the rolling pin there because it was a family heirloom and found, to the contrary, that it was put there in an attempt to hide it from the police. The court also did not credit the F.s’ testimony that no beating had occurred on that date. The court found the testimony of O.N.F., A.I.F., and An.F. about March 13, 2015, to be “practiced, and lacking in veracity.” The court determined, as a matter of law, that the physical abuse inflicted on O.F. on March 13, 2015, was not “reasonable corporal punishment[.]” The court noted that Mr. F.’s conduct in hiding the rolling pin was evidence from which the court could infer that he knew his conduct was “beyond the pale.”

The court found that Mr. F. had washed O.F.’s body, including her breasts and genitals, when she was at least 13 years old and that this was sexual abuse. While Mr. F. had done so under the guise of teaching O.F. proper hygiene and because he had “medical training more than thirty (30) years prior,” the court “reject[ed]” that testimony outright. The court found that Mr. F.’s conduct in bathing O.F. was done for his benefit

and gratification. It emphasized that there was no need for Mr. F. to assist O.F. with her bathing for such an extended period of time and, even if she had required assistance, both O.N.F. and Al.F. could have shown her proper hygiene as they had lived with the F.s for more than two years.

The court credited O.F.’s testimony that she was uncomfortable with Mr. F. bathing her. It found that O.F. “did not feel at liberty to ask either of her parents that her father not bathe her[,]” because the F.s expected their children to obey and not question their authority and, when a child broke a rule, the child was subjected to “public shaming and physical discipline.” With respect to the F.s’ “unorthodox practice of encouraging the children to sleep in their parents’ bedroom well into their adolescent years,” the court found that O.F. had been pressured to sleep in the family bedroom even though she did not want to do so.

The court found that Ms. F. had known of and not prevented Mr. F. from physically abusing O.F. on March 13, 2015. The court found that Ms. F. also was aware of and failed to prevent Mr. F. from bathing O.F. for a year, a practice she should have known was “not acceptable.”

The court determined that O.F. was a CINA because she had been abused and neglected, and because the F.s were unable or unwilling to give proper care and attention. The fact that the F.s “repudiate[ed]” O.F.’s allegations of abuse and that her siblings “express disdain for [her],” in addition to the fact that Mr. F. still lived in the family home and would not consider moving out, made it “impossible” for O.F. to return home.

For those reasons, the court awarded physical custody of O.F. to the Department “for placement in licensed treatment foster care” and awarded joint limited guardianship of O.F. to the Department and Ms. F. for the purpose of making routine decisions about her care.

This timely appeal followed.

DISCUSSION

The F.s contend the juvenile court erred by finding that Mr. F.’s conduct in bathing O.F. when she was twelve and thirteen years old amounted to sexual abuse and that Ms. F.’s conduct in permitting him to bathe O.F. amounted to neglect. They offer three reasons to support their contention. First, the court failed to give weight to the F.s’ fundamental right as parents to control the upbringing of their children, including by teaching them and assisting them with proper personal hygiene. Second, the court’s finding that it was inappropriate for Mr. F. to assist O.F. with her bathing was “based solely on a transparent gender classification” in contravention of the Maryland Equal Rights Amendment (“ERA”).⁸ Third, the F.s were denied due process of law because the Department did not allege in the amended CINA petition that bathing, standing alone, was sexual abuse, and because counsel for the Department disavowed any argument that bathing was sexual abuse during her closing argument. With respect to the physical abuse findings, the F.s assert that the court erred by crediting O.F.’s account of the events

⁸ The ERA, codified at Article 46 of the Maryland Declaration of Rights, provides that “[e]quality of rights under the law shall not be abridged or denied because of sex.”

of March 13, 2015, given other evidence that called her veracity and ability to accurately recount traumatic events into question, and given the testimony by five other family members that no beating occurred.

The Department (and O.F.) respond that the court’s factual findings that Mr. F. washed O.F.’s breasts and genitals when she was between twelve and thirteen years of age and that he did so for his own gratification were not clearly erroneous and amply supported the court’s finding that Mr. F. sexually abused O.F. It maintains that the ERA is not implicated and that the F.s were afforded notice and an opportunity to be heard on the issue of whether Mr. F.’s conduct in bathing O.F. was sexual abuse. The Department argues, moreover, that the court’s finding that Mr. F. beat O.F. on March 13, 2015, was not clearly erroneous and should be affirmed.

As an initial matter, the F.s are incorrect that this Court should apply a “strict scrutiny” standard in assessing the juvenile’s court’s findings that Mr. F. sexually abused O.F. As pertinent here, to adjudicate O.F. a CINA, the juvenile court had to be persuaded by a preponderance of the evidence that she had “been abused [or] . . . neglected . . . and . . . [that the F.s were] unable or unwilling to give proper care and attention to [her] and [her] needs.” CJP § 3-801(f). We review the court’s factual findings in support of its determination that a child is a CINA for clear error. *In re Beverly B.*, 72 Md. App. 433, 440 (1987). In determining whether the trial court was clearly erroneous, we “give due regard to [the trial judge’s] opportunity to judge the credibility of the witnesses.” Md. Rule 8-131(c). In addition, we will not “disturb the ultimate conclusion based upon those

factual findings if there has been no clear abuse of discretion.” *In re Beverly B.*, 72 Md. App. at 440.

(a)

Sexual Abuse Finding

The court made a non-clearly erroneous finding that Mr. F. assisted O.F. in washing her whole body, including her genitals and breasts, for approximately one year after she was adopted and until she was, at the youngest, 13 years old. It further found that there was no credible evidence that O.F. required assistance with her personal hygiene for that length of time and that Mr. F. took advantage of O.F.’s naïveté about American customs to exploit her for his own gratification.

These findings amply supported the court’s legal conclusion that Mr. F. sexually abused O.F. Sexual abuse is “an act that involves sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child” CJP § 3-801(x); *see also* Md. Code (1984, 2012 Repl. Vol., 2014 Supp.), section 5-701(x)(1) of the Family Law Article. The Court of Appeals has explained that the legislature’s use of the broad terms “an act” and “involves,” as well as the use of the terms “sexual molestation or exploitation” in the conjunctive, evinces an intent that the definition of sexual abuse encompass “a wide swath of behaviors, including those where a minor is sexually exploited but not physically harmed.” *Walker v. State*, 432 Md. 587, 616, 623 (2013). Mr. F.’s conduct in bathing O.F.’s entire body for a period of at least a year when she was between the ages

of 12 and 13 did not serve any legitimate hygienic purpose and plainly was sexually exploitative.

The court also did not err by finding that Ms. F. knew about this conduct and had to have recognized that it was sexually exploitative. These findings supported the court's determination that Ms. F. neglected O.F. by failing to protect her from sexual abuse and that she was unwilling or unable to give her proper care and attention.

The juvenile court's findings were not, as the F.s urge, predicated on an improper gender classification. The juvenile court did not make a blanket finding that a father never could bathe an adolescent daughter without it amounting to sexual abuse, but that a mother could do so. The court did not make any findings about the appropriateness, *vel non*, of Ms. F. bathing O.F. Rather, it found under the unique facts presented that it was inappropriate and sexually exploitative for Mr. F. to bathe O.F. for a year. This finding did not implicate the ERA.

We likewise reject the F.s' contention that they were deprived of due process of law at the five-day CINA hearing because the court found sexual abuse based upon "bathing assistance." The Department alleged in its amended petition that Mr. F. sexually abused O.F. while bathing her by digitally penetrating her vagina. During the CINA hearing, nearly every witness was questioned by counsel for the Department and by counsel for the F.s about Mr. F.'s having bathed O.F. and her siblings. The F.s and their other children testified extensively about the conditions in the Ukrainian orphanages and the lack of proper attention to hygiene there.

During closing argument, the court asked counsel for the Department if it was her position that “if all that happened is that Mr. F. bathed the female children, actually bathed them, not just instructed them, that that constituted abuse either physical, sexual, or mental?” Counsel replied that it was not up to her to make that determination because she was not a social worker, but that if O.F. had reported to the Department only that her father had bathed her with “no other outside contact or *if there was nothing else that led us to this point,*” that a CINA petition probably would not have been filed. (Emphasis added.) During her closing statements, O.F.’s attorney stated that while Mr. F.’s conduct in bathing O.F. might never have come to the Department’s attention had it not been for other abusive conduct, the court could find that that conduct, standing alone, was sexual abuse because it served no legitimate purpose and was intended to humiliate O.F. and to exert control over her. Counsel for the F.s argued in closing that Mr. F.’s training and experience bathing adult women when he worked at Sheppard Pratt qualified him to assist his daughters to bathe. Finally, during her rebuttal argument, counsel for the Department clarified that it *did* take the position that Mr. F.’s bathing O.F. would qualify as sexual molestation or exploitation if it was done for the purpose of Mr. F.’s gratification.

“Fundamentally, due process requires the opportunity to be heard ““at a meaningful time and in a meaningful manner.”” *Pitsenberger v. Pitsenberger*, 287 Md. 20, 30 (1980) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), in turn quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). Here, it was plain from the substance of

the amended CINA petition that the F.s were on notice that Mr. F.'s conduct while bathing O.F. was at issue. It also is clear from the record of the CINA hearing that the F.s had an opportunity to present testimony and effective argument on this issue before the juvenile court. *See Burdick v. Brooks*, 160 Md. App. 519, 525 (2004) (“a denial of due process claim is tested by analyzing the totality of the facts in the given case”).

(b)

Physical Abuse Finding

The juvenile court found that Mr. F. physically abused O.F. when, on March 13, 2015, he beat her with a rolling pin on her back, arms, thigh, and buttocks, causing raised red welts that were visible hours later. The court credited O.F.'s testimony because it was corroborated by the photographs and by testimony that Mr. F. had used a paddle to discipline all of the children in the past. It did not credit O.F.'s siblings' testimony because it sounded rehearsed. It found Mr. F.'s explanation for why a wooden rolling pin matching O.F.'s description of the implement used to beat her was hidden in a locked gun safe to defy credulity. These are precisely the types of credibility determinations committed to the sound discretion of the juvenile court, and we decline to second guess them on appeal.

(c)

CINA Determination

Having made non-clearly erroneous findings that Mr. F. sexually abused and physically abused O.F., and that Ms. F. neglected O.F. by failing to protect her from the

abuse, the juvenile court did not abuse its discretion by ultimately finding that O.F. was a CINA and awarding custody of her to the Department.

**JUDGMENT AFFIRMED. COSTS
TO BE PAID BY THE
APPELLANTS.**