

Circuit Court for Baltimore County  
Case No. C-03-JV-22-000440

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND\*\*

No. 1164

September Term, 2022

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IN RE: O.T.

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Kehoe,  
Leahy,  
Zic,

JJ.

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Opinion by Leahy, J.

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Filed: April 5, 2023

\* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

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

Although constitutional and common law rights of natural parents undergird the presumption that children’s best interests are best served in their custody, it is long recognized that our courts of equity stand as the guardian of all children and may intervene “to protect and advance their welfare and interests.” *Kartman v. Kartman*, 163 Md. 19, 22 (1932). In the underlying CINA<sup>1</sup> adjudication and disposition before the Circuit Court for Baltimore County, sitting as a juvenile court, the award of custody of two-year old O.T. to her Father did not ensure the child’s welfare and best interests were being protected when Mother’s unremitting allegations of abuse by Father were not investigated by the Baltimore County Department of Social Services (“the Department” or “DSS”).

Appellant Mother presents two questions which we have collapsed into one and reframed as follows:<sup>2</sup> Did the juvenile court err or abuse its discretion during the

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<sup>1</sup> The statutory scheme governing CINA cases is found in the Maryland Code (1973, 2020 Repl. Vol., 2022 Supp.), Courts & Judicial Proceedings Article (“CJP”), sections 3-801 through 3-830. Under CJP § 3-801(f), a “‘Child in need of assistance’ [“CINA”] means 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.” CJP § 3-801(f).

<sup>2</sup> Mother’s brief presents the questions as follows:

1. “Did the juvenile court err and abuse its discretion in failing to continue the disposition hearing where the Department failed to (a) conduct any investigation whatsoever into mother’s serious allegations of abuse by father, including in the presence of O.T., where a peace order had been entered against father in 2022 and a protective order in 2012, and (b) the Department failed to make any attempt to obtain mother’s pertinent treatment records?”

(continued)

underlying CINA adjudication and disposition hearing when it found Father an able and willing parent and granted him custody of O.T. after the Department failed to investigate Mother’s allegations of abuse by Father?

The juvenile court’s determination at the CINA adjudication hearing to sustain the petition against Mother, the custodial parent, is not challenged on appeal. Mother challenges, instead, the ensuing dismissal of the CINA petition and the award of custody to Father. Counsel for O.T. agrees that “Mother’s testimony ... raised factual disputes” that call into question “whether it is in [O.T.’s] best interests for custody to be awarded to Father[.]”

At the adjudication hearing, the juvenile court recognized that Mother’s allegations of abuse against Father were not fully investigated by the Department, but the record indicates that counsel and the court were under the misimpression that upon sustaining the allegations contained in the CINA petition against Mother, the court was compelled to award custody to Father if not found “unable and unwilling” to care for the child. Only several weeks prior to the hearing, however, the Supreme Court of Maryland<sup>3</sup> clarified that:

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2. Did the juvenile court err and abuse its discretion in granting custody and guardianship of O.T. to father because it failed to (a) recognize and properly exercise its discretion as to § 3-819(e), (b) adequately consider the best interest of O.T., and/or (c) hold a separate hearing on the issue of custody?”

<sup>3</sup> In the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See* (continued)

1) if the juvenile court sustains allegations in a CINA petition that are sufficient to support a CINA disposition against one, but only one, parent, and finds that the other parent is able and willing to care for the child, the court acquires discretion to make an award of custody to that parent; and 2) the court’s discretion to fashion a custody award is governed by the best interests of the child standard. *In re T.K.*, 480 Md. 122, 160 (2022). The Court highlighted that just as the best interests of the child standard is dispositive in custody awards, “[s]o too here, the best interest of the child standard is applicable to the juvenile court’s exercise of discretion under § 3-819(e).” *Id.* at 151.

We hold that the juvenile court erred, *first*, under Maryland Code (1973, 2020 Repl. Vol., 2022 Supp.), Courts & Judicial Proceedings Article (“CJP”), § 3-819(b)(1)(i) by dismissing the CINA petition where the facts left unresolved whether Father was “*able and willing*” to care for O.T. CJP § 3-819(e) (emphasis added). *Second*, the court erred by sustaining the supposition that Father was “able and willing” to care for O.T., and then awarding custody of O.T. to Father without undertaking a best-interests-of-the-child analysis. CJP § 3-819(e); *In re T.K.*, 480 Md. at 151. We reverse and remand so that the juvenile court may order additional investigation into Mother’s allegations of abuse and consider *de novo* whether: 1) Father is “able” to care for O.T. and whether O.T. should be declared a CINA; and 2) if procedurally appropriate, whether Father should be awarded

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*also* Md. Rule 1-101.1(a) (“From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . .”).

custody of O.T. under a best-interests-of-the-child analysis.

Our holding is consistent with the broader purpose of the CINA statute, “which ‘is to ensure that juvenile courts (and local departments of social services) exercise authority to protect and advance a child’s best interests when court intervention is required,’ as well as with the State’s *parens patriae* ‘interest in caring for those, such as minors, who cannot care for themselves[.]’” *In re T.K.*, 480 Md. at 147 (quoting *In re Najasha B.*, 409 Md. 20, 33 (2009)) (cleaned up).

### **BACKGROUND**

O.T. was born on July 1, 2020. The infant and her mother became unhoused when Father “forced [Mother and O.T.] out of the home April of 2020,” at the height of the Covid-19 pandemic. O.T. and her mother lived in a shelter until the Department helped them secure an apartment in Reisterstown, Maryland. For the next two years and two months, Mother had exclusive physical custody O.T.

On May 19, 2022, the Department received a report that O.T. was being neglected. In response to the request of the Department’s Child Protective Services Division, the Department assigned Social Worker Lauren Kaufman to monitor and assist Mother and O.T. On May 23, Ms. Kaufman paid an unscheduled visit to Mother’s home but was not admitted. Ms. Kaufman then telephoned Father, who told her that Mother had recently stopped taking her medication, and that Mother had become paranoid and was acting erratically. Father also told Ms. Kaufman that “he was leaving his truck parked in front of the apartment building” to facilitate “check-ins” on Mother and O.T. “to make sure that

she was okay.”

The next day, May 24, the Department received a report alleging Mother had been seen in a psychotic state and discussing drug use; and that the home was disarranged. The Department sent Baltimore County police officers to the home the same day for a wellness check. The officers reported that they found no signs of abuse or neglect, nor cause for concern.

About a week later, Ms. Kaufman initiated a text conversation with Mother, culminating with Mother’s agreement to a scheduled home visit. Ms. Kaufman testified at the underlying adjudication hearing that at no time during this period did Mother make any statements that “would be concerning.” On June 15, Ms. Kaufman paid a scheduled visit to Mother’s home, and noted in her report that she had “no concerns about [O.T.] in the care of [Mother].” Ms. Kaufman also noted that “[Mother] was presenting very well; she seemed to be at baseline. She was not exhibiting any symptoms consistent with mania or psychosis and it appeared that [O.T.] was being well cared for.” During the visit Mother “admitted to a history of drug use, ongoing mental health issues, and [domestic violence] concerns.” Ms. Kaufman later testified that she and Mother “discussed the domestic violence history between [Mother] and [Father].” At that time, Mother “was visibly shaking and crying[,] multiple times[,] while discussing her relationship” with Father. Mother advised that Father was a trigger for her and that engaging with him made her very upset. Ms. Kaufman referred Mother for mental health treatment and to the Department’s domestic violence advocate/therapist, Megan Landis, LCSW-C.

Following another visit by Ms. Kaufman on June 23, the Department Supervisor, Taylor Mast, entered a report recommending closure:

06/23/2022 Case accepted as [Risk of Harm]. There w[ere] concerns about the mother<sup>[']</sup>s mental health and care of the baby. SW was able to meet with [Mother]; she did not seem psychotic at all. SW saw the baby and felt the baby appeared well cared for. SW discussed supports to the family and [Mother's] substance abuse history: she<sup>[']</sup>s not in any substance abuse treatment at this time. She said she<sup>[']</sup>s able to identify NA meetings on her own as needed. [Mother] is still connected with Prologue [Homeless Outreach Services] and was referred to [the Department's Domestic Violence] Therapist Megan Landis for services. There are no further [Department] service needs for the family at this time. [Risk of Harm] assessment complete. Case to be closed.

*Events Leading to O.T.'s Removal from the Home*

On the morning of June 27, 2022, Ms. Kaufman received a telephone call from Mother, who was in “a manic state” and exhibited “pressured speech.” Mother made “allegations of a sexual nature” against Father and stated “that she would harm [Father] and anyone who tried to take her child.” Ms. Kaufman later testified, “It was clear that she was in distress. She was very upset; she was crying and yelling. It was difficult to understand a lot of what she was saying but she was saying that she hadn't eaten in days. She didn't have any milk or bread, that [O.T.] hadn't eaten in a day.”

After the Department contacted Baltimore County Crisis Response, Baltimore County police officers were dispatched to the home to perform a welfare check / emergency health evaluation. Mother initially denied both police and social workers entry to the home. She eventually opened the door to speak with Ms. Kaufman and Ms. Landis, who were able to observe her standing “completely naked and holding [O.T.], who was also naked.”

The Police reported that Mother, who was handling a knife periodically, made verbal threats, including that if “[s]omeone took her child, someone was going to get hurt.” Police Officer Sinicropi “observed a 6” blade butcher knife on the tv stand inside the doorway.” The social workers also observed Mother pick up “a large butcher knife by the front door” and throw it “across the room.”

When Mother saw the police officers, she became enraged and forced the social workers out and slammed the door shut. Mother then was heard screaming inside the apartment and at Mobile Crisis Officer Taranyk and Ms. Landis through her window. Ms. Kaufman reported that Mother was “tapping the butcher knife on the window and holding up pictures of her older children.” The Police eventually entered the home, retrieved O.T. from her Mother, and placed Mother into custody on an Emergency Petition.

Ms. Kaufman recorded in the Shelter Care Petition, filed in the Baltimore County Circuit Court the next day, that she visited Father on the day of the intervention, June 27, and “was able to assess his home and deemed it safe.” She noted:

[Father] has no child maltreatment history and no recent/significant criminal history. [Father] works nights and plans to have his live-in aunt, Claudia Britton assist with childcare. Clearances were completed for Ms. Britton and yielded no concerns. At this time, [Father] is asking for the Department’s assistance by sheltering [O.T.] to him as he does not feel he can keep [O.T.] safe from M[other] without a court order and [Department] support.

Accordingly, on June 27, 2022, 23-month-old O.T. was placed in emergency shelter care with Father.

***Juvenile Court – Shelter Hearing – June 28, 2022***

At a shelter care hearing on the following day, the Magistrate granted the



Department’s request to place O.T. in shelter care in the unsupervised custody of Father, sharing limited guardianship with the Department, and granting unlimited but supervised visitation to Mother. Counsel for O.T. and Father concurred. Counsel for Mother stated that “while [Mother] would deny the allegations in the petition, [Mother] would agree to shelter and the direct placement with the father for a period not to exceed 30 days until the adjudicatory hearing.”

At the scheduled adjudication hearing on July 25, Mother’s counsel stated that she was “not in agreement with the Court sustaining the petition,” and clarified that she “would file exceptions if the Court were to rule against her.” The Department requested a continuance for a contested hearing, because “[t]estimony is requested and exceptions will be taken regardless of Your Honor’s rulings.” The magistrate agreed and scheduled contested hearings for adjudication and disposition on August 23, 2022.

In advance of the August hearing, the Department submitted a six-page “Addendum to the Court Report dated July 11, 2022: Request for Custody and Guardianship” that recounted the Department’s interactions with the parties since the Shelter Care Hearing. The initial report submitted in July related that Mother had two older children who were removed from her care as a result of, in at least one instance, Mother’s substance abuse. The report also noted that O.T.’s Father had four older children and was “linked to a service case regarding his daughter [S.A.] from 2011-2012; [S.A.] was removed from her parents’ care due to concerns of domestic violence and physical abuse but in 2012 the courts granted [Father] custody and terminated court jurisdiction.” The initial report reiterated the

Department’s assessment of Father as described by Ms. Kaufman in the Shelter Care Petition and recommended that custody and guardianship of O.T. be granted to Father.

In the addendum to the report, filed in August, Ms. Kaufman described a telephone conversation with Mother on August 4, in which Mother reported impediments to visitation with O.T., but described her own health as improved. Mother reported that Father “makes excuses,” regarding visitation and controls access to O.T. “just to stress [Mother] out,” and that Father “uses the stress he causes her to his advantage[.]”

Regarding her own health, Mother reported that “things [we]re better,” that “she continue[d] to go to her therapy appointments” and that “her PTSD ha[d] not been triggered recently.” Mother noted an upcoming appointment with a gynecologist “to find out whether or not she will need a hysterectomy,” which she claimed was “due to being sexually assaulted by [Father] four days after giving birth to [O.T.] and being prohibited by him from going to the hospital for follow-up care.” Mother told Ms. Kaufman “that she is exploring criminal charges against [Father] in Baltimore City due to domestic violence she experienced at his hand in 2020[.]” that she had “various documentation proving the domestic violence and assault,” and that she would send the documentation to Ms. Kaufman by the end of the following week. Ms. Kaufman noted that Ms. Landis had communicated with Mother and was informed that Mother “ha[d] a [Domestic Violence] case and advocate in Baltimore City.”

Ms. Kaufman further reported on Father’s progress purchasing a new house and described her scheduled visit there on August 15, 2022. Father showed her the repairs he

was making and promised “all the remodeling will be completed by the end of the week” at which point he and O.T. would be able to move in. In the meanwhile, “he and [O.T.] continue[d] to reside with Kelly Ayers, the mother of [Father’s] child [S.A.]” Father told Ms. Kaufman that his aunt, Ms. Claudia Britton, “continues to care for [O.T.] when he is working,” and explained that O.T. was not present for Ms. Kaufman’s visit because Ms. Britton had taken O.T. to a doctor’s appointment. Ms. Kaufman scheduled a follow-up “virtual home visit,” at which she could see Father and O.T. interact. Ms. Kaufman reaffirmed the Department’s recommendation that the court award custody of O.T. to Father.

***Juvenile Court – Adjudication and Disposition Hearing – August 23, 2022<sup>4</sup>***

The juvenile court held adjudication and disposition hearings on August 23. Ms. Kaufman and Officer Taranyk, the mobile crisis officer attending the June 27 intervention, testified for the Department, and Mother testified on her own behalf. Father was present but did not testify and was not called as a witness by any other party. The Department entered into evidence ten minutes of footage from a body camera worn by Officer Taranyk on June 27 and the Baltimore County Police Case Report authored by Officer Sinicropi.

***Adjudication***

Mother stipulated to paragraphs 1, 2 and 9. She also stipulated to part of paragraph 8 with the exception of the third sentence. Accordingly, the stipulation was to the

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<sup>4</sup> The August 23, 2022, contested hearing took place before Judge Paul J. Hanley in Baltimore County Circuit Court, sitting as a Juvenile Court. The transcript misidentified Judge Hanley as “Magistrate Hanley.”

following:

- 1) On 06.27.2022, the Respondent, [O.T.] was sheltered to [the Department] and placed in an Agency foster home.
- 2) On 05.19.2022, Baltimore County CPS received a report of neglect of [O.T.] It was reported that [Mother] is diagnosed with Bipolar Disorder, and there were concerns that she was not engaged in mental health as evidenced by pressured speech and erratic behavior. [Mother] was recently living with [O.T.] in a shelter and was working with Prologue Homeless Outreach Services to secure the home they are currently living in. Prologue was assisting [Mother] with an outstanding BGE bill at the time the allegations were reported.

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- 8) [Mother] was heard screaming inside of the apartment for some time and would not let [the Department] or police in to assess. The tactical team was quickly contacted for the barricade situation . . .<sup>5</sup> Police were eventually able to retrieve the Respondent from her mother and placed her in the custody of [the Department]. [O.T.] was fully nude when brought out by police. [Mother] was Emergently Petitioned (EP'd) and taken into police custody.
- 9) This worker was able to reach [Father] on 06.27.2022 and completed a home visit. SW was able to assess his home and deemed it safe. [Father] has no child maltreatment history and no recent/significant criminal history. [Father] works nights and plans to have his live-in aunt, Claudia Britton assist with childcare. Clearances were completed for Ms. Britton and yielded no concerns. At this time, [Father] is asking for the Department's assistance by sheltering [O.T.] to him as he does not feel he can keep [O.T.] safe from [Mother] without a court order and [the Department's] support.

Mother also stipulated to the expertise of Ms. Kaufman “in the areas of general social work, child welfare and risk and safety assessment as it pertains to juveniles in the

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<sup>5</sup> The third sentence in paragraph of the petition, to which Mother did not stipulate, read: “At one point, she was tapping the butcher knife on the window and holding up pictures of her older children.”

context of sex abuse and neglect.”

On direct examination, Mother expanded on the accounts of sexual abuse and domestic abuse which she had reported to social workers, as evidenced in the Department’s court report. She added, however, that in addition to assaulting her while pregnant with O.T., and later, in O.T.’s presence, Father had abused O.T. directly, as “he pushed her several times.”

Ms. Kaufman testified that in addition to reviewing the Department’s record of the case, she had done “several things throughout the course of the investigation, including conducting both an announced and unannounced home visit, making several referrals to various services, such as domestic violence services, mental health services, and parenting and anger management classes.” She added that Mother did not pursue the parenting, domestic violence, and anger management referrals. Additionally, Ms. Kaufman had “made contact with community providers” and she had “spoken with family, more specifically with [Father].”

Regarding Father, Ms. Kaufman testified as follows:

DEPARTMENT’S COUNSEL: Thank you. As an expert in the areas previously stipulated, do you have an opinion to a reasonable degree of certainty in those fields as to whether [O.T.] would be safe in the care of [Father] given the allegations [Mother] has made?

MS. KAUFMAN: Yes. So upon sheltering [O.T.] I did conduct a home visit with [Father] to assess his home. I also completed clearances at that time and based on my assessment of the home it was found to be fit, safe for [O.T.] to reside in. [Father’s] clearances did not come back positive for anything, no recent or significant criminal history, no child welfare history, no -- nothing on the sex registries.

DEPARTMENT COUNSEL: So in your opinion as an expert [O.T.] would

be safe in the care of [Father]?

MS. KAUFMAN: Yes.

DEPARTMENT COUNSEL: You mentioned that his home is fit. We don't have concerns about domestic violence. Have you received any other reports, anything about substance abuse, mental health, anything else about [Father]?

MS. KAUFMAN: No.

DEPARTMENT COUNSEL: And is [Father] employed?

MS. KAUFMAN: Yes.

DEPARTMENT COUNSEL: Is he employed full-time?

MS. KAUFMAN: Yes.

DEPARTMENT COUNSEL: Does he have an appropriate care plan for [O.T.]?

MS. KAUFMAN: Yes, during that assessment of [Father's] home, he advised that he does work during nights and he lives with his aunt, Claudia Britton, and he advised that Miss Britton would be supervising [O.T.] during the evening when he was at work and he would be there during the day.

DEPARTMENT COUNSEL: And in your assessment is that an appropriate care plan?

MS. KAUFMAN: Yes. I was able to speak with Miss Britton during this visit. She was appropriate. She expressed willingness and ability to care for [O.T.] during the evenings and we also completed clearances for her and they came back negative for anything.

DEPARTMENT COUNSEL: And has [Father] made any statements to you or does the record reflect whether father has made any statements to other Department representatives about whether or not he feels he can keep [O.T.] safe without a court order?

MS. KAUFMAN: [Father] advised that it would be beneficial to have him feel that he would be more equipped to keep [O.T.] safe during this period with Court oversight and assistance from the Department just given that there was no formal custody agreement in place and just due to the nature of the communication between [Mother] and [Father].

Ms. Kaufman later opined that O.T. would be exposed to “a substantial risk of harm in the care of [Mother],” but that Father is able “to provide safe and appropriate care” at this time. She testified that Father “does not have any mental health history,” that Father had been “cooperative and responsive throughout the assessment period,” and that “no concerns regarding his ability to care for [O.T.] have arisen.”

At the close of testimony, the court consulted the assembled counsel regarding whether to proceed immediately to disposition despite the Department’s failure to investigate Mother’s domestic violence allegations:

COURT: All right. I will hear from you, counsel. To [Department Counsel], I will ask [O.T. Counsel] this question as well. If the records from Mercy [Medical Center] are never subpoenaed, there is no release ever sought, but there is an order that you provide visitation, which certainly didn’t happen, I mean, **it seems to me you sort of dismissed the claim without investigating whether or not there were domestic violence issues.** So I will hear from you.

DEPARTMENT COUNSEL: Thank you, Your Honor. I will speak first. With regards to that issue, as Your Honor heard testimony too, we did investigate with Maryland Case Search.

COURT: But that is not an investigation. Candidly, that is not an investigation. Go ahead.

DEPARTMENT COUNSEL: Certainly. I will just note for the Court that we were waiting for mother to provide these records and that is why we didn’t investigate because we were waiting for the cooperation of the parents and mother never provided those records which is why we never sought them because we were continuously waiting to cooperate with mother rather than waiting to go through different channels.

(Emphasis added). Mother’s counsel requested that O.T. be found CINA and that that finding be held against both of the parents. She further asked that “the Court return the child to her mother’s care under an order of protective supervision,” highlighting Mother’s

testimony that “not only was there domestic violence that occurred throughout their entire relationship, [but] that domestic violence occurred in front of [O.T.]” (Emphasis added).

*Disposition*

The hearing continued with O.T.’s counsel arguing first that O.T. was a CINA in relation to Mother, but *not* in relation to Father. O.T.’s counsel then asserted that, upon a finding that the allegations in the petition are sustained as to Mother, the court should proceed “under the disposition statute that empowers the Court then to grant custody to [the] non CINA parent, which is the father.”<sup>6</sup> Counsel continued:

And just a reminder what this hearing is not, it is not an equity custody hearing where you are weighing the relative merits between the parents in deciding who would be the more appropriate parent by preponderance of the evidence to have physical custody. It is [whether] the parents [are] CINA and in this case the Department has met their burden of proof towards finding CINA against the mother.

Mother’s counsel, in turn, conceded that “[a]t this point in time based on the testimony and the stipulated documents and video, I think that the Court could sustain the allegations contained in the petition.” She urged the court, however, to extend a finding of neglect against *both* of the parents. Recapping Mother’s testimony that domestic violence occurred throughout her relationship with Father, and that domestic violence occurred in front of [O.T.], Mother’s counsel pressed, “That in and of itself is neglect.” She observed that Mother:

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<sup>6</sup> The transcript attributes this line to “MS. BENDER,” however, from context, it appears that Mr. Ballesteros, O.T.’s Counsel was the speaker. There was no Ms. Bender present at the hearing.



. . . . has been placed in a very stressful situation where she is trying to raise an infant on her own under the circumstances she is saying is domestic violence; where the father admits to parking his truck across the street from her apartment. A big portion of domestic violence is control. And the perception that he could be outside watching her at any time because he has chosen to park his car across the street is absolutely exerting control. The fact that he has restricted her, even when the Department is supposed to be overseeing it has restricted my client's access to her child is part of that control.

Father's counsel countered that the Department's Petition did not allege facts against Father and counsel described Mother's testimony of domestic violence as "uncorroborated." He requested "that custody be granted to [Father,]" and noted that "this is a classic *Russell G.*"<sup>7</sup>

In conclusion, Department's counsel observed that "that mother has had ample opportunity to create a paper trail and go to the hospital and have protective orders and have police records before, during and after the pandemic, none of which we have today[.]" The Department repeated its request before the court to grant custody to Father because the Department didn't "have any concerns about him."

Critically, the court then asked O.T.'s counsel, "why shouldn't I sustain the facts in

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<sup>7</sup> *In re Russell G.*, 108 Md. App. 366 (1996), involved a custodial parent, the father, against whom CINA allegations were sustained, but there was no evidence to support a finding that he was either unwilling or unable to care for the child. *Id.* at 377-79. This Court held that *Russell G.* could not be found a CINA under the statutory definition, and further, that under the CINA disposition statute as it was then constructed, the juvenile court had no jurisdiction to make a custody disposition. *Id.* at 380. As we further explain in our discussion in this case, in response to *In re Russell G.*, the Maryland General Assembly amended the CINA statute by adding the provision now codified as CJP § 3-819(e).

the petition today and delay disposition in order to have somebody investigate the Mercy [Medical Center] records with respect to domestic violence?”. O.T.’s counsel conceded:

It can’t hurt except I just don’t think there is enough evidence to get past the first prong, that the father has actually abused or neglected the child in order to continue the jurisdiction of this Court. I think that is what this hearing is, is there enough here for CINA? Have the parents actually abused or neglected the child? And there just isn’t any evidence that the father has actually done anything.

The juvenile court judge then summarized his view of the of the evidence in the case:

**No matter how much the mother’s testimony is discounted, her allegations were never investigated.** I mean, she gives them the name of the provider at Mercy [Medical Center] and they don’t even bother to check and they want to blame that on her. It looks very much like they wanted to close the case from the time they opened it as to the father. But they never investigated whether or not these acts of domestic violence took place in the presence of the child. (Emphasis added).

Notwithstanding the foregoing concerns, after confirming with Mother’s counsel that she did have the opportunity to obtain the hospital records but failed to obtain them, the court observed: “Based on the evidence in the case, the Department has put on no evidence that the father is engaged in any acts of neglect or abuse as to [O.T.]” The court ruled:

Having sustained [the facts against Mother in the CINA petition], I sustain no facts against the father in the case. I have indicated what my concerns are but with that said, I agree with [O.T.’s counsel] with respect to the law.

So with no facts sustained against the father, I will dismiss the petition. I will award custody and guardianship of the child to the father. I will sign an order to that effect. We are recessed.

Based on the evidence presented at the hearings, the juvenile court signed an

“Adjudication/Disposition Order,” on September 1, that was entered by the clerk on September 2, 2022. In the Adjudication Order, the Court found that “the allegations in the CINA petition have been proven by a preponderance of the evidence,” and sustained the facts in all of the numbered paragraphs of the Petition.

The court checked “Disposition Order #3” on the Disposition Order form, ruling that O.T. “IS NOT found to be a Child in Need of Assistance for the following reasons:

That having sustained allegations against one parent only and finding that the other parent is available and is able and willing to care for the child, custody is awarded to [Father], with the right to reasonable visitation under such supervision and conditions as follows: As between parties.

The order further provided that the case was “DISMISSED and JURISDICTION TERMINATED.” On September 8, 2022, Mother noted an appeal from the Disposition Order to this Court.

### **DISCUSSION**

Mother does not challenge the juvenile court’s finding of neglect against her. In its posture before us, then, this appeal turns on whether the court erred by dismissing the CINA case after finding Father was an able parent, and then granting Father custody of O.T. under CJP § 3-819(e) without conducting a best-interests-of-the-child analysis. We start by outlining the applicable statutes and cases to better frame our discussion of the parties’ contentions.

## A. Legal Framework

### *The CINA Statutory Scheme*

The General Assembly has adopted a statutory scheme<sup>8</sup> to protect and further the best interests of those children who require court intervention, specifying that its purpose is to “provide the care, protection, safety, and mental and physical development” of any subject child, and to “provide for a program of services and treatment consistent with the child’s best interests and the promotion of the public interest[.]” CJP § 3-802(a)(1) and (2). Attentive to the fundamental constitutional right of parents to raise their children, the General Assembly also specified that the purpose of the statute is 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[.]” CJP § 3-802(a)(3). The statute holds the “parents of children found to be in need of assistance responsible for remedying the circumstances that required the court’s intervention[.]” CJP § 3-802(a)(4). The State’s obligation to protect a child in need of assistance is described as: “providing services to assist the parents with remedying the circumstances that required the court’s intervention[.]” and “[i]f necessary [] remov[ing] 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

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<sup>8</sup> The “CINA Statute,” Maryland Code (1973, 2020 Repl. Vol., 2022 Supp.), Courts & Judicial Proceedings Article (“CJP”), §§ 3–801 to 3–830, operates in tandem with Maryland Code (1984, 2019 Repl. Vol. 2019) Family Law Article (“FL”), §§ 5–301 to 5–342, §§ 5–501 to 5–534, §§ 5–701 to 5–716, § 9–101 and Maryland Rules 9–103 through 9–113. *See In re Adoption/Guardianship No. T97036005*, 358 Md. 1, 3 (2000).

given[.]” CJP § 3-802(a)(5) and (6). The General Assembly has identified that the law is intended to “achieve a timely, permanent placement for the child *consistent with the child’s best interests.*” CJP § 3-802(a)(7) (emphasis added).

A child is in need of assistance if the child requires court intervention because, as relevant here, “(1) the child has been abused or neglected and (2) the child’s parents, guardian, or custodian *are unable or unwilling to properly care for the child.*” *In re T.K.*, 480 Md. 122, 132 (2022) (citing CJP § 3-801(f)(1), (2)) (emphasis added). “Unless both of those prongs are proven by a preponderance of the evidence, court intervention is unavailable and a court ordinarily must dismiss the child in need of assistance (‘CINA’) case without further involvement.” *Id.* (citing CJP § 3-817(c)) (cleaned up). This is because “a parent’s liberty interest in raising a child [is] a fundamental one that cannot be taken away unless clearly justified.” *In re Yve S.*, 373 Md. 551, 566 (2003).

A child who may be in need of assistance may be placed temporarily outside the home under “Shelter Care” prior to the CINA adjudicatory and disposition hearings. CJP §§ 3-801(cc), 3-815(a). While “shelter care is not a component of every CINA case,” *see In Re. O.P.*, 470 Md. 225, 237 (2020), a child may be taken into custody by a local department or by law enforcement if there are reasonable grounds or probable cause to believe the child is in serious, immediate danger. *See* CJP § 3-814(a); Maryland Code (1984, 2019 Repl. Vol. 2019) Family Law Article (“FL”), § 5-709 (b), (c). A local department may place a child in emergency shelter care if: 1) it is required “to protect the child from serious immediate danger; 2) there is no parent or other appropriate person to

provide supervision; and 3) the child’s continued placement in the home is contrary to the welfare of the child and because of an alleged emergency situation, it is reasonable, for safety reasons, to remove the child from the home; or, the department has removed the child after exerting reasonable efforts to prevent or eliminate the need for removal and is making ongoing efforts to return the child to their home. CJP § 3-815(b).

If the child is not immediately returned, the local department shall file a petition for continuation of shelter care that the court shall hear no later than the next day in which it is in session. CJP § 3-815(c)(2)(ii). The court may order continued shelter care on grounds contained in CJP § 3-815(d), but regardless, the case must proceed to the separate adjudicatory and disposition phases within 30 days. CJP § 3-815(c)(4).

CINA hearings are split into two phases: adjudication and disposition. After a CINA petition is filed, the juvenile court must hold a hearing, CJP § 3-817, “to determine whether the allegations in the petition, other than the allegation that the child requires the court’s intervention, are true[.]” CJP § 3-801(c). At this hearing, the Maryland rules of evidence apply, and the allegations must be proved by a “preponderance of the evidence.” CJP § 3-817(b), (c). The adjudication court does not determine whether the child is a CINA. CJP § 3-801(c).

Because the “local [Department] bears the burden of proof at the hearing,” it is responsible for obtaining and presenting to the court the evidence necessary for the court to sustain the facts alleged in the Department’s CINA petition by the preponderance of the evidence. *See* CJP § 3-817(c); Code of Maryland Regulations (“COMAR”) 07.02.26.12.

B.; *see also In re J.R.*, 246 Md. App. 707, 752 (2020). A CINA petition, “must allege facts that, if sustained, would be sufficient to support a determination that both prongs of the CINA definition—past abuse or neglect *and* a present inability or unwillingness to provide proper care—are satisfied.” *In re T.K.*, 480 Md. at 147 (emphasis in original) (footnote omitted).

Following the adjudicatory hearing, unless the CINA petition is dismissed, the juvenile court “shall” hold a separate disposition hearing to “determine whether the child is a CINA.” CJP § 3-819(a)(1). The disposition hearing shall be held on the same day unless the court finds that there is good cause to delay the disposition hearing, in which case it shall be held no later than 30 days after the end of the adjudicatory hearing, unless further good cause is shown. CJP § 3-819(a).

The Department maintains its burden to prove its case during the disposition hearing, but the court may exercise its discretion “to decline to require the strict application of the rules of evidence.” *In re T.K.*, 480 Md. at 147 (citing *In re M.H.*, 252 Md. App. 29, 43 (2021)). The Department’s obligation in meeting these standards is heightened, as “[u]nlike a typical civil plaintiff, DSS is not seeking relief for itself in filing suit, but is initiating an action in the juvenile court with the purpose of advancing the child’s welfare,” and the court must take care that its deficiencies in persuasion or production do not redound upon the child. *In re Najasha B.*, 409 Md. 20, 38-39 (2009).

The instructions to the juvenile court in making a disposition on a CINA petition contained in CJP § 3-819(b)(1)(i) (iii), provide, in summary, that the court shall:

- upon a finding that the child is **not** in need of assistance, “**except as provided in subsection (e) of this section, dismiss the [CINA] case**”; or
- hold in abeyance a CINA finding regarding a child with a developmental disability or mental illness; **or**
- subject to provisions addressing “disability,” find that the child **is** in need of assistance; **and**
  - not change the child’s custody status; **or**
  - commit the child on terms the court deems appropriate to the custody of a parent; a relative or other individual subject to CJP § 3-819.2; or a local department, the Maryland Department of Health, or both.

Thus, CJP § 3-819 includes an exception to the rule that the juvenile court must dismiss the CINA case without further involvement when, after an adjudicatory hearing, the allegations of a CINA petition are sustained against only one parent. CJP §§ 3-819(b)(1)(i); 3-819(e).

Section CJP § 3-819(c) gives the juvenile court authority to order “additional dispositions” for a child who is determined to be CINA, including the ability to “[d]etermine custody, visitation, support, or paternity of a child in accordance with § 3-803(b) of this subtitle[.]” CJP § 3-819(c)(2). Section 3-803(b), in turn, recognizes the concurrent jurisdiction of the juvenile court in determining custody and visitation.<sup>9</sup> Accordingly, it is important to emphasize that the juvenile court is further constrained by FL §§ 9-101 and 9-101.1. *See, e.g., In re X.R.*, 254 Md. App. 608, 625-26 (2022) (“[O]nce a child is declared a CINA, a juvenile court must only make a custody determination that

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<sup>9</sup> Equity courts have jurisdiction over the custody or guardianship of a child under FL § 1-201(b)(5).



abides by the requirements provided in FL § 9-101.”).<sup>10</sup>

Section 9-101 dictates that, “if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding,” then the court must determine whether abuse or neglect of the child is likely under the proposed custody or visitation disposition granted to the party. FL § 9-101(a). The Court must deny the proposed disposition “[u]nless the court specifically finds that there is no likelihood of further child abuse or neglect by the party,” except so far as to allow appropriate supervised visitation. FL § 9-101(b). Section 9-101.1, in turn, instructs that the court shall consider “evidence of abuse by a party against: (1) the other parent of the party’s child; (2) the party’s spouse; or (3) any child residing within the party’s household, including a child other than the child who is the subject of the custody or visitation proceeding” when deciding custody or visitation issues. FL § 9-101.1(b). Further, it requires that if the court finds that “a party has committed abuse against the other parent of the party’s child, the

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<sup>10</sup> As we mentioned in note 9 above, custody dispositions within the CINA framework are also conducted in concert with other relevant provisions of the Family Law Article. *In re Adoption/Guardianship No. 10941*, 335 Md. 99, 103-04 (1994). For example, Section 5-525(f)(1) of the Family Law Article requires that the court consider six factors when determining a permanency plan for a child in an out-of-home placement: 1) “the child’s ability to be safe and healthy in the home of the child’s parent”; 2) “the child’s attachment and emotional ties to [his or her] natural parents and siblings”; 3) “the child’s emotional attachment to [his or her] current caregiver and the caregivers’ family”; 4) “the length of time the child has resided with the current caregiver”; 5) the “potential emotional, developmental, and educational harm to the child if moved from the child’s current placement”; and 6) “the potential harm to the child by remaining in State custody for an excessive period of time.” FL § 5-525(f)(1); *see also* CJP § 3-823(e)(2).

party’s spouse, or any child residing within the party’s household,” the court shall dispose of custody or visitation to best protect “(1) the child who is the subject of the proceeding; and (2) the victim of the abuse.” FL § 9-101.1(c).

We have held that FL § 9-101 often “needs to be considered together” with FL § 9-101.1, which “deals not just with abuse [or neglect] by a party ... against a child but also with abuse by that party directed against the other parent of the child or the party’s current spouse.” *Gizzo v. Gerstman*, 245 Md. App. 168, 193 (2020) (citing *In re Adoption No. 12612*, 353 Md. 209, 229, 236, (1999)). “As defined by FL § 9-101.1, the term ‘abuse’ includes various crimes against the person, including ‘assault in any degree[.]’ FL § 4-501(b)(1)(iii).” *Id.* at 194.

We have observed that the “legislative history of § 9-101.1 indicates recognition by the Legislature of a deep concern over the effect on a child of being in the maelstrom of *any* domestic violence within the home, including the abuse of adults and other children, whether or not those victims are related to the child whose custody or visitation is at issue.” *Id.* at 193-94 (quoting *In re Adoption No. 12612*, 353 Md. at 236-37) (emphasis in original). The Supreme Court in *In re Adoption No. 12612* held that:

In the process of enacting FL § 9-101.1, the General Assembly considered “the adverse effects on children from abusive households generally, not only the psychological harm derived from witnessing violence directed against other household members, but also the greater likelihood, statistically demonstrated, that violence directed against others, including adults in the home, will eventually be directed against them as well[.]”

353 Md. at 237.

*Development of CJP § 3-819(e)*

The juvenile court granted Father custody of O.T. in this case under CJP § 3-819(e), which states:

If the allegations in the petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child, the court may not find that the child is a child in need of assistance, but, before dismissing the case, the court may award custody to the other parent.

CJP § 3-819(e). This provision grants the court authority to modify the child’s custody in favor of a non-custodial parent who is “able and willing to care for the child” in an order that survives the surrender of the court’s jurisdiction when it declares the child not a CINA. *See In re T.K.*, 480 Md. 122, 136 (2022) (quoting CJP § 3-819(e)).

Prior to passage of section 3-819(e), application of the original statute governing CINA disposition hearings<sup>11</sup> to the unremarkable circumstance in which one parent raises

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<sup>11</sup> The roots of the CINA adjudication and disposition framework trace back to 1975, when the General Assembly enacted House Bill 483. 1975 H.B. 483, Md. Laws, Ch. 554 (1975). Among other things, H.B. 483 “repealed Subtitle 8 [of the Courts and Judicial Proceedings Article] in its entirety in favor of a new Subtitle 8[,]” which shifted the focus from the “neglected child” to the “child in need of assistance.” Barry L. Steelman, *Maryland Laws on Child Abuse and Neglect: History, Analysis, and Reform*, 6 U. BALT. L. REV. 113, 121 (1976). As with the current iteration, the original CINA framework erected by H.B. 483 divided the decisional process into adjudication and disposition. *See* 1975 H.B. 483, 1975 Md. Laws, Ch. 554, 2685-86 (1975). The original provision addressing disposition, codified at CJP §3-820, provided that a separate disposition hearing was to take place “after an adjudicatory hearing” if the court adjudicated the child as in need of assistance. *See* 1975 H.B. 483, 1975 Md. Laws, Ch. 554, 2686. Among the bench and bar, this language appeared to cause some confusion as to when the determination of a child’s CINA status was to take place. *See* Committee Note to 2001 S.B. 660, 2001 Md. Laws, Ch. 415, 2429 (“The Committee is aware that there is a school of thought that the  
(continued)

a child without the engagement of the other, revealed a loophole through which some children slipped out of the jurisdiction of the juvenile court. This was because the court was required to dismiss the case without further action when it sustained the CINA petition against only the custodial parent and not both parents.

This deficiency came into focus after this Court’s decision in *In re Russell G.*, 108 Md. App. 366, 370, 372 (1996). In that case, the juvenile court, adjudicating on scant knowledge of the father, sustained CINA allegations against both the mother and father, and declared the child to be a CINA. *Id.* at 370. On appeal, this Court took no issue with the juvenile court’s determination that the custodial mother had neglected the child and was unable to care for him due to her struggle with alcoholism. *Id.* at 377. However, we concluded that “the evidence simply did not support the factual findings upon which the [juvenile] court based its conclusion that [father] was unable to give [the child] proper care and attention[.]” *Id.* at 379. Under strict interpretation of the statute, we held that the juvenile court could not declare the child a CINA, because a child is CINA only if *both* parents are unable or unwilling to give the child proper care and attention. *Id.* at 380. Therefore, we concluded, there was no basis for the juvenile court to exercise continuing jurisdiction over the child. *Id.* The Supreme Court recently observed, regarding *In re*

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determination of the CINA finding should be made at the adjudication hearing.”). In 2001, the General Assembly settled the issue, recodifying the provision addressing disposition from CJP §3-820 to CJP §3-819, and clarifying that, at disposition, “the court shall hold a separate disposition hearing to determine whether the child is a CINA.” 2001 S.B. 660, 2001 Md. Laws, Ch. 415, 2426.

*Russell G.*, that there, “the juvenile court, lacking any basis to exercise jurisdiction over the child or order a transfer of custody, was powerless to protect him even though the child remained at risk in the mother’s care.” *In re T.K.*, 480 Md. at 148.

In response to *In re Russell G.*, the Maryland General Assembly amended the CINA statute and adopted a new provision, now codified at CJP § 3-819(e), “to respond to a situation in which petition allegations sufficient to support both prongs of a CINA disposition are sustained against only one custodial parent.” *In re T.K.*, 480 Md. at 148. (internal citations omitted).<sup>12</sup> Since the enactment of CJP § 3-819(e), the courts have struggled with how and when they should exercise the power it gives them to award custody outside of a contested custody hearing. The Supreme Court’s decision in *In re T.K.* provides the necessary guidance “concerning the mechanics of the application of § 3-

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<sup>12</sup> Senate Bill 660, discussed in the prior footnote, added CJP §3-819(d) to the statute in 2001, which was then recodified in 2002 as CJP §3-819(e) without any further substantive change. 2001 S.B. 660, 2001 Md. Laws, Ch. 415, 2427; 2002 S.B. 394, 2002 Md. Laws Ch. 151. As laid out in the Bill Analysis provided by the Senate Committee on Judicial Proceedings, the purpose of §3-819(d) (now §3-819(e)) was explained as follows:

The bill also adds a new provision stating that if the allegations in the petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child, the court may not find that the child is a child in need of assistance, but prior to dismissing the petition, the court may award custody to the other parent. This new provision is in response to the decision of the Court of Special Appeals in *In Re Russell G.*, 108 Md. App. 366 (1996), which held that a CINA finding may be made only if both parents are unable or unwilling to provide proper care for the child.

Bill File, 2001 S.B. 660 at 4. Aside from the 2002 amendment moving the provision from §3-819(d) to §3-819(e), there have been no other intervening changes and the language has remained the same. Section 3-819 was last amended in 2019 with changes to subsection (g) that are not pertinent to this appeal. 2019 S.B. 732, 2019 Md. Laws Ch. 304.

819(e) to situations in which a local department of social services has limited knowledge about one of the child’s parents until after a CINA adjudicatory hearing has concluded.”

*Id.* at 132. In its opinion, the Court clarified:

- (1) when a juvenile court has the discretion to make an award of custody under § 3-819(e);
- (2) what standard applies to the exercise of that discretion; and
- (3) when a juvenile court must afford a parent who stands to lose custody as a result of an application of § 3-819(e) an opportunity to present evidence relevant to the court’s exercise of authority under that provision.

*Id.* at 132-33.

In regard to the first of these clarifications, *In re T.K.* identified “two prerequisites” to a juvenile court’s discretion to make an award of custody under CJP § 3-819(e). *Id.* at 145. The first prerequisite requires that, “following the adjudicatory hearing, the juvenile court will have sustained allegations in the petition that are sufficient to support determinations that: (1) the child has been abused or neglected; and (2) one of the child’s parents is unable or unwilling to provide proper care for the child.” *Id.* at 147. The second prerequisite requires “that ‘there is another parent available who is able and willing to care for the child.’” *Id.* at 149 (quoting CJP § 3-819(e)). The Supreme Court explained that,

there is an important distinction between the absence of a finding that both parents are unable or unwilling to provide proper care for purposes of the CINA determination—which would be enough to preclude a determination that a child is in need of assistance—and the finding required by § 3-819(e). The distinction arises from the differing allocations of the burdens of proof for those determinations.

With respect to a CINA determination, a local department may fail to carry its burden to prove by a preponderance of the evidence that one of a child’s parents is unable or unwilling to provide proper care for the child in multiple

ways, including: (i) the court may not be convinced by the department’s evidence that the parent is unable or unwilling; (ii) the court may be convinced that the parent *is* able and willing by more persuasive evidence presented by another party; or (iii) as here, the department may opt not to present any evidence on the subject. In any of those scenarios, the court could not determine the child to be in need of assistance, but only in scenario (ii) would there be an affirmative finding that one parent is able and willing to provide proper care.

By contrast, the second prerequisite for the exercise of discretion under § 3-819(e) requires a finding that the parent to whom the court is considering awarding custody—the “other parent,” in the language of the statute—is available, willing, and able to provide proper care. **A finding that the local department failed to carry its burden to prove otherwise is, for that purpose, insufficient, because it is the proponent of the transfer of custody who bears the burden of proving that the prerequisites are satisfied. It is, after all, the proponent of an award of custody who is seeking not just dismissal of the petition, but the juvenile court’s affirmative adjustment of a private custody arrangement.**

*In re T.K.*, 480 Md. at 149 (emphasis added). If these prerequisites are established, then “the best interest of the child standard applies to the court’s decision whether to exercise its discretion to award custody[.]” *Id.* at 160.

*In re T.K.* arose from a mother’s appeal of a juvenile court’s decision to award custody of her child to his non-custodial father following CINA adjudicatory and disposition hearings held on separate days. *Id.* at 139, 142. The local department of social services filed a CINA petition alleging that Mother–T.K.’s sole caretaker—was unwilling or unable to care for T.K. *Id.* at 137. The stipulated facts included that, “late on June 25, 2020, Mother, who had been drinking, left the children at an apartment in the care of an individual who Mother knew had also been drinking . . . [and who] hit Ta.K. [T.K.’s sister] with a belt and a spatula, causing bruises, and had also pulled out some of Ta.K.’s hair. Based on that incident, Mother was indicated for neglect of both children.” *Id.* at 138

(footnote omitted). Because the department did not seek to place T.K. in shelter care, T.K. resided with Mother throughout the CINA proceedings. *Id.* at 137.

The non-custodial father had not been involved in T.K.’s care, and in fact, his paternity was not established until after the CINA proceedings had begun. *In re T.K.*, 480 Md. at 137. The department conducted no investigation of Father and brought no allegations against him. The “only fact concerning Father addressed in the stipulation” between the parties, or alleged in the amended CINA petition, “was that he was then living in Stone Mountain, Georgia.” *Id.* at 139. Father declared himself to be “willing and able” to take on T.K.’s care, and attended the adjudicatory hearing held before a magistrate, without counsel and without giving testimony. *Id.* at 139 & n.9.

Following the adjudicatory hearing, the juvenile court entered an order finding the facts stipulated as proven by a preponderance of the evidence. *Id.* at 139. During the following month, when the parties presented themselves before the magistrate for the scheduled disposition hearing, the department moved at the outset to dismiss the CINA petition because Father “had been confirmed as T.K.’s biological father and was ‘present[ing] himself as a fit and proper parent.’” *Id.* (footnote omitted). Mother’s counsel requested a postponement, which was denied by the magistrate on the ground that if, as the department claimed, Father was willing and able to care for T.K., there was no need to proceed to disposition at all. *Id.* n. 9. The magistrate also recommended that Father be awarded legal and physical custody of T.K. pursuant to CJP § 3-819(e), despite Mother’s proffer that, if permitted to offer evidence, she would “offer testimony to the effect that



Father had abandoned T.K. and had been abusive to T.K., Mother, and another former partner[.]” *In re T.K.*, 480 Md.at 139-40. Mother filed exceptions and requested a *de novo* hearing before the juvenile court. *Id.* (footnote omitted).

Before the juvenile court, Mother did not object to dismissal of the CINA case but urged the court not to make an award of custody without first conducting a best interests analysis. *Id.* at 141. Mother renewed her proffer that she would present evidence through her own testimony that Father was abusive; and through another witness, that Father was abusive to that witness and her child. *Id.* at 141-42. Counsel for the Department “proffered that it had cleared Father and all adult members of his household, verified Father’s employment, conducted a video tour of his home, and that Father had acted appropriately in his interactions” with the Department. *Id.* at 142. The juvenile court decided to close the CINA case and, without taking testimony, awarded custody to Father, reasoning that “it is in the child’s best interest to be placed with the parent that is willing and able[.]” *Id.* Mother appealed to the Maryland Appellate Court, which affirmed. *In re T.K.*, 480 Md. at 143.

The Supreme Court of Maryland granted *certiorari* and reversed our decision with instruction to remand for further proceedings because “the juvenile court did not hold a hearing to allow the parties to present evidence concerning whether Father was able and willing to provide proper care for T.K. and [that] the custody arrangement [] was in T.K.’s best interest before awarding sole legal and physical custody to Father[.]” *Id.* at 161. The Court highlighted that, just as the best interests of the child standard is dispositive in

custody awards:

So too here, the best interest of the child standard is applicable to the juvenile court's exercise of discretion under § 3-819(e). Thus, a juvenile court should exercise its discretion to award custody of a child to the parent who it finds available, willing, and able to provide care only if it determines that doing so is in the best interest of the child.

*Id.* at 151.

The Supreme Court's decision in *In re T.K.* identifies the distinction between the absence of evidence that a parent is "unable and unwilling," and the affirmative showing required before declaring that a parent is "able and willing" and that custody with that parent is in the best interests of the child. *In re T.K.* explains that the law bridges the gap with a best-interests-of-the-child analysis, in which the party advocating the custody award to the non-custodial parent bears the burden of persuasion. *Id.* at 149-50.

## **B. Contentions of the Parties**

### ***Mother's Contentions***

Before this Court, Mother argues that the juvenile court should not have proceeded to disposition after it "acknowledged the abject failure" of the Department to investigate Mother's allegations that Father perpetrated "sexual violence resulting in serious physical injury" against her, as well as verbal, emotional, and physical abuse, some of which took place in O.T.'s presence. Mother contends that the Department was aware that she received both medical treatment and counseling at Mercy Medical Center for domestic violence and that the Department "did not even ask her to sign a release to attempt to obtain those records." According to Mother, the court should have compelled the Department to, at

minimum, obtain Mother’s hospital treatment and domestic violence counseling records pertinent to the alleged abuse. The Department also should have investigated whether the peace order and protective order noted in Father’s court records stemmed from incidents of domestic violence. She observes that “a delay was unquestionably warranted[,]” and avers the court should have “either (1) sustained the petition as to both parents and delayed disposition or (2) sustained the petition only as to mother and delayed disposition.”

Mother argues that once the court sustained allegations against her in the CINA petition, the CINA statute entitled O.T. to a custody hearing under CJP § 3–819(e) to determine whether it was in O.T.’s best interests to award custody to her non-custodial father. Mother posits that CJP § 3–819(e)’s permissive language—that the court “may” award custody to the other parent—is a patent indication that the statute does not require an award of custody to the non-custodial parent, even where that parent is “able and willing” to care for the child.

Mother asserts that her “testimony concerning Father’s abuse and abandonment” left evidence unresolved that was “critical to the court’s best-interest-focused custody determination.” Mother places great significance on “Father’s failure to testify” to refute “the allegations of domestic and sexual violence allegedly perpetrated by Father against Mother and O.T.,” and argues that any credibility assessment the court would have made after such testimony “surely would have informed the court’s decision” to award custody of O.T. to Father. Mother asserts that “in light of the unresolved allegations of abuse about which other evidence clearly existed but was not before the court,” the court should have

held a hearing “to receive additional evidence in order to inform its best interests analysis concerning custody of O.T.”

Mother further argues that the juvenile court failed to observe the statutory interpretation established by *In re T.K.*, because, she asserts, O.T.’s counsel and Father’s counsel “believed this case to be a ‘classic Russell G.’ situation” (referring to *In re Russell G.*, 108 Md. App. 366 (1996)), and argued that *In re Russell G.* compelled the court to grant custody to Father in the absence of a finding that Father abused or neglected the child. Mother notes that the judge stated, despite his concerns regarding the Department’s investigation, that he “agreed with [O.T.’s Counsel] with respect to the law,” and that the judge then made the same disposition as in *In re Russell G.*, by awarding custody to the non-custodial father on the spot. Mother asserts that *In Re: T.K.* clarified that the “best interests of the child standard” governs the court’s discretion and should have compelled the court to “conduct appropriate proceedings to properly exercise [its] authority.” Mother asserts that her “testimony concerning Father’s abuse and abandonment” left evidence unresolved “that was critical to the court’s best-interest-focused custody determination.”

#### ***O.T.’s Contentions***

Counsel for O.T. reverses the position that he took at the adjudicatory hearing. He states that because Mother’s testimony raised factual disputes that call into question “whether Father is ‘able and willing to provide proper care,’ and whether ‘it is in [O.T.’s] best interest’ for custody to be awarded to Father[,]” he does not object to Mother’s request to remand the case to the juvenile court to conduct a best-interests-of-the-child analysis.

(quoting *In re T.K.*, 480 Md. 122, 160-161 (2022)). In his concise brief, O.T.’s counsel emphasizes that the only issue for the court to decide on remand is what placement is in O.T.’s best interests.

***The Department and Father’s Contentions Supporting No Error***

The Department’s and Father’s first contention on appeal, unopposed by Mother or O.T., is that the juvenile court properly found that Mother neglected O.T., who, at present, “is not safe in Mother’s care.” Then, in support of the juvenile court’s dismissal of the CINA case and grant of custody to Father, the Department argues that the holding in *In re T.K.*, 480 Md. 122 (2022), does not apply in this case because: 1) unlike the case in *In Re T.K.*, O.T. had to be sheltered and removed from Mother’s care; 2) Mother consented to O.T.’s initial placement with Father; 3) Mother did not raise concerns about Father’s ongoing care of O.T.; 4) Mother never submitted documents corroborating her allegations against Father; and 5) Mother failed to request a separate evidentiary hearing or object to the court proceeding to disposition.

The Department acknowledges its burden of proof only so far as “proving the allegations [within the CINA petition] by a preponderance of the evidence.” Accordingly, it posits, “[i]f Mother wanted a separate hearing on a disputed issue, she first had to raise a disputed issue and then she needed to request a hearing on it.” The Department observes that in this case, its “investigation into Father revealed nothing concerning, the court found him a fit parent, and O.T. has remained in his care throughout these proceedings without incident.” The Department insists that an evidentiary hearing was not necessary, stating,

“[t]his is one of those cases where such a hearing is unnecessary because Mother already had her day in court.”

Next, the Department, invoking Maryland Rule 8-131(a), contends that even if *In Re T.K.* applies, Mother waived her argument about the need for a separate hearing under the holding in that case. The Department avers, “*T.K.* does not offer litigants a pathway for circumventing the preservation rule.”

The Department urges that if this Court finds error or abuse of discretion, any remand should be limited “for the sole purpose of allowing Mother to present additional evidence about her previous abuse allegations against Father at a separate custody hearing” to determine Father’s fitness and “whether continued custody with Father is in O.T.’s best interests.” The Department stresses its objection to any remand that would “gamble with O.T.’s future by opening the door for Mother to seek O.T.’s return to her care,” and argues that any remand should “affirm the juvenile court’s decisions about mother and make those determinations the law of the case.”

Father maintains the court properly placed O.T. with him, and that, under the totality of the circumstances, there was “simply no justification” for holding a separate custody hearing for O.T. He points to Ms. Kaufman’s testimony that her investigation “revealed there was nothing indicating that [Father] had been charged with any crimes that were significant or anything related to domestic violence.”

Father contends that among Mother’s accusations of domestic violence, “there were

no allegations that [he] was abusive towards O.T.<sup>13</sup> or that Mother had witnesses who would testify to [his] abuse,” nor did Mother contend “that [O.T.] would be in danger in his care or that he did not have suitable housing.” Father notes that at the June 28 shelter hearing, Mother agreed to place O.T. in his care for 30 days, and at that period’s expiration she “did not request [O.T.] to be removed” from his care. Likewise, Father observes that the Department “had no child welfare concerns” for O.T. during the time she spent in his care between the shelter hearing and the August 23 adjudication hearing. Father concludes that “[i]t is in O.T.’s best interest to remain in Father’s care as the child is doing fine in his care.”

### C. Standard of Review

It is well established that there are three distinct but interrelated standards of review that we apply to a juvenile court’s findings in CINA proceedings. *In re J.R.*, 246 Md. App. 707, 730-31 (2020). First, [w]hen the appellate court scrutinizes factual findings, the clearly erroneous standard of Rule 8-131(c) applies. *Id.* at 730. Second, if it appears that the court erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. *Id.* at 730-31 (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). Finally, “when the appellate court views the ultimate

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<sup>13</sup> Here, Father’s assertion on brief is factually incorrect. Mother testified that Father’s domestic violence toward her continued throughout her pregnancy and then in the presence of O.T. For example, Mother testified that as recently July of 2022, she “went to reach for [O.T.] to give her a hug and he told me no; pushed me; almost pushed me down the hill on that date.” Mother also alleged that Father had “pushed [O.T.] several times.”

conclusion of the court founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the court’s decision should be disturbed only if there has been a clear abuse of discretion.” *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 47 (2019) (brackets omitted) (quoting *In re Adoption/Guardianship of Ta’Niya C.*, 417 Md. 90, 100 (2010)).

Whether parents are able and willing to care for their child is a factual determination that we review for clear error. *In re E.R.*, 239 Md. App. 334, 338 (2018). “Generally, a ‘trial court’s findings are not clearly erroneous if there is competent or material evidence in the record to support the court’s conclusion.”” *Gizzo v. Gerstman*, 245 Md. App. 168, 200 (2020) (quoting *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019)) (cleaned up). “When an action has been tried without a jury, the appellate court ... will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). Whether the juvenile court correctly applied CJP § 3-819(e) and related Maryland decisional law is a question that we review without deference. The Supreme Court of Maryland has instructed that “[a]n erroneous legal determination by the juvenile court will require further proceedings in the trial court unless the error is deemed to be harmless.” *In re Ashley S.*, 431 Md. 678, 704 (2013).

## **D. Analysis**

### **1. Presentation, Preservation, and Waiver**

The Department and Father contend that the issue of whether the court erred when it failed to continue the hearings has not been preserved for review. Invoking Maryland



Rule 8-131(a), they contend that Mother waived any argument based on *In Re T.K.* about the need for an evidentiary hearing to determine the fitness of Father.

Maryland Rule 8-131(a) specifies that, “[o]rdinarily, the appellate court will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.” However, in circuit court proceedings, “[o]n motion of any party or on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require.” Md. Rules 2-508(a).

When a circuit court sitting as the juvenile court is considering a CINA petition, unless that petition is dismissed, “the court shall hold a separate disposition hearing after an adjudicatory hearing to determine whether the child is a CINA,” which “shall be held on the same day as the adjudicatory hearing *unless on its own motion* or motion of a party, the court finds that there is good cause to delay the disposition hearing to a later day.” CJP § 3-819(a)(1), (2) (emphasis added).

Here, in a colloquy extending from the end of the adjudication hearing into the disposition hearing, the court and counsel discussed the deficiency in the Department’s investigation and the merits of a continuance to gather the missing medical records:

[COURT]: All right. [O.T.’s counsel], *why shouldn't I sustain the facts in the petition today and delay disposition* in order to have somebody investigate the Mercy records with respect to domestic violence.

[O.T.’S COUNSEL]: It can’t hurt except I just don't think there is enough evidence to get past the first prong, that the father has actually abused or

neglected the child in order to continue the jurisdiction of this Court. I think that is what this hearing is, is there enough here for CINA? Have the parents actually abused or neglected the child? And there just isn't any evidence that the father has actually done anything.

\* \* \*

[COURT]: Having sustained [the facts against the mother in the CINA petition], I sustain no facts against the father in the case. I have indicated what my concerns are but with that said, *I agree with [O.T.'s counsel] with respect to the law*. So with no facts sustained against the father, *I will dismiss the petition*. (Emphasis added).

With the court's question to counsel, "why shouldn't I sustain the facts in the petition today and delay disposition" it proposed a continuance and invited discussion on its merits. We conclude, therefore, that the issue of whether the disposition hearing should be continued to have been raised and decided.

The Department also contends that Mother waived her right to challenge the court's decision to not continue the hearing because she acquiesced to it. The Department cites to *Basoff v. State*, 208 Md. 643, 650 (1956), where the Supreme Court explained:

When a party has the option either to object or not to object, his failure to exercise the option while it is still within the power of the trial court to correct the error is regarded as a waiver of it estopping him from obtaining a review of the point or question on appeal.

The Court of Appeals adopted the rule to ensure fairness for all parties to cases and to promote the orderly administration of the law.

*Id.* at 650 (collected cases omitted). Here, under the CINA statute, the procedural question of continuing the proceedings is entwined with the outcome, and by objecting to the latter, Mother also objected to the former. Indeed, Mother's counsel argued the exact position that she asserts now on appeal, that O.T. is unsafe in Father's custody, and that he had a

history of domestic abuse and neglect of O.T.

In the lengthy colloquy comprising the close of adjudication as well as the beginning of disposition, the judge explicitly expressed his concern over the missing records with the clear concern that without more investigation he would have no choice but to proceed to disposition sustaining no CINA facts against Father, in which case he could not designate O.T. a CINA. The judge gave each party the opportunity to address the significance of that gap in the evidentiary record. After the Department's counsel and O.T.'s counsel argued their positions, the judge turned to Mother's counsel:

[MOTHER'S COUNSEL]: Thank you, Your Honor. At this point in time based on the testimony and the stipulated documents and video, I think that the Court could sustain the allegations contained in the petition. What I would argue different from [O.T.'s counsel]: the Court could find that both of the parents, CINA could be found against both of the parents. My client testified that not only was there domestic violence that occurred throughout their entire relationship, that domestic violence occurred in front of [O.T.]. That in and of itself is neglect. If [Father] believed that [Mother's] mental health was so bad and did nothing, that would be neglect.

At no point did Mother concede that Father was an able and willing parent—on the contrary—Mother persisted in her argument that Father's history of domestic violence and neglect with regard to O.T. rendered him unfit to be her custodian.

## **2. The Award of Custody to Father**

The errors in this case trace back to that point in the adjudication hearing when the court recognized that Mother's testimony that Father was abusive to Mother and O.T. went largely un rebutted, and that the protective order against Father and the records from Mercy Medical Center were not investigated by the Department. Without the benefit of the

guidance offered by the just-published controlling opinion in *In re: T.K.*, the court believed that upon sustaining the allegations contained in the CINA petition against Mother, the court was compelled to award custody to Father if he was not found “unable and unwilling” to care for the child.

The juvenile court conducted its adjudication and disposition hearings on August 23, 2022, less than four short weeks after the Supreme Court of Maryland issued its landmark decision in *In re: T.K.*—the Court’s first opportunity “to provide guidance concerning the mechanics of the application of [CJP] § 3-819(e) to situations in which a local department of social services has limited knowledge about one of a child’s parents until after a CINA adjudicatory hearing has concluded.” 480 Md. 122, 132 (2022). Therefore, while the court precisely pinpointed the problem with the case the Department presented, it did not fully exercise its powers of redress.

### *Able and Willing*

First, the court did not acknowledge for the record its power and obligation, highlighted by *In re: T.K.*, to make an affirmative finding that Father was an able and willing custodian *before* it acquired discretion to make an award of custody to him under § 3-819(e). In fact, the discomfort that the court voiced from the bench, if anything, went to show that it had not made such an affirmative finding. After sustaining the CINA petition facts against Mother, which were strongly supported by the evidence in the record, the court said “I sustain no facts against the father in the case. *I have indicated what my concerns are but with that said, I agree with [O.T.’s Counsel] with respect to the law. So*

with no facts sustained against the father, I will dismiss the petition.” (Emphasis added).

Unfortunately, the court did not require the Department to present obtainable evidence that the court needed to determine whether Father was an able and willing custodian for O.T. *In re: T.K.* explains that a juvenile court “has discretion to award custody under § 3-819(e) only if the court” amongst other findings, “finds that the other [non-petitioned] parent is able and willing to care for the child[.]” 480 Md. at 133. As the Supreme Court explained:

the second prerequisite for the exercise of discretion under § 3-819(e) requires a finding that the parent to whom the court is considering awarding custody—the “other parent,” in the language of the statute—is available, willing, and able to provide proper care. A finding that the local department failed to carry its burden to prove otherwise is, for that purpose, insufficient, because it is the proponent of the transfer of custody who bears the burden of proving that the prerequisites are satisfied. It is, after all, the proponent of an award of custody who is seeking not just dismissal of the petition, but the juvenile court’s affirmative adjustment of a private custody arrangement.

*Id.* at 149.

Here, the court observed during adjudication that the evidence submitted by the Department in response to allegations of Father’s domestic violence and abuse fell short of what is “necessary for the purpose of justice.” Md. Rule 2-514. The court critiqued the Department from the bench, observing, “[i]f the records from Mercy [Medical Center] are never subpoenaed, there is no release ever sought, but there is an order that you provide visitation, which certainly didn’t happen, ... it seems to me you sort of dismissed the claim without investigating whether or not there were domestic violence issues.” When the Department’s counsel countered that “we did investigate with Maryland Case Search,” the

court replied “[c]andidly, that is not an investigation.”

Mother presented testimony that Father had perpetrated numerous acts of sexual and physical violence against her throughout the course of their relationship, including during her pregnancy with O.T., and in the presence of O.T. Mother also testified to Father forcing her and O.T. out of the home, so that they were forced to reside in a shelter until the Department assisted them into stable housing. She recounted additional incidents of violence during the short period after their separation, such as, for example, when he allegedly tried to push her down a hill.

The Department’s own evidence may corroborate some of Mother’s story. The Department’s reports recorded that Mother’s “pressured speech” and other behavioral expressions were consistent with the experience of trauma. The Department also included information that Mother had been engaged in domestic violence counseling, and that Mother had told them of extant recent hospital records that would document Father’s sexual violence against her. Finally, the Department admitted that it had discovered through Case Search that Maryland courts had granted both a protective order and a recent peace order against Father, but the Department had not investigated the underlying incidents to discover the nature of the allegations. The fact that the Department had previous knowledge of both of these allegations is evidenced by their inclusion in its court reports.

In response to the Department’s scant effort to investigate these claims, the judge observed:

Here is my view of the evidence in the case. No matter how much the mother’s testimony is discounted, her allegations were never investigated. I

mean, she gives them the name of the provider at Mercy [Medical Center] and they don't even bother to check and they want to blame that on her. It looks very much like they wanted to close the case from the time they opened it as to the father. But they never investigated whether or not these acts of domestic violence took place in the presence of the child.

The court's recognition of this deficiency clearly indicates that, at minimum, the Department failed in its investigation. However, as the party advocating the finding that Father was able and willing and should be awarded custody of O.T., the Department bore the burden of proof. *In re: T.K.*, 480 Md. at 149. Regardless of whether, in an ordinary civil case, such failure may result in an adverse ruling, here O.T.'s best interests are paramount, *Hill v. Hill*, 49 Md. 450, 457-58 (1878), and the correct decision under the circumstances presented would have been to continue the hearing for the Department to gather additional evidence. Indeed, the court explored, *sua sponte*, whether it should take the appropriate path. Referring to the uninvestigated claims of domestic violence and sexual abuse against Father, the court asked O.T.'s counsel, "why shouldn't [the court] sustain the facts in the petition today and delay disposition in order to have somebody investigate the Mercy [Medical Center] records with respect to domestic violence?"

In sum, we observe that the court failed to require the Department to investigate and present obtainable evidence that the court needed to determine whether Father was an able and willing custodian for O.T. where the evidence before the court created a material dispute as to whether Father had abused Mother, and perhaps even abused or neglected O.T. in the past. Accordingly, we hold that the juvenile court failed to make an affirmative finding that Father was an able and willing custodian before it proceeded to make an award

of custody to Father under § 3-819(e).

***The Child's Best Interests***

The second error occurred when the juvenile court did not acknowledge for the record that the exercise of its discretion to make a custody determination is explicitly guided by the best interests of the child analysis. O.T.'s interest in a thorough examination of evidence that bears upon her future safety is indisputable. In the disposition of a child's custody, "the child's best interest[s] remains the 'transcendent standard[.]'" *In re Adoption of Cadence B.*, 417 Md. 146, 157 (2010) (quoting *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 112 (2010)) (footnote omitted), *see also Conover v. Conover*, 450 Md. 51, 60 (2016)) ("The primary goal of access determinations in Maryland is to serve the best interests of the child.") (quoting *Taylor v. Taylor*, 306 Md. 290, 303 (1986)). It is long established that the court's power to determine who shall have custody, control, and guardianship of children, "should be exercised with the paramount purpose in view of securing the welfare and promoting the best interests of the children." *Barnard v. Godfrey*, 157 Md. 264, 267 (1929). "When the custody of children is the question, 'the best interest[s] of the children is the paramount fact. Rights of father and mother sink into insignificance before that.'" *A.A. v. Ab.D.*, 246 Md. App. 418, 441 (2020) (quoting *Kartman v. Kartman*, 163 Md. 19, 22 (1932)); *see also* CJP § 3-819.2 (f)(1)(ii) ("Before granting custody and guardianship under this section, the court shall consider: . . . All factors necessary to determine the best interests of the child ...[.]").

The Department's argument that Mother failed to provide the Department with the



hospital records reveals the Department’s failure, in this case, to put the best interests of the child above all else. Moreover, the Department fails to appreciate that it was not Mother’s burden to demonstrate whether Father was able and willing, or whether it was in the best interests of O.T. that Father is awarded custody of O.T.—that burden is on the Department as the party carrying the burden of production on the issue of Father’s ability and willingness to care for O.T. *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 720 (2011) (citations omitted). As *In re Najasha B.*, reminds us, a CINA action, unlike a civil suit where a proponent seeks relief for themselves, is initiated by the Department “with the purpose of advancing the child’s welfare.” 409 Md. 20, 38-39 (2009).

We have recognized, “that in cases where abuse or neglect is evidenced, particularly in a CINA case, the court’s role is necessarily more pro-active.” *In re Mark M.*, 365 Md. 687, 706 (2001) (citing *In re Justin D.*, 357 Md. 431, 448 (2000)). While “[p]arents have a fundamental right to rear their children without unwarranted interference by the State,” “[t]hat interest ... is not absolute, and must be balanced against society’s obligation to protect the welfare of children.” *In re: T.K.*, 480 Md. 122, 131 (2022) (internal quotations omitted). “Pursuant to the doctrine of *parens patriae*, the State of Maryland has an interest in caring for those, such as minors, who cannot care for themselves.” *In re Mark M.*, 365 Md. at 705-06 (citing *Boswell v. Boswell*, 353 Md. 204, 218-19 (1998)).

We are not persuaded by the Department’s and Father’s attempts to distinguish the present case from *In re: T.K.* by arguing that Mother had significantly more opportunity to present her story than did the mother in *T.K.* Once again, neither the mother in *In re:*

*T.K.* nor the Mother of O.T. bore the burden of demonstrating that the non-custodial parent was able and willing to care for the child. Therefore, the following instruction from *In re:*

*T.K.* applies with equal force in this case: Additional evidence must be heard where,

there are factual disputes as to any consideration that is material to (a) whether the “other parent” is able and willing to provide proper care or (b) the juvenile court’s determination of whether it is in the child’s best interest to leave the current custody arrangement in place or to award custody (legal, physical, or both) to the parent against whom allegations were not sustained.

*In re T.K.*, 480 Md. at 161.

### ***On Remand***

Although the facts in this case are very similar to those presented in *In re T.K.*, we must unwind the underlying case one step further than was required in *In re: T.K.* The juvenile court, in *In re T.K.*, rejected Mother’s request, *following* the adjudication hearing, to consider *proffered evidence* before awarding custody of T.K to his father under CJP § 3-819(e). *In re: T.K.*, 480 Md. 122, 139-41 (2022). The Supreme Court held that the trial court erred in its award of custody by proceeding to disposition without consideration of that evidence. *Id.* at 161. This case is distinguishable because the court dismissed the CINA petition after *evidence was presented during the adjudication hearing* that Father may have abused Mother, and it was clear that these allegations were known to the Department prior to the hearing but were not sufficiently investigated. Mother testified that certain hospital and court records would document her injuries. These records were not obtained by the Department or made available for the court to review. Mother testified to Father’s abuse of her while pregnant with O.T. and later in O.T.’s presence, as well as to the fact that

Father abandoned O.T. when she was less than a year old. No party has contradicted those assertions on the record, and the Department’s report demonstrates that Mother has been consistent in her allegations throughout her contact with the Department. As “[a] court may consider past neglect as an indicator of future ability to care for the child[,]” the court was remiss to acquiesce to the futility of further investigation. *In re X.R.*, 254 Md. App. 608, 624 (2022). *See also In re J.R.*, 246 Md. App. 707, 753–54 (2020) (“the juvenile court may examine the parents’ ‘track record’ to determine if a child is ‘merely *placed at risk* of significant harm’”) (quoting *In re Dustin T.*, 93 Md. App. at 735) (emphasis in original)).

Accordingly, we must reverse the juvenile court’s decision to dismiss the CINA case and remand the case for an evidentiary hearing. Given that the CINA petition has already been sustained against Mother, should Mother’s allegations of abuse prove true, then the trial court must assess whether Father has a propensity for violence that could put O.T. at risk in his care. It is therefore in the best interests of O.T. that the CINA petition not be dismissed until the juvenile court is assured that Father is not unable to care for O.T. In other words, we remand the case back to the juvenile court to the adjudication stage.

If the statutory prerequisites are satisfied, and the juvenile court makes a finding under CJP § 3-819(e) that Father is willing and able to care for O.T., then the court may proceed to make a custody disposition applying the best interests of the child standard. The Supreme Court has instructed in *In re T.K.* that the juvenile court’s consideration of the child’s best interests during the disposition hearing “need not look identical to a best

interest custody hearing of the type that would ordinarily occur in a family law case, nor must an overburdened juvenile court hold an evidentiary hearing when all the evidence that is relevant and material is already in the record.” 480 Md. at 153-54. In such a hearing:

although consideration of the factors listed in *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406, 381 A.2d 1154 (1978), and *Taylor v. Taylor*, 306 Md. 290, 508 A.2d 964 (1986), will often be helpful to a juvenile court conducting a § 3-819(e) best interest analysis, the juvenile court should exercise its discretion in determining which factors and what evidence may be relevant to the best interest determination it must make in each individual case.

*In re T.K.*, 480 Md. 122, 153-54 (2022).

To be clear, it is not our role to determine or suggest that Father did or did not abuse Mother or that he should or should not be awarded custody or O.T., for such factual determinations are for the juvenile court to make. Our role is to ensure that the juvenile court’s determination is guided by the law correctly and that there is “competent or material evidence in the record to support the court’s conclusion.” *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019).

**JUDGMENT OF THE CIRCUIT  
COURT FOR BALTIMORE  
COUNTY REVERSED. CASE  
REMANDED FOR FURTHER  
PROCEEDINGS CONSISTENT  
WITH THIS OPINION. COSTS TO  
BE PAID BY BALTIMORE  
COUNTY.**