Circuit Court for Montgomery County
Case No.: 06-I-21-000026

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 338

September Term, 2021

IN RE: N. R.-P.

Reed,
Wells,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: October 4, 2021

The Circuit Court for Montgomery County, sitting as a juvenile court, granted the first amended petition of the Montgomery Department of Health and Human Services ("the Department") and ordered that N. R.-P. was a Child in Need of Assistance ("CINA"), and that N. R.-P. be committed to the Department for placement in kinship care. N. R.-P.'s mother, Y.R. ("Mother") and father, D.P. ("Father"), both filed timely notices of appeal to this Court. In her brief, Mother presents two issues, which we have reordered as follows:

> 1. Did the juvenile court err by admitting hearsay at the adjudication hearing?
>
> 2. Did the juvenile court err by failing to hold separate adjudication and disposition hearings?

For the following reasons, we affirm the juvenile court's adjudication but shall remand for a disposition hearing.[1]

BACKGROUND

The juvenile court conducted a two-day trial on the Department's first amended petition on April 29-30, 2021, and subsequently issued a written order granting the petition on May 6, 2021. In its order, the court found that N. R.-P. is a CINA, based on the facts sustained from the petition, and that continuation in the parental home would be contrary to the welfare of the child. Our summary of the facts is focused on Mother's appellate contentions.

[1] Father did not file a brief but filed a line with this Court indicating that he was "in accord with the mother's position." For ease of reference, we refer to appellants' arguments together, denoting them as originating from Mother's appellate brief.

1ST AMENDED CHILD IN NEED OF ASSISTANCE PETITION

In its petition, filed on April 23, 2021, the Department asserted that Mother had a history with the Department dating back over twenty years when the Department first investigated her with respect to her oldest child, L.W., since then an adult. Mother has two other children, L.L, age 2, and C.C., age 13. These two other children were residing with relatives pursuant to a safety plan. We note that L.L. was born prematurely, exposed to marijuana in utero, and diagnosed with cerebral palsy and hypoxic ischemic encephalopathy.

During assessments with respect to her children, Mother signed a safety plan agreeing to refrain from marijuana use, to complete a substance use and mental health assessment and was enrolled in outpatient substance abuse and mental health treatment. However, at various times in 2019 and 2020, prior to the birth of N. R.-P., Mother was investigated for substance abuse and medical neglect with respect to L.L. The petition also indicated that Mother had refused Family Preservation services at times, had missed medical appointments for her and her other two children, had continued to abuse marijuana on a daily basis, and had tested positive for cocaine, amphetamines, alcohol and marijuana. Mother's eldest daughter further alleged that Mother was involved in distribution of narcotics from inside her home, in front of the children. On one occasion, Mother had to be revived with Narcan due to an apparent drug overdose.

The petition also averred an ongoing history of domestic violence between Mother and Father, including that Montgomery County police were called to the home on seven different occasions from August 2020 to March 2021. In September 2020, Mother filed for

a protective peace order against Father, but subsequently dismissed the final protective order. Both Father and Mother had a criminal history, primarily narcotics-related.

Pertinent to this case, the petition averred that N. R.-P. was born on February 13, 2021, and was then 6.5 weeks old. Mother and N. R.-P. screened negative for drugs at that time. Three days later, Mother signed a safety plan with respect to N. R.-P., agreeing to refrain from substance abuse, that there would be no violence or weapons in the home, and that Father's visits would be subject to supervision. She also agreed to weekly and random drug testing, to contact police if Father were to become violent, and to re-engage in individual and family therapy.

However, after N. R.-P. was born, on March 25, 2021, Mother screened positive for Ecstasy/MDMA, cocaine, amphetamines, and marijuana. Indeed, both before and since these agreements, Mother had not been in compliance with drug test requirements, and had a total of twenty-eight (28) behavioral positives for substances over the life of the case.

On March 22, 2021, Mother reported that she ejected Father from the home. Prior to this, between August 2020 and March 2021, there had been approximately seven different reports of physical violence between Mother and Father, including Father bringing a concealed machete to the home, refusing to leave, damaged property, threatening and assaulting Mother while she held N. R.-P., and Mother spraying Father with mace due to his aggressive behavior.

On March 31, 2021, based on Mother's history and failure to comply with recommended programs and services, the Department placed N. R.-P. in shelter care. On April 19, 2021, Mother attended a supervised visit with N. R.-P. According to the petition,

Mother "smelled of marijuana, and at one point slumped over, appeared to be nodding off," and "the visit supervisor feared that she would drop the baby[.]" The Department ended that visit early due to safety concerns. This petition was filed approximately four days later, on April 23, 2021.

CINA HEARING

As indicated, the issues on appeal stem from the CINA hearings that occurred a week after the petition was filed. The juvenile court first heard from Gillian Anderson, a contractor for the Department, employed as a family mentor and accepted as an expert in peer recovery. Anderson confirmed many of the details in the petition, testifying that she met Mother on an ongoing basis since February 2020. They discussed issues of substance abuse, domestic violence and parenting. As for substance abuse, Mother admitted that she used marijuana on a daily basis and had used crack cocaine in the past. Anderson testified that Mother denied recent drug use, but that a positive drug screening test from March 25, 2021 precipitated N. R.-P.'s removal from Mother's care. As for domestic violence, Mother initially denied that there were any domestic violence incidents between Father and N. R.-P. However, approximately one month prior to the court hearing, Mother volunteered that Father hit her when she was pregnant with N. R.-P.

The juvenile court also heard from Susanna Wybenga, employed by the Montgomery County Child Welfare Services within the Department as a supervisory social worker, and accepted as an expert in the field of social work. Wybenga became involved with N. R.-P.'s case on February 13, 2021, the day he was born. Wybenga's testimony forms the basis for Mother's primary appellate complaint as to the admissibility of

information from the Department's records. Pertinent to that issue, Wybenga provided background as to the documents contained in the Department's case file:

> The Department's record is the electronic and hard copy document that entail all contacts that we make during investigation and services and contacts with the family, the children, relatives, any collateral contacts such as medical providers, hospitals, treatment providers, pediatricians, doctors, police and law enforcement – anyone we talk to regarding assessing safety for the duration of our case. And like I said, there's an electronic record and a hard copy record. It has our contact notes. It has our assessments that we do regarding services and has documents that we receive from collateral contacts such as hospital records, police reports, medical records, urinalysis results, future progress updates – anything that we get from a provider that can contribute to our ability to continue to service the family and also assess for ongoing risk and safety factors.

Wybenga explained the relevance of some of the documents from the Department's files as "paint[ing] a picture of a history of mother's parental abilities" and that "[w]hen you have a history of child welfare indicated investigations, whether it's on the child we're talking about or prior children, it demonstrates a pattern of chronic neglect issues that we use to inform our current positions when we're making safety assessments." She also explained, "[e]verything that we receive, whether it's on CaseSearch, police records, medicals, et cetera, it's part of our record. We collect it and we enter it into our record and use it as a basis for our assessment for risk and safety."

During the course of her testimony, and summarizing some of the documents at issue, Wybenga noted that Mother missed several urinalysis testing appointments and, even as recent as three weeks before the hearing, that she failed to recognize her substance abuse problems. Further, records obtained from Dominion Diagnostics showed that "on March 25th while the mother was caring for [N. R.-P.], she was in fact using substances." *See* Ex.

87 (showing that, on the date in question, cannabis was detected following a drug test of Mother). Another contact note, *i.e.*, notes of a meeting between representatives from the Department and Mother, from April 19, 2021, or approximately ten days before the CINA hearing, indicated that Mother arrived to a supervised visit and appeared to be under the influence of marijuana. *See* Ex. 83.9 Also, a business record, a police incident report, received from the Montgomery County police and maintained by the Department, provided that, while Mother was pregnant with N. R.-P., Father assaulted Mother. *See* Ex. 63.5a-5b, 86.

As will be discussed *infra*, after all the documentary evidence was admitted, Wybenga was asked her opinion, to a reasonable degree of social worker certainty, whether she believed it would be safe for N. R.-P. to return home to Mother. Wybenga replied that she did not believe it would be safe to do so. Wybenga explained the basis for this opinion, including, but not limited to "chronic issues" and a "significant Child Welfare history," continued concerns about substance abuse, medical neglect, physical abuse, domestic violence, and "parenting inability." Wybenga continued that the Department had "not been successful to date in mitigating most of the risk factors" that were present, including the aforementioned concerns.

Mother testified at the hearing on her own behalf. She denied overdosing on a prior occasion, denied that she used marijuana prior to a recent contact visit, and denied ever using any drugs in the presence of N. R.-P., but she agreed that she had attended drug treatment and was willing to return. In that event, she would like her "sister," Azalia Pugh, to take care of N. R.-P. Mother was also willing to attend a program for abused persons

and testified that she would "do everything I have to do" to get N. R.-P. back under her care, noting that he was born clean, without the presence of any drugs in his system.

On cross-examination, Mother denied that she used cocaine approximately a month prior to the hearing, despite test results to the contrary. She claimed that the treatment center must have "messed up my urine" test. She agreed that she had drug problems in the past but did not have one at the time of the hearing. But, she again agreed to reenter drug treatment after the hearing. Mother further denied any incidents of domestic violence between herself and Father, denied that he threatened to kill her, and denied that she told Wybenga that she was afraid of him.[2]

At the conclusion of the hearing, the juvenile court heard from the attorneys for the Department, Mother, Father, and child. The Department argued that the testimony from Wybenga, as well as the numerous exhibits, demonstrated that N. R.-P. was a Child in Need of Assistance. Mother argued that the weight of the evidence was to the contrary, noting that N. R.-P. was not born positive with any controlled dangerous substances in his system, and given that Mother was not unable and unwilling to care for the newborn, "the drastic remedy of removal is unnecessary for his welfare[.]" Referring to the documentary evidence admitted by stipulation, Mother argued that she cooperated with the Department, despite her contention that the Department did not make reasonable efforts to avoid filing the petition under these circumstances. Maintaining that the documentary evidence

[2] Mother also called several witnesses on her behalf, including Azelia Pugh, Barbi Dyson, and Patricia Holland. These witnesses primarily were called to testify to their observations of interactions between Mother and N. R.-P.

objected to constituted in admissible hearsay and "misleading facts," Mother argued that "the weight of the evidence in this case is not sufficient for removal."

After hearing briefly from counsel for Father, counsel for N. R.-P. addressed the juvenile court. Counsel noted that there was no indication of neglect in this case, but that, Mother's positive drug test approximately a month prior to the hearing was "essentially the proverbial [last] straw for the Department." Counsel expressed concern about Mother's credibility as to the substance abuse, which was evident through testing, and the domestic violence allegations. Counsel stated that she was "also concerned that [N. R.-P.] is essentially, a newborn. Less than three months old, which certainly puts him in a more vulnerable stage if there are any issues[.]" Counsel for the child concluded by asking the juvenile court to adjudicate N. R.-P. a CINA, but to consider "put[ting] off disposition," given that he "has been taken care of prior to that point" and "[t]here's no indication that she couldn't care for him," despite the history with her other children. The Department then offered a brief rebuttal, concluding that under "the totality of the circumstances, this is a case that has to be CINA'ed."

At the conclusion of the hearing, the court deferred any ruling, stating as follows:

> Okay. I don't intend to make a ruling tonight. I have a stack of papers, two giant binders, other information, and I think I need to go over it again so that I'm clear. I will say that I think that what's true is that my sense of what I heard is that there's a fair bit of denial in what the circumstances are here. This is a very little kid. Mom's had a number of children that she's had a hard time managing, and I'm not clear in what I have heard that she will be able to do what the child needs, and, alas, that's really what my role is. So, that having been said, I'm not in a position to decide tonight what the answer to this question is. I suspect I'll be able to do it by Monday, and I'll issue an order.

ADJUDICATION AND DISPOSITION ORDER

Approximately a week later, on May 6, 2021, the juvenile court entered an Adjudication and Disposition Order, finding, in pertinent part, that N.R.-P. was born on February 13, 2021, was sheltered approximately six weeks later, on March 31, 2021, and was eleven weeks old at the time of court's order; that there had been numerous child welfare investigations involving Mother and her three other children, and those investigations involved substance abuse, medical neglect, physical abuse, and neglect; that the Department had provided case management and family preservation services to Mother on an ongoing basis since February 2020; that Mother failed drug testing, had overdosed on one occasion; that there had been repeated incidents of domestic violence between Mother and Father; and that Father had pending criminal charges.

More specifically, since N. R.-P. was born, Mother agreed to "refrain from having substances in the home or around [N. R.-P.]." and had agreed to "random urinalysis tests, individual therapy, family therapy with [C.C.], and supervising Father's contact with [N. R.-P.]. She also agreed to contact the police if Father became aggressive or violent." However, since that agreement, on March 25, 2021, Mother had tested positive for cocaine and marijuana. That, on March 31, 2021, N. R.-P. was sheltered in kinship care. That, on April 19, 2021, Mother appeared at a supervised visit and "smelled of marijuana and slumped over in her chair while holding [N. R.-P.]. Mother testified that she was not slumped over, but singing to [N. R.-P]."

The juvenile court then found that the allegations in the amended petition were proven by a preponderance of the evidence and were substantiated and that N. R.-P. was a

Child in Need of Assistance. The juvenile court order then proceeded to disposition and committed N. R.-P. to the Department for placement in kinship care with an individual identified as Monik H. The juvenile court further ordered Mother to: complete substance abuse reassessment and follow all treatment recommendations; complete two urinalysis tests a week; participate in a psychological evaluation and follow all treatment recommendations; participate in individual psychotherapy; participate in the Abused Persons Program; participate in parenting education; and, sign releases for service providers, upon review by counsel, and under the direction of the Department. The juvenile court ordered similar evaluations, testing, treatment, and education for Father.

The disposition order continued and ordered no contact between Mother and Father; twice weekly supervised visits; limited guardianship of N. R.-P. to Lisa Merkin, Director of the Department, and/or her designee; a continued duty to advise the court of their updated address; and for certain procedures regarding the exhibits, disclosures, and distribution and copying of the order itself.

We may include additional detail in the following discussion.

DISCUSSION

I.

The applicable standard of review is as follows:

> There are "three distinct but interrelated standards of review" applied to a juvenile court's findings in CINA proceedings. *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214, 189 A.3d 284 (2018). The juvenile court's factual findings are reviewed for clear error. *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 708, 12 A.3d 130 (2011). Whether the juvenile court erred as a matter of law is determined "without deference;" if an error is found, we then assess whether the error was

> harmless or if further proceedings are required to correct the mistake in applying the relevant statute or regulation. *In re Yve S.*, 373 Md. 551, 586, 819 A.2d 1030 (2003). Finally, we give deference to the juvenile court's ultimate decision in finding a child in need of assistance, and "a decision will be reversed for abuse of discretion only if 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.' " *In re J.J.*, 231 Md. App. 304, 345, 150 A.3d 898 (2016), *aff'd*, 456 Md. 428, 174 A.3d 372 (2017), *cert. denied*, __ U.S. __, 139 S.Ct. 310, 202 L.Ed.2d 32 (2018) (quoting *In re Yve S.*, 373 Md. at 583-584, 819 A.2d 1030 (internal citations omitted)).

In re J.R., 246 Md. App. 707, 730-31, *cert. denied*, 471 Md. 272 (2020).

As will be addressed in more detail in the discussion that follows, Mother's primary contention is that the juvenile court erred by admitting the Department's exhibits on the grounds that they amounted to inadmissible hearsay. The Department replies that the court did not err because the documents were admissible under the public records exception to the general rule against hearsay.

Md. Rule 5-101(a) provides that the Rules of Evidence apply to all actions and proceedings in the State unless "as otherwise provided by statute or rule[.]" "In general, the rules of evidence, including the rules regarding hearsay, apply in juvenile adjudicatory hearings." *In re Michael G.*, 107 Md. App. 257, 265 (1995) (citing *In re Rachel T.*, 77 Md. App. 20, 30-32 (1988)). However, "[d]isposition hearings under Rule 11-115" are afforded discretionary application of the Rules of Evidence. Md. Rule 5-101(c)(6).

Whereas the rules of evidence applied to the adjudicatory phase in this case, we begin by recognizing that hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). It is fundamental that "out-of-court statements are

generally not admissible to prove the truth of the matter asserted. Yet, they can be admitted if the statements are 'relevant and proffered not to establish the truth of the matter asserted therein, but simply to establish that the statement was made[.]'" *State v. Young*, 462 Md. 159, 170 (2018). Consequently, whenever called upon to assess a question of hearsay, we begin by identifying what the extrajudicial statement was offered to prove. *Devincentz v. State*, 460 Md. 518, 553 (2018). If not offered for its truth, the statement need not be excluded. *Stoddard v. State*, 389 Md. 681, 689 (2005).

A number of exceptions to the general hearsay rule have been recognized and codified. *See* Md. Rules 5-801.2–5-804. Of particular relevance in the instant proceeding is the exception for public records and reports, codified as Maryland Rule 5-803 (b) (8). Subsection (A) of the Rule provides, in relevant part, that an exception to the general prohibition on hearsay evidence exists for

> a memorandum, report, record, statement, or data compilation made by a public agency setting forth (i) the activities of the agency; (ii) matters observed pursuant to a duty imposed by law, as to which matters there was a duty to report; [or] (iii) in civil actions and when offered against the State in criminal actions, factual findings resulting from an investigation made pursuant to authority granted by law[.]

However, there are limitations on the exception, focusing specifically upon the quality of information that such records provide. Subsection (B) of the provision goes on to state:

> [a] record offered pursuant to paragraph (A) may be excluded if the source of information or the method or circumstance of the preparation of the record indicate that the record or the information in the record lacks trustworthiness.

This Court had occasion to examine the applicability of the above-referenced

provision in a similar case. In *In re H.R.*, 238 Md. App. 374 (2018), *cert. dismissed as improvidently granted*, 463 Md. 10 (2019), this Court addressed the parental rights of father, Mr. R, in three children, ages 6, 5, and 3. Mr. R. had a history of mental illness, and the children involved had been adjudicated CINA. *Id*. at 380-82. Mr. R. also failed to comply with the requirements of his services agreement, and had failed to maintain consistent, long-term employment. *Id*. at 388-89. After his parental rights were terminated, Mr. R challenged the judgment, in part, on the ground that it had erred by admitting materials from the children's CINA court files. *Id*. at 402-03.

In considering the circuit court's admission of CINA Court Reports, this Court relied principally upon a Court of Appeals' opinion predating the adoption of Md. Rule 5-803, *Ellsworth v. Sherne Lingerie, Inc*., 303 Md. 581 (1985). As with *H.R.*, we cite the following language from *Ellsworth* approvingly:

> *McCormick on Evidence* § 315, at 888 (E. Cleary 3d ed. 1984) describes the common law exception for public records: "The common law evolved an exception to the hearsay rule for written records and reports of public officials under a duty to make them, made upon firsthand knowledge of the facts. The statements are admissible as evidence of the facts recited in them."
>
> The modern trend has been to admit public records when the information is gathered by a public officer under a statutory duty to investigate and record or certify facts ascertained by other than personal observation. 5 J. Wigmore, *Evidence* § 1635, at 531 (3d ed. 1940) states:
>
> > Now there may be cases in which the officer's duty clearly does involve his ascertainment of facts occurring out of his presence and requiring his resort to sources of information other than his own senses of observation; for example, an assessor's record of the value of real estate and its occupancy, or a registrar of voters' record of electors' residences. When such a duty clearly exists, the general doctrine above, that a witness should have personal knowledge, need not stand in the

> way, for (as already noted) it has its conceded limitations; and where the officer is vested with a duty to ascertain for himself by proper investigation, this duty should be sufficient to override the general principle. It is true that due caution should be observed before reaching the conclusion that the law has in fact in a given case intended to invest the officer with such an unusual duty. But when it clearly appears that a duty has been prescribed to investigate and to record or certify facts ascertained other than by personal observation, then it follows that, in accordance with the general principle of the present exception, the statement thus made becomes admissible.
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> * * *
>
> Initially, some courts expressed concern over the admission of reports where the government official did not appear to have firsthand knowledge of the facts. There is now general recognition, however, that the hearsay nature of the evidence is a factor to be considered in determining the presence or absence of trustworthiness, but the presence of any level of hearsay does not, by that fact itself, render the report untrustworthy.

Ellsworth, 303 Md. at 604-05, 607-08. *Accord H.R.*, 238 Md. App. at 404-05. *See also* McLain, 6A *Maryland Evidence, State & Federal*, § 803(8):1 at 579 (3d ed. 2013) (explaining that the rationale for admissibility of public records includes that they are "likely to be reliable, because the public agency will want to maintain accurate records", and that, public officials "are unlikely to remember more accurately the events recorded than they will be reflected in the records").

Furthermore:

> [E]ven though the burden rests upon the party opposing the introduction of a public record to demonstrate the existence of negative factors sufficient to overcome the presumption of reliability, this does not mean that additional evidence will be required in every case to meet that burden. … Additionally . . . the inclusion within a factual report of inadmissible evaluations or opinions need not necessarily result in exclusion of the entire report[.]

Ellsworth, 303 Md. at 612.

In conducting its analysis under *Ellsworth*, the *H.R.* Court summarily rejected Mr. R.'s argument that "the social workers who authored the reports were representatives of the Department, his adversary, and the reports were 'self-serving position papers.'" *H.R.*, 238 Md. App. at 406-07. Rather, the Court focused principally upon the statutory duty to provide such reports, notably pursuant to Section 3-826 of the Courts and Judicial Proceedings Article, as well as the Code of Maryland Regulations, and Mr. R.'s failure to demonstrate that the documents lacked trustworthiness. *Id*. *See* Md. Code (1974, 2020 Repl. Vol.) § 3-826 (a) (1) of the Courts and Judicial Proceedings Article ("Cts. & Jud. Proc.") (Reports provided in advance of dispositions or hearings); COMAR 07.02.11.20 (permanency planning hearings). The Court further noted that, to the extent any statements were admitted that did not fall under the public records exception, any error in admitting them was harmless, especially given that the opinions offered in the reports were cumulative to live testimony by several witnesses, who were subject to cross-examination. *Id*. at 407.

With that discussion of the pertinent law, we now focus our attention on the challenges made here. Mother's primary contention is that that the court erred by admitting third party hearsay contained within the public records, including opinions, as well as factual allegations, by individuals who were not employed by the Department. Mother also asserts that the exhibits were not admissible simply because they provided a factual basis for Wybenga, the expert in this case, to offer her expert opinion.

Mother has provided a detailed table in her appellate brief, challenging the admitted exhibits, and identifying each by: exhibit number; the identity of the child being

investigated; the purpose for admission, *i.e.*, what it sought to prove; the identity of the author of the document, if known; and, whether an objection was lodged to admission by defense counsel. Of the forty-four (44) items of evidence listed, Mother concedes that her defense counsel failed to object to twelve (12) of these. We have examined the record and concur, accordingly, Mother's claims with respect to these twelve itemized exhibits are unpreserved. *See King v. State*, 434 Md. 472, 479 (2013) (Maryland's appellate courts ordinarily will not consider "any issue 'unless it plainly appears by the record to have been raised in or decided by the trial court.'") (quoting Md. Rule 8-131 (a)); Md. Rule 4-323 (a) ("[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent").[3]

The Department asserts that Mother failed to meet her burden because she did not "identify, with specificity, any of the supposedly erroneous statements contained in the public records that she wishes this Court to declare erroneously admitted." The Department also contends that Mother failed to identify any evidence that suggested that the information provided to the Department by medical professionals, treatment providers and law enforcement officers was unreliable. The Department continues that Mother failed to

[3] Father objected to four of these twelve items, but Mother did not join in the objection. *See generally Williams v. State*, 216 Md. App. 235, 254 (stating the general rule that both counsel for co-defendants must lodge objections or expressly join in the other's objection to preserve any issue), *cert. denied*, 438 Md. 741 (2014). We note that the court denied Mother's request for a continuing objection. And, we further note that Mother stipulated to several items of evidence at the beginning of the hearing, including hospital records, referrals and safety plans by Child Protective Services, an initial service agreement, treatment updates and contact notes.

demonstrate prejudice and that her general claim does not explain how admission of any specific item of evidence impacted the court's findings.

We have examined the exhibits, as well as the testimony and argument concerning same, and conclude as follows. Many, if not most, of the exhibits fall under the public records exception of Md. Rule 5-803 (b) (8) and the reasoning of *H.R.*, 238 Md. App. at 406-07. These include documents from the Department and Child Protective Services, including intake reports and worksheets, neglect reports, safety assessments, investigation summary reports, urine monitoring reports, drug test results, court records from CaseSearch, including records of a peace order filed against Father by Mother, and a dismissal of same, as well as Mother's criminal history. *See* Exs. 1.2A (CPS Intake report); 3.2a and 2.b, 4.2a and 2b, 5.2a and 2c, 6.2a and 2c, 7.2a and 2c, 8.2a and 2e, (CPS intake worksheets and neglect reports); 9.2a and 3c (safety assessment), 10.2a and 3c (investigation summary report – indicated); 23.2e (urine monitoring – no show); 47.3e (safety assessment for two children); 54.4a (drug test results received by Department from Dominion Diagnostics); 62.4d (contact note from Jan. 28, 2021, approximately two weeks before birth of N. R.-P.); 71.5d (petition and dismissal of peace order, CaseSearch record); 79.6b (Mother's Casesearch – 2004 marijuana possession charge and paraphernalia conviction); 80.6b (Mother's 1997 criminal records from CaseSearch).

In addition, as explained by Wybenga during her testimony, the exhibits from the Department's records also included correspondence to Wybenga, in her role as a supervisor with the Department, as well as other social workers employed by the Department, regarding Mother's missed medical appointments, substance abuse assessment referrals

and treatment compliance correspondence. The Department records also included contact notes regarding case management for Mother and all three of her children. *See* Exs. 28.2e (medical appointment no-show); 32.3a, 34.3b (contact notes); 40.3c (substance abuse assessment referral); 42.3c (letter from Journeys treatment program re: Mother's program compliance); 57.4a (urinalysis appointments and no-shows); 59.4a (contact notes regarding Mother's compliance with Journeys treatment program); 60.4B (contact note regarding missed some appointments and, as for the others, appeared under the influence); 68.5b (contact note re: N. R.-P.); 70.5d (contact note re: N. R.-P.); 83.9 (contact note re: visit with Mother and N. R.-P., including that Mother appeared under the influence of marijuana).

We note here that, to the extent that Mother suggests that information in the correspondence received and maintained by the Department was inadmissible opinion evidence, we acknowledge that *Ellsworth* recognized a tension between factual findings and statements of opinion. 303 Md. at 608-13. *See Thomas v. State*, 183 Md. App. 152, 178 (2008) ("The distinction between fact and opinion is not always clear"), *aff'd*, 413 Md. 247 (2010). The *Ellsworth* Court made clear that "the term 'factual findings' will be strictly construed and that evaluations or opinions contained in public reports will not be received unless otherwise admissible under this State's law of evidence." *Id*. at 612 (footnote omitted). We have examined the correspondence received by Wybenga and other members of the Department and are persuaded that they are primarily compilations of reliable factual information within the spirit of *Ellsworth*. To the extent that any correspondence included opinion, we conclude that those opinions were properly admissible because they were

rationally based on the observations of the declarants and were helpful to the Department's role in evaluating N. R.-P.'s best interests and whether the child was a CINA. *See generally* Md. Rule 5-701; *In re Najasha B.*, 409 Md. 20, 33 (2009) (observing that juvenile courts and departments should "exercise authority to protect and advance a child's best interests when court intervention is required"). Further, we discern no abuse of discretion to the extent that the exhibits informed Wybenga's ultimate expert opinion in this case. *See Ross v. Housing Authority of Baltimore City*, 430 Md. 648, 662-63 (2013) (generally recognizing that whether a sufficient factual basis exists for an expert's opinion is left to the sound discretion of the court); *Sippio v. State*, 350 Md. 633, 653 (1998) ("A factual basis for expert testimony may arise from a number of sources, such as facts obtained from the expert's first-hand knowledge, facts obtained from the testimony of others, and facts related to an expert through the use of hypothetical questions") (citation omitted).

We are persuaded that these exhibits were admissible based on the Department's statutory duty to provide reports and conduct hearings in CINA cases. *See* Cts. & Jud. Proc. §§ 3-816.2 (Review Hearings), 3-826 (a) (1) (Reports provided in advance of dispositions or hearings); COMAR 07.02.07.17 (Provision of services by local departments as a result of CPS response).[4]

In addition to these exhibits under the public records exception, the exhibits also

[4] The appellate record does not include a police incident report, purportedly from October 2020. Wybenga testified that this report was maintained in the Department's records and concerned an incident where Father was alleged to possess cocaine and have wielded a machete while in the presence of a child. Our reasoning under the public records exception applies equally to this report.

included certified business records admitted through documentation submitted by a custodian of records, pursuant to Maryland Rule 5-803 (b) (6) (exception for records of regularly conducted business activity). *See* Exs. 63.5a-5b, 86 (certified business records from Montgomery County Department of Police), 87 (certified business records from Dominion Diagnostics sent to Juvenile Court). Other exhibits were extracted from within these larger business records and presented separately as excerpts of same, including records maintained by the Department and obtained from Montgomery County Police incident reports (36.3c) (incident re: 911 call from an older child of substance abuse and unconscious male in the home), (37.3c) (incident report – possible drug overdose).[5] We hold that these exhibits were properly admitted.

Ultimately, we also are persuaded that Mother has not met her burden of establishing that the exhibits were untrustworthy and unreliable. In addition to the certified business records, Wybenga repeatedly testified that the bulk of the public record documents were maintained by the Department, pursuant to their statutory and regulatory requirements, and Mother has not shown to the contrary for any specific exhibit. We hold that the juvenile court did not err in admitting these exhibits at trial for further consideration.

II.

Mother also asserts that the juvenile court erred by failing to hold separate hearings on adjudication and disposition. Conceding that no separate hearing was held, the

[5] Exhibit 63.5a-b was included within the certified business records from the Montgomery County Police, identified and admitted as Exhibit 86.

Department responds that a hearing was not required under the circumstances. More specifically, the Department contends that Mother "acquiesced to the issuance of dispositional orders based on the combined adjudicatory and dispositional hearing." In addition to its argument that Mother failed to preserve the issue, the Department also avers that the court's disposition order is supported by facts establishing that N.R-P. was a CINA.

Section 3-819 of the Courts and Judicial Proceedings Article provides:

> (a)(1) Unless a CINA petition under this subtitle is dismissed, the court shall hold a separate disposition hearing after an adjudicatory hearing to determine whether the child is a CINA.
>
> (2) The disposition hearing 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.

Cts. & Jud. Proc. § 3-819.

There are two stages to a CINA hearing – an adjudicatory hearing and a disposition hearing. *In re O.P.*, 470 Md. 225, 236 (2020). At the adjudicatory hearing, the juvenile court determines "whether the department's factual allegations in the CINA petition are true." *Id*. If so, "the court then holds a *separate* disposition hearing to determine whether the child is, in fact, a CINA and, if so, the nature of any necessary court intervention." *Id.* (emphasis added). "Although the disposition hearing is 'separate' from the adjudicatory hearing, the two hearings are ordinarily to be held on the same day." *Id*. Then, at that stage:

> [I]t is left to the discretion of the juvenile court whether to insist on strict application of the rules of evidence. Maryland Rule 5-101(c)(6). The court may find that the child is not a CINA and dismiss the case. CJ § 3-819(b)(1)(i). Alternatively, the court may determine that the child is a CINA, in which case it may take one of three actions: (1) decide not to change the child's current custody; (2) commit the child to the custody of a parent, relative, or another suitable individual; or (3) commit the child to the custody

> of the local department of social services or the Maryland Department of Health. CJ § 3-819(b)(1)(iii). If the child is placed out of the home, the court must later hold a permanency planning hearing to determine a permanency plan for the child. CJ § 3-823(b).

In re O.P., at 236-37 (footnotes omitted).

Here, the focus of the Department's response is that Mother failed to preserve the issue for our review, and that, in fact, she acquiesced to the juvenile court's failure to conduct a separate disposition hearing.[6] This Court addressed a similar claim in *In re J.R.*, *supra,* 246 Md. App. 707. There, the appellant conceded that the issue was unpreserved because she did not object to the denial of any opportunity to present evidence on the dispositional order. *In re J.R.*, 246 Md. App. at 754. However, we decided to address the unpreserved issue based on the discretion generally permitted under Maryland Rule 8-131 (a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, 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"); *see also Jones v. State*, 379 Md. 704, 713-14 (2004) ("The primary purpose of Rule 8-131(a) is to ensure fairness for all parties and to promote the orderly administration of law"). We explained:

> We find it imperative and beneficial to remind trial courts of the statutory requirement that the adjudication and disposition hearings must be separate hearings. By addressing this unpreserved issue, we advise trial courts about the different standards between adjudication and dispositional hearings, as well as the consequences and prejudices that parents may suffer when they are prevented from taking advantage of the opportunities available to them in dispositional hearings not necessarily available in adjudicatory hearings.

[6] It appears that Mother had no opportunity to object to the lack of a separate disposition hearing.

> Furthermore, this opinion seeks to reinforce precedent concerning a separate disposition hearing, upholding the legislative intent of conserving and strengthening "the child's family ties and to separate a child from the child's parents only when necessary for the child's welfare." Cts. & Jud. Proc. § 3-802(a)(3).

In re J.R., 246 Md. App. at 755.

After deciding to review the issue despite the lack of preservation, *id*. at 754-55, this Court determined that "even though the disposition was held on the same day as the adjudicatory hearing," "the hearing was not separate, as required by Cts. & Jud. Proc. § 3-819(a)(1)" because "there is no indication as to where the adjudication hearing ends and when the disposition starts." *Id*. at 756. And that it was harmful because the parents "were not given the opportunity to present evidence as to why they would be able to provide J.R. with the proper care and attention, nor did the court outline specific findings as to why the court felt the need for removal." *Id*. at 757. As this Court explained:

> Although the amended petition would have been acceptable for the court to rely on for the purposes of the disposition hearing, *see In re E.R.*, 239 Md. App. 334, 196 A.3d 541 (2018), the Appellants were not given the opportunity to present evidence as to why they would be able to provide J.R. with the proper care and attention, nor did the court outline specific findings as to why the court felt the need for removal, pursuant to Cts. & Jud. Proc. § 3-819(f). Additionally, Cts. & Jud. Proc. § 3-819(c) lists several alternatives that should have been considered in lieu of awarding custody to the Department. *See also In re Jertrude O.*, 56 Md. App. at 99, 466 A.2d 885. We further point out that the dispositional order directs Appellants to participate in a number of treatments and evaluations, but the court made no findings as to the basis for these services being ordered. As a consequence, the dispositional order does not correspond with the record.
>
> We therefore vacate the dispositional order which denied the Appellants custody of J.R. and remand the case back to the circuit court for Cecil County, so there can be an immediate and proper dispositional hearing to determine whether Appellants are willing and able to care for J.R., pursuant to Cts. & Jud. § Proc. 3-819.

In re J.R., 246 Md. App. at 756-57.

Here, the Department's expert, Ms. Wybenga, opined that she did not believe it would be safe to return N. R.-P. to Mother's care. Other than Mother's testimony concerning further substance abuse and mental health treatment, and that she hoped that N. R.-P. be placed with someone identified as Azalia Pugh, the evidence at the hearing in support of that conclusion was almost exclusively focused on determining whether N. R.-P. was a CINA, and not what placement would be in the child's best interest. Indeed, further indication that the parties anticipated a separate disposition hearing came from Father when he informed the court that he contemplated calling a witness for disposition if the court were to address "services and recommendations" at the hearing. And, further, counsel for the child asked the juvenile court to delay disposition for 30 days "to see how Mom does."

In sum, although, in its written order filed after the hearing, the juvenile court ordered several different courses of evaluation, treatment and conditions in its dispositional order, the only finding on the issue was its statement that "continuation of [N. R.-P.] in the home would be **contrary to his welfare** given the facts sustained in the First Amended CINA Petition." (emphasis in original). Further, in addition to the absence of testimony concerning limited guardianship with the Department, we also have been unable to find any information about the individual identified for kinship placement named in the petition and the order as Monik H.

Accordingly, we are not persuaded that a separate disposition hearing was conducted pursuant to statute, nor that the court's order was adequate under the reasoning

of *In re J.R., supra*. We shall vacate the dispositional portion of the juvenile court's order and remand this case for a disposition hearing.

DISPOSITION ORDER VACATED AND CASE REMANDED. JUDGMENT OTHERWISE AFFIRMED.

COSTS TO BE PAID ONE HALF BY APPELLANT AND ONE HALF BY MONTGOMERY COUNTY.