

Circuit Court for Montgomery County
Case Nos. 6-I-18-34, 6-I-18-35, and 6-I-18-36

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED CASES

No. 734
September Term, 2018

No. 1113
September Term, 2018

IN RE: X.A., C.H. & J.A.

Meredith,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: June 4, 2019

*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.

L.A. (“Mother” or “Ms. A.”), appellant, appeals from orders entered by the Circuit Court for Montgomery County, sitting as a juvenile court, which removed from her care and custody her three children who had been adjudicated children in need of assistance (“CINA”).¹ The three children were: X.A. (born May 2003), C.H. (born November 2008), and J.A. (born February 2017), collectively referred to herein as “the children.”²

In Mother’s brief, she presents a single question: “Did the trial court err in concluding that X.A., C.H., and J.A. were not safe in the care and custody of Ms. A.?”

The Montgomery County Department of Health and Human Services (“the Department”), appellee, urges us to affirm the judgments of the circuit court.

Perceiving no reversible error in the court’s rulings that were based upon its finding that the children would not be safe in Mother’s care and custody, we shall affirm the judgments entered by the Circuit Court for Montgomery County.³

¹ Pursuant to Md. Code, § 3-801(f) of the Courts & Judicial Proceedings Article (“CJP”), a “child in need of assistance” 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.”

² The three children each have different fathers: X.A.’s father is deceased, J.A.’s father is unknown, and C.H.’s father is S.H., who participated in the juvenile court hearings but did not note an appeal or file any brief in these consolidated appeals.

³ Pursuant to an unopposed motion to consolidate two separately noted appeals for briefing and argument because both appeals concern the same factual and procedural background, we consolidated the appeals in Appeal No. 734, September Term, 2018 (appeal from emergency removal hearing), and Appeal No. 1113, September Term, 2018 (appeal from contested merits removal hearing). Mother voluntarily dismissed two other interlocutory appeals, namely, Appeal No. 430, September Term, 2018, and Appeal No. 2502, September Term, 2018. C.H., alone, is the subject of a separate but related appeal in Appeal No. 2625, September Term, 2018.

BACKGROUND

When J.A. was born in February 2017, at 37 weeks' gestation, his meconium tested positive for marijuana. Mother acknowledged she used marijuana to self-medicate her anxiety and depression. At the hospital following J.A.'s birth, Mother declined referrals for therapy, medication management, and J.A.'s admission to the Department's Infants and Toddlers program. Mother admitted that she had used oxycodone during her pregnancy. Although Mother reported she had a valid prescription for oxycodone for back pain caused by an auto accident two years prior, she declined to sign a release authorizing a Child Welfare Services worker to contact Mother's pain management specialist. Nevertheless, after the worker conducted a risk of harm assessment, the Child Welfare Services worker determined that the children were safe in Mother's care at that point in time.

In August 2017, Child Welfare Services opened another investigation after Mother dropped X.A. off at school one day and he appeared to be inebriated, and then Mother failed to respond to the school's calls during the day. The school also reported that both X.A. and C.H. had a truancy rate greater than 30%.

In October 2017, while X.A. was at school, he was found to have marijuana on his person and be under the influence of the drug. Because the school was unable to reach Mother, the school resource officer took X.A. home, where he found 8-year-old C.H. and 8-month-old J.A. home with no supervision.

Also in October 2017, Mother tested positive for opiates (which she attributed to a prescription for oxycodone) and marijuana. Conceding that she was still self-medicating with marijuana, Mother agreed to refrain from using it in the presence of the children. She

did not provide proof of a valid prescription for her pain medication or sign a release permitting Child Welfare Services to speak with her treating physician.

Mother entered into a safety plan with Child Welfare Services, agreeing not to leave C.H. home alone or ask him to be responsible for the care of J.A. At that time, the Child Welfare Services social worker still believed the children would be safe in Mother's home with supportive services.

In November 2017, the family's case was transferred to Consolidated In-Home Services for further monitoring for safety and risk. Mother was not present for the first visit, and, after entering the home in Mother's absence, the Child Welfare Services worker had concerns about the "complete disarray" of the home. By the next day, the condition of the home had improved, and Mother signed a safety plan agreeing to address the mess and hazardous chemicals that had been noted in the home the day before.

Between November 2017 and February 2018, however, Mother was present for only six of 12 home visits, claiming her absences were due to illness and vacations, and she did not keep appointments with, or return calls to, Child Welfare Services or alleviate its safety concerns regarding her home. In addition, although Mother's family members described her as "angry" and expressed concern about her untreated mental health issues, Mother did not engage in any mental health treatment.

On November 29, 2017, Child Welfare Services and the police conducted a welfare check after X.A. and C.H. had not been seen in school and Mother had missed a scheduled home visit and therapy session. When the authorities arrived at Mother's home, the door was ajar, but no one responded to knocks or requests to enter. The police entered the home,

where they found Mother in her bedroom, groggy, disoriented, and agitated, with beer cans strewn about. Mother denied the alcohol was hers and refused the Child Welfare Services worker's request for urinalysis. X.A. and C.H. were later determined to be at school. J.A. was with his grandmother in Hagerstown.

In December 2017, a Child Welfare Services substance abuse specialist evaluated Mother. Although Mother's urine tested positive for marijuana and opiates, the specialist determined that Mother did not meet the criteria for a substance abuse disorder, although he said he would require verification of her participation in a valid pain management treatment program before making a final recommendation.

X.A. was adjudicated delinquent for possession of a dangerous weapon on school property. Having also abused drugs, with Mother's knowledge, since the start of the 2017-18 school year, X.A. was referred for substance abuse treatment and in-home therapy.

Child Welfare Services referred C.H. for in-school therapy, but Mother did not engage with the program until February 2018, claiming she did not understand its purpose. Child Welfare Services was also concerned that J.A.'s exposure to drugs *in utero* had caused delays in his language development, but Mother did not share those concerns.

On February 16, 2018, Child Welfare Services received an allegation of neglect, reporting that Mother is known to sell PCP from her home and has been observed smoking PCP while holding J.A. In addition, it was alleged that X.A. is reportedly absent from Mother's home for days at a time, with his whereabouts unknown, and Mother leaves J.A. home alone. Finally, the report indicated, Mother's home is unsanitary and infested with cockroaches.

When a Child Welfare Services worker and the police responded to Mother's home for a welfare check in response to the report, Mother refused to answer the door for an hour. The worker observed broken glass inside and outside the home, and a neighbor reported having seen Mother outside the previous day chasing X.A. with a broom and yelling at him for stealing her Percocet.

Following a family involvement meeting on February 20, 2018, Child Welfare Services removed the children from Mother's home and placed them with their maternal aunt. On February 21, 2018, the Department filed a CINA petition, which asserted that each child was a CINA and unsafe in Mother's home.⁴

On February 21, 2018, upon consideration of the Department's CINA petition and request for emergency shelter care, the juvenile court, without reaching the merits of the CINA petition, found that the children's continuation in Mother's home was contrary to their welfare, due to the allegations of neglect and physical abuse. The court therefore granted the Department's request for interim shelter care and placed the children in the temporary care and custody of Child Welfare Services for placement in foster care or kinship care.

But, on February 22, 2018, the juvenile court denied the request for continued shelter care and ordered that the children be placed under the jurisdiction of the court and returned to the care and custody of Mother, under an order of protective supervision,

⁴ The same day, the Child Welfare Services worker learned that Mother had mistakenly sent a text to X.A.'s therapist asking to purchase drugs and offering money for payment.

requiring that Mother: participate in twice weekly urinalysis; complete substance abuse evaluation and follow all recommendations; participate in therapy; attend parenting education classes; sign all releases required by the Department; return phone calls from the Department and providers within 24 hours; maintain all appointments; ensure the children attend school regularly; and abstain from using all non-prescribed drugs and alcohol.

Between the February 2018 shelter care hearings and the April 11, 2018 CINA adjudication hearing, Mother was more responsive to Child Welfare Services' e-mails but did not consistently return the workers' calls within 24 hours. The children's school attendance improved. But Mother failed to attend three urinalyses and tested positive for marijuana and opiates on March 6, March 8, and March 19, 2018, and for marijuana and alcohol on March 1 and March 5, 2018.

A hearing on the merits of the CINA petition, as amended, was held on April 11, 2018. Mother and C.H.'s father (S.H.) were both present. Although Mother asserted that the original CINA petition and request for shelter had been based on a "false accusation" by a neighbor that she used PCP, Mother and S.H. agreed that a CINA adjudication as to all three children was appropriate, with the children remaining in Mother's care under an order of protective supervision. Based upon the agreement of the parties, the court sustained all the allegations in the First Amended CINA Petition and found by a

preponderance of the evidence that the children had been neglected and were CINA.⁵ The court wrote on each page of the amended CINA petition: “Sustained 4/11/18.”

The juvenile court’s written adjudication and disposition order, entered on April 17, 2018, placed the children under the court’s jurisdiction, but ordered that all three children “shall remain in the care and custody of [Mother] under the Order of Protective Supervision entered on February 22, 2018.”⁶

The court further ordered S.H. (C.H.’s father) to entertain a home visit and engage in services with Child Welfare Services, complete the Responsible Father’s Workshop, sign all releases for providers, and engage in unsupervised visits with C.H. at least once weekly.

The situation changed significantly on May 8, 2018, when Child Welfare Services requested an emergency hearing after it again removed the children from Mother’s home, citing concerns for the children’s safety in Mother’s care, despite the court’s April 17, 2018 order of protective supervision. X.A. was placed in a treatment foster home, J.A. in a licensed foster home, and C.H. with his father.

⁵ In the Statement of Facts in Mother’s brief, she states: “Ms. A. and S.H., C.H.’s father, agreed to the facts in the petition, as amended by the parties, and to the court finding their respective children to be CINA.”

⁶ Mother agreed to most of Child Welfare Services’ recommendations in the order of protective supervision but did not agree to sign a release for her pain management treatment provider records because she did not want to give up her confidentiality or have Child Welfare Services “micromanaging her medical care.” Child Welfare Services expressed concern over her substance use, particularly marijuana with opiates. Without the release, Child Welfare Services averred, it could not assess whether Mother’s use of the substances was appropriate and whether the substances were being used only as prescribed.

At the May 9, 2018 hearing on the Department’s request for approval of change of placement, the Child Welfare Services worker related that, on May 8, 2018, shortly after midnight, police officers had responded to Mother’s home because she reported that C.H. was missing. According to the officers, many of whom wore body cams, Mother seemed to them to be more concerned about going back to sleep than locating her son she had reported as missing. The police officers also expressed concern over the condition of Mother’s home—it was dirty and messy, with a chemical smell, and there was no suitable bed in C.H.’s room. Mother, who was observed by the police officers to have bloodshot, watery eyes, slurred speech, and a “chemical smell” emanating from her body, tested positive for cocaine, alcohol, marijuana, oxycodone, and opiates.

Following an all-night search involving 14 police officers, and despite Mother’s and X.A.’s inconsistent assertions that they had seen C.H. at the basketball court the previous afternoon, the police found C.H. at his school on the morning of May 8 after S.H. dropped him off. The police determined that S.H. had picked up C.H. from school on May 7, 2018, and C.H. had been with his father continuously since then, pursuant to a regularly scheduled visitation. A social worker explained that Mother and S.H. generally “do not have any direct communication with each other” due to “a volatile past relationship,” and visitation exchanges are usually handled by S.H.’s parents.

At the May 9 shelter hearing, it was also reported that X.A. had been hospitalized in April 2018 for depression, suicidal ideation, and substance abuse, and, following his discharge from the hospital, he stole a car while under the influence of drugs. Thereafter, Mother did not facilitate his attendance at school or mental health/substance abuse

treatment. Mother nonetheless continued to utilize X.A. to supervise his younger siblings on occasion.

Child Welfare Services added that Mother had either canceled, or failed to appear at, three required parenting sessions since the children’s CINA adjudication, and her electricity had been shut off for three days. The children were behind on their medical appointments because Mother’s Medicaid coverage had lapsed, and J.A. was found to have unexplained significant bruising on his backside.⁷

The social worker stated that there had been a “totality of chronic neglect” of the children by Mother, with Mother continually taking “a step forward and two steps back.” In addition, Child Welfare Services workers felt they could not trust Mother because of her chronic lying and non-compliance with services and safety plans. It was the opinion of Child Welfare Services that the children would no longer be safe in Mother’s home because of Mother’s continuing substance abuse, overall mental health instability, and decline in functioning.

Mother testified at the hearing, denying the allegations of neglect, and stating that there was “a lot of false stuff in that police report” relating to the search for C.H. on May 8, 2018. She claimed that she had texted S.H.’s father that day asking if he planned to pick C.H. up from school, as usual, and when she did not hear back from him, she assumed the visitation with S.H. had been cancelled. When X.A. came home that evening, she asked

⁷ Child Welfare Services later retracted its allegation that J.A. had suffered a non-accidental injury after the examining doctor changed her opinion to say she could no longer testify that the marks were caused intentionally.

him if he had seen C.H. after school, and X.A. told her that his brother was at the nearby basketball court.

Mother said she then left for Walmart, returning home at approximately 9:30 p.m. At approximately 11:00 p.m., she realized that C.H. was not in his room. She said she did not call S.H. because she did not have his phone number, she did not call S.H.’s father because she “didn’t feel like bothering him that late,” and she did not call Child Welfare Services because it was after hours. She finally called the police at approximately midnight, after calming down from an anxiety attack. The police report indicates that the call was received at approximately 12:30 a.m.

Mother claimed that her red eyes when the police arrived were the result of tears, not drug use, that her slurred speech was just the way she spoke, and that any mess in her house was the result of the police taking everything out of the closets while searching for C.H. And, she said, Child Welfare Services had known that C.H.’s bed was broken but that it was of no moment because C.H. had been sleeping with her until the new bed she had ordered was delivered on approximately May 22, 2018. Mother also denied having asked X.A. to supervise the younger children after his return from the psychiatric hospital. Regarding the children being behind on their medical care, Mother claimed that she had reinstated her cancelled medical assistance the day prior to the hearing.

Mother expressed her desire to have the children returned to her, or, in the alternative, placed with her sister, but, if S.H. wanted custody of C.H., she was “not going to really fight him on that,” although the lack of communication between her and S.H. would make it hard for her to maintain contact with C.H. In closing, Mother claimed that

the children were safe with her and it was not in their best interest to be removed from her home.

Acknowledging that Mother had offered “a lot of explaining” for things that looked bad for her cause, including her positive test for cocaine use, the juvenile court nonetheless found “too much going on for the explanations to be fully credible.” The court indicated it was “concerned about the stability and the safety issues in the home,” along with the fact that some of the children’s needs were not being met by Mother. The court granted Child Welfare Services’ request for shelter care, and placed the children in the temporary care and custody of Child Welfare Services for placement in either foster care or kinship care, with supervised visitation to Mother. C.H. was placed in the temporary care and custody of his father. The court terminated its order of protective supervision and entered a written change of placement order on May 11, 2018. Mother filed a notice of appeal on May 18, 2018.

At the contested merits hearing on the removal of the children from Mother’s custody, held on May 31, July 13, and July 27, 2018, Child Welfare Services witnesses testified about Mother’s positive urinalyses for marijuana, alcohol, oxycodone, and cocaine, and about X.A.’s “pattern of truancy” from, and disciplinary problems in, school.⁸

Montgomery County Police Department Detective Naeem Hargrove testified about the May 8, 2018 call from Mother reporting that C.H. was a missing child. Mother told

⁸ Although Mother admitted to using various drugs, she vehemently denied ever having used cocaine, and a medical toxicologist later testified on her behalf that it was at least possible that the unconfirmed test could have indicated a false positive.

Hargrove that she had seen C.H. at approximately 4:00 p.m. on May 7, 2018, and did not mention the child’s father until Hargrove asked. After locating C.H. at school the following morning, Hargrove confirmed with S.H., who was “[v]ery cooperative,” that C.H. had been with him and that the child was “[p]erfectly fine.”

The juvenile court also reviewed Hargrove’s body camera footage from the night in question and found it, along with Mother’s testimony, to “point to significant deficiencies in parenting,” including Mother’s “lack of memory, lack of cooperation, angry and profane outbursts and the chaos in her home,” along with her “resistance to any suggestion or observation that runs contrary to her own view of things.”

Elbereth Chahalís, a Child Welfare Services “family preservation social worker” who had conducted weekly or biweekly home visits with Mother since 2017, offered her expert opinion that, under the totality of the circumstances, including Mother’s suspected illicit drug use, the children would be at risk if returned to Mother’s care and custody. She noted that J.A. was found to have at least a 25% language delay, C.H. and X.A. had a 30% truancy rate from school, and X.A. coped by acting impulsively and using drugs and was under treatment for his mental health and substance abuse. She believed that the unmet needs of the children supported her opinion, especially considering Mother’s failure to cooperate with Child Welfare Services in addressing those needs.

Chahalís detailed Mother’s failure to participate in court-ordered individual therapy and refusal to sign all releases, as required. In addition, Mother had missed at least 50% of her drug screens, and, when she did report, she tested positive for opiates, marijuana, cocaine, and alcohol. Mother had also admitted herself to an inpatient drug treatment

program — but told Chahalís she was going on vacation — and Child Welfare Services was unable to verify Mother’s substance abuse evaluation or progress during that inpatient program.

Chahalís also considered the May 8, 2018 incident in her assessment; Mother’s inability to account for the whereabouts of her 9-year-old child was of concern in determining whether the children would be safe with her. And Chahalís had learned that Mother had been on “loosely supervised probation” (which prohibited her from using drugs) in Washington County since 2015, but had not appeared before her probation officer since 2017; she was therefore facing a 90-day prison sentence, which would preclude her from caring for the children.

In detailing the children’s current placements, Chahalís stated that C.H., whose school attendance had improved since his removal from Mother’s care, was happy and doing well in S.H.’s structured environment and very clean home. X.A., who initially had been placed with his maternal aunt, had been moved — after sneaking out and smoking marijuana — to a community-based facility for students with emotional disabilities. He was doing well and maintaining his sobriety in that facility. J.A. had adapted quickly to his foster placement and appeared happy there.

Oliver Carter, a Child Welfare Services community support aide who monitors Mother’s visits with J.A., testified on Mother’s behalf that she attends to J.A.’s immediate needs during visitation and that J.A. is always happy to see her. To him, Mother had never appeared intoxicated during a visit, and he had never had to intervene in Mother’s care of the child.

Mother testified, and acknowledged that she had missed several urinalyses, but explained that she had done so either because she had transportation issues or was in too much pain to take J.A. out in a stroller. She also explained that she had not signed a release for Child Welfare Services to communicate with her pain management doctor because she was afraid that, if a social worker started asking questions about marijuana and alcohol, which she was admittedly not supposed to be using, she would be removed from the program and unable to have the surgery that she hoped would alleviate her chronic back pain. She further claimed that she had not re-enrolled X.A. in his therapy program after his hospitalization because his “dirty urines” precluded him from the program and the therapist suggested inpatient care, which Mother had not had time to research before his removal from her home only days later.

With regard to the fact that she lost track of C.H. on May 8, 2018, Mother stated that S.H.’s parents usually pick the child up from school for visits with S.H., and when the grandparents advised her they were leaving town, she texted S.H. to try to arrange a pickup, but she never heard back from him. Although she later learned that S.H. had picked C.H. up from school on the afternoon of May 7, she said S.H. had never done that before. Until approximately 5:00 p.m. that evening, she believed C.H. to be at a nearby basketball court; she then went looking for him and called S.H.’s parents but did not leave a message. She said she was reluctant to call the police because officers had harassed her during previous encounters. She said she decided to call the police at approximately 10:00 p.m., but an anxiety attack caused her to wait a few hours. Mother claimed the police were rude,

accused her of being a bad mother who does drugs, and messed up her house searching for C.H.

Mother explained that she had received inpatient therapy to detox from her prescribed pain medication; since her discharge, she felt healthier and was no longer using the pain medication every day. She detailed her plan to have her mother move in with her so she could undergo the back surgery that could alleviate her pain altogether. She expressed her desire to have J.A. and X.A. returned to her care, and for S.H. and her to have joint custody of C.H.

In closing arguments, Child Welfare Services requested that the court keep the children in care while Mother focused on herself and “somehow piece[d] her life together.” The children’s attorney agreed with the recommendation that the children remain in care because of the “chaos that is going on in these children’s lives,” including Mother’s continued positive drug tests.

Mother countered that the evidence had not shown that the children were in immediate danger in her care, and she argued that they should be returned to her under an order of protective supervision. Given her “many, many strengths,” her attorney argued that the fact that “she needs medication to cope with pain and her anxiety . . . should not be held against her” as the pain medications do not affect her ability to care for the children. And, she argued, her mistaken belief that she had seen C.H. earlier in the day, before she reported him missing, was a misunderstanding caused by her inability to contact S.H.

The court responded: “It’s really hard to make that mistake — that you saw your son that afternoon when you could not have because he was not there.” In the court’s view,

“that, by itself, is pretty alarming,” and could mean the children were not safe in her care. And, after C.H. was found to be safely with his father, Mother did not apologize to the police officers who conducted the search; instead, she screamed at them about being under a lot of stress, and failed to take any responsibility.

Counsel for S.H. added that, had C.H. actually been missing, Mother had not taken adequate steps to protect him, and, despite Mother’s excuses for everything that created chaos in the children’s lives, it was not in C.H.’s best interest to return to Mother’s care, especially when he was doing so well with his father.

After expressing concern about the incident in which Mother reported C.H. missing when he was actually with his father, the court ruled:

What the evidence shows clearly is that mother is struggling with a number of issues, not the least of which is that she is in pain and is trying to treat that pain which compromises at some points her ability to do other things. And, while I’m sympathetic to that and understand that whatever else maybe [sic] true, the pain is not her fault.

It’s also true that the kids can’t live in this chaos. It’s not safe for them. [X.A.] has needed treatment that he’s now getting for quite some time. [C.H.] is with his father. He’s safe there for now. And, until I have some clear sense that it is safe for the children to be in mother’s home, I think I have to make a finding that the kids are in serious immediate danger and that continued placement under what the statute says is a court-ordered placement, which it is, but, it’s with mother under an order of protective supervision, is at this point contrary to their welfare. And, the Department, of course, requested this.

So, I will find, under the circumstances, that it is appropriate for the children to remain in their respective places. [C.H.] is with his father, [X.A.] at R.I.C.A [Regional Institute for Children and Adolescents] until his program is completed, and [J.A.] in care.

The court added its preference that Child Welfare Services consider whether J.A. especially, given his tender age, could be returned to Mother’s care quickly, provided she became more stable and complied with Child Welfare Services’ requirements. The court also found that Child Welfare Services had made reasonable efforts to reunite the children with Mother but that removal was appropriate under the circumstances.

On August 1, 2018, the juvenile court entered a written order, reaffirming its May 9, 2018 finding that it is contrary to the children’s welfare to remain in Mother’s home, as doing so would put them in “serious immediate danger.” The court therefore reaffirmed its CINA adjudication, and ruled that it remained in X.A.’s and J.A.’s best interest to be placed in foster care, and in C.H.’s best interest to be placed with his father.

At an August 27, 2018 review hearing, the juvenile court learned that Mother was incarcerated in Hagerstown after an August 15, 2018 arrest for failing to appear before her probation officer. Counsel for Child Welfare Services and the children advocated placing X.A. in a residential treatment center after he had run away from his RICA placement, continuing J.A.’s placement in his foster home, where he was doing “really well,” and continuing C.H.’s placement with his father, with the closure of his case.

Although counsel for Mother agreed that X.A. and J.A. should remain in care, she argued that it would be “quite a disaster for [C.H.] and his relationship with his mother” if the court granted custody to S.H. and closed the case because there is little likelihood that Father would cooperate with Mother with respect to visitation. In addition, Mother claimed entitlement to reasonable efforts toward reunification with C.H.

In an order entered August 31, 2018, pursuant to Courts & Judicial Proceedings Article § 3-816.2, the juvenile court made the following required findings:

- (i) Safety of the Child: The children are safe in their placements. The Department is working to find a Residential Treatment Center placement for [X.A.] following his AWOL from RICA. [C.H.] has found a safe home with Father, and [J.A.] is doing well in his foster home. It would be unsafe to return the children to Mother at this time, due to her legal, physical, and substance abuse problems.
- (ii) Necessity for out of home placement: It is not possible to place [X.A.] or [J.A.] with Mother because she is incarcerated. [C.H.’s] case will be closed and he will reside with Father.
- (iii) Compliance with care plans: Although she has intermittently tried to comply, Mother has been unsuccessful. Her incarceration is one more barrier to compliance. [C.H.’s] Father has been compliant.
- (iv) Progress toward alleviating issues necessitating the Court’s jurisdiction: Progress is being made, as [C.H.] is going to live with his Father. However, [X.A.] is slated to move into a Residential Treatment Center and [J.A.] is in foster care. Upon release from incarceration, Mother must focus on mitigating her significant physical and substance issues.
- (v) Projected reunification date: The Department’s projected date for achieving the permanency plan of Reunification for [X.A.] and [J.A.] is January, 2019.

The court ordered that X.A. and J.A. remain CINA, committed to the custody of Child Welfare Services, with X.A. to be placed at RICA pending discharge to a residential treatment center, and J.A. to be placed in foster care pending possible placement in kinship care. The court closed C.H.’s CINA case and terminated its jurisdiction over C.H., granting custody to S.H. and visitation to Mother.⁹

⁹ The propriety of the court’s ruling relative to C.H. is the subject of the separate, related appeal in *In re: C.H.*, Appeal No. 2625, September Term, 2018.

Mother filed a notice of appeal on September 7, 2018.

ANALYSIS

In these consolidated appeals, Mother argues that the juvenile court erred in determining that the children were not safe in her care and in removing them from her home. Although she recognizes that we “review[] factual findings under a clearly erroneous standard, legal conclusions under a *de novo* standard, and the ultimate conclusion for an abuse of discretion,” citing *In re Yve S.*, 373 Md. 551, 586 (2003), Mother nevertheless urges us to rule that the court’s findings of fact and disposition were erroneous. We perceive no reversible error in the juvenile court’s rulings.

The broad policy of the CINA statutes 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.” *In re Najasha B.*, 409 Md. 20, 33 (2009). In cases involving abuse, neglect, or abandonment, it is “clear that, although the right to parent is essential in our cultural and legal understanding, it has limitations.” *In re: Adoption of Jayden G.*, 433 Md. 50, 67 (2013).

The juvenile court therefore possesses “a wide discretion concomitant with [its] ‘plenary authority to determine any question concerning the welfare of children within [its] jurisdiction[.]’” *Reichert v. Hornbeck*, 210 Md. App. 282, 305 (2013) (quoting *Bienenfeld v. Bennett-White*, 91 Md. App. 488, 503–04 (1992)). “Such broad discretion is vested in the [juvenile court] because only [the juvenile court] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [it] is in a far better position than is an appellate court, which has only a cold record before it, to weigh the

evidence and determine what disposition will best promote the welfare of the minor.” *Baldwin v. Bayard*, 215 Md. App. 82, 105 (2013) (quoting *In re Yve S.*, 373 Md. 551, 585-86 (2003)).

In this matter, Mother agreed on April 11, 2018, that the children were CINA based on Mother’s neglect as defined in CJP § 3-801(s), which remained unresolved as of August 31, 2018.¹⁰ The issue before us is whether the juvenile court’s determination that the children were not safe in Mother’s care was an abuse of discretion.

Mother argues that the court’s decision to order removal was based almost entirely on the events of May 7 and 8, 2018, when she reported C.H. missing although he was safely with his father for scheduled visitation. In our view, this is a mischaracterization of the totality of the circumstances and the court’s ruling.¹¹

¹⁰ Neglect is defined as follows in CJP § 3-801(s):

(s) “Neglect” means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or individual who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:

- (1) That the child’s health or welfare is harmed or placed at substantial risk of harm; or
- (2) That the child has suffered mental injury or been placed at substantial risk of mental injury.

In determining if a parent has neglected a child, the juvenile court “may and must look at the totality of the circumstances,” including the parent’s “past and present behavior.” *In re Priscilla B.*, 214 Md. App. 600, 621, 633 (2013).

¹¹ One claim of legal error raised in Mother’s brief challenged the court’s evidentiary ruling when Mother attempted to testify at the hearing on July 13, 2018, that she believed C.H. had come home after school on May 7 because X.A. told her that he had
(... continued)

Although the emergency removal hearing of May 9, 2018, was prompted by the alarming incident of May 8, 2018, that incident was not the only evidence before the court indicating a history of neglect on Mother’s part, either when the court ordered emergency

seen C.H. at the basketball court that afternoon. The court did not permit her to testify about what X.A. had told her, ruling that Mother’s testimony as to what X.A. had said would be inadmissible hearsay. Mother claims it was reversible error for the court to exclude that testimony.

We agree that the court erred in excluding that bit of testimony as hearsay. It was clearly not being offered to prove the truth of the matter asserted, *i.e.*, that C.H. in fact had been at the basketball court after school on May 7, or even that X.A. had seen C.H. there on May 7. By the time of the hearing on July 13, 2018, Mother knew, and conceded, that C.H. was not at the playground on the afternoon of May 7 because S.H. had picked him up from school. As her attorney indicated at the hearing when the Department lodged a hearsay objection, Mother was attempting to explain why she did not realize sooner that she did not know where C.H. was that evening. One reason, she suggested, was that her older son, X.A., told her X.A. had seen C.H. at the basketball court. This was not hearsay, as Professor Lynn McLain explains in her treatise: “Out-of-court statements that are relevant because a particular person heard or saw them and therefore are offered for the limited purpose of proving their effect on the hearer or reader are nonhearsay.” 6A MARYLAND EVIDENCE STATE AND FEDERAL (3d ed. 2013) § 801:10 at 243-44 (footnotes omitted).

Nevertheless, the exclusion of this one statement was a harmless error. Regardless of what X.A. may have told her, Mother acknowledged that she realized C.H. was not at the basketball court by 5:00 p.m., but she did not call the police until after midnight because she was afraid of police harassment. Even if X.A. had told Mother that he had seen C.H. at the basketball court that afternoon, that would not justify Mother’s decision to wait nearly eight hours before attempting to call the police.

Moreover, despite the court’s ruling, Mother was permitted to testify: “For, like, 30 minutes I did believe he was at the basketball court. . . . Well, around 5:00 I went out myself to start looking for him, went to the basketball court.” And she also testified that, when the police arrived after midnight, “I told them that I, I seen him around 4:30 at the basketball court.” Accordingly, we are not persuaded that Mother was prejudiced by the court’s error in excluding the statement she alleges was made by X.A. on the afternoon of May 7.

removal on May 11, or reaffirmed the change of custody in its order entered August 1, 2018, or reaffirmed the change of custody again, after a review hearing, in an order signed August 27, 2018, entered on August 31, 2018.

The juvenile court, having received the evidence and viewed the demeanor of the witnesses, found by a preponderance of the evidence that the totality of the circumstances, which included, but was not limited to, Mother’s lack of judgment during the incident of May 8, 2018, indicated that Mother had a “number of issues” that created “chaos” in her home and placed the children in “serious immediate danger” if they remained in her care. There was an abundance of evidence that supported this conclusion. The court’s factual finding that further neglect was not unlikely was not clearly erroneous, and its ultimate decision to remove the children from Mother’s care was not an abuse of discretion. Based on the facts presented, it was neither legal error nor an abuse of discretion for the court to conclude that leaving the children in Mother’s care and custody, even under an order of protective supervision, would not have ensured their safety.

**JUDGMENTS OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**