

Circuit Court for Montgomery County  
Case No. C-15-JV-23-000243

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 865

September Term, 2023

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IN RE: R.C.

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Nazarian,  
Albright,  
Zarnoch, Robert A.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Zarnoch, J.

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Filed: November 15, 2023

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

R.C., the minor child of C.C. (“Mother”) and Ri.C. (“Father”), was found, by the Circuit Court for Montgomery County, sitting as the juvenile court, to be a Child in Need of Assistance (“CINA”). The court committed R.C. to the Montgomery County Department of Health and Human Services (the “Department”) for placement with the child’s maternal grandmother. Mother and Father each noted an appeal, raising a total of five questions. For clarity, we have combined those questions into three questions and rephrased them as<sup>1</sup>:

1. Did the juvenile court abuse its discretion in denying Mother and Father’s request for a postponement?

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<sup>1</sup> Father’s questions were:

1. Did the Circuit Court abuse its discretion when it failed to grant Appellant’s Counsel’s request for a postponement when she entered the case four days prior to the trial, the state filed an Amended Petition a day prior to the trial, and the state gave Appellant’s Counsel hundreds of pages of discoverable materials the day before trial?
2. Did the Circuit Court abuse its discretion when it permitted the admission of medical records without proper witness testimony regarding inconsistent test results and other documentary inconsistencies?
3. Did the Circuit Court abuse its discretion when applying the weight it did to the Appellant’s past without giving the same weight to the current circumstances?

Mother’s questions were:

1. Whether the Circuit Court abused its discretion in denying Mother’s request for a continuance of the adjudicatory hearing?
2. Whether the Circuit Court abused its discretion when determining that R.C. was neglected, where the factual findings to support this conclusion, namely that R.C. was born substance exposed and Mother was in an abusive relationship, were clearly erroneous.?

2. Did the juvenile court abuse its discretion in admitting into evidence medical records from R.C.’s birth?
3. Did the juvenile court abuse its discretion in determining R.C. to be a CINA based on a finding of neglect?

Finding no error, we affirm.

### **BACKGROUND**

Mother and Father are married and reside together. Three children have been born during the marriage: I.C., E.C., and R.C. I.C. was born in 2016, E.C. was born in 2017, and R.C. was born in 2023. In 2018, I.C. and E.C. were declared CINA based on a finding of neglect. In 2020, Mother and Father’s parental rights to I.C. and E.C. were terminated by the juvenile court. That decision was based, in part, on Mother and Father’s “significant history of domestic violence” and “history of drug usage.”

R.C. was born on May 30, 2023, at MedStar Montgomery Medical Center (“MedStar”). Shortly after R.C.’s birth, the Department received a report from MedStar indicating “possible substance use on the part of the mother” and “possible symptoms of neonatal abstinence syndrome on the part of the child.”<sup>2</sup> MedStar also reported that Mother was not cooperating with hospital staff’s request for a urine sample from her or R.C. The Department responded by sending a request to MedStar to shelter R.C. at the hospital to prevent the parents from leaving the hospital with the child.

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<sup>2</sup> Neonatal abstinence syndrome occurs when a baby is exposed to drugs *in utero*. *Neonatal abstinence syndrome*, MEDLINEPLUS, <https://medlineplus.gov/ency/article/007313.htm> (last visited October 19, 2023).

***Emergency Shelter Request and Initial CINA petition***

On May 31, 2023, the Department filed an emergency shelter hearing request. That same day, the Department filed a CINA petition based, in part, on “suspected caregiver impairment” and a “substance exposed newborn.” The Department alleged: that hospital staff had suspected R.C. “was substance exposed *in utero*”; that R.C. “exhibited symptoms of withdrawal, such as sneezing, mild tremors when disturbed, and jitteriness”; that Mother had visible track marks on her arms and appeared “jittery”; that Mother had refused to provide a urine sample; and that a meconium sample had been taken for testing.<sup>3</sup> The Department’s CINA petition also included the following allegations: that Mother and Father’s two other minor children had been declared CINA several years earlier “due to ongoing domestic violence and substance abuse”; that Mother and Father’s parental rights to those children were ultimately terminated; and, that Father had “an extensive criminal history” and “a long history with Protective and Peace Orders, which he has failed to abide by.” Based on those allegations, the Department asked that R.C. be committed to the Department pending further investigation.

***Shelter Hearing***

On May 31, 2023, the juvenile court held an emergency shelter hearing. Father was not present. Mother, who was present, asked for the matter to be postponed. The court granted the request, and the shelter hearing was postponed to June 2, 2023. The court

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<sup>3</sup> “Meconium” is a newborn’s first bowel movement following birth. *Meconium*, NATIONAL LIBRARY OF MEDICINE, <https://www.ncbi.nlm.nih.gov/books/NBK542240> (last visited November 5, 2023).

nevertheless granted the Department’s request for shelter care and ordered that R.C. be placed in the temporary care and custody of the Department pending further court order.

On June 2, 2023, both Mother and Father came to court for the shelter hearing. Father asked for the matter to be postponed so that he could obtain an attorney. The court granted the request, and the shelter hearing was postponed to June 7, 2023.

On June 7, 2023, Mother and Father returned to court for the shelter hearing. Following that hearing, the juvenile court found that it was contrary to R.C.’s welfare for him to remain in either parents’ care. The court granted the Department’s request for shelter care and ordered that R.C. be placed in the care and custody of the Department. The court scheduled the adjudication hearing for June 27, 2023.

#### ***Amended CINA Petition***

On June 26, 2023, one day before the adjudication hearing, the Department filed an amended CINA petition. That petition reiterated the allegations set forth in the Department’s original petition and included additional factual allegations related to the circumstances surrounding R.C.’s birth and Mother and Father’s alleged history of domestic violence.

#### ***Adjudication Hearing – Postponement Request***

On June 27, 2023, the juvenile court held an adjudication hearing on the Department’s amended petition. At the beginning of that hearing, the court clerk noted that neither Mother nor Father was present. The court recessed the proceedings to give Mother and Father time to show up, which they eventually did.

Following Mother and Father’s arrival, Father’s counsel asked the court for a “brief postponement[.]” Counsel noted that “additional documents” had been received just two days prior and that the Department’s amended petition had been filed the day before the hearing. Counsel indicated that she had not had the opportunity to review the petition and additional documents with Father. Mother’s counsel joined in the motion, stating that she also did not have time to review the amended petition or the discovery material, the latter of which was “about 500 pages of documents.”

The court denied counsels’ motion. The court found that all parties had ample time to review the material. The court also noted that, had Mother and Father shown up to the hearing on time that morning, counsels could have reviewed the materials with them prior to the hearing. Finally, the court explained that, if the Department decided to have any of those documents admitted into evidence, all parties would be given the opportunity to review the documents prior to their admission.

### *Adjudication Hearing – Evidence*

The Department began its case by calling Sara Kulow-Malave, who was accepted as an expert in the field of social work and risk and safety assessment. Ms. Kulow-Malave, an assessment supervisor with the Department, testified that she became involved in R.C.’s case on May 30, 2023, after she received a report from MedStar indicating that R.C. may have been born drug-addicted and that Mother had refused to provide a urine sample. According to Ms. Kulow-Malave, hospital staff had reported that R.C. “was showing signs of neonatal abstinence syndrome” and “was jittery, had muscle, rigid muscle tone, and was inconsolable.” Ms. Kulow-Malave proceeded to secure R.C. at the hospital, and R.C.’s

case was assigned to a social worker who was part of Ms. Kulow-Malave’s team. The following day, Ms. Kulow-Malave reviewed the family’s prior history, and she developed concerns “about mother and father being in a relationship[.]” Specifically, Ms. Kulow-Malave had concerns about “the level of violence in the relationship, particularly with regard to [Father’s] behavior towards [Mother].” Ms. Kulow-Malave also had concerns about substance abuse and the fact that Mother and Father had not availed themselves of services that the Department had provided prior to the termination of their parental rights to their other two children. Ms. Kulow-Malave opined that it did not appear that Mother and Father were capable of providing a safe environment for R.C.

The Department also introduced several documents, which the juvenile court accepted into evidence over objection. Two of the documents related to Mother and Father’s prior CINA case involving their other two children. Per those documents, in June of 2018, the police responded to a hotel, where they found Mother and Father arguing in the hotel’s parking lot. The children, both of whom were under the age of two, had been left unattended in a hotel room, and both parents “were belligerent and appeared under the influence.” CINA proceedings were commenced, and Mother and Father’s parental rights were eventually terminated in 2020. During the course of those proceedings, the juvenile court found that both parents had a history of substance abuse and domestic violence; that Father had an extensive criminal history; that, in April 2020, Mother left home after Father had reportedly smashed items in the home and broken several windows; that, in July 2020, Mother was admitted to the hospital after Father had reportedly punched her several times

in the back, breaking her ribs and puncturing her lungs; and, that both parents had failed to reasonably avail themselves of the services provided by the Department.

Another document accepted into evidence was an investigative log compiled by the Department that included observations made by Kevin Garrett, the departmental social worker assigned to R.C.’s case. Per that log, Mr. Garrett reported that, in 2021, Mother had surgery after Father punched her in the face, breaking her jaw and nose. Mother tested positive for opiates, cocaine, and PCP at the time of her surgery. As to the events surrounding R.C.’s birth, Mr. Garrett noted that, two days after his birth, R.C. was “displaying withdrawal symptoms” including “jitteriness/crying/sneezing/mild tremors.” Around that same time, Mr. Garrett observed that Mother “had track marks/scars all over her body” and “a large gash just above the bridge of her nose.” That same day, Mr. Garrett spoke to Mother and Father together. Mother claimed that she had been sober for multiple years. Mother also denied any recent history of domestic violence, including the allegation that Father had broken her nose in 2021. When Mr. Garrett asked Mother about her sobriety, Father “intervened and would not allow [Mother] to elaborate.” Father then discussed the parties’ prior CINA case, claiming that the proceedings were “outrageously crooked” and that the Department was engaged in a conspiracy to remove children from their homes. Father claimed that he and Mother “know how to take care of children as evidenced by their two children being healthy at the time CPS removed them from their care.” Father also claimed that he had been sober since 2015.

The juvenile court also received into evidence Mother’s and R.C.’s health records from the time of R.C.’s birth. Per those records, R.C. was born with “[n]eonatal abstinence

syndrome” that included “withdrawal symptoms[.]” In addition, “no prenatal labs were available” because Mother “had no prenatal care (did not seek care)[.]” Staff noted that Mother had “refused any testing after admission” and had a “history of polysubstance abuse” and a “history of physical abuse[.]” Following R.C.’s birth, hospital staff were able to secure a meconium sample, which was submitted for testing. A urine sample was eventually taken from R.C., and the toxicology screen was negative. Hospital staff noted that the negative result was likely due to “sample being from Fifth void[.]” R.C.’s “NAS” was considered “[h]igh risk including delayed onset of worsening symptoms[.]” R.C.’s “NAS score” ranged from “4 to 11” in the days following his birth, with the score eventually reaching “1-2” at the one-week mark. Lab results on the meconium showed the presence of amphetamine, benzoylecgonine, buprenorphine, cocaine, methamphetamine, and norbuprenorphine.

D.J., R.C.’s paternal grandmother (“Grandmother”), testified on behalf of Mother. Grandmother testified that she and Father were in the room when Mother gave birth to R.C. She testified that R.C. appeared “[v]ery, very good” and that he cried “[a] little bit[.]” She stated that she left the hospital after a few hours but returned the following day. She noted that R.C. appeared “fine” and that she had no concerns about Mother’s behavior with R.C.

D.P., R.C.’s paternal aunt (“Aunt”), who was a registered nurse, also testified and was accepted by the court as an expert in the field of nursing. She testified that she visited R.C. in the hospital for approximately two hours following his birth. She stated that R.C. appeared “calm, very well-nourished, very content in his mother’s arms as she was breastfeeding him.” On cross-examination, the Department asked Aunt about the reports

that were included in R.C.’s medical records regarding the diagnosis of neonatal abstinence syndrome. Aunt responded that she “did not see symptoms of that.” She also suggested that R.C.’s medical records may have been made in error “[d]ue to the stigma of people who have had substance use disorder in the past[.]”

### ***Adjudication Hearing – Juvenile Court’s Ruling***

In the end, the juvenile court sustained most of the allegations in the Department’s amended CINA petition, including the allegations suggesting that Mother had been using illicit substances during the pregnancy and that R.C. was exhibiting symptoms of neonatal abstinence syndrome. In so doing, the court noted the medical records from MedStar, finding those records to be credible. The court also noted the testimony of Aunt, who testified that R.C. did not appear to exhibit signs of neonatal abstinence syndrome. The court found that testimony not credible, given Aunt’s refusal to accept the observations of the hospital staff, as reflected in the medical records.

### ***Disposition Hearing***

Immediately following the adjudication hearing, the court heard argument on disposition. In the end, the court found that R.C. had been neglected, that R.C. was a CINA, and that Mother and Father were unable to meet R.C.’s needs. The court found that there was “ample evidence” of a history of domestic violence and illicit drug use. The court found that there was also a history of “the parents not accepting resources that have been offered to them[.]” The court found that the risk of harm to R.C. was “high” and that there was “a great risk of danger for [R.C.] based on the lifestyle of these parents.” Based on

those findings, the court ordered that R.C. be committed to the Department for placement with his maternal grandmother.

Mother and Father thereafter noted an appeal. Additional facts will be supplied as needed below.

### **STANDARD OF REVIEW**

Appellate review of a juvenile court’s decision regarding child custody involves three interrelated standards. First, any factual findings made by the juvenile court are reviewed for clear error. *In re Yve S.*, 373 Md. 551, 586 (2003). Second, any legal conclusions made by the juvenile court are reviewed *de novo*. *Id.* Finally, if the court’s factual findings and legal conclusions are not erroneous, the court’s ultimate conclusion will be disturbed only if there is an abuse of discretion. *In re J.J.*, 231 Md. App. 304, 345 (2016). “A court abuses its discretion when ‘no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding rules or principles.’” *In re K.L.*, 252 Md. App. 148, 185 (2021) (quoting *Santo v. Santo*, 448 Md. 620, 625-26 (2016)).

### **DISCUSSION**

#### **I.**

#### ***Parties’ Contentions***

Mother and Father first argue that the juvenile court abused its discretion in declining their request for a postponement prior to the start of the adjudication hearing. Father notes that his counsel had entered her appearance just four days prior to the hearing, that the Department had disclosed “over 400 pages of documents” two days prior to the

hearing, that the Department had amended the CINA petition one day prior to the hearing, and that R.C. had been in the custody of the Department for less than 30 days when the hearing was held. Father contends that the court should have granted the postponement so that he could be afforded a fair opportunity to be heard and so that his concerns could be given due consideration. Mother argues that the late disclosure of the discovery documents deprived her of the opportunity to fully investigate and meaningfully rebut those documents.<sup>4</sup> She argues that, because the court denied her continuance request, she “was unable to present facts and/or witnesses to support her position, depriving her of the ability to present more than just a nominal defense.”

The Department and counsel for R.C. (collectively “appellees”) argue that the court properly exercised its discretion in denying the request for a postponement. Appellees contend that both parties had ample time to review the amended petition and discovery documents.

### *Analysis*

Generally, the decision to grant or deny a request for a postponement rests in the sound discretion of the court. *Serio v. Baystate Props., LLC*, 209 Md. App. 545, 554 (2013). We review such decisions for abuse of discretion, and, ““unless [the] court acts arbitrarily in the exercise of that discretion, [its] action will not be reviewed on appeal.””

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<sup>4</sup> Mother also contends that counsel stated during the disposition hearing that she wanted a continuance to seek her own expert. Mother does not provide a record cite for that contention, and we could find nothing in the record to indicate that counsel made such a request. To be sure, counsel did state, during the disposition hearing, that she believed “that it would be helpful to have an expert.” Counsel did not, however, ask for a continuance.

*Id.* (quoting *Das v. Das*, 133 Md. App. 1, 26 (2000)). Moreover, “[w]e will reverse the [court] only in ‘exceptional instances where there was prejudicial error.’” *Id.* (quoting *Thanos v. Mitchell*, 220 Md. 389, 392 (1959)).

Where, as here, a child has been placed in emergency shelter care and a party requests that the subsequent adjudication hearing be postponed, the court’s discretion to grant that request is further circumscribed by statute. Section 3-815 of the Courts and Judicial Proceedings Article (“CJP”) of the Maryland Code states, in pertinent part, that the Department may, under certain circumstances, place a child in emergency shelter care before a hearing is held. CJP § 3-815(b). When that happens, the Department must immediately file a petition for continued shelter care, and the court must hold a shelter care hearing on the next day on which the court is in session unless good cause is shown. CJP § 3-815(c). Regardless, a court may not order shelter care for more than 30 days unless the court finds that continued shelter care is necessary for the safety of the child. CJP § 3-815(c)(4). “Any continuation of shelter care beyond 30 days must be based upon findings made . . . at the adjudicatory stage of the CINA case.” *In re O.P.*, 470 Md. 225, 271 (2020).

Here, the postponement request was made on the morning of the adjudication hearing, 28 days after R.C. was placed in shelter care. The request was based on the fact that discovery documents had been received just two days prior to the hearing and that the Department’s amended petition had been filed the day before the hearing. Mother and Father asked for the postponement so that they could review the petition and documents. The juvenile court denied the motion, finding that Mother and Father had ample opportunity to review the material. The court also noted that Mother and Father had failed

to show up to the adjudication hearing on time. Finally, the court explained that Mother and Father would be given an opportunity to review any documents if and when they were introduced.

We hold that the court did not abuse its discretion in denying the request for a postponement. The Department filed its initial CINA petition on May 31, 2023, nearly four weeks prior to the adjudication hearing. Although the Department subsequently amended that petition, the grounds for the petition, *i.e.*, R.C.’s suspected exposure to drugs and the parents’ prior CINA case, remained unchanged. Mother and Father do not allege that they were surprised by any of the allegations contained in the amended petition. Thus, Mother and Father, as well as their counsel, should have been well-aware of the facts that served as the basis for the adjudication hearing. *See Att’y Grievance Comm’n of Maryland v. O’Neill*, 477 Md. 632, 661 (2022) (noting that the denial of a continuance request may be an abuse of discretion “when counsel was taken by surprise by an unforeseen event, but had either acted diligently to prepare for trial or had acted diligently to mitigate the effects of the surprise” (internal citation omitted)).

As to the Department’s disclosure of the documents two days prior to the hearing, both Mother and Father fail to provide any explanation as to why the two-day period was inadequate to properly review the documents or how additional time would have benefited them. Neither party claims that he or she was surprised by the documents or that he or she was unable to procure those documents in preparation for the hearing. Rather, the postponement request appears to have been based entirely on a lack of preparedness. Given those circumstances, the court’s denial of the request was proper. *See Reaser v. Reaser*,

62 Md. App. 643, 648 (1985) (“Failure to prepare adequately for trial is ordinarily not a proper ground for continuance or postponement.”).

Finally, even if the court had been inclined to grant the postponement request, the court could not have extended the time for the hearing beyond a few days. As noted, because R.C. had been placed in shelter care, the court was required to hold the adjudication hearing within 30 days of that placement. By the time the hearing was held on June 27, 2023, R.C. had been in shelter care for 28 days. We fail to see how an additional two days would have benefited either party. In fact, neither party has presented any evidence or argument to indicate how he or she was prejudiced by the limited review time, nor does either party explain how the result of the proceeding would have been different had more time been provided. As such, the court did not abuse its discretion.

Father argues that, even if the court was not inclined to postpone the adjudication hearing, the court had the discretion to postpone the disposition hearing. Father cites to CJP § 3-819, which states that a “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.” CJP § 3-819(a)(2).

We remain unpersuaded. First, Father’s argument is unpreserved, as he did not ask the court to delay the disposition hearing. Md. Rule 8-131(a). Even so, we cannot say that the court erred in failing to find “good cause” to delay the disposition hearing. As discussed in greater detail below in Part III, the court had ample evidence on which to find R.C. to be a CINA. Father presents no evidence indicating how additional time would have altered that decision. If anything, a postponement would have only lengthened the time R.C.

remained under the care of the Department. *See In re M.*, 251 Md. App. 86, 127-28 (2021) (noting that one of the purposes of CINA proceedings is to place children in permanent homes and avoid extended time in the custody of the Department).

## II.

### *Parties' Contentions*

Father claims that the juvenile court erred in admitting R.C.'s medical records. Although the basis for that claim is not entirely clear from his brief, Father appears to argue that the records were unreliable and contradicted by other evidence, namely, the testimony of Grandmother and Aunt. Counsel for R.C. argues that the medical records were properly admitted.<sup>5</sup>

### *Analysis*

A writing or recording, including a medical record, “made in the regular course of business as a memorandum or record of an act, transaction, occurrence, or event is admissible to prove the act, transaction, occurrence, or event.” CJP § 10-101(b); *see also In re Colin R.*, 63 Md. App. 684, 692-93 (1985). “The rationale underlying the business records exception is that because the business relies on the accuracy of its records to conduct its daily operations, the court may accept those records as reliable and trustworthy.” *Dep't of Pub. Safety and Corr. Servs. v. Cole*, 342 Md. 12, 30-31 (1996). “[W]here a record qualifies as a business record, there is a presumption of trustworthiness, and the objecting party, especially in a civil case, bears a heavy burden in order to exclude

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<sup>5</sup> The Department did not respond to Father's claim.

an otherwise admissible business record as untrustworthy.” *Owens-Illinois, Inc. v. Armstrong*, 326 Md. 107, 116 (1992). The decision to exclude otherwise admissible business records as unreliable is within the court’s discretion. *Id.* at 112-13.

Here, Father does not claim that the medical records at issue did not qualify as a business record.<sup>6</sup> Father argues, rather, that the records were inconsistent and contradicted by other evidence.

We hold that the juvenile court did not abuse its discretion in admitting the medical records. Father presents no compelling evidence to suggest that the records were facially unreliable or untrustworthy. That they may have been contradicted by other evidence goes to their weight not their admissibility. *See Hall v. Univ. of Maryland Med. Sys. Corp.*, 398 Md. 67, 91 (2007) (holding that discrepancies between medical records and trial testimony did not preclude the records’ admissibility). In addition, the court expressly considered the conflicting testimony provided by Aunt, and the court found the records reliable and Aunt’s testimony unreliable. The court was under no obligation to accept Aunt’s testimony, regardless of the fact that she was accepted as an expert witness. *See Dackman v. Robinson*, 464 Md. 189, 216 (2019) (“[E]ven if a witness is qualified as an expert, the fact[-]finder need not accept the expert’s opinion[,]’ *i.e.*, the fact-finder is free to reject the expert’s opinion and accord it little or no weight.” (quoting *Levitas v. Christian*, 454 Md. 233, 247 (2017))). We see no abuse of discretion in the court’s decision to admit the medical records as reliable.

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<sup>6</sup> Even if Father had made such an argument, the record contains ample evidence to show that the medical records would qualify as a business record.

### III.

#### *Parties' Contentions*

Mother and Father claim that the juvenile court abused its discretion in determining R.C. to be a CINA based on a finding of neglect. Father contends that the court placed too much emphasis on the parties' past behavior and did not give due consideration to other evidence showing that the parties were ready, willing, and able to provide care and support for R.C. Mother claims that "a number of the [c]ourt's findings of fact were clearly erroneous and not established with sufficient evidence."

Appellees contend that the court did not abuse its discretion in declaring R.C. to be a CINA. They argue that the court had sufficient evidence to make that determination.

#### *Analysis*

Section 3-801(f) of the Courts and Judicial Proceedings Article defines "child in need of assistance" as "a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." When a petition is filed alleging that a child is a CINA, the circuit court must hold an adjudicatory hearing to determine whether the allegations in the petition are true. CJP §§ 3-801(c), 3-817(a). If such a determination is made, the court must then hold a disposition hearing to determine, among other things, whether the child is a CINA. CJP § 3-819. An allegation that a child is a CINA must be proven by a preponderance of the evidence. *In re Nathaniel A.*, 160 Md. App. 581, 595 (2005). If the court finds that a child is a CINA, the court must either maintain the child's

current custody status or commit the child to the custody of a parent, a relative or other appropriate individual, or the local Department or Maryland Department of Health. CJP § 3-819(b)(1)(iii).

As noted, a child may be found to be a CINA if it is proved that the child has been neglected. “Neglect” includes failing “to give proper care and attention to a child . . . under circumstances that indicate: (i) [t]hat the child’s health or welfare is harmed or placed at substantial risk of harm; or (ii) [t]hat the child has suffered mental injury or been placed at substantial risk of mental injury.” CJP § 3-801(s)(1). “In determining whether a child has been neglected, a court may and must look at the totality of the circumstances[.]” *In re Priscilla B.*, 214 Md. App. 600, 621 (2013). Moreover, in evaluating whether a “substantial risk of harm” exists, “the court has ‘a right – and indeed a duty – to look at the track record, the past, of [a parent] in order to predict what her future treatment of the child may be.’” *In re J.J.*, 231 Md. App. at 346 (quoting *In re Dustin T.*, 93 Md. App. 726, 735 (1992)). In other words, a court “‘need not wait until the child suffers some injury before determining that he is neglected.’” *In re Nathaniel A.*, 160 Md. App. at 596 (quoting *In re William B.*, 73 Md. App. 68, 77 (1987)).

We hold that the juvenile court did not abuse its discretion in finding R.C. to be a CINA. The record makes plain that the court properly considered all the evidence and reasonably determined, based on a preponderance of the evidence, that R.C. had been neglected and that Mother and Father were unable or unwilling to give proper care and attention to R.C. and his needs. That evidence showed serious domestic violence by Father against Mother and a long history of illicit drug use by both parties, in particular Mother.

That behavior led to Mother and Father’s two other children being declared CINA in 2018, and, in 2020, after both Mother and Father failed to avail themselves of the services provided by the Department, their parental rights were terminated. In 2021, Father punched Mother in the face, breaking her jaw and nose. When Mother had surgery for that injury, she tested positive for opiates, cocaine, and PCP. Then, in 2023, the parties’ third child, R.C., was born and was immediately diagnosed with neonatal abstinence syndrome. Lab tests revealed several illicit substances, including cocaine, in Mother’s system. Mother was observed as having “track marks/scars all over her body” and “a large gash just above the bridge of her nose.” Mother was also non-compliant with the hospital staff’s efforts in obtaining urine samples from her and R.C. When Mother and Father were later confronted with these events and observations, Mother claimed that she had been sober for multiple years, and she denied any recent history of domestic violence. Father refused to accept the outcome of the parties’ prior CINA case, claiming that the proceedings were “outrageously crooked” and that the Department was engaged in a conspiracy to remove children from their homes. Father also claimed that he had been sober since 2015 and that he and Mother “know how to take care of children as evidenced by their two children being healthy at the time CPS removed them from their care.”

Given that evidence, the juvenile court was well-within its discretion in finding R.C. to be a CINA. Although there may have been some testimony from Grandmother and Aunt to suggest that Mother and Father were able and willing to care for R.C., that evidence was scant, questionable, and overwhelmed by evidence to the contrary. That that contrary evidence included evidence regarding the parties’ past conduct is irrelevant. Again, the

court had a duty to look at the parties’ past conduct in order to predict how they would treat R.C. in the future. Even so, the court did not rely only on the parties’ past conduct. The court relied heavily on evidence related to the parties’ conduct leading up to and immediately following R.C.’s birth, which established that Mother had been recently using drugs and that R.C. was born substance exposed.

As noted, Mother contends that a number of the court’s findings were clearly erroneous. First, Mother argues that the court’s determination that she had refused to provide a urine sample and that R.C. was “inconsolable” was “largely based on the hearsay of a social worker, Kevin Garrett,” and was disproved by other evidence. Second, Mother claims that the court’s determination that she had failed to receive prenatal care was disputed by R.C.’s medical records and Grandmother’s testimony. Third, Mother claims that the court’s finding that she was in a violent relationship was “based on uncertified records” and “was based on information [from] incidents alleged to have occurred some years prior to R.C.’s birth.” Lastly, Mother claims that the court failed to take into consideration certain evidence, namely, that Mother was permitted to care for R.C. following his birth.

None of Mother’s claims are persuasive. “A trial court’s findings are not clearly erroneous ‘if any competent material evidence exists in support of the trial court’s factual findings[.]’” *Velicky v. Copycat Bldg. LLC*, 476 Md. 435, 445 (2021) (quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013)). “When weighing the credibility of witnesses and resolving conflicts in the evidence, ‘the fact-finder has the discretion to decide which evidence to credit and which to reject.’” *Qun Lin v. Cruz*, 247 Md. App. 606, 629 (2020)

(quoting *Hollingsworth & Vose Co. v. Connor*, 136 Md. App. 91, 136 (2000)). “The burden of demonstrating that a court committed clear error falls upon the appealing party.” *Christian v. Maternal-Fetal Med. Assocs. of Maryland, LLC*, 459 Md. 1, 21 (2018).

The juvenile court’s finding that R.C. was “inconsolable” was not clearly erroneous.<sup>7</sup> Ms. Kulow-Malave, an assessment supervisor with the Department, testified that hospital staff had reported that R.C. “was showing signs of neonatal abstinence syndrome” and “was jittery, had muscle, rigid muscle tone, and was inconsolable.” Although that testimony could be considered hearsay, Mother did not object or otherwise argue during the hearing that the report from the hospital staff was unreliable. The court was therefore within its discretion in accepting that testimony as reliable, and Mother has presented no compelling evidence to suggest that the court erred in doing so. *See State v. Matusky*, 343 Md. 467, 486 (1996) (“The trial court’s assessment of the declaration’s reliability is a fact-intensive determination which we shall not ordinarily reverse unless it is clearly erroneous.”). That the report may have been contradicted by other evidence is irrelevant.

Regardless, even if the court erred in relying on that testimony in finding that R.C. was inconsolable, any error was harmless. That finding was one of many relied on by the court in reaching its overall finding that R.C. was born substance exposed. That overall finding was supported by ample evidence, namely, R.C.’s medical records and the

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<sup>7</sup> The symptoms of neonatal abstinence syndrome include inconsolable crying. *Neonatal Abstinence Syndrome*, NATIONAL LIBRARY OF MEDICINE, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5562160> (last visited November 5, 2023).

Department’s investigative log, and additional factual findings that were not clearly erroneous. Reversal based on a single, inconsequential erroneous finding is unwarranted under the circumstances. *See Dep’t of Econ. and Emp. Dev. v. Propper*, 108 Md. App. 595, 607 (1996) (“[T]he existence of an unsupported or otherwise erroneous finding of fact does not automatically warrant a reversal.”); *see also ACand S, Inc. v. Godwin*, 340 Md. 334, 403 (1995) (noting that an erroneous factual finding can be deemed “*de minimis*,” and thus harmless, in light of the circumstances in which it was made).

The court’s findings that Mother had refused to provide a urine sample and had failed to receive prenatal care were also not clearly erroneous, as those findings were supported by both the Department’s investigative log and R.C.’s medical records. Mother has provided no compelling evidence to suggest that those records were unreliable, and the court was well-within its discretion in accepting those records into evidence. Again, that the court’s findings were contradicted by other evidence is irrelevant.

As to the court’s finding that Mother and Father had a violent romantic relationship, that finding was supported by the records from the parties’ prior CINA case, which established a clear history of domestic violence prior to the termination of their parental rights in 2020. The Department’s investigative log and R.C.’s medical records established at least one additional incident of domestic violence in 2021, wherein Father broke Mother’s jaw and nose. Although there was no clear evidence of any ongoing domestic violence at the time of R.C.’s birth, Mother did report to the hospital with “a large gash just above the bridge of her nose.” In addition, when Mr. Garrett interviewed Mother and Father following the birth of R.C., Father exhibited controlling behavior and would not

permit Mother to elaborate on certain issues. From that, the court had sufficient evidence to conclude that the parties had a violent relationship.

In making her final claim – that the court failed to consider certain evidence – Mother does not identify any particular factual finding that she believes was clearly erroneous, thus we cannot properly evaluate that claim. To the extent that Mother is claiming that the court was clearly erroneous in failing to be persuaded by that evidence in her favor, we see no error there. *See Bricker v. Warch*, 152 Md. App. 119, 137 (2003) (emphasis removed) (“[I]t is . . . almost impossible for a judge to be clearly erroneous when he is simply not persuaded of something.”).

In sum, we hold that the juvenile court did not abuse its discretion in determining R.C. to be a CINA based on a finding of neglect. The court had before it significant, reliable evidence establishing that Mother and Father were engaged in a violent relationship; that Mother had a long history of substance abuse; that Mother had been using illicit drugs during her pregnancy with R.C., including up to the time of his birth; and that R.C. was born with neonatal abstinence syndrome after having been exposed to drugs while *in utero*. Given that Mother and Father’s other two children were removed from their care for exactly the same reasons (domestic violence and substance abuse), the court properly concluded that R.C. had been neglected and that Mother and Father were unable to give proper care and attention to R.C. and his needs.

**JUDGMENT OF THE CIRCUIT COURT  
FOR MONTGOMERY COUNTY  
AFFIRMED; COSTS TO BE PAID 1/2 BY  
FATHER AND 1/2 BY MOTHER.**