

Circuit Court for Baltimore City
Petition No.: 819121001

CHILD ACCESS

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 912

September Term, 2019

IN RE: J.O.

Meredith,
Leahy,
Friedman,

JJ.

Opinion by Leahy, J.

Filed: January 13, 2020

*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.

The blunt force trauma to 12-week-old J.O.’s head was severe enough to fracture his skull, cause a subdural hematoma, and cause part of his brain to herniate out of his skull and become necrotic. J.O.’s Mother and Father (“Appellees”) stipulate that they are unable to provide any explanation as to the cause of J.O.’s injury; yet they maintain that, during the time the injury occurred, Mother never separated from J.O. except for a brief period when Father fed J.O. a bottle.

On the day Mother brought J.O. to the pediatric emergency department at St. Agnes Hospital, April 16, 2019, the Baltimore City Department of Social Services (the “Department”) opened a child protective services (“CPS”) investigation. Shortly after, the Department filed a Child in Need of Assistance (“CINA”) petition, along with a request for emergency shelter care. After spending almost two months in the hospital, J.O. was placed in a foster home for medically fragile children pending the outcome of the CINA proceedings.

The parties agreed to a joint stipulation of facts that stated, among other things, that Mother and Father had exclusive care of J.O. on the day of his injury, that Mother never left his side, and that the injury was inflicted either by abuse or by accident. At the disposition hearing on July 16, 2019, the Circuit Court for Baltimore City, sitting as the juvenile court, found that J.O. was a CINA¹ but returned J.O. to his parents under an Order

¹ A CINA is “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.” Maryland Code (1973, 2013 Repl. Vol., 2018 Supp.), Courts and Judicial Proceedings Article (“CJP”), § 3-801 (f), (g).

of Protective Supervision (“OPS”). This triggered the Department’s appeal and motion for an emergency stay, filed in this Court, requesting J.O.’s return to the Department under an order of shelter care and limited guardianship.

We granted the Department’s motion on July 19, 2019. On July 23, we further detailed the basis for our July 19 Order and remanded the case to the juvenile court for further proceedings. We instructed the juvenile court to “(1) enter specific factual findings as required by CJP § 3-819(f) and FL § 9-101;² (2) conduct any further proceedings the juvenile court deems necessary; and (3) enter an order at or following the conclusion of any further proceedings[.]” We explained that, pursuant to FL § 9-101, “if the juvenile court determines that custody of [J.O.] should be with Mother and Father, the court must find on the record ‘that there is no likelihood of further child abuse or neglect[,]’ . . . or, if the court determines that the child should remain in the custody of [the Department], it shall make the factual findings required by CJP § 3-819(f).”

On remand, in its July 25, 2019 order, the juvenile court found that there was no likelihood of further abuse or neglect and returned J.O. to his parents under the same conditions provided in the juvenile court’s July 16 OPS. The court based its decision largely on arguments and evidence already presented at the July 16 hearing, including Mother’s reported positive interactions with J.O. while he was hospitalized. The court also relied on the new information that Mother and Father had relocated and no longer live in the same house where the injury occurred, inferring that, even though Mother and Father

² Maryland Code (1984, 2012 Repl. Vol., 2018 Supp.), Family Law Article (“FL”).

stipulated that no other person cared for J.O. on the day of the injury, someone else in the former house may have caused the trauma to J.O.'s head. J.O., through independent counsel, and the Department (“Appellants”), noted timely appeals from the juvenile court’s July 25 order and present multiple questions for our review, which we recast and consolidate as follows:³

- I. Did the juvenile court make a clearly erroneous finding of “no further likelihood of abuse or neglect” under FL § 9-101(b)?
- II. Did the juvenile court abuse its discretion in returning J.O. to Mother and Father under the OPS?
- III. Did the juvenile court err when it accepted the facts stipulated by the parties?

³ The Department presents three questions for our review:

- I. Did the juvenile court make a clearly erroneous finding of no further likelihood of abuse or neglect under Family Law 9-101(b) when there was no evidence to support that finding?
- II. Did the juvenile court abuse its discretion in returning baby to his parents under an order of protective supervision that was wholly inadequate to prevent him suffering further grievous injury?
- III. Did the juvenile court err when it drew inferences not supported by the stipulated facts; alternatively, did the court err when it accepted a stipulation of facts that contained conflicting facts as to the circumstances of the blunt force trauma causing an infant’s skull fracture and brain injury?

J.O. presents two questions, which are functionally equivalent to two of the questions presented by the Department:

- I. Did the juvenile court commit clearly erroneous error when it made a finding of “no further likelihood of abuse or neglect” under Family Law § 9-101(b), with insufficient evidence to support the finding?
- II. Did the juvenile court abuse its discretion at disposition when it ordered an Order of Protective Supervision to the Department . . . returning J.R.-O to his parents, when an OPS could not adequately protect him?

Mother and Father request that we dismiss the appeal as moot because the July 25, 2019 order has been superseded by the juvenile court’s October 4, 2019 order, which, they contend, continued J.O.’s placement with his parents “on other grounds with different agreed-upon facts by now.”^{4,5}

We find no merit in Appellees’ contention that this appeal is moot and hold that the juvenile court committed clear error when it made a factual finding of no likelihood of further abuse or neglect based, in significant part, on assumptions that were unsupported or directly contrary to facts contained in the record. Without any evidence or any explanation from J.O.’s sole caregivers as to the cause or possible cause of J.O.’s injury, we must conclude that the juvenile court abused its discretion when it determined that J.O. could be returned to Mother and Father under an OPS that is insufficient to protect J.O. Accordingly, the judgment of the juvenile court is reversed. We remand the case to the juvenile court to reassess the risk of harm to J.O. and to give Mother and Father another opportunity to meet their burden, under Maryland law, to show that there is no likelihood of further abuse or neglect. On remand, the court may take additional evidence to support its finding and, if necessary, order additional conditions to the OPS to protect J.O.

⁴ The additional facts presented at the hearing included information about J.O.’s doctor’s appointments and reports that Mother and Father largely failed to attend the parenting classes set up by the Department pursuant to the July 25 OPS. *See infra* at 19.

⁵ At oral argument before this Court in December, the Department represented that the next review hearing would be held on January 23, 2020.

BACKGROUND

*The Injury and Immediate Aftermath*⁶

On the morning of April 16, 2019, Mother brought 12-week-old J.O. to the pediatric emergency department at St. Agnes Hospital. Mother told the pediatric emergency doctor that J.O.'s head was swollen and that, on the previous night, he was irritable and had a decreased appetite. Mother denied that J.O. had a history of injuries or falls and stated that he had been in the exclusive care of Father and herself. J.O. underwent a CT scan which revealed a skull fracture, subdural hematoma, and other head injuries. Because J.O. required specialized neurological care for his injury, he was transferred that same day to Children's National Medical Center ("Children's") in Washington D.C. and admitted into the Pediatric Intensive Care Unit.

Dr. Adrienne Artis, a pediatric attending physician and the medical director of the Child and Adolescent Protection Center, consulted on J.O.'s case. Dr. Artis reviewed the pertinent materials and interviewed Father and Mother separately to develop a medical history.

Father advised Dr. Artis that, the day before Mother brought J.O. to the hospital, he had left home at 9 a.m. At that time, J.O. appeared normal to Father. Father reported that he went home at midday and J.O. was asleep with Mother in the living room. Father informed Dr. Artis that when he left the house again to play soccer, his cousin, paternal

⁶ The background information for this section, "The Injury and Immediate Aftermath," is drawn entirely from the parties' stipulation of facts contained in the order entered in the CINA hearing that was held on July 9, 2019.

aunt, and paternal aunt's two children (ages 4 and 7) were in the home at the time. When he returned home later that evening, he asked Mother to make him something to eat while he fed a bottle to J.O. It was at this time that he noticed that J.O.'s head was swelling and brought it to Mother's attention. Father also noted that J.O. cried intermittently until 10:00 or 11:00 p.m., then fell asleep and slept on and off for the rest of the evening.

Father explained that they did not take J.O. to the emergency room when he first noticed the swelling because there was no gas in his cousin's car. He added that the swelling appeared to improve over the course of the evening but did not completely subside. The next morning, however, J.O. continued to be fussy, so Father suggested to Mother that they take J.O. to the hospital. Father also informed Dr. Artis that Mother was J.O.'s primary caregiver and "does not separate from him." Father said that he asked Mother if she knew of any accidents or injuries to J.O., and she reported none.

Mother gave a slightly different version of events. She told Dr. Artis that J.O. woke up at 8 a.m. the morning before he was admitted to the hospital. Mother reported that J.O. was smiling and playful but had a cold, so she fed him and cleared his nose. Father left the house at 9 a.m. and did not return until 9 p.m. that evening. Mother informed Dr. Artis that, although J.O.'s paternal aunt was home during the day, the aunt stayed in her room all day. Mother affirmed Father's statement that he was the one who noticed the swelling and that J.O. was fussy through the night. She also confirmed that she is J.O.'s primary caregiver.

Dr. Artis reported that she advised both parents that J.O.'s injury was the result of trauma and asked them if they knew of anything that could have caused this trauma. Both

parents denied any knowledge of how the injury was caused. Dr. Artis diagnosed J.O. with “a comminuted left fronto-parietal skull fracture, left side scalp swelling, and acute subdural hemorrhage.” She believed that the lack of explanation from the parents is “suggestive of an inflicted injury consistent with child physical abuse.” Dr. Artis also indicated that J.O.’s injury could only result from blunt force trauma to J.O.’s head.

The Department’s Safety Investigator, Kristin Biggs, also spoke with J.O.’s parents. Mother and Father continued to deny any knowledge of how J.O. was injured. Father further indicated to Ms. Biggs that he never cared for J.O. alone. J.O. was subsequently placed in a specialized foster care home for medically fragile children.

J.O.’s Diagnosis and Continuing Treatment

The final admission report from Children’s Hospital noted that on April 16, 2019, J.O.’s swelling was so severe that his left ear was “displaced laterally.” CT imaging of J.O.’s skull and brain revealed a “comminuted fracture of the right parietal and frontal bones, with distraction of fracture fragments up to 3-4 mm.” Imaging also showed “regional hypodensity,” “loss of gray-white differentiation along the high left frontoparietal convexity,” “endema,” and “likely a traumatic encephalocele, with portions of the left frontal and parietal lobes herniating through the fracture defect into the subgaleal space.”

The clinical assessment concluded that J.O.’s injury was suggestive of child abuse:

Without a history of serious accidental trauma, [J.O.’s] injuries are most suggestive of an inflicted injury, and child physical abuse. Further trauma workup is underway. So far there is no obvious medical reason to explain this presentation. The history provided by parents should be corroborated to the extent possible. Input from other medical specialists, follow up skeletal survey, psychosocial assessment, and law enforcement investigation will continue to inform this assessment.

J.O. remained at Children’s Hospital for ongoing treatment for approximately one month until his discharge to Mount Washington Pediatric Center (“Mount Washington”). On June 4, 2019, J.O. was discharged from Mount Washington and placed in a therapeutic foster home for medically fragile children.

J.O. was referred to Johns Hopkins Pediatric Neurosurgery Division for further evaluation on June 25. At Johns Hopkins, Dr. Alan Cohen noted in his evaluation that “J.O. is developmentally delayed with a history of seizures.” J.O. was scheduled for further “neurosurgical intervention for repair to his left sided growing skull fracture and brain herniation.”

CINA Proceedings

After the Department opened the CPS investigation, the parents were either unable or unwilling to provide any information to the Department about how J.O. was injured. On May 1, the Department filed a CINA petition with a request for shelter care, which the juvenile court granted, though it was later amended to include Dr. Artis’ diagnosis, and to remove reference to a criminal investigation into the matter by the Baltimore Police Department.

July 9, 2019 CINA Adjudication Hearing

At the CINA adjudication hearing, the parties stipulated, in pertinent part, to additional facts, which are set out verbatim here:

- On May 1, 2019, [J.O.] was placed under an order of shelter care and limited guardianship to [the Department].
- Mother denied any history of falls or injuries and further indicated that [J.O.] is in the care of herself and [his] father.

- Dr. Artis additionally stated that during her interview with [Father], he stated that [Mother] is the caretaker day and night, she is constantly with [J.O.] and does not leave his side.
- [Mother] further indicated that [J.O.] was smiling and playful [the morning of the injury].
- [Mother] also told the doctor . . . that she is [J.O.’s] primary caretaker.
- Dr. Artis diagnosed [J.O.] with a comminuted left fronto-parietal skull fracture, left side scalp swelling, and acute subdural hemorrhage.
- Dr. Artis believes that the lack of an explanation is suggestive of an inflicted injury consistent with child physical abuse.
- [J.O.’s] parents have been unable to provide an explanation as to the cause of [J.O.’s] injuries and have failed to protect J.O. from suffering serious inflicted injuries without explanation.
- [J.O.] is placed in a specialized foster care home for medically fragile children and is doing well.
- Finally, [b]ased on the facts known at [the time of the hearing] [J.O.’s] injuries could have been inflicted or the result of an accident.

The juvenile court sustained the facts as recommended by the parties. The Court determined “at this time the continued residence [of J.O.] in the home is contrary to the welfare of the child” and continued J.O. under a limited guardianship to the Department, including “the authority to consent for needed treatment or procedures, including surgery and a seizure related to [J.O.]’s brain injuries and skull fracture.” The juvenile court then scheduled a disposition hearing for July 16, 2019.

July 16, 2019 Disposition Hearing

At the disposition hearing, the Department called two witnesses: Sherri Chester, the assigned family services case manager for J.O.; and Glenda LaPrade, the case manager for Mentor Maryland (therapeutic foster care resources). The Department also moved into

evidence: Dr. Artis’ resume; her consult note; the St. Agnes hospital records;⁷ the Mount Washington hospital records;⁸ and a letter from Dr. Alan Cohen, the chief of pediatric neurosurgery at Johns Hopkins.⁹

Ms. Chester testified that Mother frequently visited J.O. during his hospitalization. Ms. Chester also testified that she did a home inspection of the parents’ new home on July 12, 2019. The home passed the inspection, but Ms. Chester was unable to perform a background check on Father’s adult male relative who also lives in the home because the relative does not have a social security number.¹⁰ She recommended that J.O. be found a CINA and continue in therapeutic foster care.

On cross-examination, Mother’s attorney elicited that Mother was continually present at the hospital with J.O. and continued to feed, change, and comfort J.O., as well

⁷ The records from St. Agnes largely detailed the initial CT scan that showed the hemorrhaging in J.O.’s brain and his skull fracture.

⁸ The medical records from Mount Washington note a diagnosis of “ACUTE HEAD TRAUMA; TBI; CHILD ABUSE[.]” J.O. was required to wear a cervical collar and hand splints throughout the duration of his stay there and after his discharge into medical foster care. The treatment notes highlight a significant risk for “neuromotor abnormalities secondary to his recent injuries[.]” and that J.O. had a continuing need for physical therapy. J.O. also presented some visual deficits, as he was able to see and grasp a rattle easily with his left hand but required assistance with the right hand. Additionally, he had initially experienced post-traumatic seizures that were being controlled with pharmaceuticals.

⁹ Dr. Cohen’s letter noted that J.O. was evaluated on June 25, 2019 and “will require neurosurgical intervention for repair of his left sided growing skull fracture and brain herniation.” J.O.’s skull fracture was worsening, instead of healing, at that time.

¹⁰ At oral argument, counsel noted that the Department still was unable to determine the identity of the Father’s male relative or whether this relative lived with Mother and Father in their prior home.

as try to learn from the doctors how to take care of his medical needs. Father's attorney also questioned Ms. Chester about the family's income and the fact that Father works multiple jobs. Ms. Chester testified that, as of the date of her testimony, she had not been able to speak with J.O.'s parents so she could not say if she had additional concerns regarding the parents' ability to care for J.O., aside from J.O.'s unexplained injury. Despite Mother's presence at the hospital, Ms. Chester noted that Mother had not attended any of J.O.'s medical appointments while he was in foster care, though given the opportunity to do so.

Ms. LaPrade testified that, at the time, J.O. had treatment goals that included increasing mobility in his right arm and meeting normal developmental milestones. She also explained J.O.'s medical status and that he would require surgery because his skull fracture was continuing to grow. She noted that J.O. also had to see an ophthalmologist for an eye bleed.

Neither Mother nor Father testified. Mother's attorney called Carlyn Mast, a social worker from the office of the public defender, as an expert in mother-infant attachment. She testified as to how critical the presence of the mother is for proper infant development. She stated that infants who are separated from their caregivers have higher instances of psychiatric and substance use disorders. Ms. Mast also discussed hospital records that indicated that Mother was providing "excellent care" to J.O. while he was in the hospital. In Ms. Mast's opinion, it appeared from the records that J.O. and Mother were well bonded and believed the best place for J.O. was in the custody of Mother.

Mother's counsel also moved into evidence: a report, c.v., and article from Dr. Joseph Scheller; and Ms. Mast's c.v. and the medical records upon which Ms. Mast formed her opinion.¹¹ Dr. Scheller's letter stated that, based on the fact that J.O.'s skull was the only bone that was fractured, he did not think that the injury was the result of child abuse. He also noted, however, that the skull fracture was indicative of an impact injury, and that J.O. could have sustained his injury from an inflicted blow to the head or from an accidental fall of less than 6 feet.

In closing, the Department argued that J.O.'s safety was at risk and that he had needs that could not be met by his parents at that time. The Department urged that J.O. not only needed to be protected from future harm but, also, required medical care that his parents were currently incapable of providing. The Department emphasized the discrepancy over whether the injury was inflicted or accidental and reiterated the seriousness of J.O.'s injury:

The dilemma . . . in the facts and the evidence [is] that if there's an accident, what was it? What kind of thing could have happened that would cause this child to suffer a serious, inflicted, blunt-force trauma injury to his head such that it caused a wide fracture to his skull, caused his brain to literally herniate into and through and up that hole, and actually part of his brain to become necrotic, which means it died.

There are going to be developmental disabilities. There are going to be things we don't even know about at this point, until the child has further development, as to what the ramifications of this injury are.

The Department noted that it was Dr. Artis' opinion that the injury was inflicted, which was informed by the type and severity of the injury and by the parents' failure to offer an

¹¹ The medical records that Ms. Mast reviewed were entirely from Mount Washington Medical Center and contain highlights noting the times that Mother was present at J.O.'s bedside.

explanation as to how it occurred. At less than three months old, J.O. certainly could not have inflicted this injury on himself.

The Department also stressed that while there were discrepancies in the parents' stories, there was no discrepancy in their contention that, at the time of the injury, Mother took care of J.O. "basically 24/7" and was J.O.'s primary caretaker. Based on Dr. Artis' medical opinion,¹² the injury could not have been caused by co-sleeping or falling out of an adult bed unless J.O. "literally ended up hitting a metal anvil." The Department also questioned why, assuming this injury was accidental, there still was no explanation presented. It argued that even if the injury was not intentionally inflicted, it was certainly indicative of neglect. And, the Department pressed, even if the injury was not the result of abuse or neglect, the failure to seek medical attention immediately was certainly neglectful.

The court challenged the Department's argument by pointing out that J.O.'s parents had taken him to the hospital for illness in the past. The Department responded that it only happened on one occasion, and J.O.'s parents failed to take him back for regular visits or immunizations.¹³ The Department closed by requesting that the court find J.O. to be a CINA and continue the order granting the Department limited guardianship pending the

¹² Dr. Artis' consult note stated that "[w]ithout a history of serious accidental trauma, [J.O.'s] injuries are most suggestive of an inflicted injury, and child physical abuse . . . [S]o far there is no obvious medical reason to explain this presentation."

¹³ The Department pointed out that J.O. had to receive his two-month immunizations at four months of age during his inpatient stay at Mount Washington Medical Center because he was behind schedule.

six-month review. The Department stated that it remained committed to reunification as long as it could be achieved safely.

J.O.'s attorney also focused on the absence of any explanation for J.O.'s injury in her closing statement. The court responded with what it seemed to perceive as weaknesses in the medical evidence—that Dr. Artis stated that a further trauma workup would follow her initial assessment of J.O.'s injury, but that this never occurred.

J.O.'s attorney reiterated the Department's argument that even if J.O.'s injury was not intentional in any way, it certainly indicated that the parents had neglected J.O.—not only in failing to protect him from injury but also in failing to seek prompt medical attention. She also highlighted that the parents were made aware of J.O.'s medical appointments that were scheduled before his discharge from Mount Washington, and both failed to attend. This, she contended, called into question their ability to care for a medically fragile and potentially disabled child. In response to the court's observation that Mother spent a large amount of time visiting J.O. in the hospital, breast-feeding him, and staying overnight, J.O.'s attorney stated that the level of care that the parents exercised had not "risen to the level where we can conclude that this child is not a child in need of the court's assistance." Accordingly, J.O.'s attorney requested that the court find by a preponderance of the evidence that J.O. was a CINA and commit him to the Department.

Mother's attorney argued that there is a strong presumption that the best interests of the child are served by maintaining parental rights. She contended that, even though only a preponderance of the evidence is necessary to declare a child a CINA, a more stringent standard of proof is required to remove J.O. from his parents' custody. Counsel claimed

that the lack of evidence made it impossible to meet this standard, and that Mother and Father did not exhibit any of the typical signs that this injury was intentional, such as a failure to cooperate with the Department, anger or aggression, or a failure to visit J.O. in the hospital. Mother's attorney also noted that Mother received some education on how to care for J.O.'s disabilities and how to work with him while he was in the hospital. Counsel pointed largely to Mother's interactions with J.O. in the hospital setting as evidence that J.O. was not a CINA and emphasized that J.O. did not have any other injuries consistent with abuse. Mother's counsel closed by asking the court to send J.O. home even if it found that J.O. was a CINA and that it was necessary to impose conditions in an OPS to protect J.O.

Father's counsel conceded that J.O. was a CINA but maintained that he should be returned to his parents' custody. She claimed that the Department did not demonstrate that there was a bona fide safety issue. Counsel argued that, because more information about the injury was unlikely to come to light, the facts necessary to decide if reunification was appropriate had reached a stasis.

At the conclusion of argument, the Circuit Court for Baltimore County, sitting as a juvenile court, rendered the following ruling (followed by a written order):

The Court having received testimony . . . having received [the] State's Exhibit[s] and Mother's Exhibit[s].

Based on the diagnosis at the hospital that [J.O.] had a skull fracture which included an epidural as well as subdural hematoma that was swollen to the point where the left ear was slightly not aligned with the right ear because of the swelling, and there being no explanation as to the root of that injury, whether it be accidental or intentional – The Court finds that [J.O.] is

a child in need of assistance, pursuant to Courts and Judicial Proceedings Article 3-819.

With regard to what we do next, the Court is going to place the child under the protective supervision of the local Department, return the child to [Mother and Father].

The Court will order the Department to send the parents to parenting classes; to ensure that the parents – one or both of the parents attend all medical appointments; that the primary caregiver . . . be given instruction on how to care for a medically-fragile child; and any other conditions the Department deems appropriate.

The court also ordered the Department—as well as the attorneys for J.O., Mother, and Father—to conduct announced and unannounced visits to the home.

Appeal and Emergency Stay

The Department noted an appeal on July 16, 2019 and filed a motion for an emergency stay the following day with this Court to return J.O. to the Department under an order of shelter care and limited guardianship. We granted that motion and reinstated the order placing J.O. under the limited guardianship of the Department.

On July 23, we further detailed the basis for our July 19 Order and remanded the case to the juvenile court for further proceedings. We explained that the juvenile court’s order omitted the “essential factual finding” that there was no likelihood of further abuse or neglect. Accordingly, we instructed the juvenile court to “(1) enter specific factual findings as required by CJP § 3-819(f) and FL § 9-101; (2) conduct any further proceedings the juvenile court deems necessary; and (3) enter an order at or following the conclusion of any further proceedings[.]”

July 25, 2019 Hearing on Remand

On remand, the juvenile court heard oral argument but did not take any additional evidence. Counsel represented at the hearing, however, that Mother and Father had relocated since the July 16 hearing, and that there were no incidents during the three-day period between the juvenile court's initial order and the beginning of the temporary stay. Mother's counsel also noted that the Department had made two visits to the home in the middle of the night during that period, without incident.

The court then read the stipulation of facts into the record to ensure that the parties and the court were "all on the same page as to the stipulation." During the reading, however, the court routinely digressed to make observations. During one digression, the court surmised:

Now during argument for the contested disposition Mr. Cohen's theory of the case was that the mother was responsible for the injuries to [J.O.] because she was the primary caretaker. I asked him, what about the other people in the home. He referred to Dr. Artis's conclusions with regards to her observations and treatment.

But what the Court, I think, reasonably inferred was that the adults nor the children, particularly the 7-year-old, were not interviewed by the Department's investigator and as to whether they had a role in [J.O.]'s injury is not known. But, again, the standard for CINA is a preponderance of the evidence which is the lowest legal standard. So it's not difficult to get there based on [J.O.'s] injuries. But the fact remains that there are other adults in that household, even though the mother was the primary caregiver.

I can't imagine that she was able to cook meals with the baby in her hand. I can't imagine that she was able to go to the bathroom or bathe with the baby in her hand. **So at some point when father is either playing soccer or working at a car wash trying to make an income for his family that somebody could have had care and custody of [J.O.] that could have led to the injuries and would have been unknown to the parents.**

(Emphasis added). When evaluating the facts and the arguments made by counsel, the court noted that

some of the things that I heard from the Department came across, although it may not have been intended[,] as culturally incompetent. There were very detailed records that mother . . . not only cooperated with the Department, provided the treatment physicians with the information that she had, but that she also went to see her baby often and spent the night.

And that when the nurses couldn't console [J.O.], that [Mother] was responsible and took the lead in not only providing [J.O.] with care, but also providing [J.O.] with comfort and nutrition.

The court also expressed concern for the Department's failure to interview the other adults living in the home at the time of the injury, despite the stipulation that Mother was constantly with J.O. and did not separate from him, except for a brief period when Father fed J.O. The court surmised, without any support in the record, that Mother and Father's past failures to get proper medical care for J.O. were the result of their financial troubles. The court then concluded that based on the evidence received, "the Court does not believe that there is a likelihood of further child abuse or neglect by the parties." The ensuing order premised the court's decision to return J.O. to his parents on its findings that: (1) "there is no further likelihood of abuse or neglect[.]" (2) "[p]arents are not living in previous home with other household family members[.]" and (3) "[c]hild returned to parents with no incidents[.]"

October 4, 2019 Hearing

While this appeal was pending, the juvenile court held a prescheduled six-month hearing¹⁴ to review the propriety of its July 25, 2019 Order that found no likelihood of further abuse or neglect. The October 4 Order noted that J.O. was attending OT (occupational therapy) and PT (physical therapy) at Mount Washington on a weekly basis and listed J.O.’s pending medical appointments prior to his surgery to repair the growing fracture in his skull. The Order also stated:

[J.O.]’s parents were referred by [the Department] to parenting classes at Johns Hopkins-Bayview on Wednesdays from 9-11:30 a.m. Mother was provided a bus pass to get to the classes. **Father indicated that he had to work and could not attend. Mother also has not attended.** Alternative parenting classes were arranged through Infants and Toddlers at home for both parents. The classes began on 9/5/19 **but neither parent was home for this class.** Both parents in [sic] the home for the 9/12/19 class **but father was sleeping** even though both were advised they needed to participate. Both parents attended the next scheduled class on 9/26/19 and these classes will continue.

(Emphasis added). The juvenile court continued its July 25 Order leaving J.O. in his parents’ custody.

DISCUSSION

Standard of Review

Our standard of review in CINA cases is well-established:

(1) we review factual findings of the juvenile court for clear error, (2) we determine, “without deference,” whether the juvenile court erred as a matter

¹⁴ Although we refer to the October 4 hearing as a six-month hearing, the juvenile court may hold a review hearing earlier than six-months from the date of the previous hearing if it so chooses. CJP § 3-816.2 (providing that a juvenile court “shall conduct a hearing to review the status of each child under its jurisdiction within 6 months after the filing of the first petition under this subtitle and at least every 6 months thereafter”).

of law, and if so, whether the error requires further proceedings or, instead, is harmless, and (3) we evaluate the juvenile court’s final decision for abuse of discretion.

In re O.P., 240 Md. App. 518, 546 (2019) (citing *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018)), *cert. granted*, 464 Md. 586 (2019). Accordingly, here, we apply the clearly erroneous standard when reviewing the juvenile court’s finding that there was no likelihood that J.O. would suffer further abuse or neglect if returned to his parents’ custody. We also evaluate the juvenile court’s ultimate decision to return J.O. to his parents under an OPS for abuse of discretion. *In re Ashley S.*, 431 Md. 678, 704 (2013). “An abuse of discretion may [] be found where the ruling under consideration is ‘clearly against the logic and effect of facts and inferences before the court[.]’” *In re Yve S.*, 373 Md. 551, 583 (2003) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312-13 (1997)).

I.

Mootness

Mother and Father contend that this Court should dismiss this appeal as moot because the Department has acquiesced to subsequent orders of the juvenile court (continuing parents’ custody of J.O.) that were premised “on other grounds with different agreed-upon facts[.]” They argue that, because the July 25, 2019 order is no longer operative, vacating that order will provide no relief to the Department or J.O. The Department responds that “a very real controversy” continues to exist “for which this Court can fashion an effective remedy: a remand hearing for a reassessment of the risk of harm that parents pose to J.O.’s safety.” The Department argues that all six-month assessments

of J.O.’s safety will necessarily be skewed by the flawed safety assessments underlying the juvenile court’s previous orders.

“A case is moot when there is no longer any existing controversy between the parties at the time that the case is before the court, or when the court can no longer fashion an effective remedy.” *In re Kaela C.*, 394 Md. 432, 452 (2006). The Court of Appeals has recognized that, because of the statutory mandate that a juvenile court conduct periodic six-month reviews in CINA cases, orders of the kind appealed by the Department and J.O. will “almost always be replaced by subsequent orders before” the appellate courts will be able to review them. *In re Justin D.*, 357 Md. 431, 444 (2000). These situations, the Court held, required application of a limited exception to the mootness doctrine.¹⁵ *Id.* The Court of Appeals has also held that a controversy is alive, and therefore a CINA appeal is not moot, “when [a] subsequent review hearing order may have been influenced by an error made in [an] earlier review hearing order.” *In re Joseph N.*, 407 Md. 278, 304 (2009). In that situation, application of the limited exception to the mootness doctrine is not required if a party to the case will continue to suffer either direct or collateral consequences resulting

¹⁵ This exception allows a court to decide a moot issue:

if the public interest clearly will be hurt if the question is not immediately decided, if the matter involved is likely to recur frequently, and its recurrence will involve a relationship between government and its citizens, or a duty of government, and upon any recurrence, the same difficulty which prevented the appeal at hand from being heard in time is likely again to prevent a decision, then the Court may find justification for deciding the issues raised by a question which has become moot, particularly if all these factors concur with sufficient weight.

In re Justin D., 357 Md. at 445 (citation omitted).

from an erroneous judgment. *See id.* at 304-05; *see also In re Kaela C.*, 394 Md. at 464-65.

In certain cases, a juvenile court is permitted to take actions that render a case moot, and such actions are distinguishable from prohibited actions that defeat a party's right to prosecute an appeal. *In re Deontay J.*, 408 Md. 152, 163 (2009). Appellees rely on *In re Julianna B.*, 407 Md. 657 (2009), for the proposition that this appeal is moot. That case involved an appeal of a juvenile court's denial of an application to modify the treatment service plan of a child who had been adjudicated delinquent of second-degree murder. *In re Julianna B.*, 407 Md. at 659-60. This Court vacated the order of denial and remanded the case to the juvenile court, and the State petitioned the Court of Appeals for a writ of certiorari, which was granted. *Id.* at 659. It was the State's contention that the order denying modification was not a final appealable order. *Id.*

During the pendency of that appeal, pursuant to the command of this Court, the juvenile court entered another order modifying Julianna B.'s permanency plan. *Id.* at 662. The Court of Appeals held that the subsequent order, modifying Julianna B.'s treatment plan, mooted the question of *whether the order denying modification was appealable in the first place.* *Id.* at 664. The Court reasoned that, because the subsequent order was no longer operative, it did not matter whether it was appealable; and Julianna B. was no longer suffering any consequences from the denial of the modification, as her permanency plan had since been modified. *See id.* at 664-65.

None of the parties to this case are disputing the appealability of the July 25 Order returning J.O. to his parents' custody. We agree with the Department's contention that, if

the juvenile court erred in returning J.O. to his parents under an OPS that was insufficient to protect him from harm, any order continuing that arrangement could have direct consequences for J.O.'s health and safety. *See In re Joseph N.*, 407 Md. at 304-05. Any review hearing order in this case will necessarily be affected by the juvenile court's erroneous finding, based on the facts before it at the hearing on remand, that there was no likelihood of further abuse or neglect. Accordingly, we hold that as long as the juvenile court is continuing the custody order, based on its initial erroneous factual findings, this appeal is not moot. To hold otherwise would make erroneous CINA orders effectively unreviewable on appeal should they not come before our Court within the six-month window allowed between review hearings or fall under the limited exception to the mootness doctrine noted above. *See* CJP § 3-816.2.

II.

Likelihood of Further Abuse or Neglect under FL § 9-101

a. The Parties' Contentions

The Department and J.O. contend that the juvenile court clearly erred when it determined that there was no likelihood of further abuse or neglect under FL § 9-101. The Department argues that the court could not rely exclusively on the stipulated facts to support this finding. The Department states that the court could not infer from Mother's positive interactions with J.O., in the hospital, that he would not suffer further abuse or neglect. Additionally, it contends that J.O.'s three-day return to his parents without incident is not enough to infer that he will not be abused or neglected in the future. Finally,

the Department argues that the OPS conditions such as parenting classes and random unsupervised visits are not enough to protect J.O. from another injury.

J.O. urges another remand because Mother and Father failed to meet their burden to show no likelihood of further abuse or neglect. The only evidence offered by Mother was one doctor's opinion that the injury could have been caused by an accidental fall, the fact that Mother visited J.O. in the hospital and cooperated with hospital staff, and an expert opinion on the importance of mother-child attachment. Further, J.O. contends that the juvenile court should have taken additional evidence on remand and failed to do so.

Mother and Father maintain that the record contained sufficient evidence to support the court's finding based on the testimony, arguments, and documents admitted. They point to the court's emphasis of the fact that other adults in the home may have had access to J.O. on the day he was injured, that Mother had positive interactions with J.O. while he was inpatient at Mount Washington Pediatric Hospital, and that no further injuries occurred when he was returned to his parents before the temporary stay was granted. Mother and Father contend that it was an acceptable inference that someone in the home other than Mother may have injured J.O. and that relocation similarly supported a finding of no likelihood of further abuse or neglect. They argue that the medical records, indicating that Mother was a loving caretaker toward J.O., stayed with him in the hospital, and was able to soothe him, support a finding that she was not likely to inflict abuse. Mother and Father also highlight their cooperation with the court's conditions under the OPS as showing that they want to help J.O. Finally, they assert that it would be equally speculative for the court

to find that there was a likelihood of further abuse without facts to determine whether the injury was accidental or inflicted.

b. CINA Proceedings

This Court, in *In re O.P.*, summarized the statutory scheme governing CINA proceedings:

The statute [Subtitle 8 of the Courts and Judicial Proceedings Article] gives “exclusive original jurisdiction” to a juvenile court over proceedings arising from CINA petitions, *id.* § 3-803(a)(2), and establishes, among other things, the scope of the court's jurisdiction over children, venue for proceedings, assignment of judges, the appointment and authority of juvenile magistrates, the review of decisions or recommendations of magistrates to the juvenile court, the confidentiality of proceedings, the scope of a local department's obligation to make reasonable efforts to reunify children and parents, and the State's obligation to provide counsel to represent children, as well as indigent parents and guardians of an alleged CINA, in CINA proceedings, *id.* §§ 3-804, 3-805, 3-806, 3-807, 3-810, 3-812, & 3-813.

A local department of social services is required to file a CINA petition if, after receiving “a complaint from a person or agency,” “it concludes that the court has jurisdiction over the matter and that the filing of a petition is in the best interests of the child.” *Id.* § 3-809(a). “A CINA petition . . . shall allege that a child is in need of assistance and shall set forth in clear and simple language the facts supporting that allegation.” *Id.* § 3-811(a)(1). Once a CINA petition is filed, a juvenile court “shall hold an adjudicatory hearing,” *id.* § 3-817(a), for the purpose of “determin[ing] whether the allegations in the petition, other than the allegation that the child requires the court's intervention, are true,” *id.* § 3-801(c). At the adjudicatory hearing, the rules of evidence apply and the allegations of the petition must “be proved by a preponderance of the evidence.” *Id.* § 3-817(b), (c).

Following an adjudicatory hearing, the juvenile court must “hold a separate disposition hearing,” either “on the same day as the adjudicatory hearing” or later. *Id.* § 3-819(a).

With respect to a child who is alleged to be a CINA arising from abuse or neglect, the court's disposition may entail (1) finding that the child is not a CINA and terminating the case, (2) finding that the child is not a CINA and awarding custody to a noncustodial parent, or (3) finding that the child is a

CINA and making a custody determination from among various options. *See generally id.* § 3-819.

240 Md. App. at 547-49.

The standard for denying parental visitation is ordinarily quite stringent. *In re Yve S.*, 373 Md. at 570-71. Where a child has been declared a CINA, however, and evidence of abuse exists, a juvenile court is no longer at liberty to make a custody decision without meeting certain other statutory requirements. *Id.* at 571. As we will explain further, because the CINA disposition hearing is a custody proceeding, the juvenile court is bound by FL § 9-101, which applies “in any custody and visitation proceedings” in which a court has reasonable grounds to believe a child has been abused or neglected. FL § 9-101(a).

Once a child has been declared a CINA due to abuse or neglect, under FL § 9-101(b), the court must first “specifically find that there is no likelihood of further child abuse or neglect” before returning the child to the custody of his or her parents. This is the factual finding that we directed the court to make in our July 23, 2019 remand order. If the court decides instead to commit a child to the custody of a local department of social services, or someone other than the child’s parents, it must make specific factual findings that set forth the circumstances that necessitated removal of the child from the home pursuant to CJP § 3-819(f)(1). The juvenile court must also apprise the parents of the consequences of such removal, including the potential for the termination of their parental rights. CJP § 3-819(f)(2). Because the juvenile court, in this case, declared J.O. to be a CINA, the court was bound to comply with our remand order, and apply FL § 9-101(b), before it returned J.O. to his parents.

c. Family Law § 9-101(b) Determination

Section 9-101 of the Family Law Article concerns two competing values: (1) the state’s responsibility for the health and safety of defenseless children and (2) the parents’ fundamental liberty interest in raising their children. The statute provides:

- (a) In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.
- (b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

FL § 9-101. As dictated by FL § 9-101, a court engages in a two-step process. *See Baldwin v. Baynard*, 215 Md. App. 82, 106 (2013). First, the court decides whether there are “reasonable grounds” to believe a child has been abused or neglected. *Id.* Second, the court determines “whether it has been demonstrated that there is no likelihood of further abuse or neglect.” *Id.*

The statute “requires the court, when faced with a history of child abuse or neglect by a party seeking custody or visitation, to give specific attention to the safety and well-being of the child in determining where the child’s best interest lies and not place the child in harm’s way.” *In re Adoption No. 12612*, 353 Md. 209, 238 (1999). Where a child has been declared a CINA due to abuse or neglect, FL § 9-101 “directs” the juvenile court to deny custody to the parent “unless the court makes a specific finding that there is no likelihood of further abuse or neglect.” *In re Yve S.*, 373 Md. at 587. As such, FL § 9-101

protects children from an unacceptable risk of neglect or abuse despite the fundamental right of parents to raise their children.

A parent, who has been found to have abused or neglected his or her child, bears the burden, by a preponderance, to present evidence and persuade the court that there is no likelihood that abuse or neglect will reoccur. *In re Yve S.*, 373 Md. at 587-88. The Court of Appeals has “recognized that in cases where abuse or neglect is evidenced, particularly in a CINA case, the court’s role is necessarily more pro-active.” *In re Adoption/Guardianship of Victor A.*, 386 Md. 288, 301 (2005). As this Court summarized in *In re Mark M.*, the responsibility consigned to the juvenile court requires it to marshal facts and assess the situation to determine what is in the best interest of the child:

The juvenile court has a clear and continuous supervisory role to play in CINA proceedings. In such cases, a juvenile court acting under the State’s *parens patriae* authority, is in the unique position to marshal the applicable facts, assess the situation, and determine the correct means of fulfilling a child’s best interests.

In re O.P., 240 Md. App. at 569 (citations and quotations omitted).

FL § 9-101 does not require that “the hearing judge be a prophet or soothsayer and somehow ‘know’ that there will never be a future incident of abuse or neglect.” *In re Yve S.*, 373 Md. at 588. To forecast the future with complete certainty “would require unobtainable proof on the part of the parent, and omniscience on the part of the judge. Such a construction would render the statute nonsense.” *Id.* However, “[c]ourts should be most reluctant to ‘gamble’ with an infant’s future; there is no way to judge the future conduct of an adult excepting by his or her conduct in the past.” *In re Priscilla B.*, 214 Md. App. 600, 626 (2013) (quoting *McCabe v. McCabe*, 218 Md. 378, 384 (1958)).

A juvenile court’s factual finding that a child is likely or unlikely to be subjected to further abuse or neglect is clearly erroneous when it is entirely unsupported by the facts in the record. *See In re Yve S.*, 373 Md. at 594-601. In *In re Yve S.*, the Court of Appeals determined that a juvenile court’s factual findings were clearly erroneous when the court refused to return the child to her mother based on the court’s unsupported concerns about the mother’s ability to exercise sound judgment. 373 Md. at 594. In rendering its decision, the juvenile court failed to tie its concerns about the mother’s parenting abilities to any indication in the record evidence that there may be future abuse or neglect. *Id.* at 618-19. The Court noted that the juvenile court’s findings were not supported by the record evidence and were in conflict with undisputed testimony. *Id.* at 594. For example, the Court determined that the juvenile court improperly found, in the face of direct testimony to the contrary, that no witness testified that the mother could function as a competent parent. *Id.* at 608. However, the mother’s psychiatrist testified that the mother was “capable of being a full-time mother.” *Id.* The Court of Appeals held, therefore, that the juvenile court’s findings were clearly erroneous because there was either no evidence in the record to support them or because they were directly contradicted by facts in evidence. *Id.* at 599, 608.

In the case at bar, the parties do not dispute that J.O. is a CINA. The stipulated facts establish that J.O. was abused or neglected while living with his parents. The juvenile court was therefore directed under FL § 9-101 to *deny* custody to Mother and Father *unless* the court could make a factual finding of no likelihood of recurrence of abuse or neglect.

J.O. suffered a fractured skull due to blunt force trauma. The juvenile court had to fasten facts to any finding that there was no likelihood of a recurrent trauma.

We hold that the juvenile court committed clear error by determining there was no likelihood of further child abuse or neglect by Mother or Father because there is no evidence as to what happened to J.O.; and, while Mother and Father stipulated that he was injured while in their exclusive care, neither can or will provide any explanation as to what happened.

The juvenile court set forth only two reasons for its finding in the July 25 Order: (1) no incidents have occurred since the initial injury; and (2) Mother and Father relocated their home after the injury took place. During the hearing on July 25, the juvenile court expounded that it was free to infer that someone else in the home could have injured J.O. other than his parents, and therefore, relocation would prevent future harm to J.O. But the court was not allowed this inference, *see In re Yve S.*, 373 Md. at 595, because: (1) Mother and Father stated consistently that “Mother was J.O.’s primary caregiver and never left his side” during the period in question, except when Father gave him a bottle; (2) Mother and Father stipulated that “Mother is the primary caretaker of [J.O.] and no one else provides care for [J.O.]”; and (3) it is unknown whether the person who currently lives with Mother and Father also lived in the prior home when J.O. was injured. The fact that J.O. had not sustained further injury over a three-day period (at the time of the hearing) was insufficient to overcome the undisputed fact that the trauma that was inflicted on J.O. occurred while he was solely in Mother and Father’s care.

III.

Order of Protective Supervision

The Department and J.O. assert that the juvenile court abused its discretion when it returned J.O. to his parents under an OPS that was inadequate to protect J.O. from further harm. Both contend that, without knowing how J.O. was injured, the court could not impose conditions under which J.O. could be safely returned to his parents. However, given that J.O. has now been with his parents since July 25, 2019 without issue, J.O.’s counsel suggests that if the juvenile court finds that removing J.O. from his parents’ custody would not be in his best interest, certainly additional conditions must be added to the OPS to protect J.O.¹⁶

Appellees view the OPS as adequate to ensure J.O.’s safety. They aver that, once the court determines that further abuse or neglect is not “probable,” the court must then favor the parents’ fundamental right to have custody of their children and the presumption that the child’s best interest is to be with his or her parents. As such, the Appellees contend that the juvenile court’s order balances the parents’ custodial rights with the child’s safety and welfare.

The CINA statute requires juvenile courts to “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). As addressed above, J.O.’s injury is unexplained but could only result

¹⁶ No party on appeal has requested that J.O. be removed from his parents’ custody pending remand to the juvenile court. Accordingly, our order contemplates that J.O shall remain with his parents under the juvenile court’s existing order until the juvenile court conducts further proceedings on remand consistent with this opinion.

from blunt force trauma to J.O.’s head. None of the conditions ordered by the juvenile court are tailored to prevent further injury; instead, the conditions were fashioned to care for a medically fragile child.

Two recent cases examining whether a juvenile court committed an abuse of discretion in making a custody determination for a child previously found to be a CINA, are instructive here. In *In re O.P.*, a ten-week-old infant was admitted to the hospital with unexplained brain injuries. 240 Md. App. at 532. The hospital discharged O.P. into the Anne Arundel County Department of Social Services’ custody, and the department then filed a CINA petition and a request for continued shelter care. *Id.* at 533. Ultimately, there was no way for the court or “medical science” to prove that O.P.’s injuries occurred while he was in his parents’ custody. *Id.* at 579. Notably, O.P.’s doctors were unable to determine the age of the brain bleeds, relaying that it was impossible to tell whether they were two weeks or two months old. *Id.* at 535-36. Medical records confirmed that O.P. had experienced similar symptoms when he was staying in the NICU after his birth. *Id.* Furthermore, the witness who testified before the juvenile court and conveyed O.P.’s doctor’s belief that O.P.’s injuries were consistent with abusive head trauma failed to provide confirmation of this opinion or articulate how confident the doctor was that O.P. had been abused. *Id.* Consequently, we deferred to the lower court’s credibility determination that the parents were believable and that their testimony was partially corroborated by medical records. *Id.* We ultimately determined that “[a]lthough the record certainly contained sufficient information for a reasonable factfinder to have reached the opposite conclusion, in light of the evidence presented, we cannot say that the juvenile

court's conclusion here was so far 'beyond the fringe' as to constitute an abuse of discretion." *Id.* at 579-580.

By way of contrast, the Court of Appeals in *In re Yves S.*, as explained above, determined that the circuit court had abused its discretion when, in the face of substantial evidence to the contrary, it determined that there was a likelihood of future abuse or neglect and changed a child's permanency plan from reunification to adoption. 373 Md. at 620. The mother had adduced credible evidence that her mental state had been stable for two years and that she was capable of caring for a child, and there was nothing in the record to suggest a likelihood of future abuse or neglect. *Id.*

The case before us is similar to *In re Yves S.* in so far as the juvenile court grounded its determination on inferences that were not supported by the evidence. And contrary to the circumstances in *In re O.P.*, here there is no dispute that J.O. sustained his injury while he was in the care and custody of his parents. Moreover, as this Court explained in *In re O.P.*, the burden of proof in a shelter care proceeding is on the party attempting to remove a child from a parent's custody, *id.* at 559, whereas here, the burden was on Mother and Father to adduce evidence to show that there was no likelihood of further abuse or neglect. The juvenile court did not articulate this burden or take any additional evidence from J.O.'s parents on remand.

The juvenile court's ultimate decision to return J.O. to the custody of Mother and Father was based, in large part, on the unsupported inference that someone else in the house, other than Mother and Father, may have injured J.O. This finding is contradicted by the record evidence. Because the juvenile court sustained the stipulation of facts, it was

required to accept as true that J.O.’s injury was inflicted when he was in the care of his parents. As the Department conceded during oral argument, such a factual finding does not mean that J.O. can never return to his parents. However, so long as J.O.’s injury remains unexplained, we agree the juvenile court must still fashion a more robust OPS to protect J.O. The juvenile court should make every attempt to procure more evidence about how J.O. was injured, but, if that proves impossible, it can consider evidence from the post-episode history. The three days during which J.O. was returned to his parents prior to the Department’s emergency motion are insufficient to show that there is no likelihood of further abuse or neglect. Therefore, we will remand the case for the juvenile court to conduct an evidentiary hearing to make factual findings concerning whether there is no further likelihood of abuse or neglect and, if necessary, order additional conditions to the OPS to protect J.O.

IV.

Stipulation of Facts

The Department argues that the juvenile court erred by drawing inferences that were not supported by the stipulated facts¹⁷ or, alternatively, by accepting a stipulation of facts that contained conflicting facts regarding the circumstances of J.O.’s injury. The Department contends that if “the court believed there were material conflicts within the stipulation, it was required to receive evidence regarding those conflicts rather than to simply favor one version over the other.” J.O., through his attorney, did not brief this issue.

¹⁷ As we fully discussed the effect of the juvenile court’s inference that someone else in the home may have hurt J.O. above, we decline to address it again here.

Mother and Father respond that the court properly accepted the stipulated facts because all parties to the case agreed to the content and were heard on the matter before the court sustained them. Mother and Father also assert that this claim of error was waived when the Department and J.O. signed the agreement accepting the stipulation.

We have stated that “although the procedure of having all of the evidence presented through stipulation may be appropriate ‘when the parties sought to argue solely legal issues at trial,’ it ‘should not be used when there are significant witness credibility questions.’” *In re Damien F.*, 182 Md. App. 546, 574 (2008) (quoting *Atkinson v. State*, 331 Md. 199, 203 (1993)). The Department relies on *In re Damien F.* for the proposition that the juvenile court in this case erred in accepting a stipulation of facts. *In re Damien F.* is inapposite on this point, however, because there, under very different circumstances, the material facts were in dispute. The juvenile court in *In re Damien F.* announced that it would only accept proffers from the parties in a shelter care proceeding. *Id.* at 553. The mother objected and explained that she had witnesses whose testimony would contradict the Montgomery County Department of Social Services’ allegations of neglect. *Id.* at 553. The juvenile court overruled the mother’s objection and refused to allow testimony from any witnesses. *Id.* Instead, the juvenile court accepted conflicting proffers from the parties. *Id.* at 553-56. Because the juvenile court issued an order for emergency shelter care based on conflicting proffers, *id.* at 561, we held that the court abused its discretion when it declined to receive testimony to resolve material allegations in dispute. *Id.* at 584-86.

The facts of this case are not in dispute. All parties agreed to the stipulation of facts, and, although the cause of J.O.’s injury remains a mystery, the juvenile court did not make

a finding regarding how the injury occurred. Further, the juvenile court's acceptance of the stipulation of facts notwithstanding, the court also heard witness testimony and allowed counsel for each party to argue the case before the court. Because J.O.'s Mother and Father declined to testify, the court would have been unable to judge their credibility in a contested hearing in any event. We hold the juvenile court did not err in accepting the stipulation of facts in this case.

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