

Circuit Court for Howard County
Case No. C-13-JV-20-000146

CHILD ACCESS

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1015

September Term, 2020

IN RE: R.C.

Kehoe,
Leahy,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: May 3, 2021

*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 Circuit Court for Howard County, sitting as a juvenile court, ordered the transfer of custody of minor child R.C. from biological mother (“Ms. D.” or “Mother”) to biological father (“Mr. C.” or “Father”), following a Child in Need of Assistance (“CINA”)¹ disposition hearing before a magistrate. Mother filed exceptions, but the juvenile court ruled that her exceptions were untimely filed. Mother appeals, raising two questions, which we have rephrased for clarity:²

- I. Did the juvenile court err in denying Mother’s exceptions to the magistrate’s disposition recommendations and her request for a hearing as untimely where she claims that she was not served with the recommendations as required by Maryland Rule 11-111(b)?
- II. Did the juvenile court err in transferring custody of R.C. to Father because it was not in R.C.’s best interest?

We hold that under CJP § 3-807(b)(1) and Maryland Rule 11-111(b), a copy of the magistrate’s findings and proposed order in this case should have been served upon the parties. Accordingly, we vacate the juvenile court’s October 16, 2020 order and remand

¹ See Maryland Code (1973, 2020 Repl. Vol.), Courts & Judicial Proceedings Article (“CJP”), § 3-801(f), (g) (defining CINA as a “child who requires court intervention because: (1) The child has been abused, has been neglected,. . . ; and (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs”).

² Mother presents her questions as follows:

“1. Where service of the magistrate’s recommendations on Ms. D was disputed, did the court err when it denied Ms. D’s request for a de novo hearing on her exceptions to the recommendations?

2. Did the court commit error by granting custody of R.C. to Mr. C and closing the CINA case without waiting for Mr. C’s criminal clearance and without consideration that it was in R.C.’s best interest to remain with his siblings in Maryland?”

to that court with instructions to determine whether the magistrate’s proposed “CINA Disposition Findings and Order,” filed on October 7, 2020, as shown on MDEC,³ was served on the parties in accordance with CJP §3-807(b)(3) and Maryland Rule 11-111(b). Specifically, the juvenile court should determine whether the requisite “copy of [the report] and proposed order” was served upon Mother as provided by Maryland Rule 20-205(d)(1), or otherwise under Maryland Rule 1-321. Because of our disposition on the first question, we do not reach the second question.⁴

BACKGROUND

Ms. D. is the mother of four children—15-year-old N.D., nine-year-old J.M., two-year-old R.C., and infant H.D., who was born in November 2019. The children have different fathers. N.D.’s father was incarcerated; J.M.’s father died from COVID; R.C.’s father was living in New Jersey, and H.D.’s father was unknown. The Department of

³ “MDEC” is the Maryland judiciary’s “system of electronic filing and case management[.]” Md. Rule 20-101(k).

⁴ Mother’s first exception to the magistrate’s recommendations and proposed order stated: “[t]hat the [m]agistrate improperly concluded that the child should be placed with the [F]ather[.] and the case should be closed with custody to [F]ather.” This exception encompasses Mother’s second question on appeal. As the Court of Appeals determined in *In re Kaela C.*, “the right to file exceptions is a required protective provision of [a] litigants’ due process right to have his or her matter heard by a duly qualified judge.” 394 Md. 432, 475 (2006). The “clear import of [Maryland Rule 11-111] is that the hearing de novo before the judge is the only means of challenging the findings and recommendations of the master (and, by necessary implication, the propriety of the procedures by which the master arrived at those findings and recommendations).” *Id.* at 474-75 (citation omitted). Accordingly, should the juvenile court conclude that Mother was not served with a copy of the magistrate’s proposed “CINA Disposition Findings and Order,” due process requires that the juvenile court first consider Mother’s exceptions.

Social Services in Howard County (the “Department”) had provided family preservation services to Mother and her children since June 2019, when Mother moved to Maryland from New Jersey. The Department has had ongoing concerns of neglect and lack of supervision of the children by Mother.

Shelter Care Adjudication

On August 25, 2020, the Department removed Mother’s four children from her care and custody. The next day, the Department filed CINA and Request for Shelter Authorization petitions for each child. Each petition alleged:

- a. [Infant H.D.] was brought to Johns Hopkins Hospital (JHH) in Baltimore . . . for second degree surface burns on his right thigh, leg, and back of foot. He also ha[d] burns on his buttocks, back, and lower legs, in total covering 15.5% of his body. . . . The [M]other stated that she was giving [H.D.] a bath and when she reached for a towel, he grabbed the faucet and turned on the hot water. According to medical personnel, the incident is highly suspicious for abuse. Ms. D[.] initially left the hospital, but later went back to JHH to see [H.D.] at 3:00 a.m. When asked who was supervising her other children, she declined to answer.
- b. [H.D.] was also born substance exposed for THC in which both [H.D.] and Ms. D[.] tested positive. Mother admits to using marijuana.
- c. On January 20, 2020, [H.D.] was evaluated at JHH for a skull fracture and brain bleed. Mother reported that she accidentally dropped him on the concrete. The injury was reported as being consistent with the explanation, however, the hospital noted that the [M]other appeared to be high at the time of [H.D.]’s discharge.
* * * * *
- e. There are concerns about [nine-year-old J.M.]’s health. [J.M.] weighs 208 lbs, and is diabetic with sleep apnea. He is prescribed a special diet and was referred to a weight program. To date, [M]other has not followed through with J[M.]’s health appointments.
- f. [Two-year-old R.C.] suffers from temper tantrums, head banging, and has speech delays.
- g. [15-year-old N.D.] is diagnosed with autism, DiGeorge Syndrome, Congenital Facial Palsy, and is deaf in his left ear.
- h. On April 7, 2020, [the Department] received an abuse report concerning [N.D.]. He sustained bruising around both of his eyes, broken blood

vessels in his left eye, an abrasion on the left side of his face, a nose-bleed and scabbing around his nostrils. Ms. D[.] admitted to hitting him and pushing him. N[.D.] did not receive medical attention. Ms. [D.] was indicated [sic] for physical abuse.

- i. Chronic neglect includes Ms. D[.]’s failure to engage in mental health services for the children and herself, struggles with ensuring [J.M.] attends school, ensuring [J.M.] eats a healthy diet to address his diabetes and weight, ensuring the home is clean and safe, ensuring the children’s hygiene is addressed, providing proper supervision and parenting, and ensuring medication compliance for the children. Also concerning is Ms. D[.]’s lack of cooperation with the agency, refusal of [the Department’s] home visits, and being uncooperative and evasive with the current [Department] and police investigation.
- j. Mother’s chronic use of marijuana has impaired her judgment and parenting, thus, making her unable to provide proper care and attention to the children at this time.

The Department’s petition concerning R.C. averred that he should remain in shelter care “to protect [him] from serious immediate danger;” that “[t]here is no parent, guardian, or custodian or other person able to provide supervision;” that R.C.’s “continued placement in the home is contrary to [his] welfare . . . ; and removal from the home is reasonable under the circumstances;” and that “[r]easonable, but unsuccessful efforts were made to prevent or eliminate the need for removal from the child’s home.”

After a hearing on the same day, August 26,⁵ the juvenile court granted shelter care and placed R.C. temporarily in the care and custody of the Department and set a CINA adjudicatory hearing for September 23, 2020. The Department then placed R.C. and his siblings, N.D. and J.M., with his maternal cousin, Ms. G. H.D. remained at JHH in the burn unit.

⁵ The transcript from the August 26, 2020 hearing was not included in the record.

CINA Proceedings

On September 23, 2020, a magistrate judge conducted a virtual CINA adjudication and disposition hearing. Both Mother and R.C.’s father, Mr. C., were present and represented by counsel.⁶ The parties proceeded by proffer and submitted on the Department’s petition. Mother specifically agreed at the hearing that the court could sustain the allegations of abuse and neglect in the CINA petitions against her by a preponderance of the evidence. Because of the “possibility of criminal charges,” however, Mother did not admit to “the truth of the allegations” but presented that the court “could easily make the finding that the allegations are true.”

Father, who lives in New Jersey where he is employed as a truck driver, requested custody of R.C. He explained that he had filed for custody of R.C. in New Jersey, but, because Mother had fled New Jersey with R.C. and he did not know where she had gone, he had been unable to serve her. The Department agreed to transfer custody to Father conditioned upon the results of a criminal background check. Mother opposed placement of R.C. with Father alleging that she had left New Jersey to escape his abuse. Father offered that he did not have a criminal record and would allow the Department to conduct a background check immediately. The magistrate declared that she would recommend postponing the CINA disposition for R.C. for two weeks, until October 7th, for the parties to obtain additional information about Father but would recommend a finding of CINA for

⁶ R.C.’s paternal grandmother was present along with Father.

R.C.’s siblings.⁷ The magistrate memorialized her recommendations and findings in a proposed “CINA Adjudication/Disposition Findings and Order.” The juvenile court then entered the proposed order on October 2, 2020, which was electronically served on the parties through MDEC.

On October 7, 2020, the parties reconvened for the virtual CINA disposition hearing for R.C. before a magistrate. Mother and Father both were present, as well as R.C.’s paternal grandmother, and each parent/party was represented by counsel. The Department advised the magistrate that a Department employee had contacted New Jersey’s child protective services agency to request a background check on Father and subsequently received a letter from them stating that father had “no CPS history” and had “never been identified in New Jersey as an alleged abuser or neglecter in a [c]hild [p]rotective [s]ervices case.” The Department, however, did not have the results of father’s criminal background check yet because Father had not completed the requisite paperwork until October 2. Mother raised concerns about Father’s alleged unaddressed mental health and substance abuse issues. At the court’s request, father testified under oath.

Father testified that he had been honorably discharged from the armed services in 2014 because he could not be medically cleared due to an issue with his leg. He had undergone periodic routine psychological/psychiatric evaluations as a returning

⁷ See CJP § 3-819(e) (“If the allegations in the petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child, the court may not find that the child is a child in need of assistance, but, before dismissing the case, the court may award custody to the other parent.”).

Afghanistan veteran, and he had never been diagnosed with a mental health disorder or issue. He further testified that he had never been convicted of a crime of violence or a crime involving child abuse or neglect. Father stated that he had completed the criminal background clearance and stated that “[t]here should be nothing that shows up on that clearance.” He also recognized that R.C. and his brothers are “very close” and that he intended for R.C. and his brothers to maintain their close relationship.

R.C.’s temporary guardian, Ms. G., and her mother, with whom she lives, were also present at the hearing. The Department’s representative advised the court that Ms. G had a good opinion of Father and knew both Father and his family because “their families grew up together” in New Jersey. Based on interviews with Ms. G and her mother and New Jersey records, the representative reported that she had no information to indicate domestic violence between Mother and Father.

Ms. G. then advised the court that when Mother and Father were together in New Jersey, Father was the primary caretaker of all three children, and the children liked him. She related that father is “a good guy[;]” “his mom is great[;]” and “his family is wonderful.” By way of example, she told the magistrate that since the adjudicatory hearing, Father and his family have “offered their support to us[,even] with the other children that do not belong to [Father.]”

The magistrate stated that she would be recommending an immediate order transferring custody of R.C. to Father and closing R.C.’s CINA case. The magistrate asked whether any party would seek immediate review by a circuit court judge, and each party stated they would not. The magistrate additionally reminded the parties that if “anybody

in the next five days wishes to raise something . . . [they should f]ile exceptions[.]” The magistrate then clarified that she would “finish up this report” and prepare a separate CINA order and “standalone custody order.” The magistrate concluded, “I am going to finish up the order, I’m going to have it entered today. And it will be e-filed to all of the lawyers I believe by the end of today.”

According to MDEC, a proposed order containing the magistrate’s “CINA Disposition Findings and Order” was entered on October 7, 2020, the day of the hearing. The magistrate’s proposed disposition order awarded custody to Father; rescinded the Department’s custody; and terminated the court’s jurisdiction. The order contained the following notice:

EXCEPTIONS SHALL BE IN WRITING AND SHALL BE FILED WITH THE CLERK’S OFFICE WITHIN 5 DAYS OF SERVICE. THE FILING SHALL SPECIFY THOSE ITEMS TO WHICH EXCEPTIONS ARE TAKEN. COPIES OF EXCEPTIONS MUST BE SERVED ON ALL OTHER PARTIES INVOLVED IN THE CASE.

On October 16, 2020, having received no exceptions, the juvenile court adopted the magistrate’s disposition findings and proposed order and signed, dated, and entered an order on MDEC. The juvenile court’s order was then, according to MDEC, electronically served on the parties.

On October 22, 2020, 15 days after the disposition hearing before the magistrate, Mother filed a notice of exceptions to the magistrate’s findings and proposed order and requested a de novo hearing. Specifically, Mother averred:

1. That the [m]agistrate improperly concluded that the child should be placed with the [F]ather[,] and the case should be closed with custody to [F]ather.

2. Mother files these exceptions despite **never** having been served with the [m]agistrate’s Report and Recommendations in accordance with Maryland Rule 11-111. It is the service in accordance with that rule that starts the clock on the five-days to file exceptions.
3. Mother also notes that neither the [m]agistrate’s Report and Recommendations nor the [c]ourt order are docketed on MDEC to this date.
4. Mother further notes that the most recent document available on the MDEC attorney portal is the zoom notice in advance of the October 7, 2020 hearing.

The following day, the juvenile court denied her exceptions as “untimely filed.”

The court’s ruling was typed on Mother’s notice of exceptions and stated:

DENIED as untimely filed. The proposed Order states the parties were given the opportunity for a hearing on the recommendation of an immediate order and no one requested a hearing. The Order was signed on 10/16/2020 and the docket reflects copies were sent by MDEC to all parties.

Mother filed an appeal on November 16, 2016 from “the adjudication and disposition order” issued on October 16, 2020.

Standard of Review

The standard of review in CINA proceedings is well-established. Maryland courts utilize “three different but interrelated standards of review”:

When the appellate court scrutinizes factual findings, the clearly erroneous standard of Rule 8-131(c) applies. Second, if it appears that the court erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the court founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the court’s decision should be disturbed only if there has been a clear abuse of discretion.

In re Adoption/Guardianship of C.E., 464 Md. 26, 47 (2019) (brackets omitted) (quoting *In re Adoption/Guardianship of Ta’Niya C.*, 417 Md. 90, 100 (2010)).

DISCUSSION

I.

Notice of Exceptions

A. Parties’ Contentions

Mother asserts that the juvenile court erred in denying her exceptions and request for a de novo hearing as untimely filed. Specifically, Mother claims that, because there was a genuine dispute about whether she was served with the magistrate’s findings and proposed order as required by Maryland Rule 11-111(b), the juvenile court erred in “denying the exceptions immediately, and should have at least held a hearing regarding whether Ms. D. was served.” She asks us to reverse the juvenile court’s denial of her exceptions and remand for an exceptions hearing.

The Department responds that, contrary to the MDEC entry, the “magistrate did not file a written report, recommendation, or proposed order on MDEC on October 7, or thereafter[.]” Nonetheless, the Department argues that the juvenile court did not err in denying Mother’s exceptions because Mother relinquished her right to judicial review in two ways: “first, by declining the magistrate’s offer of” immediate judicial review; and second, by filing her exceptions after the exceptions’ period had expired.” R.C. likewise argues that we should uphold the juvenile court’s ruling because Mother was given an opportunity for immediate review of the magistrate’s ruling and was on notice that the

magistrate intended to file her findings and proposed order the day of the disposition hearing.⁸

In her reply, Mother contends that she did not relinquish her right to file exceptions by declining to file them by the time specified by the magistrate at the October 7 hearing. Mother avers that the magistrate’s oral notice “absolutely cannot stand in place of the requirement that counsel may file exceptions to the recommendations five days after service.” Concerning Mother’s failure to provide an affidavit regarding her contention that she was not served with the magistrate’s findings and proposed order, Mother avers that her trial counsel has the professional responsibility of candor toward the court and “presented a true dispute as to the factual question of whether counsel was served with the recommendations to trigger the five-day period[.]”

B. Analysis

We apply the same principles of interpretation to the statutes and Maryland Rules that govern in this case. *Davis v. Slater*, 383 Md. 599, 604 (2004) (citations omitted). Specifically,

We begin our analysis by first looking to the plain meaning of the rule’s language, our examination of which is guided by the principle that we should read the rule as a whole, so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory. If the language of the rule is subject to more than one interpretation, it is ambiguous, and we resolve that ambiguity by looking to legislative history, case law, and

⁸ R.C. additionally asserts that Mother’s service of process argument is moot, because “no hearing occurred on June 3, 2020,” and “[t]here is no remedy this Court can grant to Mother concerning a court hearing that never occurred.” We can quickly dispose of this form over substance argument because it is clear that the parties and the court understood that Mother was obviously mistaken when she referred to the disposition hearing as occurring on June 3, 2020, when it had, in fact, occurred on October 7, 2020.

statutory purpose. If, however, the rule is clear and unambiguous, we need not look beyond the provision’s terms to inform our analysis. In construing the meaning of the rule’s language, however, our primary goal is always to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by a particular provision, be it statutory, constitutional or part of the Rules.

In re Kaela C., 394 Md. 432, 467-68 (2006) (quotation marks and citations omitted) (cleaned up). We are mindful that, when construing rules, “we must bear in mind that they are precise rubrics, established to promote the orderly and efficient administration of justice, and thus are to be strictly followed.” *Id.* at 471 (quotation marks and citations omitted).

Magistrates and juvenile proceedings

Section 3-807 of the Courts and Judicial Proceedings Article grants magistrates the authority to conduct juvenile proceedings and states in relevant part:

(b)(1) A magistrate appointed for juvenile causes may conduct hearings.

(2) Each proceeding shall be recorded, and the magistrate shall make findings of fact, conclusions of law, and recommendations as to an appropriate order.

(3) The proposals and recommendations shall be in writing, and, within 10 days after the hearing, **the original shall be filed with the court and a copy served on each party to the proceeding.**

(c)(1) Any party, in accordance with the Maryland Rules, may file written exceptions to any or all of the magistrate’s findings, conclusions, and recommendations, but shall specify those items to which the party objects.

* * *

(d)(1) The proposals and recommendations of a magistrate for juvenile causes do not constitute orders or final action of the court.

(2) The proposals and recommendations shall be promptly reviewed by the court, and, in the absence of timely and proper exceptions, they may be adopted by the court and appropriate orders entered based on them.

CJP § 3-807 (emphasis added). Maryland Rule 11–111 expands on a magistrate’s and juvenile court’s duties. Specifically, the Rule requires a magistrate to transmit a “written report” following the conclusion of a disposition hearing. Md. Rule 11-111(b). The Rule provides, in pertinent part:

b. Report to the court. Within ten days following the conclusion of a disposition hearing by a magistrate, he shall transmit to the judge the entire file in the case, together with a written report of his proposed findings of fact, conclusions of law, recommendations and proposed orders with respect to adjudication and disposition. A copy of his report and proposed order shall be served upon each party as provided by Rule 1–321.[⁹]

c. Review by court if exceptions filed. Any party may file exceptions to the magistrate’s proposed findings, conclusions, recommendations or proposed orders. Exceptions shall be in writing, filed with the clerk within five days after the magistrate’s report is served upon the party, and shall specify those items to which the party excepts, and whether the hearing is to be de novo or on the record.

Upon the filing of exceptions, a prompt hearing shall be scheduled on the exceptions. An excepting party other than the State may elect a hearing de novo or a hearing on the record. . . .

d. Review by court in absence of exceptions. In the absence of timely and proper exceptions, the magistrate’s proposed findings of fact, conclusions of law and recommendations may be adopted by the court and the proposed or other appropriate orders may be entered based on them. The court may remand the case to the magistrate for further hearing, or may on its own

⁹ In the present case, the magistrate’s document is titled, “CINA Disposition Findings and Order.” The MDEC entry titles the document as a “Proposed Order/Decree CINA Disposition Findings and Order.” Although the document is not referred to as a “report,” it is clear from its form and substance that it meets the requirements of a report as intended under the rule, because it provides the magistrates “proposed findings of fact, conclusions of law, recommendations and proposed orders with respect to adjudication and disposition.” See Md. Rule 11-111(b).

motion, schedule and conduct a further hearing supplemented by such additional evidence as the court considers relevant and to which the parties raise no objection. Action by the court under this section shall be taken within two days after the expiration of the time for filing exceptions.

(Emphasis added.) Therefore, a party wishing to contest a magistrate’s disposition findings and proposed order must file exceptions within a narrow time frame; specifically, within five days after being served with the magistrate’s written report.

Service of process

Maryland Rule 1-321, which governs service of pleadings and papers, provides:

- (a) **Generally.** Except as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleadings shall be served upon each of the parties. If service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at the office of the person to be served with an individual in charge[.] . . . Service by mail is complete upon mailing.

Title 20 of the Maryland Rules, entitled “Electronic Filing and Case Management,” governs all “new actions and submissions” in “MDEC Counties.” *See* Md. Rule 20-102(a); *see also* Md. Rule 20-101(m) (defining MDEC Counties). Although all Maryland Rules continue to apply to cases filed in MDEC Counties, “[t]o the extent there is any inconsistency, the Rules in [] Title [20] prevail.” Md. Rule 20-102(c). At all relevant times in this case, Howard County was an MDEC County. *See* Maryland Electronic Courts, Archives (Updates/Alerts), <https://mdcourts.gov/mdec/latestupdatesarchive#mdecnorthcentral> (explaining that Howard County became a MDEC County on April 16, 2018).

Maryland Rule 20-201, captioned “Requirements for Electronic Filing,” states that “[a] registered user who files a submission and who will be entitled to electronic service of subsequent submissions in the action shall include in the submission accurate information as to the e-mail address where such electronic service may be made upon the registered user.” Md. Rule 20-201(f) (emphasis added). Maryland Rule 20-106(a)(2) requires that “judges, judicial appointees, clerks, and judicial personnel, shall file electronically all submissions in an MDEC action.” More specifically, Rule 20-205(d)(1) commands that “[o]n the effective date of filing, the MDEC system shall electronically serve on registered users entitled to service all other submissions filed electronically.”¹⁰ A “submission” is defined as “a pleading or other document filed in an action.” Md. Rule 20-101(u).

In the specific instance of a CINA disposition, service of the magistrate’s report protects a parent’s right to file exceptions and, ultimately, their parental rights. Each parent has a constitutionally protected “liberty interest in raising his or her children as he or she sees fit, without undue interference by the State.” *In re Yve S.*, 373 Md. 551, 565 (2003). Of course, this interest is not absolute but “must be balanced against the fundamental right

¹⁰ In certain circumstances, the court in an MDEC County can still, however, exact service by paper:

The clerk is responsible for serving writs, notices, official communications, court orders, and other dispositions, in the manner set forth in Rule 1-321, on persons entitled to receive service of the submission who (A) are not registered users, (B) are registered users but have not entered an appearance in the MDEC action, and (C) are persons entitled to receive service of copies of tangible items that are in paper form.

Md. Rule 20-205(c) (emphasis added).

and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect.” *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497 (2007).

It is axiomatic that “[s]tatutory provisions entitling a litigant to service necessarily affect the litigant’s rights and obligations.” *Barrett v. Barrett*, 240 Md. App. 581, 590 (2019). As this Court further explained in *Barrett*:

an “express provision for notice to the litigants overrides our often stated proposition that it is the duty of the defendant to keep himself informed as to what is occurring in the case.” *Gov’t Emps. Ins. Co. v. Ropka*, 74 Md. App. 249, 255, 536 A.2d 1214 (1988) (brackets and citation omitted). In other words, a rule requiring the court to serve the parties “entitl[es] counsel to rely upon the clerk for notice of particular entries on the docket,” *Md. Metals, Inc. v. Harbaugh*, 33 Md. App. 570, 575-76, 365 A.2d 600 (1976), rather than “monitor[ing] the dockets for when pleadings and other documents are filed.” *Estime v. King*, 196 Md. App. 296, 304, 9 A.3d 148 (2010). The court’s “[f]ailure to provide a copy of an order required to be sent by Rule 1-324 can be grounds for exercising the court’s revisory power.” *Ropka*, 74 Md. App. at 255, 536 A.2d 1214.

Id.

Returning to the case on appeal, under the plain wording of the Maryland Rules, a copy of the magistrate’s report and proposed order was required to have been electronically served upon the parties. In her notice of exceptions, Mother contends that she was never served with “the Magistrate’s Report and Recommendations in accordance with Maryland Rule 11-111.” Based on the record before us, we cannot determine whether the juvenile court found that Mother had been properly served with the report, which would trigger her time to file exceptions under Maryland Rule 11-111(c). Although the court observed that Mother was provided an opportunity for a recommendation of an immediate order, and that

Mother was served with a copy of the court’s order issued on October 16, the court’s ruling is silent on the question of whether Mother was served with the magistrate’s findings and proposed order. Neither the magistrate’s oral notice nor service of the final order satisfied the requirement that Mother be served a copy of the magistrate’s findings and proposed order.

The Department and R.C. aver that Mother “relinquished her right to be heard by a judge in two ways: first, by declining immediate judicial review; and second, by filing her exceptions after the exceptions’ period had expired.”

First, Mother did not relinquish her right to judicial review by declining the magistrate’s offer for immediate review of her proposed order to transfer custody. We observe that a magistrate’s shelter care order is subject to immediate judicial review, but a magistrate’s proposed order/recommendations on disposition is not. *Compare* Md. Rule 11-111(a), *with* Md. Rule 11-111(c). Rather, Rule 11-111(c) clearly provides that a party has five days to file exceptions for judicial review of a magistrate’s proposed disposition order, containing its findings and recommendations, and the tolling of that time period does not begin until the party has been served with the proposed order. The fact that Mother declined immediate judicial review did not in any way trigger a requirement for Mother to file her exceptions or foreclose her ability to file exceptions. *See Kaela C.*, 394 Md. at 472 (an immediate order “cannot be interpreted in such a way as to obviate a party’s right to Rule 11-111(c)’s five-day exceptions period.”).

Second, Mother did not relinquish her right to judicial review of her exceptions because she was orally advised of her right and failed to timely file her exceptions. The

Department argues that Mother was “put on notice” when the magistrate intended to file her proposed order, and when that did not happen, Mother failed to exercise “due diligence” in following up on the magistrate’s stated intentions as to when she would file her proposed order. As we address above, Mother’s right to file exceptions was not triggered by oral notice but required being served with the magistrate’s findings and proposed order in accordance with Maryland Rule 11-111. Although Rule 2-541(e), governing magistrates in civil proceedings in circuit court, states that a “magistrate shall notify each party of the proposed recommendation, either orally at the conclusion of the hearing or thereafter by written notice served pursuant to Rule 1-321[.]” as the Department admits, Md. Rule 1-101(b) provides that Title 2 does not apply to “Juvenile Causes under Title 11 of these Rules[.]”¹¹ Instead, the plain language of Maryland Rule 11-111(b) requires the magistrate to file a “written report” and order.

Accordingly, for all of the reasons explained above, we vacate the juvenile court’s October 16, 2020 order and remand to that court with instructions to determine whether the magistrate’s proposed “CINA Disposition Findings and Order,” filed on October 7, 2020, as shown on MDEC, was served on the parties in accordance with CJP §3-807(b)(3) and Maryland Rule 11-111(b). Specifically, the juvenile court should determine whether the requisite “copy of [the report] and proposed order” was served upon Mother as provided

¹¹ The Department notes that Mother did not file an affidavit to verify that she never received the October 7 proposed order. While an affidavit is required to support “facts not contained in the record” in proceedings in civil actions before the circuit court and appellate review in the Court of Appeals and the Court of Special Appeals, *see* Md. Rules 2-311(d), 8-431(c), there is not an equivalent rule for proceedings for juvenile causes under Title 11.

by Maryland Rule 20-205(d)(1), or otherwise under Maryland Rule 1-321. If the juvenile court finds that the magistrate’s “CINA Disposition Findings and Order” filed on October 7 satisfied the service requirement, then the exceptions were properly dismissed because Mother filed her exceptions well beyond the five days. On the other hand, if the juvenile court finds that the “CINA Disposition Findings and Order” was not served as required by law, then the court must set the case back in for hearing on the exceptions.

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY VACATED;
CASE REMANDED TO THE CIRCUIT
COURT FOR PROCEEDINGS
CONSISTENT WITH THIS OPINION;
COSTS TO BE PAID BY APPELLEES.**