Circuit Court for Baltimore City,
Case No.: 818207001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1127

September Term, 2019

IN THE MATTER OF D.N., III

Kehoe,
Nazarian,
Gould,

JJ.

Opinion by Gould, J.

Filed: March 5, 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.

Mr. N. appeals from the order of the Circuit Court for Baltimore City, sitting as a juvenile court, finding that his seven year old child, D.N., III ("D.N."), was a child in need of assistance ("CINA"), and allowing him neither custody nor unsupervised visitation and awarding custody of D.N. to his paternal grandmother.[1] Because we believe that the juvenile court did not abuse its discretion in its ruling, we affirm.

FACTS AND LEGAL PROCEEDINGS

Mr. N. and Ms. E. are the biological parents of D.N. They have had an abusive relationship; each has claimed to be a victim of physical violence perpetrated by the other. In 2015, Ms. E. obtained a protective order against Mr. N., and in 2018, Ms. E. was arrested and subsequently convicted of second-degree assault of Mr. N. As a result of Ms. E.'s conviction, Mr. N. was given primary custody of D.N.

The family was investigated by Child Protective Services ("CPS") in 2015, for neglect, substance abuse, and domestic violence issues. Prior to that, in 2008 and 2009, Ms. E. had been evaluated by CPS with regard to D.N.'s older brother. D.N.'s brother was ultimately found to be a CINA, Ms. E.'s parental rights were terminated, and he was

[1] Section 3-801(f) of the Maryland Code Annotated Courts and Judicial Proceedings Article ("CJP") (1974, 2013 Repl. Vol.), defines a CINA as:

> . . . 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.

committed to the Baltimore City Department of Social Services (the "Department") for placement with a relative.

On July 25, 2018, after receiving a CPS report of physical abuse and/or neglect,[2] both a Department worker and the police went to Mr. N.'s home to investigate, but Mr. N. would not let them inside. Instead, Mr. N. brought D.N. to the door, and the police took him to Johns Hopkins Hospital for a physical examination. Mr. N.'s position was that "he considered state agencies and police to be corrupt, his home was raided with [a] warrant for weapons, drugs were found and that was used against him in court in violation of his constitutional rights; and the Department home assessment request constituted double jeopardy since CPS had already been to his home."

At the hospital, D.N. reported that his father hit him and sat on him, making it hard for D.N. to breathe. The Department worker also observed that D.N. was very dirty and had several rotten teeth. Based on her observations and D.N.'s statement, the worker made a finding of physical abuse.[3]

Mr. N. arrived at the hospital screaming and irate. Upon inquiry, he acknowledged that D.N. had not been to the dentist since he was six, but blamed Ms. E. because he had

[2] This report came from D.N.'s great-grandmother.

[3] CJP § 3-801(b)(2)(i) defines abuse, in relevant part, as "[p]hysical or mental injury of a child under circumstances that indicate that the child's health or welfare is harmed or is at substantial risk of being harmed by: (i) A parent or other individual who has permanent or temporary care or custody or responsibility for supervision of the child."

given Ms. E. money for D.N.'s dental care. Because of the condition of D.N.'s teeth, the Department worker made a finding of neglect.[4]

That same day, D.N. was placed in the custody of the Department under an emergency authorization. The next day, the Department filed a petition with a request for shelter care, and he was sheltered to the Department for placement with a relative. In a CINA order approved on that day, the court found that D.N. was a CINA. The court further determined that:

> continued residence in the home is contrary to the welfare of the child and it is not now possible to return the child to the home because of the following reasons: Dental care including anesthesia and surgery. [R]easonable efforts to prevent removal from the home as required by 42 U.S.C. Section 672(a)(1) and defined by 42 U.S.C. 671(a)(15) were not made because of the emergent nature of the situation. The basis for this finding is: Allegations of physical abuse by father. Mother has prior CPS history and history of addiction. Baltimore City Department of Social Services is directed to provide care and custody for the child in shelter care with relative placement, not to exceed the next hearing date. Baltimore City Department of Social Services and or Valerie S[.[5]] is hereby granted the authority to consent to the provision of routine and evaluative medical care[,] also authorized to make travel and educational decisions[.] Dental care including anesthesia and surgery[.]

D.N. had to have eight teeth removed and eight teeth capped with spacers and retainers.

On August 7, 2018, November 16, 2018, November 20, 2018, and December 14, 2018, additional hearings were held, and each time, D.N.'s CINA finding was continued.

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[4] CJP § 3-801(s)(1) defines "neglect" as the "failure to give proper care and attention to a child by any parent or individual who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate . . . [t]hat the child's health or welfare is harmed or placed at substantial risk of harm."

[5] Valerie S. or V.S. is D.N.'s paternal grandmother.

Throughout this time, Mr. N. filed numerous petitions for a review of the shelter order, all of which were denied.[6]

Between September 2018 and February 2019, the Department met with Mr. N. in an attempt to set up a service agreement. In December 2018, the Department provided Mr. N. with a copy of the service agreement and referrals for services. The service agreement required Mr. N. to undergo drug screening, attend anger management and parenting skills classes, and obtain appropriate housing. Mr. N. did not sign the agreement.

On January 18, 2019, the shelter order was continued, the magistrate recommended that the facts be sustained, and the adjudication hearing was converted to a contested disposition. On April 15, 2019, a disposition hearing was held before a magistrate, which was continued to April 19, 2019 and June 7, 2019.

At the disposition hearing, the following facts were alleged:

- As of April 15, 2019, Mr. N. still had not signed a service agreement.
- In December 2018, the Department had referred Mr. N. to Partners in Recovery for a drug assessment, but, as of April 15, 2019, he had not had an assessment.
- On October 12, 2018, the Department referred Mr. N. to anger management classes and parenting classes through the Family Tree. Although Mr. N. began attending parenting classes, as of April 15, 2019, there was no evidence that he had completed the classes or attended anger management classes.

[6] During this time, Mr. N. also filed motions related to the Department's ability to consent to vaccinations of D.N., which Mr. N. opposed. Ultimately, Mr. N. filed an appeal related to this issue, which we dismissed.

- In January 2019, the Department tried to get Mr. N. to attend a domestic violence screening to determine whether services would be required. Mr. N. was not amenable to receiving any services for domestic violence.

- Despite the need to have appropriate housing for D.N., in January 2019, Mr. N. stated that he would not allow an inspection of his home.

At the April 15, 2019 hearing, at the request of the magistrate, the Department met with Mr. N. about his service agreement. They agreed to a service agreement that required him to participate in a domestic violence male victim program, anger management and parenting classes, a substance abuse assessment, and obtain stable housing.

On June 7, 2019, the magistrate recommended that D.N. be declared a CINA and committed D.N. to the Department for placement with a relative, his paternal grandmother. Mr. N. filed exceptions to this order.

On August 8, 2019, the parties appeared in the circuit court, sitting as a juvenile court, to hear Mr. N.'s exceptions. After hearing the parties' arguments, the court ruled, as follows:

> The Court finds that there was ample evidence to find that [D.N.] had been abused and/or neglected, and that neither parent was able or willing to care for [D.N.].
>
> At adjudication both the Department and [Mr. N.] put on testimony from CPS workers, Paternal Grandmother, as well as Mother, and it included medical records.
>
> The Court does find that there was no witness who testified to their observations as to [Mr. N.'s] sleeping arrangements with Father.
>
> Nor were there school records that were introduced or testified to by [the Department caseworker].
>
> At disposition, the Court rightly concluded that Father had not made any significant progress with his service agreement.

> That Father's home did not pass inspection to be safe.
>
> That Father had not resolved the issue of domestic violence, and per the Department proffer, as a victim.
>
> And that the father indicated that he did not need anger management. Where many of the allegations in the petitions were based on, as characterized by the transcript, his inability to control his temper. That he provided no documentation as to his compliance therein, and any recommendations by Healthcare for the Homeless.
>
> The facts as iterated by the magistrate -- the facts sustained as iterated by the magistrate in the record met the standard of a preponderance of the evidence to conclude that the respondent was a child in need of assistance. And, again, it's the lowest possible legal standard we have.
>
> The Court also indicated that he wasn't inclined to make a finding with regard to 9-101.[7] And I think that's because over the length of this case, or at least at some point during this case, he suspended . . [the] disposition, to give the parent the opportunity to work with the Department to meet the benchmarks, which would put them in a better place in terms of their relationship with their son.
>
> And for those reasons, the Court is going to overrule -- not -- overrule the exception, and find that the magistrate did not err in his findings or his conclusions and his recommendations.
>
> The Court will uphold the magistrate's order of June 7, 2019.
>
> And visitations will remain the same.

In its written order, the court stated that D.N. was a CINA, not only because Mr. N. failed to give proper care and attention to D.N., but also because Mr. N. and Ms. E. were "unable or unwilling to give proper care and attention to the Respondent and the Respondent's needs." As to Mr. N., the court stated:

> The court cannot specifically find that there is no likelihood of further child

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[7] The court was presumably referring to Md. Ann. Code Family Law ("FL") (1984, 2012 Repl. Vol.) § 9-101.

> abuse or neglect by Respondent's father: the Respondent's father has child protective services history dating back to 2015 related to neglect, substance abuse issues, and domestic violence issues; the Respondent's father has a history of domestic violence issues and has not completed domestic violence counseling (victim and perpetrator); the Respondent's father has not completed anger management; the home of the Respondent's father has not been re-assessed.

The court also noted that D.N. "look[ed] great" in his grandmother's care and stated:

> [D.N.] resides with his grandmother and they've had a wonderful summer. He is going to camp, and he really likes the pool. He likes to eat everything. He had an IEP, and he is scheduled to resume his education in the Fall (2nd grade). He receives supplemental work through Kumar for reading and math. He is on the waiting list for Kennedy Krieger Institute. He had a physical in 2019, and there are no known concerns. He had a dental in 2019, and follow up is scheduled in late August 2019.

The court ruled that D.N. was a CINA, committed D.N. to the Department for placement with a relative, and awarded limited guardianship of D.N. for medical, dental, educational, psychiatric/psychological, and out-of-state travel purposes to the Department and/or V.S.

This timely appeal followed.[8]

[8] D.N. filed a motion to dismiss the appeal as moot and also filed an opposition to Mr. N.'s opening brief. D.N. voluntarily dismissed his motion and opposition.

DISCUSSION

Mr. N. presents three questions for review, which we have rephrased as follows:[9]

1. Did the circuit court err in finding D.N. to be a CINA?
2. Did the circuit court err in denying custody to Mr. N.?
3. Did the circuit court err in failing to award to Mr. N. unsupervised visitation of D.N.?

STANDARD OF REVIEW

In reviewing a decision of a juvenile court, courts apply three different levels of review:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard . . . applies. [Secondly,] if it appears that the [juvenile 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 [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [juvenile court's] decision should be disturbed only if there has been a clear abuse of discretion.

In re Shirley B., 419 Md. 1, 18 (2011) (quoting In re Yve S., 373 Md. 551, 586 (2003)).

"CINA cases 'are very often fact-intensive[,]'" which is why "trial courts are endowed with great discretion in making decisions concerning the best interest of the

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[9] Mr. N.'s questions presented are as follows:

1. Did the court commit error in finding that D.N. was in need of assistance, when he was not at a substantial risk of harm and his father was willing and able to give him proper care and attention?
2. Did the court err when it resorted to the drastic remedy of denying Mr. N. custody of D.N.?
3. Did the court commit error by refusing to find that no further abuse or neglect by Mr. N. would occur, such that the court should have ordered unsupervised visitation between D.N. and Mr. N.?

child." In re Adoption/Guardianship of Amber R., 417 Md. 701, 713 (2011) (citations and quotations omitted). We give "the greatest respect" to the juvenile court's opportunity to view and assess the witnesses' testimony. Id. at 719. Thus, in order to find that a court abused its discretion, the decision "has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." In re Shirley B., 419 Md. at 19 (quoting In re Yve S., 373 Md. at 583-84).

ANALYSIS

D.N.'s CINA Finding

The Basis for a CINA Finding

A parent is vested with a constitutionally protected fundamental liberty interest in the care, custody, and control of his child without the State's interference. In re Yve S., 373 Md. at 565. And, there is "a substantive presumption—a presumption of law and fact—that it is in the best interest of children to remain in the care and custody of their parents." In re Adoption/Guardianship of Rawhawn H., 402 Md. 477, 495 (2007).

The parent's interest is not absolute. In re Mark M., 365 Md. 687, 705 (2001). A parent's liberty interest in the care and custody of their children must "be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect." Rashawn H., 402 Md. at 497. "[W]here the fundamental right of parents to raise their children stands in the starkest contrast to the State's effort to protect those children from unacceptable neglect or abuse, the best interest of the child remains the ultimate governing standard." In re Shirley B., 419 Md. at 21 (quoting Rashawn H., 402 Md. at 495).

As part of the legislative scheme to "address those situations where a child is at risk because of his or her parents' inability or unwillingness to care for him or her," the juvenile court may declare a child to be in need of assistance. In re Adoption/Guardianship No. 10941 in the Circuit Court for Montgomery County, 335 Md 99, 103 (1994). Maryland courts have "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 Mark M., 365 Md. at 706.

The Parties' Contentions

Mr. N. makes several arguments in support of his contention that the circuit court erred in finding D.N. to be a CINA. Mr. N. argues:

1. "The risk of harm to D.N. by Mr. N. was non-existent by the June 2019 hearing";
2. His visits with D.N. demonstrate that they have a close and positive relationship;
3. He made "substantial progress" towards reunification such that "D.N. was not at substantial risk of harm";
4. He "demonstrated his willingness and ability to meet D.N.'s needs";
5. There is no basis for the court's finding because he "satisfied the department's request to take a parenting class";
6. As to the allegations of neglect, his conduct did not "rise to the level of [an] 'overreaching pattern' such that the court could determine his future conduct";
7. The court "heard insufficient evidence to find that D.N. was a CINA because Mr. N. was willing and able to give D.N. proper care and attention"; and
8. The court did not find that he abused D.N., only that he "failed to give proper care and attention to [D.N.] under circumstances that indicate that the child's welfare is harmed or placed at a significant risk of harm[.]"

Preliminarily, the State contends that Mr. N. never challenged any of the court's findings of fact, and that, therefore, "he has entirely failed to establish that those findings were clearly erroneous."

The State also contends that the court correctly found that Mr. N. neglected D.N. and that D.N. is a CINA, based on the court's findings that: (1) Mr. N. neglected D.N.'s teeth; and (2) that Mr. N. is unable to provide D.N. with proper care and attention. In addition, the State contends that the evidence of D.N.'s extensive dental problems while being cared for by Mr. N. supports a finding that D.N. suffered actual harm from Mr. N. The State further contends that Mr. N. has resisted the Department's efforts to mitigate his neglect of D.N., including his "unresolved anger issues and refusal to have his home assessed for D.N.'s safety," and that his history of neglect of D.N. dates back to 2015.

Analysis

As the Department argues, Mr. N. does not challenge the juvenile court's findings of fact, but instead contends that the court's findings do not support its conclusion. In any event, we will not second-guess the court's factual findings. See State Sec. Check Cashing, Inc. v. American Gen. Financial Serv. (DE), 409 Md. 81, 110 (2009) (quotation omitted) (noting that "the appellate court should not substitute its judgment for that of the trial court on its findings of fact").

As stated above, in April 2019, the Department and Mr. N. created a service agreement that required him to participate in a domestic violence male victim program, substance abuse assessment, anger management and parenting classes, and obtain stable

housing. While Mr. N. argues that he made substantial progress towards these goals, he could not substantiate sufficient effort or progress in the majority of the requirements:

- Domestic violence - The court found that Mr. N. did not resolve the issue of his domestic violence treatment. Mr. N. does not dispute that he has not attended any domestic violence class. Instead, Mr. N. blames the Department for his failure to attend, claiming that his "struggles with the domestic violence programming were not for lack of effort: he continued to try to enter programming as a male victim of domestic violence but had been thwarted in his efforts, and the department was lackadaisical in its efforts to follow up and provide the correct referrals for Mr. N."

- Substance abuse - Mr. N. contends that even though he maintains he does not have a substance issue, he "completed a screening assessment through Mosaic and signed a release."

- Anger management - At the hearing, the court found that Mr. N. indicated that he did not need anger management, notwithstanding that many of the allegations against him were based on his inability to control his anger. The court further found that he could not document that he had taken any courses or acted on any of the suggestions that were made to him. Here, Mr. N. reiterates his claim that he attended three sessions of anger management at Healthcare for the Homeless with "Greta," but that the Department could not verify his status because he could not provide more than the name of "Greta."

- Parenting - Mr. N. contends that he satisfied the Department's "request to take a parenting class." As of April 15, 2019, however, there was no evidence that he had completed the classes.

- Housing - The court concluded that Mr. N.'s home did not pass inspection. Mr. N. argues that although in June 2019, the house did not pass inspection because he had a hole in his basement and a low-hanging cable wire, it is nonetheless acceptable because he told the Department that he would lock the basement door so that D.N. would not be able to access that floor. He concedes, however, that he did not ask for a reassessment of his house, and the Department contends that he has refused to permit a reassessment of his house.

We find that the court did not err in finding that Mr. N. had not "substantially complied with his service programming between April and June 2019 [or] showed that he

was willing and able to care for D.N." To the contrary, Mr. N. failed to demonstrate that he has made much, if any, progress towards his goals, and certainly not "substantial progress" towards reunification, and similarly failed to "demonstrate[] his willingness and ability to meet D.N.'s needs." The record evidence reveals little, if any, effort by Mr. N. to modify his behavior and otherwise comply with the service agreement that he signed.

When assessing whether a child is a CINA, the State has "a right—and indeed a duty—to look at the track record, the past, of [the parent] in order to predict what her future treatment of the child may be." In re Dustin T., 93 Md. App. 726, 735 (1992). The juvenile court "need not wait until the child suffers some injury before determining that he is neglected." In re Nathaniel A., 160 Md. App. 581, 596 (2005) (quotation omitted)). "This would be contrary to the purpose of the CINA statute" which "is to protect children—not to wait for their injury." Id. (quotation omitted). Further, "[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)).

Here, the record contains ample, unobjected-to evidence that raises significant questions regarding Mr. N.'s fitness as a parent. While living with Mr. N., D.N.'s teeth deteriorated to such an extent that he needed numerous extractions and substantial dental work, which resulted in the Department's finding that D.N. was neglected. Similarly, after hearing D.N.'s allegations that Mr. N. sat on him and made it difficult for him to breathe and after observing that D.N. was dirty and had rotting teeth, the Department determined that D.N. suffered from abuse. In addition, there is no evidence that Mr. N. made or is

willing to make any real and concrete changes to his lifestyle or to his care of D.N. that demonstrates that neglect and abuse would not recur.

The record reflects that the juvenile court appropriately considered the future risk of harm to D.N. by evaluating the totality of the circumstances. The juvenile court reasonably concluded that D.N.'s health and welfare would be placed at substantial risk of harm in Mr. N.'s care. See In re Priscilla B., 214 Md. App. at 621 ("In determining whether a child has been neglected, a court may and must look at the totality of the circumstances . . . ."). Further, the court was justifiably impressed by how D.N. was thriving under the care of V.S.

The court's ultimate determination that D.N. was a CINA was based on proper factual findings and correct legal principles. As such, based on the record here, the broad discretion afforded to trial courts in CINA cases, and the trial court's overriding legal and policy purpose of protecting a child's best interests, we conclude that the trial court did not abuse its discretion by finding D.N. to be a CINA and concluding that Mr. N. was "unable and unwilling to give proper care and attention to [D.N.] and [D.N.]'s needs." This decision was especially appropriate given D.N.'s young age and complete dependence upon his caregiver.

Custody and Visitation of D.N.

Mr. N. argues that the court erred in not granting him custody or unsupervised visitation. We disagree.

"Child custody and visitation decisions are among the most serious and complex decisions a court must make, with grave implications for all parties." Conover v. Conover,

450 Md. 51, 54 (2016). These decisions are "within the sound discretion of the trial court, not to be disturbed unless there has been a clear abuse of discretion." Barrett v. Ayres, 186 Md. App. 1, 10 (2009); see Domingues v. Johnson, 323 Md. 486, 492 (1991) (custody decisions are "unlikely to be overturned on appeal"). The court's primary objective, when deciding disputes over child access, "is to serve the best interests of the child." Conover, 450 Md. at 60.

Section 9-101 of the Family Law Article dictates the procedure for deciding custody if the court reasonably believes a parent neglected or abused the child.[10] This statute concerns two competing interests: (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.

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[10] When it made its decision, the court stated that the magistrate "indicated that he wasn't inclined to make a finding with regard to 9-101. And I think that's because over the length of this case, or at least at some point during this case, he suspended . . . [the] disposition, to give the parent the opportunity to work with the Department to meet the benchmarks, which would put them in a better place in terms of their relationship with their son." It is clear from the juvenile court's decision, however, that it followed the requirements of FL § 9 -101.

Section 9-101 reflects a presumption "that a child's best interest is not served by placing the child in the custody of someone with a history" of child abuse or neglect. In re Adoption No. 12612 in Circuit Court for Montgomery Cty., 353 Md. 209, 238 (1999). This statute "dictates that, if the court . . . has reasonable grounds to believe that a child . . . has been abused or neglected by a party to the proceeding, the court must determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to . . . the party responsible for the abuse or neglect." Id. at 234. "Unless the court specifically finds that there is no likelihood of further abuse or neglect by that party, it must deny custody or visitation rights to that party except for a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child." Id.

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 by the party." Id. The court is "explicitly prohibited from granting custody or unsupervised visitation to a party who has abused or neglected a child unless the court specifically finds that there is no likelihood of further abuse or neglect." Id. Further, the burden is on the parent found to have neglected or abused the child to "adduce evidence and persuade the court to make the requisite finding under § 9-101(b)." Id. (quoting In re Yve S., 373 Md. at 587).

Here, for the first step, the court had previously found that Mr. N. both abused and neglected D.N. As to the second step, the court found that it could not "specifically find

that there is no likelihood of further child abuse or neglect by [Mr. N.]." The court therefore determined that it was in the best interest of D.N. to award custody to his paternal grandmother, a situation that the court observed benefitted D.N.

In arguing that the court erred in its decision, Mr. N. contends that denying custody to a parent requires more proof than declaring a child to be a CINA,[11] and that the court did not meet the higher standard of proof. While that may be true, that is not relevant here, because the court had already made a finding that Mr. N. abused and neglected D.N. See FL § 9-101.

Mr. N. additionally claims that the decision was in error because D.N.'s issues with his teeth have already been resolved, and because Mr. N. took a parenting class to resolve the abuse issues. He contends that the only issues remaining are "not 'urgent' ones." According to Mr. N.:

> Though he may have displayed frustration to the court regarding the CINA process, Mr. N. never demonstrated anger or frustration towards D.N. during their visits, and D.N. did not fear his father. Mr. N. also specifically disclaimed any substance use issues, and the department's insistence on a substance abuse evaluation could have been easily replaced by a less time-intensive process, such as random use substance screening. And assuming, *arguendo*, that the department's evidence and the court's reasoning was adequate to support a finding of D.N. as a CINA, there was not enough evidence to meet the more stringent standard to justify separation of a parent, who was abiding by his recent service agreement, and his son.

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[11] In support of his argument that for custody and visitation decisions, the court requires a "more stringent standard of proof" before denying custody, Mr. N. cites to In re Jertrude O., 56 Md. App. 83 (1983). In re Jertrude O., however, does not involve a situation where the court reasonably believes the parent neglected or abused the child. See, e.g., 56 Md. App. at 98 ("There was not the slightest evidence that the parents, or either of them, had abused the child.").

As to visitation, Mr. N. argues that he had substantially complied with his service agreement and that he and D.N. had positive visits together.

Although Mr. N. may have complied with the requirement that he take a parenting class,[12] he did not convince the juvenile court that there is no likelihood that he will neglect or abuse D.N. in the future, and we see no basis to second-guess the court's assessment. See, e.g., Baldwin, 215 Md. App. at 106-07 (there was sufficient evidence to support court's conclusion that it could not say there was no likelihood there would be future abuse or neglect); In re Yve S., 373 Md. at 620 ("there is nothing in the record to suggest a likelihood of future abuse or neglect, nor is there any such finding by the trial judge").

Further, as we explained above, Mr. N. had not, in fact, substantially complied with his service agreement. And, although it is encouraging that Mr. N.'s visits with D.N. were apparently positive, it does not alone establish that Mr. N. will not likely abuse or neglect D.N. again.

We acknowledge, as Mr. N. argues, that taking custody away from a parent is indeed a "drastic remedy."[13] In re Beverly B., 72 Md. App. 433, 440 (1987). But here, as the facts established that Mr. N. both abused and neglected D.N., pursuant to FL § 9-101(b), he bore the burden, by a preponderance of the evidence, to present evidence and persuade the court that there is no likelihood that abuse or neglect will reoccur. See In re Yve S., 373 Md. at

[12] As of April 15, 2019, there was no evidence that he had completed the classes or attended anger management classes.

[13] We note that in the decision being appealed, the court did not remove D.N. from Mr. N.'s custody, but rather continued the custody of D.N.'s paternal grandmother.

587-88. He did not meet this burden. We therefore find that the court did not abuse its discretion in denying him custody and unsupervised visitation.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

The correction notice(s) for this opinion(s) can be found here:

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