

Circuit Court for Baltimore City
Case Nos. 821092005, 821092006, 821092007

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1138

September Term, 2022

IN RE: C.R., D.R., & P.R.

Arthur,
Beachley,
Ripken,

JJ.

Opinion by Ripken, J.

Filed: February 13, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

** 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.

Appellant, R. (“Father”) appeals from an order of the Circuit Court for Baltimore City, sitting as a juvenile court, which rescinded a prior Order of Protective Supervision (OPS) to Father and ordered that C.R., D.R., and P.R. (collectively, “the children”), be committed to the Baltimore City Department of Social Services (“the Department”) for relative placement. The court also ordered Father to participate in psychotherapy and a sexual history polygraph. Father filed this timely appeal. For the reasons that follow, we shall affirm.

ISSUES PRESENTED FOR REVIEW

Father presents the following issues for our review:¹

- I. Whether the court erred in rescinding the OPS and committing the children to the Department for relative placement
- II. Whether the court erred in ordering Father to participate in psychotherapy and a sexual history polygraph.

FACTUAL AND PROCEDURAL BACKGROUND

Father and Mother (collectively, “the parents”) are currently legally married, but they no longer reside together. The parents have three children together—C.R, D.R., and

¹ Rephrased from:

- I. Was the evidence sufficient for the court to authorize commitment of the children to the department and rescind the OPS to [Father]?
- II. Did the court commit error when it ordered [Father] to participate in services recommended by Dr. Marshall, including a sexual history polygraph with the purpose to identify additional victims and sex offender treatment, where [Father] would need to admit to sexual abuse to benefit from treatment?

P.R. Mother has two children from another relationship, including K.² Mother has lived in Texas since 2018 and has no plans to return to Maryland. Father resides in Maryland.

A. History of State Intervention

1. Initial allegations and 2018 Department investigation

In 2018, while the family was still living together in Baltimore, K. alleged that Father sexually abused her, and the Department began an investigation. However, the Department was unable to complete its investigation because Father’s mother, the paternal grandmother (“Grandmother”), moved Mother, K., and the children to Texas before the Department could interview K. As a result of the inability to complete the investigation, the Department’s report was unsubstantiated,³ and the related criminal charges against Father were dismissed by the State after K. left Maryland.

2. 2021 Texas Department of Family and Protective Services investigation

In March of 2021, the Texas Department of Family and Protective Service (“the Texas Department”)⁴ opened an investigation after it received a neglect report alleging that Mother had substance abuse issues, failed to properly supervise the children, and had deplorable housing conditions. During the Texas Department’s investigation, Grandmother

² K. is Mother’s biological child and Father’s stepchild.

³ “Unsubstantiated” is defined as “a finding that there is an insufficient amount of evidence to support a finding of indicated or ruled out.” Md. Code Ann., Fam. Law (“FL”) § 5-701(aa).

⁴ To avoid confusion, this opinion uses “the Texas Department” to refer to the Texas Department of Family and Protective Services and “the Department” to refer to the Baltimore City Department of Social Services.

moved in with Mother to assist her with improving the housing conditions and providing supervision for the children. The Texas Department learned that Father had previously sexually abused K. As a result, K. was scheduled for an interview at the Child Assessment Center in Texas. However, in the middle of the investigation and before K. could be interviewed, the Texas Department allowed Grandmother to remove the children and K. from Texas and return with the children to Baltimore.

The Texas Department contacted the Department to report that Grandmother left Texas with the children and possibly would reunite them with Father. After the children arrived in Baltimore, the Department received multiple reports that Father and the children's "uncle," who lived with Father, were sexually abusing the children. According to the reports, the children disclosed the abuse to Grandmother, who allegedly beat the children in response, locked them in a bedroom, withheld food from them, and threatened them so that they would not tell anyone about the abuse. It was further reported that Grandmother stated to the children that if they told anyone else about the abuse, Father would go to jail and Grandmother would have to move them once again to another state.

In April of 2021, based on the ongoing allegations of sexual and physical abuse occurring while the children were in Father's custody, the Department filed a Petition for Emergency Intervention under the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), seeking temporary placement authority for the children. The court held an emergency hearing the same day and granted the Department limited guardianship of the

children and time-limited authority to maintain the children in a safe placement.⁵ The court specifically found that the jurisdiction invoked by the Department’s filing of the Petition was limited until the children could be returned to their home state. The Texas Department declined to complete a follow-up assessment of Mother’s home and declined to assist the Department in developing a plan to return the children to Texas.

The children were subsequently interviewed at the Baltimore Child Abuse Center and were examined at the University of Maryland Medical Center (“UMMC”). The children did not make any allegations of sexual abuse against Father during interviews, and UMMC staff made no medical findings. As a result, the Department ruled out⁶ the then-current reports of sexual abuse by Father. However, the Department proceeded to file a CINA⁷ petition⁸ because at the time, Father lived with “uncle” and a paternal aunt, who

⁵ The court’s order refers to the children’s home state as Texas. However, according to the record, it is apparent that the children were living in Maryland prior to being moved to Texas with Mother and Grandmother. Based upon our review of the record, it is unknown where the children were born and unclear whether the children lived in Texas prior to 2018.

⁶ “Ruled out” is defined as “a finding that abuse, neglect, or sexual abuse did not occur.” FL § 5-701(w).

⁷ 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.” Md. Code, Cts. & Jud. Proc. (“CJP”) § 3-801(f) (2020 Repl. Vol.).

⁸ The Department’s petition was titled “Petition with Request for Shelter Care” and included a statement that the children were in need of assistance (CINA).

had a history of indicated⁹ findings for physical abuse. Notably, the Department did not approve Father’s childcare plan, which included leaving the children with these relatives while he was at work. Alternatively, the Department approved placing the children with another relative until Father was able to secure appropriate housing and childcare. In August of 2021, the court held an adjudication settlement hearing wherein the parties agreed to a set of facts and continued the shelter care order.¹⁰ At the conclusion of the adjudication hearing, at the parties’ request, the court scheduled a shelter care hearing for later that month.

The court held the shelter care hearing of the children that had previously been continued. The Department argued that shelter care should not continue and that the children should be placed with Father. In support, the Department stated that Father had been visiting the children every weekend and had daily telephone contact with them. Father secured independent housing, and purchased two beds, and the Department stated it would assist him in purchasing a third bed. Father enrolled the children in a school and verified that the school had an after-school program available for the children until Father could pick them up following work. The Department requested the court place Father under an Order Controlling Conduct (OCC).

Counsel for the children opposed the Department’s proposed arrangement. Counsel

⁹ “Indicated” is defined as “a finding that there is credible evidence, which has not been satisfactorily refuted, that abuse, neglect, or sexual abuse did occur.” FL § 5-701(m).

¹⁰ The court’s factual findings at the adjudication hearing were very similar to the facts contained in the Department’s CINA Petition.

for the children stated that the children wanted to remain with their paternal cousin at the home in which they were currently residing, and that they did not wish to return to Father's care. Mother's counsel also opposed the Department's plan, arguing that K.'s 2018 sexual abuse allegations needed to be addressed before the children were returned to Father's care. The court granted the Department's request, discontinued shelter care, and placed the children with Father under an OCC.¹¹ The court's order stated that the Department shall remove the children if the Department was alerted to any new disclosures and/or allegations.

The court held a disposition hearing in October of 2021. Pursuant to an agreement reached by the parties, the court found that the children were CINA and continued

¹¹ The court ordered the following conditions pursuant to the OCC:

1. Father shall cooperate with [the Department].
2. Father shall allow announced and unannounced visits by [the Department] and child's counsel and make the [children] available for virtual visits with the same.
3. Father shall ensure that the [children] have appropriate sleeping arrangements, including individual beds, at all times.
4. Father shall not sleep in the same room as any of the [children][.]
5. Father shall immediately enroll the [children] in school and ensure that they attend school regularly.
6. Father shall ensure that all of the [children's] educational needs are met.
7. Father shall immediately identify an appropriate after school/daycare program.
8. Father shall ensure that the [children's] medical need[s] are timely met.
9. Father shall ensure that the [children] have no unsupervised contact with paternal grandmother.
10. Father shall not allow the children to leave the state of Maryland.
11. Father shall follow up on the need for the [children] to be engaged in therapeutic services.
12. Father shall not physically discipline any of the children.

placement with Father under an OPS. The OPS imposed the same requirements on Father as the previous OCC.

B. New Information Regarding Abuse Allegations

1. Request for emergency review of placement and Department's response

In January of 2022, the court held a review hearing on the OPS. The Department and Father requested the court rescind the OPS and close the case, with custody of the children to Father. On the same date as the hearing, Mother filed a Request for Emergency Review of Placement with [Father] in which she provided new information and requested the court remove the children from Father's care and return them to out-of-home placement. The court scheduled the matter for a contested hearing in late March of 2022.

By March 1, 2022, the Department filed a Motion to Authorize Removal of Child[ren]. The court held an immediate hearing on the Department's motion. The Department asserted that it was not safe for the children to remain with Father because the Department had received new information that K. was diagnosed with chlamydia, a sexually transmitted infection, which was tied to the 2018 sexual abuse allegations against Father.¹² After hearing from counsel and reviewing the Department's motion, the court authorized temporary removal of the children from Father based on the new information.

2. K.'s 2021 chlamydia diagnosis

In November of 2021, Mother took K., who was 12 years old at the time, for a pediatric well checkup in Texas. K. met with Dr. Bapat, who was admitted as an expert in

¹² The Department raised this new information both in its written motion to the court and orally at the hearing.

pediatric medicine at the hearing. As part of the medical evaluation, Dr. Bapat interviewed K. about K.'s current health, including sexual activity. Dr. Bapat also spoke with Mother, who disclosed that Father sexually molested K. in 2018. Dr. Bapat observed that K. was withdrawn and anxious and began to “tear up” when Mother made this disclosure. Dr. Bapat separately interviewed K., who confided that Father tried to have sexual intercourse with her and also engaged in oral sex with her. K. was emotional and crying when describing the incident. Dr. Bapat ordered a diagnostic panel to have K. tested for sexually transmitted diseases, which revealed a positive chlamydia diagnosis.

Dr. Bapat explained that it is possible, but uncommon, for chlamydia to be spread through oral sex. Dr. Bapat stated that it was rare to see children of K.'s age with chlamydia and that it was more common in sexually active teenagers. Dr. Bapat could not determine whether K. contracted chlamydia orally or vaginally from the conducted test or the timeframe in which K. contracted the infection, but K. noted not having any sexual partners other than the sexual abuse by Father. Dr. Bapat further explained that chlamydia can be symptomless in women and noted that K.'s diagnosis may have been “long standing” and “due to alleged molestation by [Father]” three years ago.

3. 2022 evidentiary hearings on petition for children's removal from Father

The court began a series of three evidentiary hearings addressing the removal of the children from Father in May, June, and July of 2022. The purpose of these hearings was twofold: to conduct a contested merits hearing on the Department's Motion to Authorize

Removal and to review the OPS.¹³ The court heard testimony from Cutina Bethel, a caseworker in the Department’s sexual child abuse unit.¹⁴ Bethel was assigned to the family’s case in February of 2022 after the Department learned that K. tested positive for chlamydia following a routine medical visit in November of 2021. As a result of this new information, the Department had safety concerns about the children living with Father. Bethel met with and interviewed the children in-person and spoke with Mother on the telephone. The children did not make any sexual abuse allegations, so Bethel ruled out sexual abuse against the children.

Bethel did not have an opportunity to speak with K. during the course of her investigation. Bethel was unsuccessful in arranging for K. to be interviewed in Texas and was unable to access the Texas Department’s records because the Texas Department was uncooperative with her investigation. However, Bethel determined K.’s allegations against Father were consistent based on a review of K.’s statements during previous interviews with the Department and K.’s medical records. Bethel testified that K. stated on several occasions that Father “touched her private” and that K. was “forced to touch his private.” On one occasion, K. stated “something came out [Father’s] penis and that Father “attempted to put his penis in her mouth.” Based on Bethel’s investigation into K.’s allegations of abuse in 2018, the Department made a finding of indicated sexual abuse by

¹³ At the beginning of the first hearing on May 3, 2022, after the court had already established that the hearing was on the Department’s motion for removal, the court made clear it was that it was “considering this to be two types of hearings, including a review of the order of protective supervision.”

¹⁴ The court admitted Bethel as an expert in conducting child sexual abuse investigations.

Father.¹⁵

Bethel spoke with Father regarding K.’s allegations and description of the sexual abuse. Father denied the allegations and said he was not aware of the allegations until after he was incarcerated for another crime. According to Father, K. made up the allegations because she was upset with him for not buying her something. Father also believed K. was upset with him because he had caught K. in a “compromising position” with a boy in her neighborhood when K. was living in Baltimore.¹⁶ Additionally, Bethel spoke with Mother, who claimed Father’s story about K.’s incident with the boy was untrue. Bethel testified that Mother said she learned of her own chlamydia diagnosis while pregnant with one of the children. When Bethel asked Mother if she knew how she got chlamydia, Mother responded that she found a piece of paper in Father’s car that said he had chlamydia. Bethel acknowledged that the exact source of K.’s chlamydia was unknown, and Bethel was aware that the Department had previously ruled out K.’s sexual abuse allegations against Father. However, Bethel reiterated that the basis for the indicated finding of sexual abuse was K.’s consistent allegations which dated back to 2018.

4. Analysis of Father’s likelihood to engage in future acts of inappropriate sexual behavior

Dr. Marshall, an expert in clinical psychology with a focus on evaluation, diagnosis, and treatment of sex offenders, conducted a psychosexual risk evaluation of Father in May

¹⁵ In the present case, “indicated” for sexual abuse means that the Department believes there is preponderance of undisputed evidence that Father sexually abused K.

¹⁶ This information was not contained in the Department’s records.

of 2022 at the Department’s request. The purpose of the evaluation was to determine Father’s risk of engaging in sexually inappropriate behaviors in the future and to offer possible treatment recommendations. Dr. Marshall determined that Father was at an average risk for future episodes of sexual recidivism and diagnosed Father with antisocial personality disorder.¹⁷ Dr. Marshall recommended that Father participate in psychosexual or sex offender therapy and that Father not have unsupervised contact with anyone under the age of 16, including the children. Dr. Marshall based her recommendations on the Department’s most recent indicated¹⁸ finding of sexual abuse by Father against K. Dr. Marshall also recommended that Father participate in a sexual history polygraph. Dr. Marshall explained that a sexual history polygraph is a tool that is used for people who are participating in psychotherapy regardless of whether they admit to or deny previous sexual offenses.¹⁹

¹⁷ Dr. Marshall’s written report also noted Father was diagnosed with “[p]aranoid [t]raits,” was a “[c]onfirmed” perpetrator of sexual abuse, and had a personal history of sexual abuse in his childhood.

¹⁸ We note that Dr. Marshall’s written report and testimony refer to the Department’s most recent 2022 report as “substantiated.” However, it appears Dr. Marshall used the terms “substantiated” and “indicated” interchangeably; she testified that she paid attention to the “most recent investigation,” that “the most recent report for 2022 had the substantiated finding,” and later, “the positive finding or the substantiated or indicated finding from the Department . . .” When asked on cross examination about the various investigations, Father’s counsel asked, “do you have the 2022 investigation by the Department . . . where it was indicated,” to which Dr. Marshall replied, “Yes.”

¹⁹ Dr. Marshall’s written report further explained that it may be beneficial for Father to participate in a sexual history polygraph because it would aid in determining additional instances of deviant sexual arousal, antisocial practices, additional victims, and the development of treatment goals.

The Department’s permanency supervisor testified that she reviewed Dr. Marshall’s psychosexual report and based on that report, the Department did not recommend the children be placed with Father. Rather, the Department requested the children continue to be placed with relatives and allow Father supervised visitation. Finally, Father testified that he “[wanted] [his] kids back” and that he was willing to undergo psychotherapy and a sexual history polygraph.

C. The Court’s Decision

Based on the evidence and testimony at the hearings, the court found good cause to rescind the OPS and committed the children to the Department for relative placement.²⁰

The court declined to make a Family Law (“FL”) section 9-101²¹ finding that there was no

²⁰ The Courts and Judicial Proceedings Article grants magistrates the authority to conduct juvenile proceedings such as those conducted in this case. *See* CJP § 3-807. At the conclusion of a disposition hearing, the magistrate submits its proposed findings to the circuit court. *See In re Keala C.*, 394 Md. 432, 470 (2006). “Any party may file exceptions to the [magistrate’s] findings, conclusions, recommendations or proposed orders.” *Id.* The circuit court then reviews the magistrate’s report and either adopts the magistrate’s proposed findings or orders additional hearings. *Id.* at 471. Unless it is of particular relevance, for ease of understanding, we refer to both the magistrate and circuit courts as “the court” because the circuit court in this case adopted the magistrate’s findings in full.

²¹ FL section 9-101 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.

likelihood that Father would engage in further child abuse or neglect; therefore, the court denied custody rights to Father. The court noted it considered the trustworthiness of the Department's witnesses regarding K.'s consistent position, Dr. Bapat's testimony, and Dr. Marshall's testimony and recommendations. The court further indicated the following in its order:

As noted in this Court's prior rulings, the information provided regarding sexual abuse of [Father's] step-daughter [K.] is new and significant. The [Department's] decision to make a substantiated, unsubstantiated, or ruled out finding does not dictate the Court's decision regarding an appropriate disposition in this matter. Nor does [the Department's] unsubstantiated finding mean that sexual abuse did not occur. This Court utilizes a preponderance of the evidence standard and as such, [the court] finds it is in the best interest of the [children] to remain out of the care of their father due to significant concerns about victimization.

The court ordered the Department to facilitate monitored and supervised visitation for the parents with the children. Finally, the court ordered the Department to refer Father for services as recommended by Dr. Marshall's evaluation, including psychotherapy²² and a sexual history polygraph. No party filed exceptions to the magistrate's recommendations. There being no exceptions filed, the court adopted the magistrate's proposed findings of fact, conclusions of law, and recommendations and entered an order based on them. Father appealed the court's order. Additional facts will be included as they become relevant to the issues.

²² The court, both in its ruling from the bench and its written order, referred to psychotherapy, not psychosexual or sex offender therapy. Dr. Marshall recommended the latter, and the court indicated the Department should refer Father to "services as recommended by Dr. Marshall's evaluation."

DISCUSSION

Our review of a juvenile court’s decision involves three distinct but interrelated standards. *In re Adoption/Guardianship of C.A. and D.A.*, 234 Md. App. 30, 45 (2017) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). First, we review the juvenile court’s factual findings for clear error. *Id.* Second, we review the juvenile court’s legal conclusions *de novo*, “and if the lower court erred, further proceedings are ordinarily required unless the error is harmless.” *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018) (citing *In re Adoption of Ta’Niya C.*, 471 Md. 90, 100 (2010)). Third, we review the juvenile court’s ultimate decision for abuse of discretion. *Id.* This Court will find an abuse of discretion when the juvenile court’s decision was “well removed from any center mark. . . and beyond the fringe of what the court deems minimally acceptable.” *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 48 (2019) (quoting *In re Adoption of Cadence B.*, 417 Md. 146, 155–56 (2010)).

I. THE COURT DID NOT ERR IN RESCINDING THE ORDER OF PROTECTIVE SUPERVISION AND COMMITTING THE CHILDREN TO THE DEPARTMENT.

Father argues that the court erred when it rescinded the OPS and authorized the commitment of the children to the Department for placement. According to Father, the evidence was insufficient to show that returning the children was contrary to their safety and welfare and that removal was necessary due to an emergency and to provide for their safety.²³ Father asserts that it was in the best interest of the children to remain in his custody

²³ As we explain in Section I.B, *infra*, Father misstates the standard applicable at the hearing on the Department’s motion for removal.

and care and that the terms of the OPS already protected the children.

Preliminarily, the Department, the Children, and Mother contend that Father waived his right to challenge any first-level findings of fact or credibility determinations by failing to file exceptions to the magistrate’s recommendation. They further assert that the court’s decision to rescind the prior OPS and commit the children to the Department for relative placement was proper and supported by the evidence. In reply, Father asserts he has not waived any appellate challenge because he is not merely challenging the court’s factual findings; rather, he contends his argument concerns the court’s application of law. Father asserts that the evidence was insufficient for the court to justify removal of the children from his care. We first address the Department, the Children, and Mother’s argument that Father relinquished his right to challenge the magistrate’s findings of fact before we conclude that the court did not abuse its discretion.

A. Father’s Failure to File Exceptions

Maryland Rule 11-103 provides that exceptions to a magistrate’s proposed findings, conclusions, or recommended order must be filed within five days after being served with the magistrate’s report. Md. Rule 11-103(e)(1). If no exceptions are filed pursuant to Maryland Rule 11-103(e)(1), “the court shall adopt the magistrate’s proposed findings of fact, conclusions of law, and recommendations and enter an appropriate order based on them[.]” Md. Rule 11-103 (g)(1). This Court has held that “[a] party’s failure to timely file exceptions forfeits ‘any claim that the [magistrate’s] findings of fact were clearly erroneous.’” *Barrett v. Barrett*, 240 Md. App. 581, 587 (2019) (quoting *Miller v. Bosley*, 113 Md. App. 381, 393 (1997)). Therefore, we must accept the magistrate’s findings of

fact “as established for purposes of the pertinent proceedings leading to [an] appeal.” *Miller*, 113 Md. App. at 393; *see also In re J.R.*, 246 Md. App. 707, 749 (2020) (holding that this Court was not required to address “the merits of assumed errors” in various orders, where the Appellant did not file exceptions to the orders or otherwise object).

In August of 2022, following the series of evidentiary hearings, the magistrate issued proposed findings and recommendations. The magistrate made a factual finding, by a preponderance of the evidence standard, that Father likely sexually abused K.²⁴ This finding was the foundation for the court’s ultimate conclusion to rescind the prior OPS and commit the children to the Department for relative placement.²⁵ In Father’s view, the court made “inferences between the fact of [K.]’s positive chlamydia test and the legal conclusion that removal was necessary.” In essence, Father argues that the magistrate’s factual finding that sexual abuse likely occurred was not supported by sufficient evidence warranting removal of the children. We conclude that because Father failed to note an exception to the magistrate’s factual finding regarding the sexual abuse, Father forfeited

²⁴ The magistrate, when rendering the decision from the bench, stated the following: “[U]ltimately, the Court has to make a decision about whether or not the sexual abuse likely did occur. I’ll also note, of course, that we’re not talking about a beyond the reasonable doubt standard as we would in a criminal case. We’re talking about a preponderance of the evidence.” The magistrate’s recommendation, adopted by the court in its order, further stated: “Nor does an agency’s unsubstantiated finding mean that sexual abuse did not occur. This Court utilizes a preponderance of the evidence standard and as such, [the magistrate] finds it is in the best interest of the [children] to remain out of the care of their father due to significant concerns about victimization.”

²⁵ *See* note 21, *supra*.

the right to challenge that finding on appeal.²⁶

However, even if Father had properly filed exceptions to the magistrate’s findings of fact and properly preserved his argument for our review, he would not prevail. As we shall explain, the evidence was sufficient to support the court’s decision to rescind the prior OPS and commit the children to the Department for relative placement.

B. Hearings on OPS Review and Department’s Motion for Removal

As stated *supra*, the court conducted a series of three hearings in May, June, and July of 2022 to review the 2021 OPS in which the court granted custody of the children to Father and to consider the Department’s Motion to Authorize Removal of the children. In Father’s view, the court could only continue shelter care if it found that the return of the children to the home was contrary to their safety and welfare; and that removal was necessary due to an alleged emergency situation and in order to provide for the safety of the children; or reasonable efforts were made but were unsuccessful in preventing the need for removal. *See* CJP §§ 3-820(e), 3-815(d).²⁷ Father asserts that the court drew inferences

²⁶ *See* Md. Rule 8-131(a) (“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.”).

²⁷ CJP § 3-820(e) provides:

At the emergency review placement hearing, the court’s decision to reject or to ratify the local department’s removal of the child shall be based upon such evidence as would be sufficient under § 3-815(d) of this subtitle to order shelter care.

In this matter, the emergency review hearing occurred on March 1, 2022, and the court’s order on March 9, 2022, authorized the children’s temporary removal from Father. Father did not note an exception to these findings, nor did he appeal that order, so any issue regarding the emergency review hearing is not before this court. *See* Md. Rule 8-202(a)(requiring that a party note an appeal within 30 days).

that were insufficient to establish that returning the children to their home was contrary to their safety and welfare. Furthermore, Father argues that K.’s positive chlamydia test was too attenuated to be an “emergency” situation warranting removal. The Department, the Children and Mother respond that Father misstates the standard applicable to the court’s analysis at these hearings and that the court correctly declined to return the children to Father. We agree.

This Court has recognized that parents have a well-established and fundamental constitutional right to raise their children without undue influence by the State, and that right cannot be taken away “unless clearly justified.” *In re A.N.*, 226 Md. App. 283, 306 (2015) (quoting *In re Yve S.*, 373 Md. at 566). However, that right is not absolute and must be balanced against the State’s interest in protecting a child’s health, safety, and welfare. *See In re Yve S.*, 373 Md. at 568–69. The Supreme Court of Maryland (at the time named the Court of Appeals of Maryland)²⁸ has often reaffirmed that the State’s interest takes

CJP § 3-815(d) provides:

A court may continue shelter care beyond emergency shelter care only if the court finds that: (1) Return of the child to the child’s home is contrary to the safety and welfare of the child; and (2)(i) Removal of the child from the child’s home is necessary due to an alleged emergency situation and in order to provide for the safety of the child; or (ii) Reasonable efforts were made but were unsuccessful in preventing or eliminating the need for removal of the child from the home.

Likewise, this standard is not applicable as Father contends because the court’s order of August 3, 2022, was not a shelter care order.

²⁸ At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See, also*, Md. Rule 1-101.1(a) (“From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute,

precedence over a parent’s fundamental right. *See id.* at 569–70. Indeed, “where 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 Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 496 (2007). A child’s welfare is “a consideration that is of ‘transcendent importance’” when the child might otherwise be in jeopardy. *Id.* at 497 (quoting *In re Adoption/Guardianship No. A91-71A*, 334 Md. 538, 561 (1994)).

The Courts and Judicial Proceedings Article (“CJP”) outlines the procedures governing the designation of a child as a CINA. *See* CJP §§ 3-801–3-836. The purpose of CINA proceedings is “[t]o provide for the care, protection, safety, and mental and physical development of any child.” CJP § 3-802(a)(1). At the disposition hearing in October of 2021, pursuant to an agreement by the parties, the court found the children were CINA but allowed them to remain with Father under an OPS. Therefore, since the children were previously determined to be CINA, and it was established that one of the twofold purposes of the hearings was to review the OPS, the court was also required to consider CJP section 3-816.2(a). Section 3-816.2(a) provides, in relevant part, that at a review hearing, the court shall evaluate the safety of the child and determine the continuing necessity for and appropriateness of any out-of-home placement. *See* CJP § 3-816.2(a)(2)(i)–(ii).

Additionally, where a child has been declared a CINA because of abuse or neglect,

ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland....”).

the court is constrained by the requirements of FL section 9-101.²⁹ *In re Yve S.*, 373 Md. at 587. The Supreme Court of Maryland has explained the significance of section 9-101 in CINA proceedings, stating:

This section directs the court to deny custody to the parent unless the court makes a specific finding that there is no likelihood of further abuse or neglect. The burden is on the parent previously having been found to have abused or neglected his or her child to adduce evidence and persuade the court to make the requisite finding under § 9-101(b).

Id. (internal citations omitted). This Court has also clarified that the focus of section 9-101 “is not on a particular child but on the party guilty of the previous abuse or neglect.” *In re: Adoption No. 12612*, 353 Md. 209, 234 (1999). The statute applies when the abuse was directed against *any* child because it ensures that “the party responsible for abusing or neglecting a child in the past will not abuse or neglect the child or children whose custody or visitation is within the court’s control, whether or not they were the ones subjected to the previous abuse or neglect.” *Id.*

Father challenges the court’s reliance on K.’s positive chlamydia test and asserts that the terms of the OPS fully addressed any concerns of potential sexual abuse of the children. However, the court was presented with “new and significant” information to which it could not “turn [] a blind eye,” including evidence that Father had sexually abused K. and that K. had been diagnosed with chlamydia. Specifically, the court heard testimony from Cutina Bethel, the Department’s caseworker, whom the court admitted as an expert in child abuse allegations. Bethel’s testimony revealed that Father was indicated for sexual

²⁹ See note 21, *supra*.

abuse after the Department learned of K.'s consistent disclosures to multiple interviewers over a period of three years. The court was also presented with evidence that both K. and Father had chlamydia, which supported the Department's conclusion to indicate Father for sexual abuse.

The court also heard from Dr. Bapat, whose testimony confirmed K.'s positive chlamydia test and reiterated K.'s consistent allegations that she was sexually abused by Father in 2018. Although Dr. Bapat acknowledged that the exact source of K.'s chlamydia was unknown, Dr. Bapat believed K.'s diagnosis could have been long-standing and due to Father's alleged sexual abuse of K. three years prior because K. denied being otherwise sexually active. The court also heard the expert testimony of Dr. Marshall, who determined that Father was at risk for future episodes of sexual recidivism and opined that Father "should not have any unsupervised contact with anyone under the age of 16," including the children.

The court properly considered the children's best interests in conjunction with CJP section 3-816.2(a) and FL section 9-101 when it rescinded the prior OPS and committed the children to the Department for relative placement. Specifically, the court noted in its order that it "utilizes a preponderance of the evidence standard," and, as such, the court found "it is in the best interest of the [children] to remain out of the care of [Father] due to significant concerns about victimization." The court was unable to make a finding pursuant to FL section 9-101 that Father posed no likelihood of further abuse or neglect; and therefore, the court denied Father custody rights. With respect to CJP § 3-816.2(a), the court evaluated the safety of the children and determined it was necessary and appropriate

for the children to be committed to the Department for relative placement.³⁰ K.’s consistent disclosures, coupled with her chlamydia diagnosis, justifies the court’s conclusion that it was in the children’s best interest to rescind the OPS and commit the children to the Department. We discern no error in that conclusion.

II. THIS COURT DECLINES TO CONSIDER FATHER’S CONSTITUTIONAL CHALLENGES RAISED FOR THE FIRST TIME ON APPEAL.

Father next challenges the court’s order requiring him to participate in psychosexual psychotherapy and a sexual history polygraph. According to Father, the court’s order violates his Fifth Amendment right against self-incrimination and his right to due process. Alternatively, Father argues even if this Court does not find that the trial court’s order for these services rises to a constitutional violation, the court’s order was still an abuse of discretion. In response, the Department, the Children and Mother contend that the court’s order requiring Father to cooperate with the Department’s referrals for psychotherapy and a sexual history polygraph was not an abuse of discretion.

Initially, the Department and Mother respond that Father waived his constitutional challenges to the court-ordered treatment by failing to assert them below. Additionally, the Department contends that the sexual history polygraph is a therapeutic tool rather than a tool used for criminal investigations, and the purpose of the court’s order was to remedy the issues that brought the children into care. The Children assert the court’s order did not

³⁰ Although the court did not explicitly refer to CJP § 3-816.2 in its ruling from the bench or written order, we can infer the court considered this statute in evaluating the children’s safety and determining whether there was a continuing need for out of home placement as it found it was in the best interest of the children to not be in Father’s care due to “significant concerns about victimization.”

violate Father’s Fifth Amendment right to self-incrimination and that the order promoted the best interests of the children by increasing the possibility of family reunification. Mother also reiterates the purpose of the sexual history polygraph is something that the Department uses for treatment and in therapeutic, as opposed to criminal, investigations.

The Department and Mother, relying upon Maryland Rule 8-131(a), argue Father’s constitutional claims are not before this Court because he did not raise those arguments below. “Ordinarily, the appellate court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]” Md. Rule 8-131(a). The appellate courts have a strong “established policy is to decide constitutional issues only when necessary.” *Burch v. United Cable Television of Balt. Ltd. P’ship*, 391 Md. 687, 695–96 (2006) (quoting *Mercy Hosp. v. Jackson*, 306 Md. 556, 565 (1986)) (declining to consider constitutional arguments, first raised on appeal, that did “not involve a jurisdictional question or any other matter which f[ell] within an established exception to Maryland Rule 1-131(a)” (citation omitted)). The Supreme Court of Maryland has held that the “primary purpose” of Md. Rule 8-131(a) is two-fold:

- (a) to require counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings, and (b) to prevent the trial of cases in a piecemeal fashion, thus accelerating the termination of litigation.

Fitzgerald v. State, 384 Md. 484, 505 (2004).

In the proceedings below, Father argued that the treatment recommended by Dr. Marshall “presupposes the fact that the person going to therapy actually committed an offense,” which Father had denied. According to Father, “had it not been for the indicated

finding by the Department,” Dr. Marshall “would not be making this recommendation.” Father asserted that the evidence failed to establish that he was “a person who has been found to have sexually abused or been engaged in some sort of sexually deviant behavior.” The only constitutional argument Father raised below was that the Department violated his “procedural due process rights in having the [Department] investigate and investigate and reinvestigate and change its position again and again and again.” In Father’s view, this was “a violation of his constitutional rights to raise and rear his children.”

It is clear from Father’s arguments below that his only constitutional challenge related to the Department’s multiple investigations, not to Dr. Marshall’s recommendations for treatment. Therefore, the circuit court was not given an opportunity to consider this aspect of Father’s argument, nor did Appellants have a chance to respond to it. Father’s additional constitutional arguments, raised for the first time on appeal, do not involve a jurisdictional question or any matter which falls within an established exception to Maryland Rule 8-131(a). Since the constitutional issue raised by Father was not raised in the circuit court, we decline to address it. Likewise, we need not address the Department’s and the Children’s remaining contentions that that court’s order requiring Father to participate in psychosexual psychotherapy and a sexual history polygraph was in the children’s best interest, as they relate to Father’s constitutional claim.

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