Circuit Court for Baltimore City
Case No. T20191001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1292

September Term, 2021

IN RE: J.J.

Berger,
Reed,
Beachley,

JJ.

Opinion by Reed, J.

Filed: May 5, 2022

This case comes as an appeal from a guardianship case concerning J.J., the minor biological daughter of A.D. ("Mother") and R.J. ("Father") (collectively, "Appellants"). On September 28, 2018, J.J. was found to be a child in need of assistance ("CINA") by the Juvenile Division of the Circuit Court for Baltimore City. On July 9, 2020, the Baltimore City Department of Social Services ("DSS") filed a petition for guardianship which sought to terminate Appellants' parental rights regarding J.J.

Sitting as a juvenile court, the Circuit Court for Baltimore City held a trial on the petition on July 23, 2021, August 3, 2021, September 9, 2021, and September 23, 2021. On September 23, 2021, the juvenile court issued an order terminating the parental rights of both Appellants. Father and Mother each timely filed notice of appeal.

In bringing their appeal, Appellants present five (5) questions for appellate review, which we have rephrased to four (4) for clarity:[1]

[1] Mother presented the following questions for appellate review:

> I. Did the trial court err in taking judicial notice of an unreported opinion of this Court?
>
> II. Did the trial court err in admitting into evidence the Department's Exhibit 53A?

Father presented the following questions for review:

> I. Did the juvenile court clearly err in finding that the Department made reasonable efforts towards reunification with Father?
>
> II. Did the juvenile court abuse its discretion in finding clear and convincing evidence that there were exceptional circumstances to terminate Father's parental rights?

I. Did the juvenile court err in taking judicial notice of an unreported opinion from this Court?

II. Did the juvenile court err in admitting DSS exhibit 53A into evidence?

III. Did the Court err in finding that DSS made reasonable efforts towards reunification of J.J. with Father?

IV. Did the Court err in its consideration of evidence that J.J.'s brother currently resides in Appellants' home?

For the reasons herein expressed, we affirm the decision of the juvenile court.

FACTUAL & PROCEDURAL BACKGROUND

Mother's Prior Child Welfare Incidents

Mother has five children: S.G. (born 2006), K.G. (born 2008), I.D. (born 2011), J.J. (born 2018), and R.J. (born 2019). Father is the father of J.J. and R.J. DSS initially became involved with Mother in 2008 because of her substance abuse and inadequate housing provided for her children.

III. Did the Court err in not allowing evidence of the respondent's brother residing in the parents' home?

However, as DSS correctly noted in its brief, Father's second question presented "regarding whether the juvenile court abused its discretion in terminating his parental rights based on a finding of exceptional circumstances, is not at issue in this appeal because the court did not make such a finding and instead terminated his parental rights based on unfitness." *See* Apx. 8-9 "(Having considered all the factors enumerated in §5-323(d) of the Family Law Article and the foregoing factual determinations, the Court finds by clear and convincing evidence *that the facts demonstrate an unfitness of the parents*, [Mother] and [Father], *to remain in a parental relationship with their child* by virtue of the aforementioned facts found by the court.") (emphasis added).

In 2011, while Mother was pregnant with I.D., she was not taking her psychotropic medication, which was prescribed for treatment of her previously diagnosed bipolar disorder. In January 2011, the day after Mother gave birth to I.D., the juvenile court in a CINA proceeding awarded temporary custody of S.G. and K.G. to their maternal grandparents. The juvenile court noted that Mother's home was not appropriate for S.G. and K.G., and that Mother had advised her parents, her grandmother, and the children's father that she was unable to continue to care for S.G. and K.G. On June 28, 2012, the juvenile court found that Mother continued to be unable to care for S.G. and K.G. and awarded their custody and guardianship to the maternal grandparents, closing S.G.'s and K.G.'s CINA proceedings.

J.J.'s Prior CINA Proceedings

On March 11, 2018, DSS received allegations that Mother tested positive for codeine, morphine, methadone and cocaine at the time of J.J.'s birth. In March 2018, the Department assigned Paige Eyler as the social worker for the family. DSS subsequently filed a petition for shelter care on March 19, 2018. Following a hearing on the petition, the Court found that it was contrary to the welfare of the respondent to remain in the care of either parent and granted an order of shelter care to the DSS.

Following the order of shelter care which granted DSS care over J.J., the juvenile court set a follow up hearing for April 19, 2018, which Mother did not attend. On both April 19 and April 21, 2018, Mother tested positive for cocaine, methadone, marijuana, and opiates; on April 21, Mother also tested positive for fentanyl, cotinine, and benzodiazepines.

On May 17, 2018, the juvenile court held a review of shelter care hearing. Father was present for the hearing, but Mother was not. That same day, Mother tested positive for methadone, cotinine, cocaine, and marijuana. On May 18, 2018, the court issued an order rescheduling the adjudicatory hearing and continuing J.J.'s placement with DSS. Additionally, the court permitted Father to have unsupervised visitation with J.J. in a paternal aunt's ("Ms. C.") home.

On May 25 and May 31, 2018, Father had unsupervised day visits with J.J. On June 7, 2018, Appellants both attended a supervised visit with J.J., and that same day, Mother tested positive for opiates, methadone, fentanyl, cotinine, cocaine, and marijuana. On June 14, 2018, Father had a scheduled overnight visit with J.J. at Ms. C.'s home. When Ms. Eyler went to pick up J.J. from the visit, Father was not present, and Ms. Eyler learned that Father was not living there – contrary to his prior assertion. Later that day, Ms. Eyler further learned that Father had not arrived at Ms. C.'s home until 2:30 a.m. and that he had fallen asleep with J.J. on the couch, without putting J.J. in the portable crib that DSS had supplied. After June 15, 2018, Ms. C. stated that she did not allow Father in her home, except for Thanksgiving the following year, because he admitted to her that he had stolen and pawned her son's PlayStation.

From June 15 until July 5, 2018, Ms. Eyler scheduled supervised visits for both Father and Mother. Appellants attended one visit and missed two.

On July 18, 2018, the juvenile court conducted J.J.'s CINA adjudicatory hearing. Mother did not attend, but she filed exceptions to the magistrate's recommendations. On July 19, 2018, Mother failed to attend a scheduled visit and tested positive for opiates,

methadone, fentanyl, codeine, cocaine, and marijuana. That same day, Father attended his unsupervised visit with J.J.

On July 24, 2018, the juvenile court held the adjudicatory exceptions hearing and deferred the CINA disposition hearing. Both Appellants attended and testified. The court found that Mother had a ten-year history with child protective services owing to her substance abuse and inadequate housing. The juvenile court also found that, at the time of J.J.'s birth, Mother tested positive for codeine, morphine, methadone and cocaine and J.J. tested positive for opiates and cocaine. Further, J.J. required an extended hospital stay following birth due to withdrawal symptoms. Moreover, the court found that Mother was not caring for her three older children, who were instead under the care of relatives. As for Father, the juvenile court found that he did have independent housing when Mother was pregnant with J.J., and that Father stayed with Mother during at least some of her pregnancy with J.J. The court further found that Father did "not prevent [Mother] from abusing illicit substances while pregnant and did not take appropriate steps to prevent the neglectful situation." Pending the CINA disposition, the court awarded J.J.'s temporary custody to Father, with specific limitations. Specifically, Father was required to ensure that J.J. was only in the care of J.J.'s paternal grandmother and Ms. C., at Ms. C.'s home in Randallstown, when Father was working. When Father was not working, J.J. was to stay with Father at Ms. C.'s home. Further, Father was required to supervise all of Mother's contact with J.J.; and there were to "BE NO OVERNIGHT VISITS BETWEEN MOTHER AND [J.J.]." (emphasis in original).

On August 17, 2018, Ms. Eyler went to Ms. C.'s home in Randallstown. J.J. was

present along with J.J.'s paternal grandmother. The grandmother told Ms. Eyler that Father only spent some nights at the home and spent other nights elsewhere. The grandmother further advised that J.J. spent all nights at the designated Randallstown home.

On September 21, 2018, DSS removed J.J. from Father's care after it learned that: Father was not living at the Randallstown home; that Father and J.J. were living with Mother; and that Father permitted Mother to have unsupervised contact with J.J. On September 24, 2018, DSS filed a motion to authorize J.J.'s removal from the court-ordered placement, and the court held an emergency hearing on the motion. Father appeared for the hearing but Mother did not. The court authorized J.J.'s placement in DSS's temporary custody. This marked the last CINA hearing Father ever attended for J.J.

Four days later, the juvenile court held the CINA disposition hearing, at which neither parent appeared. The court found J.J. to be a CINA and awarded DSS custody of J.J. Father appealed, and this Court affirmed the juvenile court's finding of CINA, awarding custody of J.J. to DSS. *See In re J.J.*, No. 2529, Sept. Term, 2018 (July 8, 2019)

Events Following CINA Appeal

From September 28, 2018, until the next review hearing held on January 16, 2019, the parents only visited J.J. once – on November 9, 2018. Prior to the January 16, 2019 review hearing, DSS moved J.J. from a foster care placement to the home of J.J.'s paternal aunt, Ms. C. Neither parent attended the review hearing.

In 2019, Appellants visited J.J. together only two or three times. Father had two additional visits without Mother. That same year, neither parent maintained regular communication with DSS.

J.J.'s permanency plan hearing was set for November 5, 2019, but neither parent attended the hearing. The court found that:

> Neither parent[] [is] involved with [J.J.]'s day to day care. Neither parent[] [is] responsive to [DSS]'s attempts to contact them. Neither parent[] maintain[s] visit[s] with [J.J.]. Neither parent[] participate[d] in meetings relating to [J.J.]. Neither parent[] attend[ed] Court regularly.

The court also found that Ms. C. was a long-term placement for J.J., and that J.J. was doing well in Ms. C.'s home. On November 14, 2019, the court entered an order changing J.J.'s permanency plan from reunification to adoption by Ms. C. Father saw J.J. only one more time in 2019, when he went to Ms. C.'s home on Thanksgiving.

On January 29, 2020, both Father and Mother entered into service agreements with DSS. As part of the agreement, both parents agreed to attend weekly visits. However, from the time of the agreement through June 2020, Father and Mother only visited J.J. twice. In addition to their failure to visit, the parents also failed to comply with other terms of the January 2020 service agreements: did not enroll in parenting classes; did not find stable housing; did not locate day care options for J.J.; and did not submit to a substance abuse evaluation.

From the period of June 2020 to August 2021, neither parent maintained regular visits with J.J. Moreover, during this period, neither parent provided financial support for J.J., nor did they maintain consistent contact with DSS.

Final CINA Decision: Termination of Parental Rights

On September 23, 2021, the juvenile court held a guardianship hearing to consider DSS's Petition for Guardianship with the Right to Adoption or Long-Term Care Short of

Adoption. Following the conclusion of the guardianship hearing, on September 27, 2021, the juvenile court granted the DSS's petition for guardianship and terminated Appellants' parental rights.

STANDARD OF REVIEW

"In reviewing a juvenile court's decision with regard to termination of parental rights, we utilize three different but interrelated standards." *In re Adoption of Ta'Niya C.*, 417 Md. 90, 100 (2010) (*citing In re Adoption/Guardianship of Victor A.*, 386 Md. 288, 297 (2005)). First,

> [w]hen the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8–131(c)] applies. [Second,] [i]f 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 Victor A., 386 Md. at 297 (internal citations omitted). A juvenile court's decision is not clearly erroneous if the record shows that there is legally sufficient evidence to support it. *See In re J.J.*, 456 Md. 428, 452 (2017). Appellate courts will reverse for abuse of discretion when the decision under consideration is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *In re Yve S.*, 373 Md. 551, 583–84 (2003).

I. Judicial notice of an Unreported Opinion During CINA Proceeding

A. Parties' Contentions

Mother contends that the juvenile court erred in taking judicial notice of our prior affirmance of the CINA finding in J.J.'s case. *See In re: J.J.*, No. 2529, September Term, 2018, filed 7/8/19 (unreported). The juvenile court ruled that it would take judicial notice of our prior opinion but would not necessarily adopt our reasoning. Mother argues that "an appellate opinion by its nature is not a proper subject of judicial notice" because "far from acknowledging facts that are not subject to reasonable dispute, such an opinion reviews a record, and reviews the record evidence in a light most favorable to the prevailing party below." Further, Mother contends that judicial notice of our prior opinion was prejudicial because our opinion included facts that conflicted with Appellants' testimony in the instant case. Specifically, Mother points to three examples: (1) our opinion stated that J.J. "suffered from severe neonatal drug withdrawal," whereas according to Mother, "the testimony in the instant case paints a picture of a normal child growing up healthy and happy"; (2) our opinion provides a "Background history of Mother's Substance Abuse" which Mother argues is entirely negative and contradicts evidence of "Mother's at least partially successful association with the 'Redeem' program"; (3) our opinion questions the veracity of Father's testimony regarding his knowledge of Mother's drug use, and concludes that Father falsified his address in reports to DSS.

In response, DSS contends that judicial notice of our prior opinion was appropriate. DSS notes that "[i]ncluded among the categories of things of which judicial notice may be taken are 'facts relating to the . . . records of the court.'" *Lerner v. Lerner Corp.*, 132 Md. App. 32, 40 (2000) (*quoting Smith v. Hearst Corp.*, 48 Md. App. 135, 136 n.1 (1981)). Moreover, DSS contends that any error would not have been prejudicial because the

prejudicial facts cited by Mother were cumulative of other evidence which was admitted without objection.

B. Analysis

In Maryland, a trial court's decision regarding judicial notice is governed by Maryland Rule 5-201, which states as follows:

> **(a) Scope of Rule.** This Rule governs only judicial notice of adjudicative facts. Sections (d), (e), and (g) of this Rule do not apply in the Court of Special Appeals or the Court of Appeals.
>
> **(b) Kinds of Facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
>
> **(c) When Discretionary.** A court may take judicial notice, whether requested or not.
>
> **(d) When Mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.
>
> **(e) Opportunity to Be Heard.** Upon timely request, a party is entitled to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
>
> **(f) Time of Taking Notice.** Judicial notice may be taken at any stage of the proceeding.
>
> **(g) Instructing Jury.** The court shall instruct the jury to accept as conclusive any fact judicially noticed, except that in a criminal action, the court shall instruct the jury that it may, but is not required to, accept as conclusive any judicially noticed fact adverse to the accused.

Mother argues that the juvenile court erred in taking judicial notice of our prior opinion because "an appellate opinion by its nature is not the proper subject of judicial notice." As

DSS notes, we have previously held that prior CINA proceedings are the proper subject of judicial notice in a subsequent CINA proceeding. *See In re Nathaniel A.*, 160 Md. App. 581 (2005) (holding that juvenile court did not err in taking judicial notice of prior related CINA proceeding).

In deciding a 2005 CINA case, *In re Nathaniel A.*, we surveyed a broad line of cases from other jurisdictions which considered the propriety of taking judicial notice of prior related proceedings:

> For analyses of the appropriate invocation of judicial notice, *see TT. v. State Department of Human Resources,* 796 So. 2d 365, 367–68 (Ala. Civ. App. 2000) ("We note that the trial court is allowed to take judicial knowledge of all previous proceedings and that it could consider the prior matters and is not required to forget the past."); *In Re J.M.C.; N.C.,* 741 A.2d 418, 424 (D.C. 1999) ("[i]n appropriate cases, a judge may take judicial notice of the contents of court records in a related prior proceeding. This is particularly true where, as in this case, the interested parent was a party to and was represented by counsel in the prior neglect proceeding."); *In re J.P.,* 737 N.E. 2d 364, 372 (2000) ("[a] trial court should only take judicial notice of those portions of the underlying court file that have been proffered by the State and to which the respondent is given an opportunity to object.") *In the Interest of J.L.W.,* 570 N.W. 2d 778, 780 (Iowa Ct. App. 1997) (In a termination proceeding, a court may judicially notice exhibits which were part of the prior child in need of assistance proceeding. The papers must be marked, identified, and made a part of the record."); *In the Interest of T.C., N.C., and C.C.,* 492 N.W. 2d 425, 429 (Iowa 1992) ("The juvenile court was authorized to judicially notice the pleadings and exhibits from the previous child in need of assistance proceeding.") *In the Interest of H.R.K., R.M.A.C., and R.L.C.,* 433 N.W. 2d 46, 48 (Iowa Ct. App. 1988) ("[i]t is permissible for a trial court ... [in a] termination proceeding to judicially notice the prior CHINA case, *including* the evidence ..."); *In re Scott S.,* 775 A.2d 1144, 1149–50 (Me. 2001) ("We first address the parent's contention that the court should not have [taken judicial notice of] the findings of fact and conclusions of law previously entered by a different judge at the jeopardy and judicial review hearings. The parents argue that because the judge could not consider the evidence presented at those former hearings, he also could not consider the findings of fact and conclusions of law reached at those prior hearings. That contention is simply wrong ... A judge may take judicial notice of any

> matter of record when that matter is relevant to the proceedings at hand ... [but] it must independently assess all facts presented."); *In the Interest of C.M.W.*, 813 S.W. 2d 331, 333 (Mo. Ct. App. 1991) (judicial notice of prior hearings appropriate where, at prior hearings, mother was represented by counsel, "had every opportunity to refute, impeach or explain the evidence against her," and the records the court considered "were recorded court entries.") *In the Matter of K.C.H.*, 68 P.3d 788, 790–91 (2003) (district court did not err in taking judicial notice of mother's prior termination proceeding); *In re Interest of Ty M. and Devon M.*, 655 N.W. 2d 672, 690 (2003) (juvenile court may take judicial notice of its own proceedings and judgments closely related to current proceeding "where the same matters have already been considered and determined."). *In the Matter of the Parental Rights to KLS*, 94 P.3d 1025, 1034 (Wyo. 2004) ("[c]ourt may take judicial of its own records in cases closely related to the one before it."). *See also, Lerner v. Lerner Corp.*, 132 Md. App. 32, 40 (2000) ("In McCormick's treatise on evidence, it is said to be 'settled, of course, that the courts, trial and appellate, take notice of their own respective records in the present litigation, both as to the matters occurring in the immediate trial, and in the previous trials and hearings.'"). *Cf. In the Matter of Richard*, 128 Md. App. 71, 77 (1999) (although not raised on appeal and other evidence was presented, trial judge took judicial notice of prior court records presided over by a different judge pertaining to the current case); *In re Michael G.*, 107 Md. App. 257, 262 (1995) (although issue not on appeal, "master took judicial notice of a prior CINA case" she presided over concerning the same child.).

160 Md. App. at 598, n.1. The above cases provide a compelling basis to conclude that judicial notice of prior CINA proceedings and determinations is appropriate. However, none of the above cases directly addresses the issue of whether a prior appellate CINA decision may be judicially noticed in subsequent related CINA proceedings. Regardless, we need not decide that question here because any error in judicially noticing our prior opinion would not have been prejudicial because the prejudicial facts cited by Mother were cumulative of other evidence which was admitted without objection.

As to the first prejudicial fact, Mother contends that our opinion stated that J.J. "suffered from severe neonatal drug withdrawal," whereas according to Mother, "the

testimony in the instant case paints a picture of a normal child growing up healthy and happy." However, the fact of J.J.'s severe neonatal drug withdrawal was also found in Exhibit 10 and Exhibit 18. Exhibit 10 was an October 17, 2018 CINA order which stated: "[J.J.] was born on []. [J.J.] was positive for codeine, morphine, methadone, and cocaine." Exhibit 18 was a July 24, 2018 order from the juvenile court following a CINA hearing concerning J.J., which stated:

> [J.J.] was born [in] 2018 at the Johns Hopkins Hospital (JHH). Mother tested positive for codeine, morphine, methadone and cocaine at the time of the [J.J.]'s birth. [J.J.] tested positive for opiates and cocaine. [J.J.] experienced withdrawal symptoms requiring extended hospitalization.

Thus, the fact that J.J. suffered from severe neonatal drug withdrawal was evident from the record without needing to rely on the facts asserted in our prior opinion.

Mother also contends that our opinion was prejudicial because it provided a "Background history of Mother's Substance Abuse" which Mother argues is entirely negative and contradicts evidence of "Mother's at least partially successful association with the 'Redeem' program." However, the record is replete with details regarding Mother's history of substance abuse, which contradicts "Mother's partially successful association with the "Redeem" program" in the same manner.[2] Accordingly, the fact that Mother had a decidedly negative history with substance abuse was evident from the record notwithstanding the judicial notice of our prior opinion.

[2] For example, in Exhibit 10, an October 9, 2018 CINA order regarding I.D., the juvenile court found that Mother had tested positive for opiates, cocaine, marijuana and other illicit substances on six separate occasions between April 19 through August 7, 2018.

Finally, Mother argues that judicial notice of our prior opinion was prejudicial because the opinion questions the veracity of Father's testimony regarding his knowledge of Mother's drug use and concludes that Father falsified his address in reports to DSS. However, these facts were also evident from other portions of the record. In Exhibit 18, the July 24, 2018 order, the court found that "Father has not prevent[ed] [M]other from abusing illicit substances while pregnant and did not take appropriate steps to prevent the neglectful situation." As for the conclusion that Father falsified his address in reports to DSS, testimony from the guardianship proceeding leads to the same conclusion. Father testified that he lived with Mother for four years, but later claimed that he had only lived with Mother for several months before the guardianship hearing, after Mother put him on the lease. Moreover, when the juvenile court discussed Father's disingenuous representations, the court did not rely on our opinion, but instead relied on the findings of a prior related proceeding in juvenile court:

> On September 24, 2018, [DSS] filed a Motion to Authorize Removal of Child and Child's New Placement, alleging that Father was not residing at the Randallstown address, "because BGE was suspended, and failed to notify DSS or to remedy the situation". [DSS] also alleged that instead of addressing the BGE cut off, Father moved in with Mother, in violation of the Court's Order. Furthermore, Father failed to advise [DSS] of his actions.

Further, the "Randallstown address" – where Father claimed to reside – belonged to Ms. C., who testified that she never allowed [Father] to live in her home. Ms. C. also testified that, with the exception of Thanksgiving 2019, she did not allow [Father] to be at her home after June 15, 2018, when Father stole and pawned her son's PlayStation. Thus, there was ample additional evidence in the record to both question Father's claim that he did not

know of Mother's drug abuse, and to find that Father falsified his address in reports to DSS.

In sum, even if the juvenile court did err in judicially noticing our prior opinion, any error would not have been prejudicial because the allegedly prejudicial facts within the opinion could be found from other evidence in the record, admitted without objection.

II. Admission of DSS Exhibit 53A Into Evidence

DSS Exhibit 53A was generated by an "addictions specialist" employed at "Partners in Recovery." Ms. Eyler testified that she received the document in the ordinary course of business. DSS Exhibit 53A contains the following statement:

> Writer spoke with . . . Client [C]ounselor at Redeem Health center who reports client 1[3] missed 14 days of treatment and test[ed] positive on Oct 11, 2018 for opiates, cocaine, Marijuana and is doing poor. [Client Counselor] reports client should seek Inpatient Treatment at this time then move back into OMT if needed.

Counsel for Mother and Father each objected to the admission of DSS Exhibit 53A on hearsay grounds. The juvenile court overruled the objection and admitted the exhibit under the Md. Rule 5-803(b)(6) business records hearsay exception.

A. Parties' Contentions

Mother argues that the juvenile court erred in admitting the exhibit under the business records exception because "no foundation was laid regarding the preparation of the document." In response, DSS does not argue that the exhibit was properly admitted,

[3] Mother notes in her brief that "'[c]lient' is apparently [Mother], although the document misspells her name."

but instead, argues that any error was harmless because the same facts were provided through other admitted evidence.

B. Analysis

Given that DSS does not argue that the exhibit was properly admitted, we proceed to determine whether any error in admission of the exhibit was prejudicial. Notably, Mother did not propound any argument in her brief on the issue of prejudice. DSS, on the other hand, argued that the admission was not prejudicial because the facts contained in the exhibit could be found elsewhere in the record.

Indeed, Exhibit 10 and Exhibit 57 provided the same substantive information as did Exhibit 53A. Exhibit 57 reflects that on August 23, 2018, Mother agreed that she needed inpatient treatment. Moreover, Exhibit 10 is an October 9, 2018 CINA order regarding I.D., in which the juvenile court found that on six separate occasions between April 19 through August 7, 2018, Mother had tested positive for opiates, cocaine, marijuana and other illicit substances. Thus, the admission of Exhibit 53A was not prejudicial because the facts within the exhibit were established elsewhere in the record.

III. Finding of Reasonable Efforts to Reunify J.J. with Father

Father contends that the juvenile court erred in finding that DSS made reasonable efforts to reunify J.J. with Father. Father cites FL § 5-525(e), which reads:

> (e)(1) Unless a court orders that reasonable efforts are not required under § 3-812 of the Courts Article or § 5-323 of this title, **reasonable efforts shall be made to preserve and reunify families**:
>
> > (i) **prior to the placement of a child in an out-of-home placement, to prevent or eliminate the need for removing the child from the child's home**; and

> (ii) to make it possible for a child to safely return to the child's home.
>
> (2) In determining the reasonable efforts to be made and in making the reasonable efforts described under paragraph (1) of this subsection, the child's safety and health shall be the primary concern.
>
> (3) Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with the reasonable efforts described under paragraph (1) of this subsection.
>
> (4) **If continuation of reasonable efforts to reunify the child with the child's parents or guardian is determined to be inconsistent with the permanency plan for the child**, **reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan**, including consideration of both in-State and out-of-state placements, and to complete the steps to finalize the permanent placement of the child.

(Emphasis added).

As DSS notes, as of November 14, 2019, J.J.'s permanency plan was changed from reunification to placement with a relative for adoption or custody and guardianship. The status of J.J.'s permanency plan at the time of the juvenile court's order is evident from the following language in the court's order:

> Following the Contested Termination of Parental Rights Hearing the Court orders the following:
>
> * * *
>
> (e) Finds that [DSS] *has made reasonable efforts* in that [DSS] *has filed a petition for guardianship, served all parties, proceeded to complete the case, and located a prospective adoptive resource*[.]

Thus, upon the change in J.J.'s permanency plan on November 14, 2019, reunification of J.J. with Father was determined to be inconsistent with the permanency plan in place for J.J. *See* FL § 5-525(e)(4) ("If continuation of reasonable efforts to reunify the child with the child's parents or guardian is determined to be inconsistent with the permanency plan

for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan[.]"). Indeed, Father acknowledges in his brief that "[t]he objective pertinent to the reasonable efforts case would be to 'finalize the permanency plan in effect for the child [and meet the needs of the child, including the child's health, education, safety, and preparation for independence].'" *Quoting* Maryland Code, Courts and Judicial Proceedings Article § 3-816.1(b)(2). Accordingly, as of November 14, 2019, the court was not tasked with deciding whether DSS made reasonable efforts to reunify J.J. with Appellants. Instead, the juvenile court was tasked with deciding whether reasonable efforts were taken to finalize J.J.'s permanency plan for placement with a relative for adoption or custody and guardianship.

Notably, Father does not provide any basis for the contention that DSS did not make reasonable efforts to achieve the permanency plan in place for J.J. as of November 14, 2019. The juvenile court explained circumstances leading to the change in permanency plan as follows:

> A review of placement was held on November 14, 2019, and neither parent appeared for the hearing. The parties stipulated and agreed that [J.J.] continued to be CINA, the Court found [DSS] made reasonable efforts to reunify parents with [J.J.], and [J.J.] continued to live with paternal aunt, Ms. C[]. It was agreed that neither parent was involved with [J.J.]'s day to day care, neither parent was responsive to [DSS]'s attempts to contact them, neither parent maintained consistent visitation with [J.J.], and neither parent participated in meetings related to [J.J.]. Commitment of [J.J.] to [DSS] was continued, with limited guardianship to Ms. C[]. and [DSS]. The permanency plan was changed to placement with a relative for adoption or custody and guardianship.

Based on these facts, along with the lack of any factual basis to challenge the efforts to achieve the permanency plan in place at the time of the juvenile court's order, we hold that

the juvenile court did not err in finding that DSS made reasonable efforts to achieve J.J.'s permanency plan after reunification was no longer in J.J.'s best interest.

IV. Consideration of Evidence that J.J.'s brother currently resides in Appellants' home?

A. Parties' Contentions

Father contends that the juvenile court erred in not admitting evidence that J.J.'s sibling resides with Appellants. In response, DSS asserts that, although the evidence was excluded as irrelevant, the evidence was cumulative, and could therefore be excluded on those grounds. DSS cites *Yaffe v. Scarlett Place Residential Condo., Inc.*, 205 Md. App. 429, 440 (2012), for the proposition that "an appellate court can affirm when the record demonstrates that the decision was correct even if on a ground not relied upon by the trial court and raised by the parties."

Here, we agree that the exclusion of evidence that J.J.'s sibling resided in Appellants' home was cumulative and had virtually no prejudicial effect. Notably, in the juvenile court's order – from which this appeal was taken – the court twice noted that J.J.'s brother lived with Appellants:

> Of Mother's five children, three (3) are no longer in her care, and one (1) child, **R.J. whom she parents with Father, remains in her care**.

(emphasis added).

> **[Mother and Father]'s other child, R.J., lives at the home with them.** [DSS] conducted a home safety inspection for R.J., and the home passed the evaluation. However, [DSS] has not completed a home safety inspection for [J.J.].

(emphasis added). Clearly, the juvenile court did not need additional evidence on the matter because the court had already acknowledged the fact that R.J. lives with Appellants. The juvenile court considered the fact that J.J.'s brother lives with Appellants in rendering its order. Accordingly, the juvenile court did not err in excluding cumulative evidence.

CONCLUSION

We hold that, even if the juvenile court erred in judicially noticing our prior opinion, any error would not have been prejudicial because the allegedly prejudicial facts within the opinion could be found from other evidence in the record, which was admitted without objection. Likewise, we hold that even if the juvenile court erred in admitting Exhibit 53A, any error was harmless because the same facts found in Exhibit 53A were provided through other properly admitted evidence. Moreover, we hold that the juvenile court did not err in finding that DSS made reasonable efforts to achieve J.J.'s permanency plan. Finally, we hold that the juvenile court did not err in excluding cumulative evidence that J.J.'s brother lives with Appellants. Accordingly, we affirm the decision of the juvenile court.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE DIVIDED BETWEEN APPELLANTS.