Circuit Court for Howard County
Case No. C-13-JV-21-000080

CHILD ACCESS

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1331

September Term, 2021

In Re: M.B

Leahy,
Shaw,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: June 9, 2022

On September 17, 2021, the Howard County Department of Social Services (the "Department"), appellee, removed M.B. from the home where he lived with his mother and two sisters on allegations of abuse and neglect. Several days later, on September 20, 2021, the Department filed a Child in Need of Assistance ("CINA") petition and request for shelter care authorization in the Circuit Court for Howard County, sitting as a juvenile court.[1] The court held a shelter care hearing, after which the presiding magistrate found that it would be contrary to M.B.'s welfare for him to return to his mother's care and recommended that shelter care be continued. The circuit court adopted the magistrate's findings and recommendations on September 21, 2021.

After the Department filed an amended CINA petition, a dispositional and adjudicatory CINA hearing was held before a magistrate on October 13, 2021. The magistrate, after hearing testimony from the social worker assigned to the case, sustained the facts in the Department's petition and adjudicated M.B. a CINA. The court then proceeded to the dispositional phase, where it recommended, among other things, that the Department take temporary limited guardianship. Neither Mother nor Father filed exceptions to the magistrate's report and recommendations. The circuit court ultimately adopted the magistrate's recommendations fourteen days after the report was issued.

[1] *See* Maryland Code (1973, 2013 Repl. Vol., 2021 Supp.) Courts & Judicial Proceedings Article ("CJP"), §§ 3-801(f), (g) (defining 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."); CJP § 3-801(bb) (defining shelter care as "temporary placement of a child outside of the home at any time before disposition.").

Mother appeals the circuit court's order and presents three questions for our review:

> "1. Was it improper for the [c]ourt to rely on hearsay statements the [c]ourt had indicated were not coming in for the truth as a basis for its finding at adjudication?
>
> 2. Was it improper for the [c]ourt to consider at disposition the content of hearsay statements admitted at adjudication only to explain the effect on the listener and not for the truth of the matter?
>
> 3. Should the court have applied the 'Missing Witness' rule when [M.B.] did not testify but did tell the court that he had been lying in his accusations?"

For the reasons explained herein, we conclude that in her first two arguments presented on appeal, Mother challenges the factual findings contained in the magistrate's report as clearly erroneous. Because Mother did not file exceptions to the magistrate's report and recommendations, as required by former Rule 11-111,[2] we hold that Mother's first two appellate questions are not preserved for our review and the magistrate's findings of fact are conclusively established. Still, considering the propriety of the judge's actions in adjudicating M.B. a CINA even excluding the evidence Mother asserts was improperly incorporated into the magistrate's findings of fact, we hold that the circuit court properly adopted the magistrate's recommendation. Finally, we hold that the magistrate did not err or abuse her discretion by declining to draw a "missing witness" inference in Mother's favor. Accordingly, we affirm the judgment of the circuit court.

[2] As we will explain, Rule 11-103 replaced Maryland Rule 11-111 as the provision governing the role of magistrates in juvenile causes on January 1, 2022. However, we utilize former Rule 11-111 throughout this opinion as it was the governing rule at the time of M.B.'s CINA hearing.

BACKGROUND

The Allegations

On September 15, 2021, the Howard County Department of Social Services (the "Department") received allegations that M.B. had been physically abused and neglected by his mother. Ms. Blair Grooms, a licensed social worker with the Child Protective Services unit of the Department, interviewed M.B. at his school, where she noted that he had "multiple injuries including scratches and welts on his right leg, a scratch and bruise on his left leg, a welt on his left arm, and a sore shoulder, consistent with abuse." M.B. informed Ms. Grooms that his injuries were caused by Mother and explained that the two had "gotten into an altercation in the middle of the night due to [M.B.] leaving food in the oven[.]" M.B. also told Ms. Grooms that Mother kicked him out of the home "in the middle of the night" leaving him with "nowhere to go" after the altercation. After photographing M.B.'s injuries, Ms. Groom drove to mother's house to draft a safety plan. The safety plan, which was signed by Mother and verbally agreed to by Father, stated that M.B. had "sustained multiple injuries during an altercation with [Mother]." It required that both parents refrain from using "any physical discipline on [their children] (including hitting, pushing, punching, etc.)" and provided that Mother was to take M.B. to "the hospital/urgent care to have his shoulder evaluated."

Several days later, on September 17, 2021, the Department received new allegations that Father had physically assaulted M.B. After the allegations were received, Ms. Groom reinterviewed M.B. at his school, where she noticed that he had redness and bruising on

his chest. She also learned that Mother had failed to comply with the safety plan, as M.B. had not had his shoulder evaluated. Given the violations of the safety plan and new allegations of abuse, Ms. Grooms attempted to craft a safety plan that would allow M.B. to live with his maternal grandmother in Baltimore City; however, neither Mother nor Father agreed to the revised safety plan. Consequently, M.B. was taken into shelter care.

Shelter Care Proceedings and Order

The Department, on September 20, 2021, filed a Child in Need of Assistance Petition and Request for Shelter Authorization in the Circuit Court for Howard County, sitting as a juvenile court. The filing alleged that M.B.'s family "has an extensive CPS history, including multiple indicated abuse findings" and that M.B.'s Mother had previously faced "criminal child abuse charges in Baltimore City." The Department recounted the recent allegations of abuse and noted that Mother and Father had violated the safety plan. In addition to physical abuse, the Department noted that there "are also concerns of neglect" as M.B. was kicked out of his Mother's house in the middle of the night and that the parents had not had his shoulder evaluated by a medical professional. It averred that M.B.'s "continued placement in [Mother's] home is contrary" to his welfare and that there is "no parent, guardian, or custodian, or other person able to provide supervision." The Department posited that "removal from the home is reasonable under the circumstances to provide for the safety of the child[.]"

Later the same day, the circuit court held a shelter care hearing before a magistrate. While a transcript of the shelter care hearing is not a part of the record, the hearing sheet

indicates that Ms. Groom testified. In addition to Ms. Grooms' testimony, the Department proffered six photos of M.B.'s injuries taken by Ms. Grooms and a copy of the safety plan. The report of the magistrate "sustained the finding that continuation of [M.B.] in [his mother's] home **is contrary** to [M.B.'s] welfare and that it is not possible to return [M.B.] to the home and placement of [M.B.] is required to protect him from serious immediate danger." The day after the hearing, on September 21, 2021, the circuit court adopted the magistrate's findings and signed the proposed order.

Amended CINA Petition and CINA Adjudication and Disposition

On October 6, 2021, the Department filed an amended CINA petition, which was, in substance, the same as the original CINA petition. An adjudication hearing was held before a magistrate on October 13, 2021. In support of the CINA petition, the Department called Ms. Grooms, the social worker assigned to M.B.'s case. She explained that, generally, her role as a licensed social worker with the Department requires that she "investigate child abuse and neglect and assess the safety of children." Mother objected to the Department asking Ms. Grooms what her "understanding" of the abuse allegations against Mother were on September 15, 2021, when Ms. Grooms was assigned to the case, and the following colloquy took place:

> THE COURT: What's the basis for the objection?
>
> [MOTHER'S COUNSEL]: Hearsay if it's coming in for the truth of the matter.
>
> [PETITIONER'S COUNSEL]: Your Honor, it asked about the allegations. It's not coming in as the truth of the matter. It's the allegations as she understood them according to [the] report to the Department.

> THE COURT: They are coming in on the effect on the listener and what it caused her to do next. Overruled.

Ms. Grooms subsequently testified that she was tasked with investigating allegations that Mother had hit M.B. "with a broom and metal object resulting in injuries."

Ms. Grooms testified that she began her investigation by searching M.B.'s family's history with the Department, which she noted, is typical of any Department investigation. Mother objected to the Department's questions concerning M.B.'s family history. The magistrate overruled the objection, reasoning that it was being offered to show what Ms. Grooms "looked at to do her job" and "[n]ot for the truth of the matter." Ms. Grooms explained that Mother and Father had "multiple child abuse and child neglect findings against" them and that Mother "had been arrested multiple times for child abuse charges."

After checking the family's history, Ms. Grooms testified that she interviewed M.B. at his school. Mother objected to the Department asking Ms. Grooms what M.B. told her during the interview:

> [MOTHER'S COUNSEL]: Objection.
>
> [PETITIONER'S COUNSEL]: Your Honor, we're offering this [as] an admission of a party.
>
> [MOTHER'S COUNSEL]: Your Honor, this is not a party opponent and if it is – unless they're asking that he be designated as an opponent. And again, if it is coming in that way, it would only be admissible against the party and not my client.
>
> * * *
>
> [PETITIONER'S COUNSEL]: So, I'm going to ask that it be admissible in two ways. Number one, it is a party. Ms. Jones is representing [M.B.] . . .

> [M.B.] has indicated that they are opposing this petition. So, certainly any facts in that matter would come in. In addition, any admissions that [M.B.] made to Ms. Grooms will inform what she would do next in her investigatory world as the CPS worker. And, so, that information is crucial to her decisions going forward.
>
> * * *
>
> [MOTHER'S COUNSEL]: Okay. First of all, Ms. Jones says she wants a CINA finding but not an OPS. So, she's not supporting my client's effort to have the case thrown out. Again, it sounds like [Petitioner's Counsel] is saying that she's not seeking its admission for the truth of the matter. If that's the case, then that's a different issue. But if she is, then my objection stands. And even if you admitted it as a party admission, it wouldn't be admissible against my client.
>
> THE COURT: All right. I am going to admit it not as to the truth of the matter asserted but what caused her to take her next actions. Go ahead.

Ms. Grooms testified that M.B. relayed that he "and his mother had gotten into an altercation in the middle of the night due to [M.B.] leaving food in the oven," causing the house to become filled with smoke. M.B. told her that his mother "slapped him multiple times and punched him in the face" before hitting him on his arms and shoulders with the pole end of a broom. M.B. advised Ms. Grooms that, after Mother hit him with the broom, she "grabbed a metal pole that was also in his room and began hitting him with that as well." After the altercation ended, M.B. left the house and sat in the waiting room of Howard County General Hospital. M.B. informed Ms. Grooms that as a result of the altercation, he sustained a sore shoulder, which popped when he moved it, as well as scratches, open wounds, and welts on his legs. Ms. Grooms took photos of visible injuries on M.B.'s right leg, left leg, and left arm, which were admitted into evidence at the hearing.

As Ms. Grooms was about to leave, M.B. informed her that he did not feel safe going home as Father "was making threats to [M.B.] that he was going to fight him after school."

Ms. Grooms testified that the next step in her investigation was to go to Mother's house in the hopes of establishing a safety plan. She stated that after Mother arrived at the house, which was around 4:00 p.m., she "would not let me speak and kept talking over me." Mother "just said that she doesn't know where the injuries came from" and then asked Ms. Grooms to leave the home. A copy of the agreed upon safety plan, signed by Mother, was admitted at the hearing. The plan stated that M.B. had "sustained multiple injuries during an altercation with [Mother]" and forbade both parents from using "physical discipline."

The following day, September 16, 2021, Ms. Grooms received a call and a text message from M.B. alerting her that he "did not go home the night of the 15th" because he was "scared to go home." Ms. Grooms assured M.B. that "a Safety Plan was in effect" and that he could return home. Several hours after this conversation, M.B. sent Ms. Grooms a picture of "his front door stating that he was waiting for his mother to get home." After receiving this photo, Ms. Grooms sent a text message to Mother reminding her that she needed to take M.B. "to get his shoulder looked at."

Ms. Grooms returned to M.B.'s school the next day, September 17, 2021, to ascertain whether Mother had complied with the terms of the safety plan. She recalled that after she arrived, an "officer at the school" informed her that M.B. had new injuries. Although Mother objected to the admission of what the officer told Ms. Grooms, the

magistrate admitted the statements "not for the truth of the matter asserted but what informed [Ms. Grooms] decision-making." Ms. Grooms testified that she proceeded to interview M.B. Again, Mother objected before the Department could ask about the substance of the interview. The magistrate overruled the objection, again, noting that Ms. Grooms' testimony was "not [offered] for the truth of the matter asserted but what informed her decision-making." Although M.B. did not want to speak with Ms. Grooms, she recalled that he hesitantly agreed to lift his shirt, at which time Ms. Grooms "observed injuries on his chest." A photo taken by Ms. Grooms of these injuries was admitted into evidence.

Next, Ms. Grooms testified that she drove from M.B.'s school to Mother's house to discuss the new injuries. Although Mother was not at home, Ms. Grooms reached her on the phone. Mother told Ms. Grooms to "leave her alone" and that she "did not want to meet with [her]." Ms. Grooms attempted to draft a new safety plan, which would have allowed M.B. to reside with his grandmother in Baltimore City; however, neither Mother nor Father would agree to such a plan. Therefore, Ms. Grooms, on the afternoon of September 17, sheltered M.B.

When she met with M.B. after the shelter care hearing, Ms. Grooms recalled, he informed her that the injuries on his chest were caused by Father. Ms. Grooms relayed to the court that M.B. has not seen his parents since he was sheltered, as he has consistently refused visitation with both Mother and Father. She also testified that neither Mother nor Father had agreed to an interview with her.

On cross-examination, Ms. Grooms confirmed that the criminal child abuse charges that were previously filed against Mother, and that she mentioned during her direct testimony, appear to be "stet." She also clarified that, while there has been no in-person contact between M.B. and his Mother since the shelter care hearing, the two have spoken on the phone and via video chat and that M.B. has expressed a desire to return to Mother's home. During closing arguments, Mother's counsel argued that the Department had not presented any evidence that Mother "hurt her child at all" as the testimony of Ms. Grooms was not offered "for the truth of the matter" and that the magistrate "indicated that [she] was hearing it not for the truth of the matter." He also averred that the court could draw a "missing witness" inference, as M.B. was in the Department's custody, and it decided not to "ask him what happened." In his view, the lack of evidence presented by the Department, in concert with the missing witness inference, dictated that the allegations in the petition should not be sustained.

After a brief rebuttal from the Department, the court delivered its recommendations:

> All right. Based on the evidence presented here today, I do find that the allegations in the petition are sustained. I find by a preponderance of the evidence that it is more likely than not that the cause of [M.B.'s] demonstrated injuries are from his parents. And it is possible to make that determination without taking [M.B.'s] words for the truth of the matter asserted. When you put the pieces together of him leaving the home, having observable injuries, being resistant to going back, being resistant to being with his parents and the history of this case and previous findings, I do find that the facts are sustained.

The court proceeded to the dispositional phase of the proceeding. The Department again called Ms. Grooms to testify, this time about a report that she had written on behalf of the Department. She informed the court that in the report she recommended that M.B. "stay in the care and custody of the Department" and that Mother "complete a psychological evaluation," "follow all treatment recommendations," "participate in anger management classes," and give M.B. "his belongings, such as clothes and school supplies." In her view, it was not safe for M.B. to go home because his parents had violated a previous safety plan and had refused to draft a new plan or to even meet with the Department to discuss M.B.'s safety. She expounded that Mother needed anger management as she had consistently been "irate" with her, "gotten in [her] face," "kicked [her] out," and had even "threatened and argued with the police officers" who accompanied Ms. Grooms at Mother's house.

Mother testified on her own behalf. She informed the court that, generally, she disciplines M.B. by taking "his phone and his video games" but does not physically discipline him. In her view, M.B. would not be in danger if he were to return home, as she is "not even in any capacity to hurt anyone" given that she was "twenty-four weeks pregnant." She advised the court that M.B. calls her every day from his laptop. When asked why she did not follow the terms of the safety plan, she averred that she was not able to take M.B. to get his shoulder examined as M.B. did not come home the night that the safety plan was signed.

On cross-examination, she reiterated that she had never physically disciplined M.B. and that she was "very sure of her answer." She indicated that there had never been any findings against her by Child Protective Services nor had she been criminally convicted of neglect or abuse. Those cases, she relayed, were dismissed after it was discovered that M.B. had made false allegations. Father also explained that there is "no need to abuse [M.B.] physically" because "all you have to do is . . . take the game away from him on his phone." He expressed that, in his view, M.B. should come home because he "misses his family," and his family supports him and misses him.

After hearing closing arguments, the magistrate made the following recommendations:

> All right. Well, as I previously said, I do find the facts in the petition are sustained. In terms of disposition, I'm going to recommend that [M.B.] be found a child in need of assistance and placed in the care and custody of the Howard County Department of Social Services with temporary, limited guardianship. I'm also recommending a psych evaluation for [M]other and that she follow all treatment recommendations. That both parents participate in anger management, releasing information to the Department. That the parents will give [M.B.] his belongings. And that the parents and siblings shall have supervised visits with the child as can be arranged. And I'm also recommending that a CASA be appointed and that the Department make all efforts to ensure that [M.B.] remains in school[.]
>
> * * *
>
> . . . I'm just concerned – [an] order of protective supervision and imposing certain conditions only works when everybody is willing to abide by those conditions. And so far, that has not seemed to be the case. So, the fact that there was a Safety Plan and it was violated doesn't make me feel confident.

After the magistrate made her recommendations, M.B. spoke and noted that being away from his home would "be hard" on him and his family. He noted that, in his view, the court did not "care about his interest at all" and he "wouldn't have lied in the first place about these allegations and what was happening at the home" if he had known this would be the outcome.

Later that same afternoon, on October 13, 2021, the magistrate issued her adjudication/disposition findings and order. In the report, the Magistrate included the following factual findings:

> On September 15[], [the social worker] went to [M.B.'s school] to see [M.B.] and assess his injuries. The Respondent ha[d] multiple injuries including scratches and welts on his right leg, a scratch and bruise on his left leg, a welt on his left arm, and a sore shoulder consistent with abuse. He told her that his mother came home, and they discussed dinner. Dinner never appeared. Later burnt food was found in the oven. Mother came into [M.B.'s] room and was upset. She slapped him and punched him in the face. She started throwing things at him. He threw one back and it hit her. Mother than hit him with the pole end of a broom on his shoulder and legs. Eventually she left and told him, "if [you] open my door again, I will kill you in here." [Mother] then told [M.B.] that he had to leave the house and not to come home after school. This was at 4:00 a.m. He had pain in his shoulder, scratches and welts. She observed the injuries and took photos of them. They were on his legs and his arms.
>
> [M.B.] told the social worker that he was afraid to go home because Father threatened to fight him after school.
>
> [M.B.] told the social worker that when he returned home the following morning his mother refused to let him inside.
>
> * * *
>
> On the 16th [M.B.] also called the [social worker] saying he was afraid to go home. He did not come home the night of the 15th. The [social] worker reminded Mother to take [M.B.] to get his shoulder examined. She told her to leave her alone.

* * *

> On the 15th, [the social worker] presented a safety plan to Mother. It was executed by Mother and verbally agreed to by Father. . . . On the 17th [the social worker] went to the school to see if [M.B.] had gone to the doctor. A safety officer stopped her saying that [M.B.] had new injuries. He had not had his shoulder examined. She had [M.B.] lift his shirt and observed redness and bruising on his chest. She was told by the safety officer that the bruises were from an altercation between [M.B.] and his father.
>
> After this, the [social] worker went to [Mother's] home to discuss violations of the safety plan. She was told to leave Mother alone. She did not discuss things with [Father]. She then started to create a new safety plan for [M.B.] to go reside with his [] grandmother in Baltimore City and to have no contact with either parent. The parents would not agree to the plan. After that she sheltered [M.B.] and brought him into foster care.
>
> There was a team meeting to try to develop a plan for [M.B.]. Nothing was agreed to and the parents just kept talking about his bad behavior. [The social worker] tried to arrange supervised visits with parents and [M.B.] refused the visits.

The magistrate's recommendations included, among other things, that M.B. be "committed to the temporary care and custody of the [Department]" and required that Mother "submit to a psychological evaluation" and "participate in an anger management class." The magistrate's recommendations concluded by explaining that:

> Exceptions to the Magistrate's proposed order shall be in writing and shall be filed with the clerk's office. The exceptions must be in writing and filed within 5 days of service. The exceptions shall specify those items to which exceptions are taken. Copies of exceptions must be served on all other parties involved in the case.

After no exceptions were received, the circuit court adopted the magistrate's findings and recommendations on October 27, 2021. Two days later, on October 29, 2021, Mother filed a notice of appeal.

STANDARD OF REVIEW

The standard of review in CINA cases is well-established. "There are 'three distinct but interrelated standards of review' applied to a juvenile court's findings in CINA proceedings." *In re J.R.*, 246 Md. App. 707, 730-31 (2020) (quoting *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018)). First,

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

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

DISCUSSION

The Legal Framework

Before addressing the parties' arguments, we outline the applicable provisions of the Maryland Code governing CINA proceedings and the Maryland Rules governing juvenile causes. We interpret the Maryland Rules and Maryland Code under the same, well-established, principles of construction. *Davis v. Slater*, 383 Md. 599, 604 (2004) (citations omitted). Specifically,

> [w]e begin our analysis by first looking to the plain meaning of the rule's language, our examination of which is guided by the principle that we should read the rule as a whole, so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory. If the language of the rule is subject to more than one interpretation, it is ambiguous, and we

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

In re Kaela C., 394 Md. 432, 467-68 (2006) (cleaned up). We are mindful that the Maryland Rules "are precise rubrics, established to promote the orderly and efficient administration of justice, and thus are to be strictly followed." *Id.* at 471 (quotation marks and citations omitted).

This State has long recognized that every parent has a constitutionally protected "liberty interest in raising his or her child as he sees fit, without undue influence by the State." *In re Yve S.*, 373 Md. 551, 565 (2003). However, this right is not absolute and "must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497 (2007). To effectuate this balance, "[t]he General Assembly has established a statutory framework for the State's exercise of its authority to safeguard a child in need of assistance." *In re M.*, 251 Md. App. 86, 114 (2021). This framework is codified at Maryland Code (1979, 2020 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP"), §§ 3-801-30. Related provisions are located at Title 5, Subtitle 7 of the Family Law Article. *See* Maryland Code (1984, 2019 Repl. Vol.), Family Law Article, § 5-703(a) ("The provisions of this subtitle are in addition to and not in substitution for the provisions of Title 3, Subtitle 8 of the Courts Article.").

Under the CINA framework, a local department, after receiving complaints that "may cause a child to be subject to the jurisdiction of the court" is required to file a petition, "if it concludes that the court has jurisdiction over the matter and that the filing of a petition is in the best interests of the child." CJP § 3-809(a). Generally, the petition must "allege that a child is in need of assistance and shall set forth in clear and simple language the facts supporting that allegation." CJP § 3-811(a)(1). A juvenile court must subsequently conduct a two-stage hearing process. *In re O.P.*, 470 Md. 225, 236 (2020). During the first stage, "the juvenile court is to hold an adjudicatory hearing." *Id*; CJP § 3-817(a). In the CINA context, an adjudicatory hearing means: "[A] hearing . . . to determine whether the allegations in the petition, other than the allegation that the child requires the court's intervention, are true." CJP § 3-801(c); Md. Rule 11-114. During this hearing, "the rules of evidence under Title 5 of the Maryland Rules . . . apply," and the department bears the burden of proving the allegations of the complaint "by a preponderance of the evidence." CJP § 3-817(b)-(c).

Unless a court decides to dismiss a CINA petition, it must proceed to the disposition stage. CJP § 3-819(a). At this stage, a court must determine: "(1) Whether a child is in need of assistance; and (2) If so, the nature of the court's intervention to protect the child's health, safety, and well-being." CJP § 3-801(m). The disposition hearing, generally, "shall be held on the same day as the adjudicatory hearing" unless "there is good cause to delay the [] hearing to a later day." CJP § 3-819(a)(2). "At the disposition phase, it is left to the discretion of the juvenile court whether to insist on strict application of the rules of

evidence." *In re O.P.*, 470 Md. at 236. If, at the conclusion of this hearing, a court determines that a child is not a CINA, then, generally, the case is to be dismissed. CJP § 3-819(b)(1)(i). Should a court decide that a child is a CINA, it can:

> 1. Not change the child's custody status; or
> 2. Commit the child on terms the court considers appropriate to the custody of:
>
> A. A parent;
> B. Subject to § 3-819.2 of this subtitle, a relative, or other individual; or
> C. A local department, the Maryland Department of Health, or both, including designation of the type of facility where the child is to be placed.

CJP § 3-819(b)(iii).

Section 3-807 of the Courts and Judicial Proceedings Article grants magistrates the authority to conduct, among other juvenile proceedings, CINA hearings. It states, in relevant part:

> (b)(1) A magistrate appointed for juvenile causes may conduct hearings.
>
> (2) Each proceeding shall be recorded, and the magistrate shall make findings of fact, conclusions of law, and recommendations as to an appropriate order.
>
> (3) The proposals and recommendations shall be in writing, and, within 10 days after the hearing, **the original shall be filed with the court and a copy served on each party to the proceeding**.
>
> (c)(1) **Any party, in accordance with the Maryland Rules, may file written exceptions to any or all of the magistrate's findings, conclusions, and recommendations, but shall specify those items to which the party objects.**
>
> * * *
>
> (d)(1) The proposals and recommendations of a magistrate for juvenile causes do not constitute orders or final action of the court.

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

CJP § 3-807 (emphasis added).

Former Maryland Rule 11–111, which was the governing provision at the time of M.B.'s CINA hearings, outlined a process by which circuit courts may review exceptions to a magistrate's findings and recommendations.[3] The Rule provided, in pertinent part:

> b. **Report to the court.** Within ten days following the conclusion of a disposition hearing by a magistrate, he shall transmit to the judge the entire file in the case, together with a written report of his proposed findings of fact, conclusions of law, recommendations and proposed orders with respect to adjudication and disposition. A copy of his report and proposed order shall be served upon each party as provided by Rule 1–321.[4]
>
> c. **Review by court if exceptions filed.** Any party may file exceptions to the magistrate's proposed findings, conclusions, recommendations or proposed orders. **Exceptions shall be in writing, filed with the clerk within five days after the magistrate's report is served upon the party, and shall specify those items to which the party excepts, and whether the hearing is to be de novo or on the record**.

[3] As of January 1, 2022, Maryland Rule 11-111 was replaced with Maryland Rule 11-103, which now governs the role of magistrates in juvenile causes. We use former Rule 11-111 in this opinion as it was the governing rule at the time of M.B.'s hearing. However, we note that Rule 11-103, like former Rule 11-111, provides that exceptions to a magistrate's proposed findings:

> shall be in writing, filed with the clerk within five days after service of the magistrate's report, and served on each other party.

Rule 11-103(e)(1).

[4] In the present case, the magistrate's document is titled, "CINA Disposition Findings and Order." The MDEC entry titles the document as a "Proposed Order/Decree CINA Adjudication/Disposition Findings and Order."

> Upon the filing of exceptions, a prompt hearing shall be scheduled on the exceptions. An excepting party other than the State may elect a hearing de novo or a hearing on the record. . . .
>
> d. **Review by court in absence of exceptions. In the absence of timely and proper exceptions, the magistrate's proposed findings of fact, conclusions of law and recommendations may be adopted by the court and the proposed or other appropriate orders may be entered based on them**. The court may remand the case to the magistrate for further hearing, or may on its own motion, schedule and conduct a further hearing supplemented by such additional evidence as the court considers relevant and to which the parties raise no objection. Action by the court under this section shall be taken within two days after the expiration of the time for filing exceptions.

Former Maryland Rule 11-111 (b) – (d) (emphasis added). Significant in the case before us is the Rule's commandment that a party wishing to contest a magistrate's findings and proposed order must file exceptions within five days after being served with the magistrate's written report.

The Parties' Contentions

In her opening brief, Mother avers that the magistrate erred when she relied on hearsay evidence in her findings and recommendations during the adjudicatory phase of the hearing. Mother challenges three categories of hearsay evidence: (1) M.B.'s "purported statements" to Ms. Grooms; (2) the results of Ms. Grooms' "purported investigation into the family's prior DSS history"; and (3) a "school security officer's purported statements to [Ms. Grooms] regarding statements the officer said [M.B.] made." Mother points out that counsel objected, before the statements were made, on the basis that the statements were inadmissible hearsay. The magistrate, she avers, sustained her objections, and admitted the evidence for the effect on Ms. Grooms and not for the truth of the matter

asserted. Despite these rulings, Mother asserts that the court "did not follow its own directive and treated the disputed testimony as if it had been admitted for all purposes." Without these hearsay statements, Mother posits that "[t]here was absolutely . . . no basis for finding the allegations proven and abuse or neglect established without them."

Mother also alleges that the magistrate considered the same hearsay evidence during the dispositional phase of the hearing. While acknowledging that the rules of evidence are relaxed during disposition, Mother argues that "[t]here was no effort to repurpose or resurrect the evidence excluded for the truth of the matter at adjudication." In her view, for the evidence to be admissible during the disposition phase, the Department was required to: (1) have Ms. Grooms re-testify or (2) ask the magistrate to reconsider the admissibility of the statements, this time for the truth of the matters they assert. Even under the relaxed rules of evidence, Mother argues that the court had to determine whether the "evidence proffered for admission is sufficiently reliable and probative prior to its admission." (Quoting *In re Billy W.*, 387 Md. 405, 434 (2005)).

Finally, Mother asserts that the court failed to draw a "missing witness" inference in her favor, as the Department declined to call M.B. as a witness during the CINA hearing. She argues that a "missing witness" inference was appropriate as M.B. was, at the time of the hearing, in the custody of the Department and that both Ms. Grooms and M.B. had informed the court that M.B. had altered his story during the course of the CINA investigation. These facts, according to Mother, dictate that the court "should have given weight to the failure to put the only real witness," M.B., "on the stand."

The Department responds by arguing that by failing to file exceptions, Mother "relinquished her right to challenge the magistrate's findings of fact," and has "failed to preserve her evidentiary challenges for appellate review." Because the magistrate's findings of fact are "immutabl[y] sustained," the Department argues that "appellate review is limited to 'the propriety of the judge's actions.'" (Quoting *Green v. Green*, 188 Md. App. 661, 674 (2009) (internal citation omitted)).

The Department avers that the "juvenile court properly exercised its discretion" when it sustained all of the allegations in its petition and found that M.B. is a CINA. Specifically, it avers that, based on the sustained findings of the magistrate, the court properly concluded that M.B.'s parents had physically abused and neglected M.B. by, among other things, "engaging in physical altercations with M.B. that caused observable injuries" and failing to obtain medical care for M.B.'s shoulder, in violation of the safety plan. Considering these findings, the Department posits that the court properly concluded that "placement [was] required to protect [M.B.] from serious immediate danger."

Counsel for M.B. avers in her brief that the trial court "did not [e]rr, nor abuse its discretion, by adopting the findings and recommendations of the Magistrate." The report of the Department as well as the photographs of M.B.'s injuries, she avers, constitutes "ample evidence in the file to support a finding of CINA." Counsel notes that "the parties" were served with the magistrate's CINA report "via the MDEC system" on October 13,

2021.[5] In her view, the circuit court was forced to "accept the sufficiency of the [magistrate's] first-level factual findings" as it was not provided with transcripts from either the shelter care or CINA hearings as would have been the case had exceptions been filed. Additionally, she argues, Mother was required to challenge the report and recommendation of the magistrate "at the trial court before seeking an appeal" and that her "failure to file timely exceptions bars her from challenging the recommendations of the Magistrate."

Mother asserts—for the first time ever—in her reply brief, that she was never served with a copy of the magistrate's report and recommendations. Because she was never served, Mother claims that she can challenge the magistrate's report and recommendations in this Court, even though she did not file exceptions in the circuit court. For service to have been properly effectuated, she argues that the court was required to deliver or mail a copy of the order to her address. Given that she was not served with the magistrate's report before it was adopted by the circuit court, Mother alleges that "she cannot be faulted and deprived her opportunity to challenge the decision."

[5] At oral argument, Mother's counsel could not remember whether he was emailed a courtesy copy of the magistrate's report and recommendations but acknowledged that in his experience it "would sometimes happen." Although an emailed courtesy copy does not constitute service of the magistrate's report, Md. Rule 1-324(a); *Barrett v. Barrett*, 240 Md. App. 581, 588-91 (2019), the fact that Mother may have received a courtesy copy highlights her failure to preserve her claim that she was not properly served.

Analysis

a. Service of the Magistrate's Report and Recommendations

At the threshold of our analysis, we address Mother's claim, raised for the first time in her reply brief, that she was not properly served with the magistrate's report and recommendations. Under Maryland Rule 8-131(a), "an appellate court has discretion to excuse a waiver or procedural default and to consider an issue even though it was not properly raised or preserved by a party." *Jones v. State*, 379 Md. 704, 713 (2004). The Rule provides, in relevant part, that:

> 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, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

Md. Rule 8-131(a). Although appellate courts are vested with the discretion to address unpreserved issues, this discretion should rarely be exercised as:

> considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to make to a trial court's ruling, action or conduct be presented in the first instance to the trial court so that (1) a proper record can be made with respect to the challenge, and (2) the other parties and the trial judge are given an opportunity to consider and respond to the challenge.

Chaney v. State, 397 Md. 460, 468 (2007).

While there is "no fixed formula for the determination of when discretion should be exercised," the Court of Appeals has suggested that "when presented with a plausible exercise of this discretion, appellate courts should make two determinations[.]" *Jones*, 379 Md. at 713-14. First, an appellate court must determine "whether the exercise of discretion

will work unfair prejudice to either of the parties." *Id.* at 714. In considering whether the prejudice suffered by a party rises to the level of "unfair," reviewing courts should consider whether "the failure to raise the issue was a considered, deliberate one, or whether it was inadvertent and unintentional." *Id.* The Court of Appeals has noted that unfair prejudice may, for example, "result if counsel fails to bring the position of her client to the attention of the lower court so that that court can pass upon and correct any errors in its own proceedings."[6] *Id*. Second, an appellate court must "consider whether the exercise of its discretion will promote the orderly administration of justice." *Id.* at 715. This consideration seeks "to prevent the trial of cases in a piecemeal fashion, thereby saving time and expense and accelerating the termination of litigation." *Id. See also In re Kaleb K.*, 390 Md. 502, 513 (2006) (explaining that permitting "Petitioner to raise a new argument based on a different statute on appeal would result in 'sandbagging' the State and the trial (juvenile) court, which is the precise result that Rule 8-131(a) was designed to avoid").

Here, proper exercise of our discretion requires that we decline appellate review of Mother's service argument. Mother's default in this case is the failure to preserve the issue—distinguishing it from those cases in which we vacated judgments to address

[6] The Court of Appeals also noted that unfair prejudice may result if the State, in a criminal trial, presented a new argument on appeal which was premised on "evidence not adduced at the trial level" because "it would be manifestly unfair to the defendant who had no opportunity to respond to the argument with his own evidence to the contrary." *Jones*, 379 Md. at 714.

allegations of failures to serve. *See Barrett v. Barrett*, 240 Md. App. 581 (2019).[7] First, Mother failed to raise her service argument before the circuit court. Second, on appeal, Mother failed to raise the issue in her opening brief.

Initially, we recognize that Mother does not argue, in her reply brief or otherwise, that this court should exercise its discretion to address her service argument. Even if we were inclined to overlook this shortcoming, we hold that reaching this argument would unfairly prejudice the Department, M.B., and the circuit court. Because Mother circumvented review in the circuit court, the Department and M.B. did not have an opportunity to consider and respond to Mother's assertion that she was not served with the magistrate's report and recommendations. The circuit court was also deprived of an opportunity to make findings and develop a record regarding whether Mother was properly served. And, if the court determined that Mother was not properly served, it was not given

[7] In *Barrett v. Barrett*, approximately three months after hearing closing arguments in the parties' divorce action, a magistrate issued a "Report, along with a notice to the parties regarding filing exceptions and a certificate of service." 240 Md. App. at 585. The certificate of service "indicated that the court served the parties . . . by 'Courthouse Mailbox' rather than hand delivery or U.S. mail." *Id.* Several weeks later, after no exceptions were received, the circuit court entered "a judgment of absolute divorce premised on the magistrate's recommendations." *Id.* The very next day, appellant filed "a motion for leave to file exceptions, exceptions, and a motion to alter or amend the judgment . . . or to revise" claiming that service via his attorney's "Courthouse Mailbox" was not proper under the Maryland Rules. *Id.*

The circuit court summarily denied appellant's motions, reasoning that the exceptions were not timely filed. *Id.* at 586. Appellant subsequently noted an appeal to this Court. *Id.* We vacated the circuit court's judgment reasoning that "[i]n light of the underdeveloped record on appeal" the service issue needed to be remanded "with instructions to examine whether the clerk properly served [appellant] with a copy of the Report." *Id.* at 591.

the opportunity to correct the error. Finally, the failure to raise the issue at any stage leaves us unable to address the issue on an incomplete record.

Unlike the appellant in *Barrett v. Barrett*, here, Mother did not challenge the circuit court's order before filing an appeal. Even if Mother was not aware of the magistrate's report and recommendations, she could have filed post-judgment motions with the circuit court after it issued its order on October 27, 2021.[8] Therefore, we disagree with Mother's contention that she was "deprived her opportunity to challenge the decision[s]" of the magistrate and the circuit court. Although she had a means to challenge the circuit court's decision, she made the deliberate choice to bypass circuit court review and go "directly to appeal[.]"

Mother further compounded her failure to complain in the circuit court that she was never served a copy of the magistrate's report by omitting the argument from her opening brief. Consequently, the argument is raised for the first time, in any court, in Mother's reply brief. "Ordinarily, we do not consider arguments that a party raises for the first time in a reply brief." *Dolan v. Kemper Indep. Ins. Co.*, 237 Md. App. 610, 627 (2018) (citing *Jones v. State*, 379 Md. 703, 713 (2004)). By failing to raise this issue until the reply brief, Mother exacerbated the unfair prejudice inflicted upon both the Department and M.B. by forestalling their chance to consider and respond to it.

[8] Mother does not contest that she was properly served with the circuit court's October 27, 2021 order adopting the recommendations of the magistrate.

We decline to address Mother's unpreserved argument that she was not served with a copy of the magistrate's report because reaching it would unfairly prejudice the Department and M.B. and would not promote the orderly administration of justice.

b. Failure to File Exceptions

Courts in this State have held that "[a] party's failure to timely file exceptions forfeits any claim that the [magistrate's] findings of fact were clearly erroneous." *Barrett*, 240 Md. App. at 587. Therefore, where no exceptions are timely filed, a reviewing court, and the parties, must accept the magistrate's findings of fact "as established for purposes of the pertinent proceeding leading to [an] appeal." *Miller v. Bosley*, 113 Md. App. 381, 393 (1997); *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, as Appellant did not file exceptions to the orders or otherwise object). Failure to timely file exceptions does not, however, "preclude[] [a party] from appealing the trial court's adoption of the [magistrate's] recommendation if the issues appealed concern the court's adoption of the [magistrate's] application of law to the facts." *Green v. Green*, 188 Md. App. 661, 674 (2009).

In *Green v. Green*, this Court examined, in the child custody context, the effect of exceptions that were untimely filed. *Id.* at 664. There, Mother and Father had previously entered into a custody agreement which provided that their daughter would "reside with Mother's aunt and uncle." *Id.* Several years later, Mother filed a complaint to modify custody after completing a drug rehabilitation program. *Id.* at 665. After a hearing before

a magistrate, her complaint was denied.[9] *Id.* at 666. The magistrate orally dictated several factual findings and recommendations and, several weeks later, issued a report of findings and recommendations. *Id.* at 669. Mother filed exceptions to the magistrate's findings seven days after the magistrate issued his written report, and Father moved to strike on the basis that the exceptions were not timely filed. *Id.* The circuit court agreed that the exceptions were not timely and, consequently, "granted the motion to strike the exceptions and entered the *Pendente Lite* Order Regarding Child Custody as a Final Custody Order." *Id.* Mother appealed. *Id.* at 671.

On appeal Mother argued, among other things, that "the failure to file exceptions should not be a bar to the filing of an Appeal based upon the improper application of those (now) established facts to the prevailing law[.]" *Id.* at 674. We agreed and drew a distinction between appeals challenging the "circuit court's adoption of the [magistrate's] factual findings" and appeals challenging the "trial court's adoption of the [magistrate's] recommendation if the issues appealed concern the court's adoption of the [magistrate's] application of law to the facts." *Id.* We reasoned that three of Mother's appellate questions fell into the latter category, specifically:

> III. Did the trial court err when it found that the Agreement and Order of June 30, 2006, awarded primary physical custody of the minor child to the [Aunt and Uncle]?
>
> IV. Did the trial court err when, absent a finding of unfitness or exceptional circumstances, the Court failed to apply the presumption in favor of the

[9] While the original opinion uses the term "master" instead of "magistrate," as of September 30, 2015, all "masters" were redesignated as "family magistrates." *See* Md. Rule 1-501(a). For consistency with current monikers, we utilize the term magistrate.

> biological parent and shifted the burden of proof to the parent during the best interest of the child analysis in an Intervening Third Party custody case?
>
> V. Did the trial court err when it failed to exercise discretion by entering a pendente lite order entered into by parties pending the conclusion of the litigation as a final order intended to completely resolve the custodial arrangement of the minor child?

Id. Because these issues challenged only the magistrate's "legal analysis and recommendations and the propriety of the circuit court's actions in adopting that recommendation," we concluded that a failure to file exceptions did not preclude appellate review. *Id.* at 674. We also reasoned that these questions would not offend Maryland Rule 8-131(a). *Id.* at 675.

Returning to the case on appeal, under former Rule 11-111, Mother was required to file exceptions to the magistrate's report in order to preserve any challenges to the magistrate's factual findings. Despite this obligation, Mother did not file exceptions. As we already explained above, Mother had the opportunity to preserve her claim that she was not properly served with the magistrate's report in the circuit court (even if she did receive a courtesy copy), but she failed to do so. Compounding this failure, Mother did not raise the claim in her questions presented or anywhere in her opening brief on appeal. Therefore, the facts in the magistrate's report are now established, and Mother is precluded from challenging them on appeal.

Here, Mother's first two questions allege that the magistrate considered hearsay evidence for its forbidden purpose, which, in turn, led to factual findings that were not supported by the record. In essence, Mother argues that the magistrate's factual findings

were clearly erroneous as, in her view, they were supported only by improperly admitted hearsay statements. *See In re M.H.*, 252 Md. App. 29, 49-55 (2021) (holding that the circuit court's findings of fact were clearly erroneous, as it did not rely on competent evidence to make its findings of fact); *In re Yve S.*, 373 Md. 551, 586 (2003) ("When the appellate court scrutinizes factual findings, the clearly erroneous standard . . . applies." (quoting *Davis v. Davis*, 280 Md. 119, 125 (1997))).[10] We conclude that these are challenges to the "circuit court's adoption of the [magistrate's] factual findings." *Green*, 188 Md. App. at 674. And, because Mother did not file exceptions to the magistrate's order, these arguments are not preserved for our review.

Considering the propriety of the judge's actions in adjudicating M.B. a CINA, even excluding the evidence Mother asserts was improperly incorporated into the magistrate's findings of fact, we hold that the circuit court properly adopted the magistrate's recommendation. We explain.

This Court has previously held that a "court may find either neglect of abuse if the child is merely *placed at risk* of significant harm," *In re Dustin T*, 93 Md. App. 726, 736 (1992) (emphasis in original), and we "need not and will not wait for abuse to occur and a child to suffer concomitant injury before we can find neglect," *In re Priscilla B.*, 214 Md. App. 600, 626 (2013). Consequently, violations of a safety plan can be, themselves, sufficient to support a CINA finding. *See In re X.R.*, __ Md. __, Nos. 1051, 1052, and

[10] In her brief, Mother argues that: "There was absolutely no basis for the Magistrate to consider the child's statements for the truth of the matter and no basis for finding the allegations proven and abuse or neglect established without them."

1054, Sept. Term 2021, at slip op. 12 (May 5, 2022) ("[W]e hold that the juvenile court did not abuse its discretion in finding Child 1 and Child 2 to be CINAs based on Mother's violation of the safety plan.").

Here, during the adjudicatory phase of the CINA hearing, Ms. Grooms testified that, when she originally interviewed M.B. at his school, she observed and photographed visible injuries on M.B.'s person. Ms. Grooms explained that the pictures, which were admitted by the court, depicted M.B.'s right leg "with open scratches and parallel red welts," and his left leg "with [a] scratch and a bruise above it." The court also admitted pictures showing bruising and welts on M.B.'s left forearm and bruising on his face.

The court also admitted a safety plan, which Ms. Grooms testified was violated. The plan, which was signed by Mother and orally agreed upon by Father, stated, among other things, that M.B. "sustained multiple injuries during an altercation with [Mother]." To prevent further injury, the plan required that Mother and Father refrain from using "any physical discipline" on their children and that Mother take M.B. "to the hospital/urgent care to have his shoulder evaluated and provide [Ms. Grooms] with the documentation." Ms. Grooms testified that two days after the safety plan was instituted, she observed new "circle-like redness" and bruising on M.B.'s chest when she visited M.B. at his school the second time following his allegation that Father abused him this time. Pictures of these new injuries were admitted during the hearing. Ms. Grooms testified at the CINA adjudication hearing that M.B. had not seen his parents since he was sheltered, as he consistently refused visitation with both Mother and Father.

Therefore, even if we were to disregard the testimony that Mother challenges as improperly admitted, the magistrate was presented with pictures of M.B.'s injuries, Ms. Grooms' testimony of the injuries that she observed, and testimony that the safety plan was violated. Mother signed the safety plan stating that M.S. had sustained physical injuries during an altercation with her. Taken together, this evidence proves, by a preponderance of the evidence, that M.B. was a CINA. Consequently, we hold that the circuit court, sitting as a juvenile court, did not abuse its discretion in adopting the recommendations of the magistrate.

c. Missing Witness Rule

Mother's final questions allege that the magistrate erred by not applying the "missing witness" rule. Unlike her first two questions, this question challenges the "court's adoption of the [magistrate's] application of law to the facts." *Green*, 188 Md. App. at 674. It is, therefore, preserved for our review. The Court of Appeals has explained that:

> Although technically not a rule, the concept known as the 'missing witness rule' refers to the permissible inference that a factfinder may draw from the absence of a potential witness who might have knowledge of facts at issue in the case. If the factfinder determines that the witness is 'peculiarly available' to one party, the absence of the witness is ascribed to that party. The factfinder is then permitted to infer that the party did not call the witness because whatever testimony that individual would have given would be unfavorable to that party.

Harris v. State, 458 Md. 370, 388 (2018) (footnote omitted). For a missing witness inference to be properly drawn, "it must be demonstrated that 'the missing witness was peculiarly within the adversary's power to produce by showing either that the witness is physically available only to the opponent or that the witness has the type of relationship

with the opposing party that pragmatically renders his testimony unavailable to the opposing party.'" *Bereano v. State Ethics Comm'n*, 403 Md. 716, 742 (2008) (quoting *Chi Coll. of Osteopathic Med. v. George A. Fuller Co.*, 719 F.2d 1335, 1353 (7th Cir. 1983)).

Initially, we note that Mother raised the missing witness rule during her closing argument. Recently, the Court of Appeals explained that: "Where a party raises the missing witness rule during closing argument, its use is just that—an argument." *Webb v. Giant of Md., LLC*, 477 Md. 121, 266 A.3d 339, 352 (2021). Therefore, based on the evidence presented, the magistrate, as fact finder, was within her discretion to reject Mother's missing witness argument. *See Yacko v. Mitchell*, 249 Md. App. 640, 679 (2021) ("The fact finder may believe or disbelieve, credit or discredit, any evidence introduced[.]" (cleaned up)). Further, we conclude that M.B. was not "peculiarly available" to the Department. M.B. was both present and represented by counsel during the CINA hearing. Therefore, although neither party decided to call him, M.B. was equally available to his parents and the Department. This fact is underscored by M.B.'s comments during the hearing's epilogue. Additionally, given that M.B. is the natural child of Mother and Father, he was not in a relationship that rendered his testimony "pragmatically . . . unavailable" to his parents. In fact, his informal comments to the magistrate suggested that he "want[ed] to be home" and felt "like [he] need[ed] to be home[.]" Consequently, we hold that the magistrate did not abuse her discretion when she decided not to apply the missing witness rule.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.