

Circuit Court for Baltimore City  
Petition No. 819357002

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1363

September Term, 2020

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IN RE J.D.

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Graeff,  
Reed,  
Gould,

JJ.

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Opinion by Graeff, J.

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Filed: August 12, 2021

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case arises from an order of the Circuit Court for Baltimore City, sitting as a juvenile court, adjudicating J.D. as a child in need of assistance (“CINA”) and providing that Father, appellant, have supervised visitation.<sup>1</sup> Father challenges this order, presenting the following questions for this Court’s review, which we have rephrased and reordered, as follows:

1. Did the circuit court err in finding J.D. to be a CINA?
2. Did the circuit court abuse its discretion by ordering that Father’s visitation with J.D. be supervised?
3. Did procedural delays deny Father his due process rights?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **I.**

#### **CINA Petition & Shelter Care**

On December 23, 2019, the Baltimore City Department of Social Services (“the Department”) filed, in the Circuit Court for Baltimore City, a Petition with Request for Shelter Care on behalf of J.D., who was born days earlier. The Petition stated that J.D. was a CINA because Mother had “tested positive for fentanyl and methadone upon delivery of [J.D.] at Johns Hopkins Hospital,” Mother had a history of drug use and mental health

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<sup>1</sup> A “CINA” is a child whom a court has determined is in need of judicial intervention because he or she has been abused or neglected, and whose parents or guardian either cannot or will not adequately care for the child. *See* Md. Code Ann., Cts. & Jud. Pro. Article (“CJ”) § 3-801(f) (2020 Repl. Vol.).

issues, and Mother reported that “she does not yet have a safe place for [J.D.] to sleep.” It further noted that Father questioned paternity and had requested a paternity test.

Following a shelter care hearing that same day, a magistrate recommended that J.D. be placed in shelter care due to Mother’s positive toxicology screens for various substances since 2019 and Father’s questioning of paternity.<sup>2</sup> The court ordered that J.D. be placed in the care of her maternal aunt, A.C., that Mother not reside in the home with A.C. and J.D., and that Mother and Father’s visitations take place at a visitation center.

In January 2020, the parties received the results of a paternity test, which determined that Father was the biological father of J.D. As a result, on March 4, 2020, the Department amended its petition to include this information.

On July 24, 2020, the circuit court issued an order providing that J.D. be returned to Mother’s care under an order controlling conduct (“OCC”). The order noted that J.D.’s counsel objected to this course of action.<sup>3</sup> The conditions of the OCC were as follows:

Mother shall comply with her substance abuse treatment and her mental health treatment.

Mother shall [allow the Department] and Child’s counsel announced and unannounced visits.

Mother shall be allowed to live in the home of the present caretaker (Mother’s sister).

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<sup>2</sup> CJ § 3-815(a) authorizes “the placement of a child alleged to be a CINA in emergency shelter care prior to disposition of the CINA petition.” *In re: O.P.*, 470 Md. 225, 237 (2020).

<sup>3</sup> The transcript from the hearing held on July 21, 2020, was not prepared or submitted to this Court.

Father shall be allowed supervised visits.

Pursuant to this order, Mother assumed providing care for J.D.

## II.

### Adjudication Hearing and Order

On August 31, 2020, the magistrate held a remote adjudication hearing.<sup>4</sup> Mother and Father, both represented by counsel, were present, as were counsel for the Department and counsel for J.D. The parties proffered that they had agreed to the stipulated facts, including that Mother had mental health and drug problems, that her toxicology screens were positive at J.D.'s birth, that Father had supervised visits at A.C.'s home, and that Mother and Father "at times have had a conflictual relationship." Counsel for the Department advised that the parties previously had agreed to bifurcate the adjudication and disposition hearings, with the latter to be held in December 2020 to allow for further investigation. Father, however, voiced his objection, stating that he wanted the matter settled that day.<sup>5</sup> Father eventually withdrew his objection after the court explained that this was a continuation to allow time for the Department and J.D.'s attorney to gather more information.

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<sup>4</sup> As a result of the Administrative Order on Statewide Judiciary Restricted Operations due to the COVID-19 pandemic, all hearings discussed from this point forward were held remotely via video conference.

<sup>5</sup> CJ § 3-819(a)(2) provides that, unless "the court finds that there is good cause to delay the disposition hearing to a later day," the "disposition hearing shall be held on the same day as the adjudicatory hearing." Father's counsel proffered that they had discussed the bifurcation previously, and she requested a brief recess to call Father on a separate line to discuss, but Father refused to do that.

After the court accepted the agreed upon facts and stated that the contested disposition would be held on December 4, 2020, Father's counsel requested unsupervised day visits with J.D., pending the Department's approval of his home environment. Counsel proffered that Father had requested an inspection of his residence, but the Department had not yet conducted one. Counsel stated that Father had lived in the home for three years, he had stable employment, and he previously had dropped off supplies at A.C.'s home for J.D., including diapers, clothing, and groceries.

Mother's counsel objected to unsupervised visitation for Father, stating that Mother and Father had a tumultuous relationship, Father had not completed any sort of parenting classes, and Mother had not seen his home. J.D.'s attorney agreed that it would be in J.D.'s best interest for Father's visitation to be supervised. Counsel for the Department also agreed, adding that the Department did not receive the request to inspect Father's home until that day. It stated that it would begin the process to conduct the inspection.

Following these arguments, the court stated that Father's visitation would continue to be supervised, noting that Father was entitled to liberal visitation at A.C.'s home. Father interjected that he was "not comfortable there," and he requested that visitation take place elsewhere, but the court denied that request.<sup>6</sup>

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<sup>6</sup> Father's counsel suggested that the visitation take place at the Department's "Banja Center," but the Department's counsel stated that it would be unable to facilitate that because J.D. was in the care of Mother. The court did not respond to this suggestion, stating that "that ruling is my ruling for today," and if Father was "unhappy," he could "take the appropriate action."

That same day, the circuit court issued an Adjudication Order, which included the following facts to which the parties stipulated:

1. Respondent's Mother . . . tested positive for fentanyl and methadone upon delivery of Respondent at Johns Hopkins Hospital.
2. Mother admitted a history of daily polysubstance abuse, including regular use of heroin, cocaine, fentanyl, and [X]anax. Mother is in the CAP program through Johns Hopkins Hospital. She has been in the program since November 2019. She is doing well in that program. She graduated to the intensive outpatient program in July 2020. She has since been referred to the regular outpatient program at CAP, and attends 6 sessions a week. She participates in individual counseling sessions and daily online NA meetings, and has a sponsor through NA. Mother also has completed parenting classes with Family Tree.
3. Prior to the Shelter care hearing, Mother reported that her last drug use during her pregnancy was on 12/01/2019, when Mother used fentanyl. Toxicology screens were still positive at birth, and during pregnancy.
4. Mother is diagnosed with major depressive disorder. Mother was hospitalized for depression in May 2019, for 5 days in-patient treatment at JHH Meyer psychiatric unit. This in-patient psychiatric hospitalization occurred during Mother's pregnancy with Respondent. Mother is participating in mental health treatment through CAP.
5. Mother shared that she struggled at times with her mental health during her pregnancy.
6. Mother resides in the home of the maternal aunt. The respondent was returned to the care of her mother on July 24, 2020. Mother has been providing appropriate care for the respondent.
7. Father of the respondent has been determined to be [Father] through paternity testing. The Father works as a heavy equipment operator at the Port of Baltimore, driving a forklift. He has a two bedroom house and is asking that it be inspected by the Department.
8. The parents at times have had a conflictual relationship. However, since Respondent has been born, there have been no reports of any physical conflicts.

9. Father has had supervised visits at the Maternal Aunt's home. He has provided some supplies for the Respondent such as pampers, clothes, milk, etc. for Respondent. The visits go well.

The Order further provided that, pursuant to Md. Code Ann., Cts. & Jud. Proc. Article ("CJ") § 3-817 (2020 Repl. Vol.), the allegations in the CINA petition had been proven by a preponderance of the evidence, and "the facts recommended by the parties as stated herein were sustained." It also found, pursuant to CJ § 3-819, that there was good cause to delay the disposition hearing to a later date because "further investigation [was] needed."

### **III.**

#### **Disposition Hearing and Order**

The circuit court held a disposition hearing on December 4, 2020, and January 7, 2021. The Department proffered that, although Mother had a "brief relapse" in early November, she had been doing "fairly well" under the OCC and was participating in substance abuse counseling and mental health treatment. The Department stated that Mother continued to live with J.D. at A.C.'s home, and it "did not have any concerns with the care that Mother [was] providing." It asked the court to find J.D. to be a CINA and to allow her to remain in Mother's care under an Order of Protective Supervision ("OPS"), with conditions similar to those in the OCC. With regard to Father, the Department recommended supervised visitations due to "incidences of volatility between Father" and Mother and her family. J.D.'s attorney argued that J.D. should be placed in A.C.'s care

because Mother had tested positive for illicit substances four times since assuming primary caretaking duties in July 2020.

Counsel for Mother agreed with the Department's request for supervised visitation and noted that one of Mother's relapses was "mainly due to a misunderstanding" regarding her medications. Father requested physical custody of J.D. and asked that the case be dismissed as being non-CINA because no facts of abuse or neglect were sustained against him, and he was able and willing to care for the child.

The Department called Sarita Hall, J.D.'s case worker, as its only witness. She testified that, since July 2020, J.D. had lived with her Mother at A.C.'s home, along with Mother's mother and Mother's teenage brother. Ms. Hall stated that Mother had complied with the portion of the OCC requiring her to permit announced and unannounced visits of the home by the Department. She reported that the conditions in the home were "very adequate," and the baby appeared to be happy and healthy in Mother's care.

Ms. Hall further testified that, although Mother had relapsed, she had been compliant with her outpatient substance abuse and mental health treatment and was on "a very good path" towards "maintain[ing] sobriety."<sup>7</sup> She proffered that, if J.D. were allowed to remain in Mother's care, the Department would continue to monitor J.D.'s growth and progress. On cross-examination, Ms. Hall conceded that these relapses were a

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<sup>7</sup> On cross-examination by J.D.'s attorney, Ms. Hall was asked about three separate occasions, October 19, November 2 and 9, 2020, when Mother's urine analysis came back positive for benzodiazepines, a medicine that was not prescribed for her. She testified that she did not recall the October date but received notice of the two November dates. Mother "went into treatment" on November 12, 2020.



cause for concern with respect to Mother's recovery, but she did not file a petition to have the child removed because she did not believe the child was in danger as a result. She noted that there were other family members in the home at the time of Mother's relapses, and Mother had immediately made plans with her substance abuse counselors to address the situation. In sum, she recommended that Mother and J.D. continue to reside with A.C. while Mother continued treatment.

With regard to Father, Ms. Hall stated that she had inspected Father's home on November 23, 2020, and she did not observe any "major issues or concerns." She testified that they did not discuss daycare arrangements, but Father had told her that he had family to help with J.D.'s care, including an adult child. She stated that, although Father had "stopped by" A.C.'s house to see J.D. and drop off supplies, she was not aware of any physical bonding time the two had spent together. She also had not personally observed Father interact with J.D.

In conclusion, Ms. Hall testified that the Department's recommendation was for J.D. to remain in Mother's care and for Father to have unsupervised visits on weekends with an established pick-up and drop-off schedule. When asked why she was not recommending that Father have custody, she highlighted that J.D. was "familiar" with Mother, had resided with Mother since birth, and Mother had been the primary caretaker.

At the conclusion of the hearing on December 4, 2020, Father again inquired about unsupervised visitation. The court stated that the previous order (providing supervised visitation) would remain in place until the continued hearing.

When the disposition hearing resumed on January 7, 2021, Ms. Hall testified that she had conducted announced and unannounced weekly visits at A.C.'s home, and she observed that Mother was "very alert," "attentive," "hands-on," and "caring" with J.D. She testified that she also received regular updates and records from Mother's substance abuse counselor at Johns Hopkins.

Through Ms. Hall's testimony, J.D.'s attorney introduced Mother's urinalysis record from the Addiction Treatment Service at Johns Hopkins Bayview. The document, with a date range of October 19, 2020, to December 28, 2020, showed that Mother had tested positive for illicit substances (benzodiazepine or cocaine) on four occasions during that period. J.D.'s counsel also highlighted that Mother was routinely tested only on Mondays, and therefore, the true extent of Mother's drug use was unknown.

Mother then called A.C. as a witness. A.C. testified that Mother spends "all day" with J.D. and is a "really good mother." She stated that she was aware of Mother's relapses, but she did not have concerns about Mother's ability to care for the child. She indicated that Mother's attitude and lifestyle had significantly improved since J.D.'s birth.

A.C. testified that, since the Adjudication Order, Father had come to the door to say hello, but he did not enter the home or interact further with J.D. Although they invited him into the home, he told them he did not feel comfortable or safe going inside. He drove past the house, however, every day. On one occasion, Father became irate when he thought Mother had another man in the house, and he threatened to "burn the house down." A.C. took this threat seriously because she felt he was capable of committing such an act.

Mother testified that she had been J.D.'s primary caretaker since July 2020. She also testified to her regular attendance at substance abuse treatment at Johns Hopkins, Narcotics Anonymous, and other programs aimed at drug and mental health treatment and support.

Mother stated that, although Father had dropped off supplies and birthday and Christmas gifts at the home, he consistently refused to come inside. In October 2020, Father got into a verbal altercation with her and her friend outside the home while J.D. was sitting in the car.

Father testified that he had worked at the Port of Baltimore driving heavy machinery for three years. In addition to working 40 hours per week at the Port (12:00 p.m. to 8:00 p.m., Monday through Friday), he also had been working a second job for approximately one year driving "trucks and machinery" on Sunday through Thursday from 6:00 a.m. to 11:00 a.m. As a result, Saturdays were his only day off work. In reference to A.C.'s testimony that she had seen him driving by the house, he noted that his commute took him by the house.

Father stated that he wanted custody of J.D., but he expressed a desire to co-parent with Mother. He testified, without specific explanation, that he did not feel comfortable or safe entering A.C.'s home. He had, however, dropped off various supplies and gifts at the house for J.D.

With regard to childcare, Father testified that his mother operated a fully licensed daycare facility that J.D. could attend if placed in Father's care. The Department, however,

never inquired about his childcare plans and did not reach out to schedule a home visit until he called Ms. Hall. The Department also was unresponsive to his requests to conduct the visitation at a location other than A.C.'s home. With regard to his ability to parent, Father testified that he previously had raised two children, who were now adults.

After closing arguments, the circuit court issued an oral ruling. The court found J.D. to be a CINA, noting Mother's continued drug use. Mother, however, had been compliant with treatment and had attended all her appointments. As a result, the court permitted Mother to retain custody of J.D. in A.C.'s home, subject to certain conditions. The court ordered that Mother's urinalysis tests be randomly administered, rather than only on Mondays.

As described in further detail, *infra*, the court ordered that Father's visitations would remain supervised until he completed an anger management course. The court agreed that a location other than A.C.'s house would be appropriate for the supervised visits, but because of Father's work schedule and the closure of various resource centers due to the pandemic, it asked Ms. Hall to explore options for a third-party supervisor and an alternative location.<sup>8</sup>

On January 11, 2021, the circuit court issued a written order finding that J.D. was a CINA, and placing her with the Department under an OPS, with the following conditions:

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<sup>8</sup> The court stated that, ideally, Father's adult daughter would be amendable to supervising the visits in Father's home. Mother objected on the basis that she had never met the daughter.

1. Mother and Father are to participate in co-parenting classes through the Family Tree.
2. Father to enroll in Anger Management counseling. The Court will not consider unsupervised visits until Anger Management is completed.
3. The Mother is to abstain from illicit substances.
4. [The Department] is to explore options for third party to supervise visitation. Said visitation is to occur on Saturdays between 12 p.m. and 6 p.m. [T]he visits may occur at the residence of the Father.
5. Ms. Hall will facilitate [a Family Involvement Meeting] so that Mother can meet the third party who will supervise visitation.
6. Mother is to participate in [Juvenile Court Early Intervention Program] for random urinalysis.
7. Mother shall comply with her substance abuse treatment and her mental health treatment.
8. Mother shall allow BCDSS and Child's counsel announced and unannounced visits with [J.D.]
9. Mother shall continue to reside in the home of her sister, [A.C.] Mother shall provide the BCDSS with notification of her new residence should she decide to leave the home of her sister.

This appeal by Father followed.

## **DISCUSSION**

### **I.**

#### **CINA Adjudication**

##### **A.**

#### **Parties' Contentions**

Father contends that the circuit court erred in declaring J.D. to be a CINA. He asserts that, although Mother's inability to care for J.D. without court intervention was clear, J.D. could be found to be a CINA only if the Department proved that *both* parents were unable or unwilling to give the child proper care. Father argues that the Department did not prove that he was unable or unwilling to care for J.D. He asks this Court to dismiss the CINA finding and remand the case for a hearing on the issue of custody.

Mother contends that the circuit court properly found J.D. to be a CINA. In support, she asserts that Father had conflict in his relationship with Mother, so much so that he threatened to burn down the house where Mother and J.D. were living, he had no parental relationship with J.D., and his intense work schedule limited his ability to provide J.D. with proper care and attention.

The Department similarly argues that the court properly found J.D. to be a CINA. It points to the evidence of Father's volatility, which supported a finding that he was unable to give proper care to J.D., including Father's aggression toward Mother, his threat to burn down the house in which Mother and J.D. lived, and his inability to manage his anger at the disposition hearing. Moreover, it points to the court's finding that Father's work

schedule did “not leave him much time to develop a relationship with his daughter,” and “Father had made little effort to bond with J.D.,” despite Mother’s efforts to give Father that opportunity.

Counsel for J.D. makes similar arguments to support her contention that the circuit court correctly held J.D. to be a CINA. She further notes that this Court defers to the circuit court on its findings of fact.

**B.**

**CINA Proceedings**

This Court has recently described our standard of review for CINA proceedings as follows:

There are “three distinct but interrelated standards of review” applied to a juvenile court’s findings in CINA proceedings. *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214, 189 A.3d 284 (2018). The juvenile court’s factual findings are reviewed for clear error. *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 708, 12 A.3d 130 (2011). Whether the juvenile court erred as a matter of law is determined “without deference;” if an error is found, we then assess whether the error was harmless or if further proceedings are required to correct the mistake in applying the relevant statute or regulation. *In re Yve S.*, 373 Md. 551, 586, 819 A.2d 1030 (2003). Finally, we give deference to the juvenile court’s ultimate decision in finding a child in need of assistance, and “a decision will be reversed for abuse of discretion only if ‘well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.’” *In re J.J.*, 231 Md. App. 304, 345, 150 A.3d 898 (2016), *aff’d*, 456 Md. 428, 174 A.3d 372 (2017), *cert. denied*, — U.S. —, 139 S.Ct. 310, 202 L.Ed.2d 32 (2018) (quoting *In re Yve S.*, 373 Md. at 583–584, 819 A.2d 1030 (internal citations omitted)).

*In re J.R.*, 246 Md. App. 707, 730–31 (2020), *cert. denied*, 471 Md. 272 (2020).<sup>9</sup>

We begin with a review of the relevant statutory framework. “The procedures governing proceedings when a child is alleged to be a CINA are set forth in [CJ] § 3-801 *et seq.*” *In re O.P.*, 470 Md. 225, 235 (2020). A “child in need is assistance” is defined as:

(f) 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.

CJ § 3-801(f). CJ § 3-801(s) defines “neglect” as:

the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or individual who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:

- (1) That the child’s health or welfare is harmed or placed at substantial risk of harm; or

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<sup>9</sup> In his brief, Father asks this Court to consider what impact the hearing “being held via Zoom may have had on the court’s ability to assess witnesses.” He asserts that the elements that typically place a trial court in a better position than an appellate court to observe witnesses and assess credibility are “extremely diminished in the Zoom hearing setting.” As a result, he contends that this Court “should consider the juvenile court’s findings and the level of deference due when witnesses and observations of the parties are made in a virtual and informal setting without the benefit of all the formalities of a traditional court proceeding.” Although we recognize some challenges with Zoom hearings, the trial court still observes the testimony of witnesses, as opposed to the words of the record reviewed by the appellate court. We are not persuaded that the established standard of review should be altered when a case involves a virtual hearing.



(2) That the child has suffered mental injury or been placed at substantial risk of mental injury.

“Abuse” is defined as the “[p]hysical or mental injury of a child under circumstances that indicate that the child’s health or welfare is harmed or is at substantial risk of being harmed by . . . a parent or other individual who has permanent or temporary care or custody or responsibility for supervision of the child[.]” CJ § 3-801(b)(2).

There is a two-step process to find a child to be a CINA. The court must find: (1) that the child has been abused or neglected; and (2) if the first prong is met, both parents are unable or unwilling to provide the child proper care. *See In re Russell G.*, 108 Md. App. 366, 376–77 (1996) (“[A] child in the care and custody of a parent or parents is a CINA only if *both* parents are unable or unwilling to give the child proper care and attention.”).

After a petition is filed by the Department, “[t]he juvenile court proceeding to determine whether the child is a CINA consists of two stages – an adjudicatory hearing and a disposition hearing.” *In re O.P.*, 470 Md. at 236. *Accord* CJ §§ 3-817(a), 3-819. “During the adjudicatory hearing, the juvenile court determines ‘whether the allegations in the petition, other than the allegation that the child requires the court’s intervention, are true.’” *In re R.S.*, 242 Md. App. 338, 369 (2019) (quoting CJ § 3-801(c)) (emphasis omitted), *aff’d*, 470 Md. 380 (2020). “If the court finds that the allegations in the petition are true, the court then holds a separate disposition hearing to determine whether the child is, in fact, a CINA and, if so, the nature of any necessary court intervention.” *In re O.P.*, 470 Md. at 236. *Accord* CJ §§ 3-801(m), 3-819(a).

This Court has explained that, although

the factual allegations in the petition should show that the child meets the definition of a CINA[,] . . . it is not until the dispositional hearing that the court finally “determine[s] whether a child is a CINA,” CJ § 3-819(a)(1), which requires the court to find that the child needs “court intervention because: (1) [t]he child has been abused [or neglected]; and (2) [t]he child’s parents . . . are unable or unwilling to give proper care and attention to the child and the child’s needs.” CJ § 3-801(f); *see also* CJ § 3-801(m) (defining “disposition hearing” as hearing at which court determines (1) “[w]hether a child is in need of assistance” and (2) the nature of court intervention necessary to protect the child).

*In re R.S.*, 242 Md. App. at 369.

At the disposition hearing,

[t]he court may find that the child is not a CINA and dismiss the case. CJ § 3-819(b)(1)(i). Alternatively, the court may determine that the child is a CINA, in which case it may take one of three actions: (1) decide not to change the child’s current custody; (2) commit the child to the custody of a parent, relative, or another suitable individual; or (3) commit the child to the custody of the local department of social services or the Maryland Department of Health. CJ § 3-819(b)(1)(iii).

*In re O.P.*, 470 Md. at 236–37.

“The standard that must be employed by the juvenile court in CINA adjudication proceedings is preponderance of the evidence.” *In re J.R.*, 246 Md. App. at 752. *Accord* CJ § 3-817(c). “The principal focus of the CINA statute is to ‘ensure that juvenile courts (and local departments of social services) exercise authority to protect and advance a child’s best interests when court intervention is required.’” *In re J.R.*, 246 Md. App. at 751 (quoting *In re Najasha B.*, 409 Md. 20, 33 (2009)).

Juvenile courts, particularly, are “vested” with this far-reaching authority because they . . . see[ ] the witnesses and the parties, hear[ ] the testimony, and ha[ve] the opportunity to speak with the child; [the juvenile court] is in

a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.

*Id.* at 751–52 (quoting *Baldwin v. Baynard*, 215 Md. App. 82, 105 (2013)).

**C.**

**Analysis**

As indicated, there are two prongs to a CINA finding. The parties agree that the first prong, showing that the child was neglected or abused, was satisfied because Mother testified positive for drugs at J.D.’s birth and continued to relapse in her drug use. Father contends, however, that the second prong was not satisfied because the Department did not prove that he was unable or unwilling to provide proper care.

Father argues first that no facts were sustained against him at the adjudication hearing. Although the adjudicating facts included that he and Mother had a “conflictual relationship,” he asserts that this fact was insufficient to find him unable or unwilling to care for J.D. This argument is disposed of easily because the court does not make a CINA finding until the disposition hearing, so that is the critical hearing for the CINA finding.

At that hearing as the appellees note, there were facts regarding Father’s inability to properly care for J.D., including his aggression and anger toward Mother, which resulted in a threat to burn down A.C.’s home, where Mother and J.D. reside. There also was evidence of occasions when Father caused conflict, including one time when Father yelled at Mother in J.D.’s presence, yelling “all types of just crazy, wild stuff.” Moreover, the court witnessed Father’s difficulty with his temper during the disposition hearing. In

addition to Father’s volatility, his work schedule left little time for him to properly care for a baby, and Father had made little effort to bond with J.D., despite having the opportunity to do so.<sup>10</sup> When taken as a whole, this evidence was sufficient to support a factual finding that, at that time, Father was unable and/or unwilling to provide proper care and attention to J.D.’s needs. CJ § 3-801(f)(2); *see In re Priscilla B.*, 214 Md. App. 600, 633 (2013) (CINA finding should be considered under a totality of the circumstances standard.).

“[T]he purpose of CINA proceedings is ‘to protect children and promote their best interests.’” *Id.* at 622 (quoting *In re Rachel T.*, 77 Md. App. 20, 28 (1988)). Here, given Mother’s substance abuse and Father’s anger issues and lack of any relationship with the child, the circuit court did not abuse its discretion in determining that it was in the best interest of J.D. for the court to have continued involvement at that point. *See In re D.M.*, 250 Md. App. 541, \_\_\_, 252 A.3d 1, 15 (2021) (“In CINA cases, the juvenile court judge is given ‘broad statutory authority’ to act in the best interest of the child.” (quoting *In re Danielle B.*, 78 Md. App. 41, 68 (1989))). Accordingly, we cannot say that the juvenile court’s order declaring J.D. to be a CINA was “well removed from any center mark imagined” by this Court and “beyond the fringe” of what this Court deems to be “minimally

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<sup>10</sup> The lack of a relationship, by itself, does not make a parent unable to care for a child. *See In re R.S.*, 470 Md. 380 (2020). In this case, however, it was one of a number of factors. *See In re Priscilla B.*, 214 Md. App. 600, 633 (2013) (CINA finding should be considered under a totality of the circumstances standard.). Here, Father’s lack of effort to bond with the infant was a relevant factor to consider in determining whether he was willing and able to properly care for J.D.

acceptable,” *id.* (quoting *In re Shirley B.*, 419 Md. 1, 18–19 (2011)), and therefore, we conclude that the court did not abuse its broad discretion in finding J.D. to be a CINA.

## II.

### Visitation

Father next challenges the court’s order that his visitation with J.D. would be supervised. During the court’s oral ruling at the January 7, 2021, disposition hearing, the court initially stated the following:

Counsel is right that there are no sustained facts against Father and I think that we ought to be very careful about relationships and maintain familial relationships. There are no allegations sustained against Father for having been drug addicted. Yet, I suppose it’s because of the nature of their previous interactions, the Father -- the Father’s interactions with daughter must be supervised and I don’t think that’s appropriate. I don’t. What I think is appropriate is that Mother have primary physical custody of daughter, but that Father have liberal visitation and will establish a mutual drop-off place. . . . And, so, I’m going to establish a visitation schedule, a place and location where they should meet, and a person other than Father or Mother to facilitate that visitation so that we don’t have the issue where Father feels uncomfortable seeing his daughter, or is precluded from seeing his daughter because of the relationship or concerns he has about the family. So, we’re going to have a third party to assist with pickup and drop-off, or somebody has to be there.

The court then ordered Father to complete an anger management course. Father interrupted to reply: “I’m telling you, I’m not -- I’m not even going to -- I’ll just wait until my daughter get grown, Judge. I’m good.” The following colloquy subsequently occurred:

THE COURT: Let me say that there’s a reason why the court ordered anger management, based on my observations and what I’ve heard, and [Father] did not help himself just a moment ago when he said he’s not going to do it. I heard that.

[FATHER]: Yeah, I'm not -- I'm not going to -- I'm going to let you all have her.

THE COURT: It's not a discussion.

[FATHER]: I don't understand what -- I don't want to visit -- I don't want to have to visit with her. No, that's not --

THE COURT: So, part of the issue, we know, is that he doesn't listen because what I said was with a third party, which is the reason why it's imperative that he participate in anger management, and now that I've heard that, I'm going to change my order. So, this is what I'm going to do. Now I'm going to order supervised visitation. The supervised visitation is to occur until --

[FATHER]: I'm not going to do that. I'll wait until my daughter get --

THE COURT: -- the supervised visitation is going to occur until [Father] has completed anger management. The Court will note for the record that [Father] has interrupted these proceedings several times and he has just disconnected,<sup>[11]</sup> and the Court has given him ample opportunity to participate. But the Court is going to order supervised visitation at the Biddle Street location.

Counsel then proceeded to discuss possible visitation locations and third-party supervisors. In its order, the court instructed the Department to "explore options" for a third-party supervisor and stated that the visitations could occur at Father's residence.

On appeal, Father contends that the circuit court abused its discretion in ordering Father's visitation with J.D. to remain supervised. As indicated, he argues that the court failed to apply the best interests of J.D., and the record was "devoid of any evidence to support continued supervised visitation." He cites to the court's initial comment that it did

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<sup>11</sup> By "disconnect," the court was referring to the fact that Father had exited the remote hearing after his last comment. Although Father's counsel remained, Father did not return for the remainder of the hearing.

not think supervised visitation was appropriate and argues that the court then punitively changed its mind after Father's interjections during the ruling.

Mother argues that the court properly exercised its discretion in maintaining supervised visitation. She asserts that the order for supervised visitation, with a third-party supervising, "fully account[ed] for the tension between the parents and the newness of the relationship between [Father] and J.D." She argues that "[u]nsupervised visitation between one-year-old J.D. and a parent she has never known was premature," and "[t]he age of J.D., her closeness with Mother, [Father's] inability to establish a relationship with her, and his strong negative feelings toward[] Mother and J.D.'s other caretakers mitigate against unsupervised visitation being in J.D.'s best interest." Moreover, Mother asserts that the order for unsupervised visitation is not permanent because it was ordered only until Father took anger management classes.

The Department and counsel for J.D. similarly contend that the court did not abuse its discretion in awarding supervised visitation, arguing that Father's anger issues gave the court reasonable grounds to believe that unsupervised visitation was not appropriate before he attended anger management classes.

"Child custody and visitation decisions are among the most serious and complex decisions a court must make, with grave implications for all parties." *Conover v. Conover*, 450 Md. 51, 54 (2016). These decisions are "within the sound discretion of the trial court, not to be disturbed unless there has been a clear abuse of discretion." *Barrett v. Ayres*, 186 Md. App. 1, 10 (2009). The juvenile court's primary objective when deciding disputes

over child access “is to serve the best interests of the child.” *Conover*, 450 Md. at 60. *Accord In re Mark M.*, 365 Md. 687, 705–06 (2001) (In reviewing a decision regarding visitation, “the best interest of the child may take precedence over the parent’s liberty interest.”) (quoting *Boswell v. Boswell*, 352 Md. 204, 218–19 (1998)).

Here, at the disposition hearing, Father repeatedly exhibited an inability to control his emotions and temper, and when the court attempted to explain the anger management classes, he said he was “not going to do that” and suggested he would wait until J.D. was grown before exercising his parental rights. Given Father’s in-court demeanor, in combination with the evidence presented regarding his aggressive behavior outside of A.C.’s home on numerous occasions, the court did not abuse its discretion in finding that supervised visitations were in J.D.’s best interest until Father had completed the anger management course. Accordingly, we reject Father’s argument in this regard and affirm the supervised visitation portion of the court’s disposition order.<sup>12</sup>

### III.

#### Due Process

Father contends that he was denied due process by the “unprecedented delays in the case due to COVID-19.” He notes that there was an eight-month delay between the shelter care hearing (December 2019) and adjudication (August 2020), and there was a further delay of four months between adjudication and the first disposition hearing (December

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<sup>12</sup> Father is, of course, free to ask the court to revisit the issue of visitation after he completes the anger management classes.



2020). Father acknowledges that delay was inevitable given “the realities of the global pandemic,” but he argues that the extended delay unfairly prejudiced him, “violating his due process rights.” Further, he contends that the delay gave Mother an undue advantage because she was “afforded extensive time with J.D. in her sole care and custody,” during which she and J.D. bonded, but he was “not afforded a meaningful opportunity to visit with and bond with J.D.”

Appellees argue that this issue is not preserved for review because: (1) Father did not raise any due process challenge below; and (2) Father agreed to bifurcate the adjudicatory and disposition hearings, and then waived any claim of error by failing to file a motion to advance the hearing during the ensuing four-month period. In any event, they assert that appellant’s due process challenge is without merit.

We agree that Father has failed to preserve for review his contention that the delay in the proceedings violated his right to due process. With respect to the initial eight-month delay between the shelter care order (December 2019) and the adjudication hearing (August 2020), Father has not argued, or presented this Court with any transcript, motion, other record to show, that he complained about this delay in the circuit court. *See Hughes v. State*, 43 Md. App. 698, 706 (1979) (The burden of providing a record on appellate review “is placed upon ‘the aggrieved party, the party claiming abuse, to preserve his objection for review.’”) (quoting *Langrall, Muir & Nopp’r v. Gladding*, 282 Md. 397, 401 (1978)), *rev’d on other grounds*, 288 Md. 216 (1980). Accordingly, any argument regarding the delay during this time is not preserved for our review. *See* Md. Rule 8-131(a)

(This Court ordinarily “will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.”).

With respect to the four-month delay between the adjudication and disposition hearings, counsel for all parties stipulated at the August adjudication hearing that they had agreed to bifurcate the two hearings. J.D.’s counsel proffered that the earliest date by which she could complete her investigation was December 2020. When the court proceeded to discuss possible dates for the disposition hearing, Father initially stated that he did not agree to a bifurcation and wanted the court’s judgment that day. The court responded that it would be unable to hear a full disposition hearing that day. After further discussion, Father agreed to proceed with a bifurcated proceeding.

The court then set the contested disposition hearing for December 4, 2020, without further debate. Given Father’s ultimate agreement to the bifurcated hearing and to the December hearing date, after the process was explained to him, his argument that this delay violated his due process rights is not preserved for this Court’s review. *See* Md. Rule 8-131(a); *Taylor v. State*, 226 Md. App. 317, 375 (2016) (To preserve a scheduling issue for appeal, the complaining party must object at the time the court made the scheduling decision and waives that argument if she or he affirmatively agrees to the scheduling.).

Even if the contention were preserved for review, we would find Father’s contention, that the delay in the proceedings violated his due process rights, to be without merit. Pursuant to CJ § 3-819(a)(2), the court may bifurcate the adjudication and disposition hearings *sua sponte* or on a motion of a party if the court finds that there is good

cause to delay the disposition hearing to a later date. CJ § 3-819(a)(3) further provides that “[i]f the court delays a disposition hearing, it shall be held no later than 30 days after the conclusion of the adjudicatory hearing *unless good cause is shown.*” (Emphasis added.) Here, the court found that there was good cause to delay until December 2020 because J.D.’s counsel and the Department needed time to conduct further investigations, which counsel proffered could not be completed before December 2020. Part of the investigation was to assess the suitability of Father’s residence for a child, which Father had not requested prior to the date of the adjudication hearing. The delay, therefore, was not improper.

Moreover, as indicated, Father’s claim of prejudice on appeal is that the delay “cost him invaluable bonding time with J.D.” and allowed Mother an “undue advantage” by giving her extensive bonding time with J.D. The record is clear, however, that Father was permitted liberal (albeit supervised) visitation with J.D. throughout the proceedings. That Father did not avail himself of the opportunity to bond with J.D. was a result of his choice, as opposed to the delay. There was no due process violation due to delay in this case.

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