

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2360

September Term, 2015

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IN RE: AUTUMN P.

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Wright,  
Graeff,  
Eyler, James R.  
(Retired, Specially Assigned),

JJ.

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Opinion by Wright, J.

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Filed: June 23, 2016

\*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.

Mark P. (“Father”) appeals the November 18, 2015, adjudication and disposition order of the Circuit Court for Howard County, sitting in juvenile court, declaring his then seventeen-year-old daughter, Autumn P., to be a Child In Need of Assistance (“CINA”).<sup>1</sup> At the hearing, the juvenile court found Autumn to be a CINA and placed her in the custody of the Howard County Department of Social Services (“the Department”) for placement in a therapeutic foster home. Autumn was due to turn 18 years old three days from the hearing, on November 21, 2015, which was about three days prior to the expiration of the mandatory period for exceptions. For that reason, the magistrate found “good cause” for the entry of an immediate order. At the end of the hearing, Father<sup>2</sup> filed a timely appeal on December 14, 2015, challenging the CINA finding, presenting the following questions for our review:

I. Did the trial court err in entering an immediate order in a Child In Need of Assistance case?

II. Did the trial court err in taking judicial notice of a court file without that file or information therefrom being properly introduced into evidence?

III. Did the trial court err in relying on the magistrate’s personal recollections to support its fact findings?

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<sup>1</sup> A child in need of assistance means a “child who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” Md. Code (1974, 2006 Repl. Vol.), § 3-801(f) of the Courts & Judicial Proceedings Article (“CJP”).

<sup>2</sup> Autumn’s mother, Rebecca P., did not attend the November 18, 2015, hearing and did not appeal the CINA finding.

IV. Did the trial court err in finding CINA when appellant and the mother were willing and able to provide proper care and attention for the minor respondent?

For the reasons discussed below, we answer Father's questions in the negative and affirm the decision of the juvenile court.

### FACTS

Autumn was adopted by Father and Rebecca P. ("Mother") (collectively, "parents") when she was two and a half years old. As she grew up, problems developed in the household, and, according to Father, Autumn became "a runner" who "would put herself at risk. She would leave home and run and be at bay to the point where, you know, authorities were picking her up and bringing her back." As a result, Autumn had not consistently lived with her parents since she was twelve.<sup>3</sup>

In September 2014, Autumn ran away from a therapeutic foster home and was "on the run" until August 2015, when she was picked up at Sinai Hospital and returned to Waxter's Children's Center. Following a September 2015 hearing, Autumn returned to

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<sup>3</sup> Autumn was first placed by her parents at RICA, a "mental health residential treatment facility" in Baltimore City operated by the Department of Health and Mental Hygiene, and "provid[es] treatment and educational programs for adolescent boys and girls aged 12 to 17, 6 who are experiencing emotional, behavioral and learning difficulties." <http://dhmh.maryland.gov/rica-balti/Pages/home.aspx> (last visited June 10, 2016).

While at RICA, Autumn committed a juvenile offense and a petition for delinquency was filed against her; the Department of Juvenile Services then became involved. Autumn then spent time in Waxter's Children's Center, a secure detention facility operated by DJS for girls between the ages of 12 and 18. She also was placed in multiple residential treatment centers.

her parents' home. For about three and a half weeks, there were no serious issues in the home. One evening, however, Autumn returned home to find that her older sister, Katy, was visiting. Autumn and Katy had an intense argument, and Katy pressed charges against Autumn for damaging her vehicle. These charges led to an arrest on October 20, 2015. The following day, a Department of Juvenile Services ("DJS") hearing was held on those charges, after which Autumn was released to her parents' custody. Her parents, however, refused to allow Autumn to return home with them and left her at the courthouse.

Child Protective Services ("CPS") worker, Jenna Petroski, subsequently took custody of Autumn at the courthouse and contacted Mother. Mother expressed that she did not want Autumn in her home "for the safety of the other children in the home" and because she had "safety concerns" about Autumn's behaviors. The Department then sheltered<sup>4</sup> Autumn in a therapeutic foster home, where she remained at the time of the hearing. On October 22, 2015, a shelter care hearing was held, which Father attended, but Mother did not attend. At the hearing, the juvenile court found that the parents were "unwilling to accept responsibility for Autumn at this time" and ordered Autumn's placement in the Department's custody.

Ms. Petroski later visited Mother and Father at their home. The parents expressed that they were willing to have Autumn return home as long as services were in place.

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<sup>4</sup> "Sheltered" or "shelter care" means "a temporary placement of a child outside the home at any time before a [CINA] disposition." CJP § 3-801(y).

They wanted Autumn to participate in individual therapy and possibly family therapy with Katy.

On November 18, 2015, three days before Autumn's eighteenth birthday, Father, Autumn, and Autumn's foster father attended Autumn's CINA adjudication hearing. At the hearing, the Department requested a CINA finding and an order of protective supervision to provide Autumn a safety net, concerned that she would otherwise be out of the Department's jurisdiction once she turned 18 and might end up homeless. The same request was also made by Autumn's counsel. Father, however, argued there was no need for a CINA finding.

At the start of the hearing, the court granted the Department's request for it to take judicial notice of Autumn's delinquency case. The magistrate presiding over the case indicated that she was "familiar with the case having heard a number of review hearings in the juvenile case."

During the hearing, Ms. Petroski testified that Autumn had been living in an experienced therapeutic foster home since first entering the Department's custody, and that she was "doing really well" there. Autumn's foster father told the court that there were plans in place to help Autumn get the services she needed, such as starting to work towards her GED, getting her a job, and getting her a car. Autumn directly addressed the court, saying she was at a place that can "help me to get where I need to be . . . I would like to [sic] home but I'm not ready to go home yet . . . I feel like we got issues that we need to work out first before I go home." While at the foster home, Autumn was receiving individual therapy, something that she had previously refused. However, she

remained unwilling to see her parents, and they had not visited her since she entered the Department's custody.

At the conclusion of the hearing, the magistrate found Autumn a CINA, recognizing that "I think that Autumn's parents love her but that they are unwilling to provide what she needs at this time," and "it is not a good idea for her to go home at this point." Concerned that Autumn would age out of the juvenile court's jurisdiction once she turned 18, three days after the hearing, the magistrate recommended the immediate entry of an order.

Twelve days later, on November 30, 2015, Father filed exceptions to the magistrate's recommendation and a hearing was scheduled for January 13, 2016. On December 14, 2015, Father filed a timely notice of appeal. Father failed to appear for the January 13, 2015 exceptions hearing, and his exceptions were consequently dismissed.

Additional facts will be included below as they become relevant.

## **DISCUSSION**

### **I. Standard of Review**

When reviewing a CINA adjudication and disposition hearing, the appellate court must apply "three different but interrelated standards of review." *In re Adoption of Cadence B.*, 417 Md. 146, 155 (2010). First, the juvenile court's factual findings are reviewed under a clearly erroneous standard. *Id.* (citation omitted); *In re Nathaniel A.*, 160 Md. App. 581, 595 (2005); Md. Rule 8-131(c). The juvenile court's factual findings will not be disturbed "if any competent evidence exists in support" of those findings. *In re Ryan W.*, 434 Md. 577, 593-94 (2013) (citation omitted). Second, any legal

conclusions are reviewed “without deference” and any legal errors will be remanded, unless the error is harmless. *Id.* (citations omitted). Finally, the appellate court reviews for abuse of discretion the juvenile court’s “ultimate conclusion . . . founded upon sound legal principles and based upon factual findings that are not clearly erroneous.” *Cadence B.*, 417 Md. at 155 (citation omitted). The juvenile court abuses its discretion when its decision under consideration is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Id.* at 155-56 (citing *In Re Yve S.*, 373 Md. 551, 583-84 (2003)).

## **II. Autumn was appropriately adjudicated a CINA.**

A “child in need of assistance” is defined 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.

Md. Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article (“CJP”)

§ 3-801(f). Under the Maryland Code, “neglect” means “leaving of a child unattended or other failure to give proper care and attention to a child” by a parent or guardian that may harm or place the child at risk of substantial harm of the child’s health, welfare, or mental health. CJP § 3-801(s); *see also In re Priscilla B.*, 214 Md. App. 600, 604 (2013)

(holding that parents neglected child “failing to provide her with an emotionally or physically safe environment”). To determine neglect, “a court may and must look at the

totality of the circumstances,” *Priscilla B.*, 214 Md. App. at 621, and makes a CINA finding by a “preponderance of the evidence. CJP § 3-817(c).

On appeal, Father argues that there was insufficient evidence presented at the hearing to justify a CINA adjudication. He pointed to his testimony at the adjudication, reiterating comments he had made to the Department exhibiting the willingness of the parents to have Autumn return to the home: “Well, we want Autumn home. We love Autumn. She’s our daughter. No matter what the outcome is she’s always going to be our daughter. She’s going to be home.” Further, Father noted that there was no evidence that the parents are unable to provide for Autumn’s physical needs. He noted that there was no showing that the parents could not provide proper care and attention to Autumn because all of the behavior putting her at risk, such as running away and not engaging in therapy, was made by Autumn alone.

The juvenile court found that “Autumn’s parents love her but that they are unable or unwilling to what she needs at this time.” From the time Autumn was twelve, she had not lived with the parents for more than a three-and-a-half-week period. During this time, the parents could not have provided Autumn with the “proper care and attention” she required. CJP § 3-801(f).

The parents have also demonstrated an unwillingness to care for Autumn on several occasions other than the incident that was the basis for this adjudication hearing.

The magistrate recalled:

numerous times at which it was suggested that Autumn was ready to step down out of a residential treatment facility and her parents felt that she



needed to do more residential or more something else before they would consider having her come home.

The magistrate also recalled at least one delinquency hearing that the parents had not attended, and that Autumn “basically dared [the magistrate] to see if [the magistrate] could get her parents to come because they had not been participating at all.”

The juvenile court is free to view a parent’s past behavior as an indicator of the parent’s future conduct. *Priscilla B.*, 214 Md. App. at 625-26 (citing *In re Adriana T.*, 208 Md. App. 545, 570 (2012) (“To the extent that inaction repeats itself, courts can appropriately view that pattern of omission as a predictor of future behavior, active or passive[.]”). “Reliance upon past behavior as a basis for ascertaining the parent’s present and future actions directly serves the purpose of the CINA statute.” *Id.* Looking at the parents’ past behavior with Autumn, the juvenile court was within its discretion to predict their future behavior, especially because there was nothing presented by Father to suggest that things would be different. As the Department points out, although Father testified that things would be different this time because the Department had provided Autumn with services, many of these services would cease if Autumn were not adjudicated as CINA. The parents outlined no plan if and when those services stopped.

Based on the totality of the circumstances, *Priscilla B.*, 214 Md. App. at 621, the juvenile court did not abuse its discretion in concluding that the parents were not willing or able to provide for Autumn with the proper care and attention she required, and that her health or welfare was at substantial risk of harm. Autumn’s risk of harm was amplified in this case because of her upcoming eighteenth birthday; had she not been

found CINA and the parents failed to take care of her, Autumn would be outside the Department's CINA jurisdiction and would be on her own. *See In re William B.*, 73 Md. App. 68, 78 (1987) (explaining that "a neglect or dependency proceeding is preventative as well as remedial").

**III. The Magistrate appropriately considered Autumn's juvenile delinquency proceedings.**

Father challenges the juvenile court's taking judicial notice of Autumn's delinquency file as well as its reliance on information that the magistrate had obtained while presiding over Autumn's delinquency proceedings. Father's counsel asked during the adjudicatory hearing that, if the juvenile court was going to take judicial notice per the Department's request, the file should be brought to the courtroom for review because Father's counsel was unfamiliar with the previous proceedings. The magistrate explained that she was personally familiar with the case, "having heard a number of review hearings in the juvenile case," but that she would "try to get that file."

The file was brought to the courtroom and given to Father's counsel. The file was not offered into evidence. The magistrate indicated to Father's counsel that the court can "make sure [to] take a break where you could look more if that turns out to be necessary." However, the juvenile court never took a break nor did Father's counsel ever request a break or request additional time.

At the conclusion of the hearing, the juvenile court stated:

Alright, based on the evidence presented here today, as well as the matters that I take judicial notice of from the delinquency file, I find Autumn is a Child In Need of Assistance . . . .

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I'm just going to tell you the whole thing. One of the things that the court takes judicial notice of from the delinquency file is that it required an Order Controlling Conduct for the parents to attend any of Autumn's DJS hearings.

Father's counsel interjected, "Your Honor, that issue was not addressed during testimony. I did inquire Mr. P. about that and he says that's actually, that they were present." The magistrate responded, "Well, I will tell you that I was there at the time and they were not present." Father now alleges error because the magistrate resolved a factual dispute – whether Father and Mother were at the delinquency proceedings – based on her independent recollection.

**a. The juvenile court appropriately took judicial notice of the delinquency file.**

The Maryland Rules provide that a court "shall take judicial notice if requested by a party and supplied the necessary information." Md. Rule 5-201(d). For a fact to be judicially noticed, it cannot be subject to "reasonable dispute," meaning the fact must "either (1) [be] generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Md. Rule 5-201(b). "[P]ublic records such as court documents" are some of the most common of the "types of information [that] can fall under the umbrella of judicial notice." *Abrishamian v. Washington Med. Grp., P.C.*, 216 Md. App. 386, 413 (2014) (citing *Marks v. Criminal Injuries Comp. Bd.*, 196 Md. App. 37, 78 (2010)). Thus, in CINA cases, the juvenile court can take judicial notice of prior adjudications and evidence. *Nathaniel A.*, 160 Md. App. at 600 n.1 ("[i]t is permissible for a trial court . . . [in a] termination proceeding to judicially notice the prior [CINA]

case, *including* the evidence . . . .” (citing *In the Interest of H.R.K., R.M.A.C., and R.L.C.*, 433 N.W.2d 46, 48 (Iowa Ct. App. 1988) (emphasis in original)). Further, “[j]udicial notice may be taken at any stage of the proceeding.” Md. Rule 5-201(f).

Father argues that the file was never introduced as evidence but was referenced in the magistrate’s decision. He explains that the testimony and the court’s recitation reveal “that the minor child had more than one delinquency matter adjudicated, and that the evidence does not clearly reveal exactly which specific case formed the basis of the Magistrate’s findings.” However, in making a CINA determination, “a court may and must look at the totality of the circumstances.” *Priscilla B.*, 214 Md. App. at 621 (citation omitted). There is no requirement for the magistrate to “clearly reveal exactly which specific case formed the basis of [her] findings,” as Father alleges. He supports his assertion by relying on *Irby v. State*, 66 Md. App. 580, 587 (1986), for the proposition that “court may not take judicial notice of testimony or factual statements in unrelated trials in other jurisdictions to establish the statutory predicate in an enhanced punishment proceeding.” (Citations omitted). However, contrary to Father’s reading, *Irby* rejects a formal presentation of evidence:

In the context of judicial notice by a court of its own records in other cases, we adopt, as a proper extension of the existing Maryland law, the following statement from *People v. Davis*, 65 Ill.2d 157, 2 Ill.Dec. 572, 357 N.E.2d 792 (1980):

Traditionally, courts have been cautious in expanding the scope of judicial notice. In *McCormick on Evidence*, section 330, at 766 (2d ed. 1972), it is said to be ‘settled, of course, that the courts, trial and appellate, take notice of their own respective records in the present litigation, both as to the matters occurring in the immediate trial, and in previous trials

or hearings. *The principle seemingly is equally applicable to matters of record in the proceedings in other cases in the same court, and some decisions have recognized this, but many courts still adhere to the needless requirement of formal proof, rather than informal presentation, of recorded proceedings in other suits in the same court.*’ (Emphasis added). Taking judicial notice of matters of record in other cases in the same court is simply an application of the increasingly recognized principle that matters susceptible of judicial notice include facts ‘capable of immediate and accurate demonstration by resort to easily accessible sources of indisputable accuracy.’ McCormick, at 763 (2d ed. 1972).

*Id.* at 586 (emphasis in original). *Irby* highlights not only that it is appropriate to take judicial notice of matters in the same court, but that doing so saves the court’s time and resources.

Here, not only were Autumn’s delinquency matters before the same court, they were before the same magistrate; they were not “unrelated trials in other jurisdictions.” *Id.* at 587. The juvenile court had “independently analyzed the evidence before it and made its own conclusion” regarding the issues. *Nathaniel A.*, 160 Md. App. at 598-99 n.1 (referencing *In re Scott S.*, 775 A.2d 1144, 1149-50 (Me. 2001) (“A judge may take judicial notice of any matter of record when that matter is relevant to the proceedings at hand . . . [but] it must independently assess all facts presented.”)).

The Department requested that the juvenile court take judicial notice of the file, and the court had the file brought in and given to Father’s counsel. Father’s counsel had the opportunity to review the file but failed to ask for a recess to review it. Thus, all parties and the court had access to Autumn’s delinquency file and its contents. As such, the juvenile court appropriately took judicial notice. Md. Rule 5-201(d) (requiring the

court to “take judicial notice if requested by a party and supplied the necessary information”).

**b. The magistrate properly considered information she recalled from the juvenile delinquency proceedings.**

Father also challenges the magistrate’s reliance on her recollection of Autumn’s previous juvenile delinquency proceedings that the magistrate herself had presided over. Relying on our reasoning in *Priscilla B.*, 214 Md. App. at 600, we determine that the juvenile court properly considered that information.

In *Priscilla B.*, a father appealed the CINA determination for his daughter, who had twice been adjudicated a CINA. *Priscilla B.*, 214 Md. App. at 605. The magistrate presiding over the case from which the appeal arose had also presided over the daughter’s previous CINA cases, and the father argued that the magistrate had improperly relied on her knowledge of the previous cases in making her latest recommendations. *Id.* at 624. On appeal, we disagreed with the father and explained that the juvenile court “must look at the totality of the circumstances” when making its CINA determinations. *Id.* at 621.

In doing so, reliance on prior events was appropriate:

[T]he master knew about Father’s background and the CINA proceeding not because *any* party went out of its way to introduce that evidence, but because she had overseen the prior CINA case herself. As Priscilla’s counsel points out in her brief, Worcester County has only one juvenile master who hears all CINA cases, so her continuing involvement was inevitable. Father can’t expect the master to repress the past, particularly when the new CINA proceeding followed so closely on the heels of the prior one and reflected the same underlying problems—indeed, we required in [*In re*] *Dustin T.* [93 Md. App. 726, 735 (1992)] that the master consider the fact of the prior proceeding.

*Id.* at 630 (emphasis in original).

Here, much like in *Priscilla B.*, the magistrate expressed that she was “familiar with the case having heard a number of review hearings in [Autumn’s] juvenile case,” and Father did not challenge the magistrate’s statements that she presided over Autumn’s “other hearings.” Father, therefore, cannot “expect the master to repress the past” where she has been continuously involved in Autumn’s case.<sup>5</sup> The juvenile court’s conclusion was supported by evidence and was not an abuse of discretion.

**IV. Any error by the juvenile court in entering an immediate order in a CINA case was harmless.**

We review the juvenile court’s conclusions of law without deference. *In re Ryan W.*, 434 Md. at 594. Any “[e]rrors of law are generally remanded to the trial court for further proceedings, unless the error is harmless.” *Id.* (citation omitted). The juvenile court entered an immediate order adjudicating Autumn a CINA. The juvenile court was concerned that, because Autumn turned eighteen three days from the hearing, she would no longer be subject to the court’s jurisdiction. Although this entry may have been in error, any error was harmless and does not require reversal.

The juvenile court’s immediate order was in error because it did not provide the parties the five days necessary to file exceptions. Under Md. Rule 11-111(c), each party has five days to “file exceptions to the magistrate’s proposed findings, conclusions, recommendations or proposed orders.” As a result, the trial court is prohibited “from taking any action on the master’s recommendations before the expiration of those five

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<sup>5</sup> There was actually no factual dispute as Father was relating rank hearsay in contesting the magistrate’s recollection.

days.” *In re Kaela C.*, 394 Md. 432, 472 (2006). Here, however, the circuit court adopted the magistrate’s recommendations prior to the expiration of the five days afforded under the Maryland Rules.<sup>6</sup> Nevertheless, no reversal is required because the error was harmless.

Here, while the juvenile court adopted the findings before the expiration of the five days for the purpose of preserving jurisdiction, it nevertheless gave the parties a copy of the magistrate’s report at the November 18, 2015 hearing and informed them of the five-day period for filing exceptions. The parties were, in fact, afforded a period for exceptions despite the immediate adoption of the magistrate’s recommendations. Consequently, Father had until Wednesday, November 25, 2015,<sup>7</sup> to submit his exceptions to the magistrate’s findings. However, Father did not file his exceptions until November 30, 2015. A party’s right to file exceptions is waived if the party fails to make a timely filing of the exceptions. *Kosinski v. Evans*, 102 Md. App. 595, 597 (1994) (citing *Dobrow v. Dobrow*, 50 Md. App. 465 (1982)).

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<sup>6</sup> Furthermore, the juvenile court’s justification for bypassing the five-day exceptions period was flawed. That is, it incorrectly assumed that it would not have jurisdiction after Autumn’s eighteenth birthday. The court would have had continued jurisdiction over Autumn even after she turned eighteen and until the CINA petition was adjudicated because “the court has jurisdiction . . . if the alleged CINA or child in a voluntary placement is under the age of 18 years *when the petition is filed.*” CJP § 3-804(a) (emphasis added). Because Autumn was under eighteen when the petition was filed, the juvenile court would continue its jurisdiction over her until it adjudicated the matter. There was, therefore, no need for immediate judgment without the five-day exception period.

<sup>7</sup> Weekend days are not counted when computing the five-day period. Md. Rule 1-203(a).



In addition to untimely filing the exceptions, Father also failed to appear at the exceptions hearing scheduled for January 13, 2016. We have previously held that even when a party timely filed exceptions, the failure to appear at the exceptions hearing constitutes a waiver of the party's right to a *de novo* hearing, "as if no exceptions had been filed within the prescribed period." *In re Appeal No. 287 from Circuit Court of Baltimore City, Sitting as a Juvenile Court*, 23 Md. App. 718, 722 (1974). While all other parties were present at the exceptions hearing, neither of the parents nor Father's counsel appeared. Father missed, without justification, his opportunity to argue that Autumn should not be adjudicated a CINA.

In sum, because Father had the opportunity to file exceptions, but did so in an untimely manner and failed to show up at the hearing, the juvenile court's error in entering the immediate order was harmless. "It is well settled in Maryland that a judgment in a civil case will not be reversed in the absence of a showing of error *and* prejudice of the appealing party." *In re Adriana T.*, 208 Md. App. 545, 572 (2012) (citing *In re Ashley E.*, 158 Md. App. 144, 164 (2004)) (emphasis in original). "In that context, prejudice means that it is likely that the outcome of the case was negatively affected by the court's error." *Id.* (citations omitted). Here, there was no prejudice to Father because even if the court had not entered the immediate order, it would not have considered his untimely exceptions and his failure to appear at the exceptions hearing constituted a waiver of those exceptions. Further, the order itself was proper, as we determined above that Autumn was appropriately adjudicated a CINA. *C.f. Smith v. Warbasse*, 71 Md. App. 625, 634-35 (1987) ("Our review of the record and the

authorities convinces us that the trial court's ruling is correct. It would be the height of folly for us to reverse and remand for further consideration, this case, which we know to be correct, solely on the basis of an inappropriate use of an unpublished opinion.

Accordingly, we hold that the error, *under the circumstances of this case*, was harmless.”

(Emphasis in original)).

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