UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2675

September Term, 2015

IN RE: T.C., Z.C, T.M.

Berger,
Reed,
Shaw Geter,

JJ.

Opinion by Reed, J.

Filed: November 29, 2016

On November 17, 2015, the Washington County Department of Social Services (the "Department") filed child in need of assistance ("CINA") petitions on behalf of T.C., Z.C., T.M., and M.C., all of whom are the minor children of the appellant, Ms. R. The Circuit Court for Washington County, sitting as a juvenile court, held an adjudication and disposition hearing on January 7, 2016. The juvenile court adjudicated T.C. and Z.C. CINAs, but continued them in the custody of Ms. R. under an order of protective supervision by the Department. And although the court did not find T.M. to be a CINA, it awarded custody of him to his father, Mr. M.

The appellant filed a timely appeal and presents three questions for our review, which we reduce to two and rephrase:[1]

1. Did the juvenile court err in finding that T.C. and Z.C. were placed at substantial risk of harm by their mother and, consequently, adjudicating them CINAs?

2. Did the juvenile court err in granting custody of T.M. to his father and terminating the CINA proceedings?

[1] The appellant presents the following questions:

1. Did the juvenile court err in finding that the three children had been neglected and in finding that the mother's failure to voluntarily enter into a safety plan supported a finding of neglect?

2. Did the juvenile court err in finding that T.C. and Z.C. were CINA?

3. Did the juvenile court err in finding that the father was able and willing to safely care for T.M. and in granting custody to the father?

For the following reasons, we answer the first question in the negative and the second question in the affirmative. Therefore, we shall vacate a portion of the juvenile court's judgment and remand to that court for further proceedings not inconsistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

Ms. R. is the mother of four children: T.C., a boy born in January 2011; Z.C., a girl born in April 2012; M.C., a girl born in May 2013; and T.M., Jr. ("T.M."), a boy born in November 2014. The Department filed CINA petitions on behalf of all four children on November 17, 2015. Only the petitions that were filed on behalf of T.C., Z.C., and T.M. are the subject of this appeal.[2]

It is possible that none of the CINA petitions in this case would have been filed were it not for the events that occurred on November 5, 2015. On that day, Ms. Christina McCauley, a child protective services worker for the Department,[3] was in Ms. R.'s neighborhood providing services to another family. While there, she observed T.C., who was then four years old, riding a bicycle outside without any supervision. She walked T.C. back to his house and was allowed inside by Ms. R. She testified that while inside the house, she observed a large, half-full bottle of vodka "[lying] on the floor amongst the

[2] The petition that was filed on behalf of M.C. was dismissed by the juvenile court. The court found that M.C., unlike the other three children, "was not in an unsafe situation" because she had not been living in Ms. R.'s home for at least a year and, therefore, was not exposed to the same lack of care as were the other children.

[3] Ms. McCauley was previously a foster care worker for the Department. While in that capacity, she served as T.C.'s foster care worker when the Department removed him from Ms. R.'s home for a six-month period that ended sometime in 2012.

chairs of the dining room table." Ms. R. admitted during her testimony that the children could easily have accessed the bottle, but explained that their ability to do so did not worry her because "they can't get the lid open." Ms. McCauley noticed that despite it being around 11:00 a.m., Ms. R. had "just . . . been woken up or . . . taken out of a deep rest" and "was not [yet] dressed." Ms. McCauley observed that T.C. was "climbing the furniture" and being "aggressive towards his mother," was wearing a diaper at the age of four years and ten months, and had "visibly dark" teeth. Ms. R. repeatedly described T.C. as "fucking crazy" and indicated that she could not get him to use his potty-chair, brush his teeth, or take him to the dentist because of his behavior. Ms. McCauley's observations and interactions with Ms. R. that day served as the primary basis for the CINA petitions at issue, which were filed by the Department on November 17, 2015. The Department did not place the children in shelter care upon the filing of the petitions because it was merely seeking a disposition of legal and physical custody remaining with Ms. R. under an order of protective supervision by the Department.

The CINA petitions were originally scheduled for an adjudication hearing on December 17, 2015, but that hearing was continued to January 7, 2016, to allow for discovery at the request of Ms. R.'s attorney. When the hearing resumed, a number of incidents of alleged neglect by Ms. R. were the subject of differing testimony. The first such incident was when T.C. allegedly placed a bag over T.M.'s head. According to Ms. McCauley, during her unplanned visit to Ms. R.'s home on November 5, 2015, Ms. R. told her about a time when T.C. "put a bag over [T.M's] head, and . . . she had to do C-P-R."

Ms. McCauley's testimony was corroborated by that of Mr. M., the father of T.M.,[4] who testified that Ms. R. told him that T.C. placed a bag over T.M.'s head while she and her mother were upstairs in the house. Ms. R., however, testified that she was not home when the incident took place and does not believe it actually happened.

Likewise, contradictory testimony was given regarding an occasion in which T.C. allegedly choked T.M. by wrapping a slinky around his neck. Ms. McCauley and Mr. M. both testified to what Ms. R. had previously told them about the incident. Ms. McCauley recalled that "[s]he told me that . . . T[.C.] choked [T.M.] with a slinky and she had to go and take the slinky off of his neck." Similarly, Mr. M. testified that "Ms. R. told me that there was a slinky wrapped around [T.M.'s] neck." According to Ms. R., however, the slinky was not wrapped around T.M.'s neck, but rather his body: "It was a little slinky. And it was around his body. Me and my mom was upstairs. And we came down and it was a little slinky." Ms. McCauley admitted on cross-examination that she heard different accounts of the incident from Ms. R.: "[T]he first time she told me his neck. But then later she did say, 'It wasn't his neck, it was his body.'"

In addition to the bag incident and the slinky incident, there was also an incident involving a toy gun. Ms. McCauley testified that while she was in the house for a follow-up visit on November 9, 2015, she observed T.C. hit Z.C. with a "very large Nerf gun that included a clip." Ms. McCauley described the toy gun as "a hard plastic large toy." When the hitting occurred, Ms. R.'s only response, according to Ms. McCauley, was to turn to

[4] Mr. C., the father of T.C. and Z.C., was not present at any of the proceedings below.

her and say, "[S]ee, I told you he's f–ing crazy." When Ms. McCauley advised Ms. R. that they needed to physically intervene, T.C. threw the toy gun at Ms. McCauley. Ms. McCauley proceeded to carry T.C. upstairs and put him in "time out" in his bedroom. Ms. McCauley testified that during T.C.'s "time out," Ms. R. suggested that they lock the door and leave him there because that is something she sometimes does. Ms. R. refuted that claim, testifying that she never shuts T.C.'s bedroom door when she puts him in "time out."

T.C. has a prescription for two medications: Clonidine and Adderall. The former was prescribed for difficulty sleeping, while the latter was prescribed to treat the effects of ADHD. T.C. is supposed to take the Clonidine at night and the Adderall in the morning and at 4:00 p.m. Ms. R. told Ms. McCauley during one of her house visits that although she was giving T.C. the Clonidine as prescribed, she wasn't giving him the Adderall very often. She indicated that she stopped giving T.C. the Adderall because she was concerned about a "rebound" effect when the drug wore off. Ms. R. testified that she "contacted the doctor and they said [taking him off the Adderall] was fine because he hasn't been on it that long." However, as of the date of the adjudication and disposition hearing, Ms. R. was giving T.C. both medications as prescribed.

On one occasion, Ms. McCauley witnessed T.C. climb up and open the kitchen cabinet directly next to the one in which Ms. R. kept his medications. Concerned that the medications were not secure from T.C.'s reach, Ms. McCauley offered Ms. R. a lockbox. Ms. R. declined Ms. McCauley's offer, indicating that she already owned a lockbox. Ms. R. testified that she stored T.C.'s medications in child-proof bottles that

T.C. has never been able to open. With respect to T.C.'s tendency to climb on things such as the kitchen cabinets or the refrigerator, Ms. R. testified: "So he was just really – he was just T[.C.] He was climbing on stuff. He's very – he's very free willing."

Whether Ms. R. followed through with obtaining services recommended by the Department was also a matter of contention at the hearing. Ms. McCauley testified that she recommended the Early Intervention and Head Start programs for T.C. She testified that she took T.C.'s birth certificate to Head Start herself and called the Early Intervention team directly to advise them what services T.C. required. Ms. McCauley further testified that she recommended the Early Intervention program for Z.C. as well because she believed that she was "behind in her speech." Ms. McCauley developed this opinion after Z.C., who was then three-and-a-half years old, did not speak at all during the November 5, 2015, house visit. Ultimately, despite Ms. McCauley's offer to assist in transporting the children to their appointments, Ms. R. did not follow through with any of these service referrals. Ms. R. testified that she declined the Early Intervention program because she had tried it in the past and "didn't have proper transportation to go to the services."

In addition to Early Intervention and Head Start, Ms. R. repeatedly declined referrals to the Department's Intensive Family Preservation ("IFP") program. Ms. R. explained that she declined Ms. McCauley's referral to the IFP program because she planned to enroll T.C. in mental health services at Brook Lane once he became eligible in January 2016.[5] In

[5] In order to be eligible for treatment at Brook Lane, a child must be at least five years old. Therefore, T.C. would become eligible to receive services at Brook Lane approximately two months after Ms. McCauley's house visits in November 2015.

fact, she testified that before the incident on November 5, 2015, she had an appointment scheduled for T.C. at Brook Lane on January 8, 2016, which happened to be the day after the hearing. She also testified that she had arranged for T.C. to start attending daycare at a nursery located within walking distance of her home.

Ms. R. was asked on two occasions—first on November 10, 2015, and again on November 12, 2015—to sign a safety plan for her children, but both times she refused. When she was asked to sign a safety plan on November 12, 2015, Mr. R. indicated that she would only work with the Department if she was ordered by a court to do so. The lower court acknowledged that she was within her rights at that point to "tell the State . . . [to get] out of my life, I want to do what I want to do."

Mr. M. testified: "I don't think [Ms.] R. is a harm to my son. I just think at times she will put my son at risk." One way Mr. M. believes Ms. R. has put T.M. at risk is by allowing her mother to be alone with him. Mr. M. testified that "[Ms. R.] tells me her mom is hooked on a lot of different types of drugs." On the date of the hearing, Ms. R. indicated that "[my mom] is watching [the children] now while I'm in Court."

Mr. M. also expressed concern about a young adult male who had been living in Ms. R.'s home. Mr. M. testified that one day he found a needle, a belt, a syringe, and a "substance" on T.C.'s train table in one of the upstairs bedrooms. Mr. M. testified that Ms. R. told him the young adult male living in the house was a diabetic, but Mr. M. believes he could have been a heroin addict.

Ms. R. addressed her failure to obtain dental care for T.C. and Z.C., telling the court that she took all three children to the dentist a few days before the hearing and scheduled six-month follow-up appointments for all of them. Like with T.C.'s Brook Lane appointment on January 8, 2016, Ms. R. did not provide any documentation confirming the dental appointments.

Finally, testimony was given regarding the safety of Mr. M.'s home and his fitness as a parent. Ms. R. testified to an incident in June or July of 2015 in which Mr. M. pushed her up against a wall and slapped her. She also testified that the police were called to her house on the night of December 24, 2015, after Mr. M. arrived and "aggressively" tried to take T.M. away from her. According to Mr. M., however, he only tried to take T.M. away because when he arrived, T.M. was being watched by Ms. R.'s mom, who "wasn't looking right," and the Christmas presents he had bought for T.M. were not placed by the tree. Although Mr. M. testified that he visited T.M. several times a week, Ms. R. alleged that he "just randomly pops in and sees [T.M.] like two or three times a month." Mr. M. indicated that he purchased diapers and baby clothes for T.M. several times a month, as well as a car seat for T.M. when he was born. Mr. M. testified that Ms. R. never bought T.M. a new car seat after his first one was broken in a car accident when T.M. was four months old.

In November 2015, Mr. M. was charged with second-degree assault in Washington County. He was ultimately found not guilty on this charge after the victim, his wife, invoked the marital privilege. Mr. M. was also in court in September 2015 after his wife filed a petition for protective order against him. That petition was ultimately dismissed, but

Ms. R. is concerned because the allegations brought in the petition stemmed from an altercation between Mr. M. and his wife over his wife's efforts to prevent him from getting his name put on T.M.'s birth certificate.

Mr. M. testified that there are two bedrooms in his home: one is occupied by his two daughters and the other by him and his wife. Mr. M. also lived with his adult brother, who slept on the couch. If he were awarded custody of T.M., then he planned on having him sleep in a crib in his and his wife's bedroom. Mr. M. testified that he was planning on moving into a larger place soon. In Ms. R.'s home, T.C., Z.C., and T.M. all shared a bedroom. Mr. M., whose first language was not English, testified: "I don't think [my home] is a safe environment. But's safer than Ms. R.'s environment. And I think I make mistakes. We all make mistakes. But it's what you do to not make that same mistake no more." At the time of the hearing, Mr. M. was working a day job at Food Lion. He indicated that he was planning on getting a night job so that he could care for T.M. during the day and either his wife or brother could care for him at night. Ms. R. was unemployed.

The cases proceeded to disposition on the same day as the adjudication hearing. The juvenile court found that T.C. and Z.C. were CINAs and continued them in Ms. R.'s custody under an order of protective supervision by the Department. The court found that T.M., on the other hand, was not a CINA because he had at least one fit parent, Mr. M. Therefore, the court awarded custody of T.M. to his father.

On February 5, 2016, Ms. R. noted a timely appeal of the juvenile court's disposition for all three children.

STANDARD OF REVIEW

It is well-settled that "[i]n child custody disputes, [including CINA proceedings,] Maryland appellate courts simultaneously apply three different levels of review." *In re Shirley B.*, 419 Md. 1, 18 (2011). The Court of Appeals has outlined the three levels as follows:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard . . . applies. [Secondly,] if it appears that the [juvenile 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 [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [juvenile court's] decision should be disturbed only if there has been a clear abuse of discretion.

Id. (quoting *In re Yve S.*, 373 Md. 551, 586 (2003).

DISCUSSION

I. CINA ADJUDICATIONS OF T.C. AND Z.C.

A. Parties' Contentions

The appellant argues that the juvenile court erred where it adjudicated T.C. and Z.C. to be CINAs. The appellant asserts that the court's CINA dispositions were based on clearly erroneous findings of fact, including that T.C. placed a bag over T.M.'s head and a slinky around his neck. The appellant contends that the court should have only credited her account of both of those incidents because no other witness had any direct knowledge as to what occurred.

The appellant argues that the evidence also contradicts the juvenile court's findings that she was neglectful in not giving T.C. his Adderall as prescribed, failing to obtain proper medical and dental care for her children, and refusing to follow through with the Department's service referrals. She asserts that T.C.'s pediatrician was "okay" with her decision to withhold the Adderall, that "all three children regularly visited the same pediatrician and were up to date on their shots," that "all three children had visited the dentist several days before the adjudication hearing," and that she only declined Ms. McCauley's service referrals because she planned on enrolling T.C. in services at Brook Lane, which the Department agreed would be an appropriate substitute for IFP.

The appellant also contends that there was not, as the juvenile court found, easily accessible "drug paraphernalia" in her home. She argues that this finding was based solely on Mr. M.'s testimony, which cannot be credited due to his "fractious relationship" with both her and her mom. In short, the appellant asserts that because "[t]he Department did not prove, within the meaning of the [CINA] statute, that Ms. R. had neglected T.C. and Z.C.[,] . . . [t]he juvenile court abused its discretion in ordering that T.C. and Z.C. be found CINA and in placing the mother under an order of protective supervision."

The Department responds that "[t]he juvenile court properly sustained factual findings of neglect against Ms. R. and did not abuse its discretion in determining that T.C. and Z.C. were CINA." The Department argues that actual harm need not be proven in order to sustain a finding of neglect, but rather, a showing that the children are placed at a "substantial risk of harm" is enough. The Department asserts that sufficient testimonial

evidence was presented at the hearing to support all of the juvenile court's factual findings and, thus, that the juvenile court did not abuse its discretion in adjudicating T.C. and Z.C. CINAs.

B. Analysis

For the following reasons, we shall hold that the juvenile court did not abuse its discretion where it adjudicated T.C and Z.C. to be CINAs and continued them in the custody of their mother under an order of protective supervision by the Department.

As the Department has correctly indicated, "[t]he purpose of a CINA proceeding is to protect children and promote their best interests." *In re Rachel T.*, 77 Md. App. 20, 28 (1988). The CINA statute provides that a

> "[c]hild 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.

CJP § 3-801(f) (emphasis added). Moreover, "neglect" is defined as "the leaving of a child unattended or other failure to give proper care and attention to a child by any parent . . . under circumstances that indicate . . . [t]hat the child's health or welfare is harmed or placed at a substantial risk of harm . . . ." *Id.* at § 3-801(s). "[I]t is clear from [CJP] § 3-801(s)(1) . . . that there may be neglect of a child without actual harm to the child. A 'substantial risk of harm' constitutes 'neglect.'" *In re Andrew A.*, 149 Md. App. 412, 418 (2003).

CINA proceedings have two stages. The first stage, known as the "adjudicatory" phase, is governed by CJP § 3-817, which provides:

> **In general**
> (a) After a CINA petition is filed under this subtitle, the court shall hold an adjudicatory hearing.
>
> **Rules of evidence**
> (b) The rules of evidence under Title 5 of the Maryland Rules shall apply at an adjudicatory hearing.
>
> **Burden of proof**
> (c) The allegations in a petition under this subtitle shall be proved by a preponderance of the evidence.

If the juvenile court finds that the allegations in the CINA petition have been proven by a preponderance of the evidence, then the case moves to the second stage, "disposition." The dispositional phase is governed by CJP § 3-819, which, in relevant part, provides:

> (b)(1) In making a disposition on a CINA petition under this subtitle, the court shall:
>
> (i) Find that the child is not in need of assistance and, except as provided in subsection (e) of this section, dismiss the case; [or]
>
> * * *
>
> (iii) Subject to paragraph (2) of this subsection, find that the child is in need of assistance and:
>
> 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 Department of Health and Mental Hygiene, or both, including designation of the type of facility where the child is to be placed.

In the case at bar, the juvenile court found that T.C. and Z.C. were CINAs because, pursuant to CJP §§ 3-801(f) & (s), they were placed at a substantial risk of harm by their mother, who was unable or unwilling to properly care for their needs. Then, in accordance with CJP § 3-819(b)(1)(iii)(1) and at the recommendation of the Department, the juvenile court did not change T.C. or Z.C.'s custody status. Rather, pursuant to CJP § 3-819(c), the court continued them in the care of their mother under an order of protective supervision.[6]

[6] CJP § 3-819(c) provides:

> In addition to any action under subsection (b)(1)(iii) of this section, the court may:
>
> (1)(i) Place a child under the protective supervision of the local department on terms the court considers appropriate;
>
> (ii) Grant limited guardianship to the department or an individual or both for specific purposes including medical and educational purposes or for other appropriate services if a parent is unavailable, unwilling, or unable to consent to services that are in the best interest of the child; or
>
> (iii) Order the child and the child's parent, guardian, or custodian to participate in rehabilitative services that are in the best interest of the child and family; and

We hold that in light of the above-referenced statutory provisions and their corresponding case law, the juvenile court did not err in its disposition of T.C. and Z.C.'s CINA cases.

It is well-settled that "[t]he appellate court must consider evidence produced at trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed." *Webb v. Nowak*, 433 Md. 666, 680 (2013) (quoting *General Motors Corp. v. Schmitz*, 362 Md. 229, 233-34 (2001)). In addition, we must not "embark on an independent fact-finding mission to resolve the conflicting evidence." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 331 (1997). Instead, "[i]t is the [juvenile court]'s role to assess the evidence and the credibility of witnesses, and to resolve the conflicting evidence." *Id.*

In the present case, as the appellant draws to our attention, there was an ample amount of conflicting testimony given by Ms. R., Mr. M., and Ms. McCauley at the adjudication and disposition hearing on January 7, 2016. However, the juvenile court weighed the evidence and the credibility of the witnesses and determined that Ms. R. neglected T.C. and Z.C. where she: (1) "[did] not know [T.C.] was out riding his bicycle at eleven o'clock in the morning[;]" (2) left a bottle of vodka on the floor within reach of the children; (3) did not take advantage of intensive services referrals between November 2015 and January 2016; (4) withheld T.C.'s Adderall prescription; (4) did not provide dental care for T.C. or Z.C.; (5) did not properly use a car seat for T.M.; and (6) allowed a

> (2) Determine custody, visitation, support, or paternity of a child in accordance with § 3-803(b) of this subtitle.

needle to be left on T.C.'s train table, even if it had not been used to inject heroine. Based on the record of the January 7, 2016, hearing, we simply cannot say that any of these factual findings were clearly erroneous.

As we explained *supra*, placing a child at a "'substantial risk of harm' constitutes 'neglect.'" *In re Andrew A.*, 149 Md. App. at 418. Therefore, based on the juvenile court's factual findings, Ms. R. neglected T.C. and Z.C. under the applicable provisions of the CINA statutes. Accordingly, the juvenile court did not abuse its discretion where it adjudicated T.C. and Z.C. CINAs and continued them in the custody of their mother under an order of protective supervision by the Department.

II. CUSTODY OF T.M.

A. Parties' Contentions

The appellant argues that "[t]he juvenile court erred in finding that Mr. M., father of T.M., was able and willing to safely care for T.M. and in granting custody to the father." The appellant asserts that the juvenile court erroneously based its custody award on *In re Russell G.*, 108 Md. App. 366 (1996), because that case was superseded by the enactment of Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 3-819(e). The appellant contends that the court ignored evidence of Mr. M.'s propensity for violence toward family members and the safety issues that his testimony revealed about his home, which the Department had done little investigation into.

The Department argues that "[t]he juvenile court properly exercised its discretion when it awarded custody of T.M. to his father prior to dismissing the CINA petition." The

Department asserts that the court properly weighed all the evidence in making "no findings of neglect or abuse against Mr. M." The Department points out that the court was not obligated to believe the assault allegation because Mr. M. was ultimately found not guilty of that charge. Finally, the Department contends that the juvenile court properly applied CJP § 3-819(e) in granting custody of T.M. to his father.

B. Analysis

The appellant argues that the juvenile court awarded custody of T.M. to Mr. M. based on an erroneous reading of *In re Russell G.*, *supra*. We agree and shall explain.

In *In re Russell G.*, we held that

> 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. No other interpretation would give effect to the statutory use of the plural noun "parents." Furthermore, that interpretation comports with the purpose of the CINA statute. A child who has at least one parent willing and able to provide the child with proper care and attention should not be taken from both parents and be made a ward of the court.

108 Md. App. at 376-77 (emphasis in original). Our holding dealt strictly with our interpretation of then-Section 3-801(e)(2) of the CINA statute, which defined a "child in need of assistance" as a child whose "parents, guardian or custodian are unable or unwilling to give proper care and attention to the child. . . ." *Id.* at 375.

However, while the current CINA statute contains virtually the same definition of a "child in need of assistance," *see* CJP § 8-301(f), it also contains the following section, which deals with the juvenile court's ability to award custody of a child to a noncustodial

parent when allegations of neglect have only been sustained against the child's other parent:

> If the allegations in the petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child, the court may not find that the child is a child in need of assistance, but, before dismissing the case, the court *may* award custody to the other parent.

CJP § 3-819(e) (emphasis added). This section, added by the legislature in 2001, was not part of the CINA statute in place at the time this Court issued its opinion in *In re Russell G.*

In order to determine whether the juvenile court's ruling was based on an incorrect application of Section 3-819(e), we must engage in statutory interpretation. As the Court of Appeals has explained,

> "the cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Melton v. State,* 379 Md. 471, 476, 842 A.2d 743, 746 (2004) (quoting *Holbrook v. State,* 364 Md. 354, 364, 772 A.2d 1240, 1245–46 (2001)). The first step in our analysis is to examine the plain language of the statute. *Grandison v. State,* 390 Md. 412, 445, 889 A.2d 366, 385 (2005). We will not look beyond the plain meaning of the statute when the words used are unambiguous. *Grandison,* 390 Md. at 445, 889 A.2d at 385; *Deville v. State,* 383 Md. 217, 858 A.2d 484 (2004); *Melton,* 379 Md. at 477, 842 A.2d at 746.

Bryant v. State, 393 Md. 196, 202 (2006). In other words, "[i]f the words of a statute are clear and unambiguous, our inquiry ordinarily ends and we need investigate no further, but simply apply the statute as it reads." *Hackley v. State,* 161 Md. App. 1, 11, *aff'd,* 389 Md. 387 (2005) (quoting *Gillespie v. State,* 370 Md. 219, 222 (2002)).

Based on the plain language of Section 3-819(e), the juvenile court was not *required* to award custody of T.M. to his father once it sustained the allegations of neglect against his mother. Section 3-819(e) clearly states that "[i]f the allegations in the petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child, . . . the court *may* award custody to the other parent." (Emphasis added). The juvenile court, however, in awarding custody of T.M. to his father, believed that it had no other option once it found that T.M. was neglected by his mother and had a noncustodial parent who was not proven to be unfit:

> Ms. R. for herself into this situation . . . because she freely decided to have a child with Mr. M. Had this matter been resolved by her just agreeing to a safety plan . . . and trying to get T.C. into some mental health . . . this case never would have gotten filed. And in a way it's karma on her part for being so obstinate to Ms. McCauley that now I am going to find the *Russell G.* argument **because I have to**. There is nothing I know about Mr. M. that makes him unfit . . . . I don't think he was saying that his house was an unsafe house. I think he was, in his broken English way, trying to say that it is a safe house because it's safer than Ms. R.'s house. There wasn't much of an investigation. If there was maybe there would have been something turned up. Maybe his wife would have said that he's a dangerous person or something. **But my understanding of *Russell G.* is not that someone has to prove Mr. M. is unfit. Basically there has to be a lack of evidence that he's unfit. And on top of that the little bit I see in the case he is fit.** So custody for T.M. is awarded to his father . . . .

This interpretation of the law, however, is directly contrary to the plain language of CJP § 3-819(e).

It is of course true that "parents have a fundamental, Constitutionally-based right to raise their children free from undue and unwarranted interference on the part of the State –

including its courts." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495 (2007). Thus, for a court to sustain allegations of neglect solely against a custodial parent and award custody to a nonparent would be to violate any fit, noncustodial parent's constitutional right. *See In re Russell G.*, 108 Md. App. at 377 ("A child who has at least one parent willing and able to provide the child with proper care and attention should not be taken from both parents and be made a ward of the court."). However, because "the best interests of the child are paramount," *Melton v. Connolly*, 219 Md. 184, 188 (1959), the Maryland legislature has recognized that there may be instances where it is proper, despite the existence of a fit, noncustodial parent, to continue a child in the custody of a parent against whom allegations of neglect have been sustained.

CONCLUSION

For the foregoing reasons, we remand T.M.'s case to the juvenile court with instructions that it reenter its custody order with respect to that child alone. On remand, the court shall grant custody of T.M. based on an interpretation of the law that is consistent with this opinion. All other judgments of the juvenile court are affirmed.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED IN PART AND VACATED IN PART. CASE REMANDED TO THE CIRCUIT COURT FOR WASHINGTON COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY WASHINGTON COUNTY.