

Circuit Court for Montgomery County
Case Nos. 06-I-17-63, 06-I-17-64 & 06-I-17-65

UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 703

September Term, 2017

IN RE: B.L., B.L., & B.L.

Eyler, Deborah S.,
Meredith,
Graeff,

JJ.

Opinion by Meredith, J.

Filed: January 19, 2018

*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 appeal arises from an order entered by the Circuit Court for Montgomery County, sitting as a juvenile court, which adjudicated Bre.L. (born 4/04), Bro.L. (born 6/07), and Bra.L. (born 3/09), children in need of assistance (“CINA”),¹ and committed them to the Montgomery County Department of Health & Human Services (“the Department”) for kinship care placement with their maternal grandmother, A.W. (“Grandmother”), and step-grandfather, C.W. (“Grandfather”).²

As we will describe in more detail below, the events that led to the children being adjudicated CINA began with an incident on February 23, 2017, when the children’s natural mother, N.R. (“Mother”), had an unusual encounter with Montgomery County police. As a result of Mother’s behavior, the police filed an emergency petition for a psychiatric evaluation, and Mother was hospitalized until March 3, 2017. During the time Mother was in the hospital, the children were sheltered with Grandmother and Grandfather. On April 11, 2017, the Department filed CINA petitions for the three children, and, after an evidentiary hearing on May 9 and 10, 2017, the juvenile court

¹ Pursuant to Md. Code (2013 Repl. Vol., 2017 Supp.), §3-801(f) of the Courts & Judicial Proceedings Article (“CJP”), 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.”

² Grandfather married Grandmother when Mother was eight years old and considers Mother to be his daughter.

found each child CINA and awarded custody to the Department for continued placement with the maternal grandparents.

Mother noted a timely appeal of the juvenile court's order, asking us to consider the following questions:³

1. Did the juvenile court err by admitting confidential mental health records in contravention of the mother's privilege to prevent disclosure of them?
2. Did the juvenile court err by admitting testimony in violation of the rule against hearsay?
3. Did the juvenile court err by finding the children CINA and divesting the mother of custody?

Finding no error or abuse of discretion, we shall affirm the juvenile court's order.

FACTS AND LEGAL PROCEEDINGS

On the evening of February 23, 2017, Montgomery County police officers responded to the Wheaton Mall after a mall security guard observed Mother sitting in her parked car, holding a 12-inch butcher's knife. When police officers asked her to exit her vehicle, she was not compliant. After the police broke the car window to gain access, Mother lunged at the officers with the knife and threatened self-harm. Officers used a

³ B.L. ("Father") did not participate in the CINA adjudication hearing and did not note an appeal. Although he told the Department that he is not in a position to care for the children, Father does remain in "pretty consistent contact" with the Department via e-mail and phone from his home in North Carolina.

Taser to subdue Mother, and thereafter filed an emergency petition to have her admitted for psychiatric evaluation at Holy Cross Hospital.

In the meantime, while Mother was parked at the mall, Bre.L. called Grandmother to report that Mother had not picked the children up from school. Grandfather picked up the children because he was closer and Grandmother was otherwise occupied. Grandmother called the police to report that Mother was missing. The police later told Grandmother that Mother was in the hospital.

When Grandmother visited Mother in the hospital, Grandmother confronted Mother about abandoning her children, and Mother responded, “that’s how it was supposed to work.” Mother was involuntarily committed and transferred to Washington Adventist Hospital for further psychiatric treatment. Because she was suffering from hallucinations and delusions, as well as inappropriate affect, hospital staff medicated her with Invega, a drug used to treat schizophrenia/schizoaffective disorder. Her judgment and insight were deemed poor, as evidenced by her continued denial of any need for psychiatric intervention.

Mother was diagnosed with acute psychosis, bipolar disorder, and undifferentiated schizophrenia. She was dismissed from the hospital on March 3, 3017, with recommendations to follow up within one week with a primary care physician and a psychiatrist for medication management. She was prescribed Invega, Seroquel, and Zyprexa, three antipsychotic medications. Prior to her discharge from the hospital, Mother refused to participate in a family meeting with the Department.

Grandmother agreed to care for the children in accordance with a Child Welfare Services (“CWS”) safety plan until Mother’s mental health stabilized. CWS workers met with Grandmother and the children on March 3, 2017. Grandmother reported that Mother had lost her job in August 2016 and had been struggling financially. According to Grandmother, in the months leading up to her hospitalization, Mother had been acting out of character — agitated and disrespectful. In addition, in early 2017, Mother had suffered a seizure that required emergency medical treatment. While she was in the hospital on that occasion, Mother appeared to be paranoid and concerned about hospital staff having her address and social security number. She later refused treatment.

Father reported to CWS that he visits with the children, but he travels often for work, and would be unable to care for the children.⁴ He denied any knowledge of previous mental health issues for Mother. He agreed that the children should remain with Grandmother and Grandfather while Mother addressed her mental health.

On March 7, 2017, Stephanie Sicard, a CWS assessment social worker, met with Mother at her home. To Ms. Sicard, Mother appeared paranoid, complaining that Grandmother had people driving by her home and watching her. Mother stated that, on February 23, 2017, before the incident at the mall, an unknown man on a motorcycle had parked in her driveway and waved for her to follow him. She said she followed him to

⁴ Prior to February 23, 2017, Mother had full legal custody of the children.

the mall, but he left without speaking to her. She also made an alternate claim that she was at the mall to pick up her children.

During the home visit, Mother told Ms. Sicard that she had received notification that her water was to be cut off. Grandmother reported that the children had not bathed for several days because the shower was not functioning in their home.

At Ms. Sicard's request, during the home visit on March 7, 2017, Mother signed authorizations for health care providers to release her medical records from Washington Adventist Hospital, Kaiser Permanente, and Dr. Kisa Crosse. Prior to Mother's signing of the releases, Ms. Sicard had explained that the Department needed the medical records to assess her case. Ms. Sicard further explained that she had to gather more information about Mother's mental health status and post-discharge recommendations by the hospital. Mother signed the releases, and she expressed no concern to Ms. Sicard about the Department receiving her medical information. The releases contained a provision for written revocation of the authorizations.

On April 10, 2017, CWS held a Family Involvement Meeting. At that time, Mother acknowledged that she had failed to follow up on the hospital discharge instructions regarding mental health treatment and prescription medications. Mother denied having any mental health problems, and denied having been assessed at the hospital. She refused to cooperate with the Department, and refused to agree to a plan for the children's care. She wanted the children, who, at that point, were being informally sheltered with Grandmother and Grandfather, returned to her care.

As a result of the April 10 meeting, the Department filed a CINA petition on April 11, 2017. The juvenile court appointed an attorney for the children and scheduled an adjudicatory hearing for May 9-10, 2017. After a shelter care hearing on April 11, 2017, the juvenile court granted shelter of the children to Grandmother and Grandfather, because continuation in Mother’s home would be contrary to the children’s welfare, and Father was unable to care for the children due to his work schedule.

On April 20, 2017, in compliance with Md. Code (2015 Repl. Vol., 2016 Supp.), § 4-306 of Health-General Article (“HG”), the Department sent notice to Mother that it had subpoenaed her mental health records from Washington Adventist and Holy Cross Hospitals and from Dr. Robert Litman and Dr. Kisa Crosse. On May 4, 2017, Mother filed a motion to quash the subpoenas and for protective order against use of her medical records. She argued that the subpoenas did not comply with HG §4-306(b)(6)(i)(A) because they had not been accompanied by the required certification. In addition, she asserted her privilege to protect the confidentiality of her mental health records, and she denied the need for the production of the records. To whatever extent she had previously waived her privilege, she asserted a claim in her motion that she was now revoking that waiver.

The Department filed an amended CINA petition on May 5, 2017, and sought a finding of CINA for the three children.

At the start of the adjudicatory hearing on May 9, 2017, the juvenile court heard argument on Mother’s motion to quash and for protective order regarding her medical

records. The Department’s attorney referred the court to the waivers of confidentiality and releases of medical records Mother had signed, noting that she had made no attempt to revoke those waivers until the filing of her motion to quash on May 4, 2017. Counsel added that Mother’s attorney had been provided the releases and the pertinent medical records in discovery, and was therefore on notice that the Department had access to those records.

The Department argued that Mother had waived her mental health record privilege with respect to the records that had been obtained by the Department prior to the time Mother filed the motion to quash on May 4. The Department further represented that the Department intended to offer only one four-page mental health summary, which had been prepared by a licensed clinical professional counselor (“LCPC”), rather than a psychologist or psychiatrist, and the Department argued that, pursuant to CJP § 9-109.1(d), no privilege would apply to these proceedings.

Mother’s attorney countered that the LCPC was “working under a psychiatric and medical provider and, therefore, the psychiatric privilege extends to everyone who works for them.” The record also contained the diagnoses of two physicians who evaluated Mother for involuntary admission, and Mother would not agree to those records being admitted into evidence. Counsel claimed that, by virtue of filing the motion to quash, Mother had withdrawn any prior waiver of privilege, and asked that the records not be admitted during the proceeding. Although Mother did not testify, her counsel argued that Mother claimed she had signed the records releases under duress.

The court reviewed the releases signed by Mother on March 7, 2017, and then said that the court would hold the motion *sub curia* until such time as the Department sought to introduce the records into evidence.

At the hearing, Montgomery County Police Officer Michael Giacalone testified about the February 23, 2017, incident involving Mother at the Wheaton Mall. On that evening, he had been dispatched to the mall in response to a call about a woman locked in her car. When he arrived at the mall, Officer Giacalone observed Mother in her car, holding a large kitchen knife to her face. She appeared to be in a “frantic state” and crying, but not responding to questions or the officers’ commands to put the knife down.

Officer Giacalone described the officers’ efforts to disarm Mother. At one point when the car door was open a few inches, Officer Giacalone was able to shoot Mother with his Taser, in an effort to deescalate the situation. After Officer Giacalone used the Taser on Mother a second time, officers were able to recover the knife and remove Mother from the car. When the effect of the Taser wore off, Mother again became combative. But, by the time an ambulance arrived to transport her to the hospital for emergency evaluation, Mother had calmed down.

Grandmother testified that, prior to 2014, the children had lived with Mother in North Carolina, but she and Grandfather had seen them on school breaks and during the summers. When Mother and the children moved to Maryland in 2014, they stayed with Grandmother and Grandfather while Mother looked for a home, and, thereafter, the

children continued to spend school breaks, summers, and many weekends with their grandparents.

Prior to the incident on February 23, 2017, Grandmother had observed that Mother was becoming increasingly disrespectful. Grandmother described an incident on Thanksgiving Day 2016 which caused Grandmother to order Mother to leave her house. As Mother left, she physically bumped into Grandmother repeatedly and told her the children would never be allowed in the house again. Because Mother also blocked Grandmother's incoming calls from her phone, the pair thereafter communicated mostly by text messages.

According to Grandmother, Mother was then unemployed, and Grandmother was unaware how she supports herself or pays her bills. When Grandmother asked how she pays her mortgage, Mother responded, "maybe Justin'll pay it." Grandmother asked who Justin was, and Mother answered, "just in case." On several prior occasions, Grandmother had implored Mother to get help for her mental health condition, but Mother denied needing any help.

On the evening of February 23, 2017, the eldest grandchild, Bre.L., called to advise Grandmother that she and her siblings had been waiting approximately 40 minutes for Mother to pick them up from school, and that she had tried to call Mother, but Mother's phone was turned off. Grandmother sent Grandfather, who was closer, to pick up the children. Grandfather took them to their home, but Mother was not there. Grandfather took the children to the grandparents' home.

When Grandmother arrived at Mother's house at approximately 8:30 p.m., Mother was still not home. Grandmother phoned the police, who searched the home and found it empty. The police later advised Grandmother that Mother was in the hospital.

The next day, Grandmother entered Mother's home to get clothing for the children, and found a "disaster area." She first noticed an odor emanating from a large pot on the floor of Mother's bedroom, which was filled with water and cigarette butts. She found what she believed to be four or five days' worth of food in the room, clothes everywhere, and 35 or 40 notes stuck "all over the wall," with words such as "don't be stupid" written on them. In the children's rooms, Grandmother found piles of dirty clothes, which she took with her to wash. Grandfather found the toilets to be clogged.

Upon visiting Mother in the hospital, Grandmother found her "in a daze" and "staring off at the wall." When Grandmother asked Mother why she had not picked the children up at school, Mother answered, "well, it was planned like that," and then refused to answer more questions. Grandfather agreed that, upon his visit to the hospital, Mother "wasn't herself" and would respond with a "lost stare" when he asked questions. He had never seen her like that before.

The Department called Stephanie Sicard as a witness at the CINA hearing, and she was accepted by the court as an expert in the field of social work. Ms. Sicard testified that she became involved with the L. family after concerns were raised regarding Mother's mental health as a result of the incident on February 23, 2017. After speaking with Mother's doctors, Grandmother, Grandfather, and Father, and reviewing the

emergency petition and Mother's discharge paperwork from Washington Adventist Hospital, Ms. Sicard met with Mother at Mother's home on March 7, 2017. The house was very messy, with clothes strewn everywhere.

Ms. Sicard said that Mother presented as very intelligent, but paranoid, and Mother was saying things that did not comport with reality. Mother told Ms. Sicard that, on February 23, 2017, an unknown man on a motorcycle had appeared outside her home and waved to her for her to follow him to Wheaton Mall, which she did. Once there, she said, the unknown man left. Mother acknowledged having had a knife in the car with her and said she always keeps it in the car, and sleeps with it under her pillow. Mother told Ms. Sicard that she was at the mall waiting for her children, but she alternately acknowledged that the children were waiting to be picked up from school.

With respect to the incident with the police at the mall, Mother claimed she had been sitting in her car minding her own business when the police arrived. She denied having been hostile toward the police or threatening to harm herself.

Mother told Ms. Sicard that she believed Grandmother had been sending people to her house to watch her, which Grandmother denied. Mother said she did not understand why she had been hospitalized, and denied any mental health issues, or even having been assessed for mental health issues. She did acknowledge having been prescribed three antipsychotic medications and having been counseled to follow up with her doctors, which she had not done.

At the meeting with Ms. Sicard on March 7, 2017, Mother entered into a safety plan with CWS, which provided that the children would remain with Grandmother and Grandfather until the Department could assess the case. In light of the incident of February 23, 2017, the Department remained concerned that Mother's mental health was impeding her capacity to use good judgment and provide proper care for the children.

The Department thereafter scheduled a Family Involvement Meeting on April 10, 2017, to discuss the plan for the children going forward. The plan following the Family Involvement Meeting was to shelter the children with Grandmother. The day after the April 10 meeting, the Department filed the petition to have all three children adjudicated CINA.

After the children had been sheltered with Grandmother, Ms. Sicard received numerous emails from Mother, which were "very concerning." Mother asked multiple times why the children were in care and why they could not come home; Mother did not seem to understand the Department's safety concerns. Mother had been participating in supervised visitation with the children, with positive results.

Ms. Sicard testified that it was her expert opinion that it would not be safe for the children to return to Mother's care. In light of the February 23, 2017, incident, the high probability of a similar incident created a concern for the physical safety of the children. In addition, Bra.L.'s school had communicated concerns to Ms. Sicard about his performance at school and disruptive behavior.

Further, the Department had been unable to confirm that Mother was addressing, or even acknowledging, her mental health concerns, which interfered with her ability to use good judgment when parenting the children. Ms. Sicard had learned that Dr. Litman, the psychiatrist who had treated her during her hospitalization at Washington Adventist Hospital, had recommended a “partial hospitalization program,” a daytime treatment program that would permit Mother to be home at night, but Ms. Sicard was unaware of any treatment being received by Mother.

Mother did not testify or offer any evidence.

After the parties had rested their cases, the juvenile court addressed Mother’s pending motion to quash and for protective order. The court pointed out that CJP § 9-109(d)(6) states that there is no privilege when the patient expressly consents to waive the privilege, which Mother had done when she signed the waivers on March 7, 2017. The court found that, when Ms. Sicard asked Mother to sign the waivers, Ms. Sicard “did not make any threats or coerce [Mother] in any way.” And, although the form did provide for revocation of the waiver upon written notice, the court, citing *Hamilton v. Verdlow*, 287 Md. 544 (1980), noted that case law makes clear that, once the privilege is waived, it cannot be used to protect the same information from use or disclosure to a similarly situated party who will use the information for the same purpose.

The release forms Mother signed contained a specific notice that the signatory “can revoke this authorization at any time by submitting a request in writing to DHHS program staff. The revocation will become effective on the date it is received by DHHS

and does not apply to information that has already been used or disclosed through this authorization.” There appears to be no dispute that Mother did not submit a written revocation notice to the Department at any time. And, to the extent that her motion to quash and for protective order would be deemed written notice to the Department of revocation of the waiver, as she argues, the motion was not filed until May 4, 2017, just five days before the CINA adjudicatory hearing, and well after the disputed records had been received and considered by the Department as part of its procedures for determining whether to seek a CINA adjudication for the children. In other words, before Mother gave any written notice of a desire to revoke her waiver, the Department already had the medical information. The court concluded that the request for revocation of the waiver, contained in the May 4 motion, would not preclude the admission of the report into evidence. The court therefore admitted the report as Petitioner’s exhibit 7.⁵

In closing argument, the Department asked the court to make an adjudication of CINA for the three L. children. Although no physical harm had befallen the children as a result of the events of February 23, 2017, the Department argued that the court is not required to wait for harm to the children before making a CINA adjudication based on

⁵ The four-page report identified a primary diagnosis of “unspecified schizophrenia spectrum and other psychotic disorder,” with suicidal ideation. In sum, the LCPC noted that Mother “would benefit from inpatient mental health admission due to endorsing suicidal ideations and making threatening statements to the police. Due to patient’s current level of functioning (psychosis, impaired judgment and insight, threats to harm self and others) patient is not able to recognize the severity of their current mental status. Pt has declined a voluntary admission and presents as being a high risk for self-harm/to others and can’t be managed safely in the community at this time without immediate psychiatric interventions.”

neglect. In the Department's view, the “logical conclusion would be that some serious mental health issues were motivating this behavior on February 23rd.” If Mother’s mental health problems were left unchecked, the Department asserted, similar dangerous behavior could occur at a time when the children were present. The Department said it needed an opportunity to provide mental health services to Mother before returning the children to her care. And, given Father’s unwillingness or inability to be present at the hearing and to assume care of the children, it was the Department’s opinion that those facts supported a finding that he, too, is unwilling or unable to provide proper care to the children.

The children’s attorney agreed with the Department’s assertion that the children should be adjudicated CINA.

The juvenile court found, by a preponderance of the evidence, that the children were CINA. The Department’s inability to make any determination of whether Mother had received any treatment for her mental illness left the court worried and concerned that the children’s welfare or health is at substantial risk of harm. Moreover, the evidence showed that the children had been living in a home that was described as a “disaster area,” with two clogged toilets, dirty clothes all over, and a water cutoff notice pending. Mother admitted to sleeping with a large knife under her pillow, and she remained paranoid even after her hospitalization. Considering the totality of the circumstances, the court found a situation in which the children’s health and welfare were at a substantial risk of harm, and adjudicated the children CINA.

The court committed the children to CWS for placement in kinship care with Grandmother and Grandfather, with supervised visitation with Mother. Mother was ordered to follow all treatment recommendations, including consultation with a psychiatrist, outpatient therapy, and medication management. The court's written adjudication and disposition order was filed on May 17, 2017. Mother's appeal followed.
(As noted above, Father did not appeal.)

DISCUSSION

I.

Mother first argues that the juvenile court erred in admitting into evidence Petitioner's Exhibit 7, a psychosocial assessment from Washington Adventist Hospital, after ruling that Mother had waived her privilege of confidentiality in the record by executing an authorization for the release of the records to the Department. Although Mother concedes that she signed a waiver of confidentiality of that mental health record, Mother now contends that her waiver was limited in nature, that is, "intended to be a waiver for the purpose of receiving assistance from the Department but not a waiver for the purpose of using it in an adversarial proceeding" against her.

We agree with the Department that Mother has not preserved this argument for appellate review. At the adjudicatory hearing, Mother argued only that the releases were signed "under duress because of the open Child Welfare case, and that [M]other has withdrawn that release . . . [by filing] the motion to quash and motion for protective order." Her claim of duress in signing the release and withdrawal of the release, which

was the argument she asserted at the hearing, bears no resemblance to the argument she now makes, *i.e.*, that her waiver was intended to be limited in scope to the purpose of receiving assistance from the Department. Therefore, pursuant to Maryland Rule 8-131(a), we shall not consider Mother's argument about the limited scope of her waiver.⁶

⁶ Rule 8-131(a) states, in pertinent part: "Ordinarily, the appellate court will not decide any other issue [*i.e.*, other than jurisdiction] unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal."

Moreover, even if we were to consider the argument she now raises about her intent to limit the scope of her waiver, she would not prevail.

CJP § 9-109(d)(6) expressly provides that there is no privilege if: "(6) The patient expressly consents to waive the privilege, . . ." Mother does not dispute that she signed waivers of the privilege of confidentiality in her mental health record from Adventist Hospital, but she claims that, when she did so, she intended the Department be permitted to use the records only in its capacity of providing her with services and for no other purpose. That argument is not supported by any testimony, and is without any merit. As the Court of Appeals explained in *Hamilton v. Verdow*, 287 Md. 544, 552 (1980), although it is possible for a waiver of a privilege to be limited to a specific use or purpose,

courts have generally held that once a person waives his privilege by revealing, or permitting to be revealed, certain information, then the privilege will no longer be permitted to protect that same information from use or disclosure to the same or a similarly situated party who will use the information for the same purpose. In these circumstances, therefore, a prior waiver of the privilege is generally regarded as a waiver to the subsequent discovery or use of that information at a later trial of the same issues, or even unrelated issues.

Because Mother signed the waiver to enable the Department to investigate questions about her present ability to care for her children, the Department's subsequent use of the information contained in the released records as evidence in the ensuing CINA proceedings was in accord with the rule stated in *Hamilton*.

II.

Mother next contends that the trial court erred in admitting hearsay evidence of communications with two of her doctors and Bra.L.'s school personnel through the testimony of Ms. Sicard. The testimony, Mother asserts, did not qualify for admission under any exception to the rule against the admission of hearsay and should not have been admitted.

Mother's hearsay argument relates to three portions of Ms. Sicard's testimony. In the course of explaining how she arrived at her opinion regarding Mother's inability to care for the children, Ms. Sicard testified to the following.

First, when Ms. Sicard met with Mother on March 7, Mother told her that Dr. Kisa Crosse (Mother's primary care physician) had instructed her not to take the anti-psychotic medications that had been prescribed upon her discharge. Ms. Sicard said that, when she attempted to confirm this information with Dr. Crosse, Dr. Crosse told her that Mother had missed a scheduled appointment, and Dr. Crosse denied instructing Mother not to take the medication.

Second, Mother had indicated that she was following up on the discharge recommendation that she pursue mental health treatment with her psychiatrist, Dr. Litman. In an effort to confirm that Mother was complying with this aspect of the discharge recommendations, Ms. Sicard contacted Dr. Litman's office and spoke with his intake coordinator, who advised that Mother came in for an initial screening and had been scheduled to return the following day but failed to appear, and she had received no

treatment from Dr. Litman. Ms. Sicard also stated that Dr. Litman had recommended that Mother participate in an outpatient therapy hospital.

Third, Ms. Sicard testified that, as part of her investigation, she had spoken with Bra.L.’s school principal, who was “really concerned” about the child’s disruptive behavior, and the principal thought Bra.L. would benefit from an individualized education plan (“IEP”).⁷

In Mother’s view, although the court purportedly admitted the testimony to show the basis for Ms. Sicard’s opinion, the court improperly relied upon the hearsay as substantive evidence to sustain facts in the CINA petition, and considered this information in making the court’s determination that the children were CINA. We disagree with Mother’s characterization.

Ms. Sicard was accepted as an expert in the field of social work by the juvenile court. Maryland Rule 5-703(a) states:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. **If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.**

(Emphasis added.) The statements that Mother contends were improperly-admitted hearsay were, in our view, properly admitted pursuant to Rule 5-703(a).

⁷ Because the juvenile court deleted, as unproved, any mention of Bra.L.’s behavior and IEP from the amended CINA petition in its adjudication, we conclude that the court did not consider that evidence in rendering its decision, and the admission of this evidence was harmless, even if there was any error.

In her role as investigator of the child welfare case involving the L. children, Ms. Sicard attempted to assess Mother's mental health and ability to provide care to the children. In doing so, she met with Mother and spoke with Grandmother, Grandfather, and Father, as well as Dr. Crosse and Dr. Litman's staff. Ms. Sicard explained that it is her ordinary practice, as an assessment social worker, to obtain information from a variety of sources collateral to the parent and to rely on that information in forming her expert opinion as to the propriety of seeking a CINA adjudication.

When Ms. Sicard met with Mother at the beginning of her investigation, Mother told Ms. Sicard that Dr. Crosse had instructed her not to take the medications prescribed upon her release, and that Dr. Litman was her psychiatrist, but he was treating her for anemia, and she had not seen him for treatment upon her release from the hospital. As part of the process of arriving at her expert opinion, Ms. Sicard spoke to these health care providers in an attempt to verify the information provided by Mother. Pursuant to Md. Rule 5-703(a), the responses of those health care providers that played a role in Ms. Sicard's assessment and opinion were of a nature typically relied upon by social workers in Ms. Sicard's field, and were, therefore, properly described by her in the course of explaining the basis of her opinion.

III.

Finally, Mother avers that the trial court erred in adjudicating the children CINA because the adjudication was based on the "court's speculative fear" that Mother would have another psychotic episode, even though no competent evidence proved she had

suffered a psychotic episode or could potentially experience another episode. Even if the CINA adjudication was correct, she contends, the court erred in placing the children in the custody of Grandmother and Grandfather because Mother could obtain any necessary mental health treatment and still maintain custody of the children if the court had entered an order of protective supervision in favor of the Department. She asserts that removing the children from her custody was “a drastic and unwarranted remedy.”

A primary goal of the CINA statutes 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 Najasha B.*, 409 Md. 20, 33 (2009). In cases involving abuse, neglect, or abandonment, it is “clear that, although the right to parent is essential in our cultural and legal understanding, it has limitations.” *In re: Adoption of Jayden G.*, 433 Md. 50, 67 (2013). The juvenile court therefore possesses “wide discretion concomitant with [its] ‘plenary authority to determine any question concerning the welfare of children within [its] jurisdiction[.]’” *Reichert v. Hornbeck*, 210 Md. App. 282, 305 (2013) (quoting *Bienenfeld v. Bennett-White*, 91 Md. App. 488, 503–04 (1992)). “Such broad discretion is vested in the [juvenile court] because only [the juvenile court] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [it] 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.”” *Baldwin v. Bayard*, 215 Md. App. 82, 105 (2013) (quoting *In re Yve S.*, 373 Md. 551, 585-86 (2003)).

Before adjudicating a child CINA, the juvenile court must determine, by a preponderance of the evidence, that the child requires court intervention because he or she has been abused or neglected, has a developmental disability, or has a mental disorder, and that the child's parents, guardian, or custodian are unable or unwilling to give the child and the child's needs proper care and attention. CJP §3-801(f); CJP §3-817(c).

Neglect is defined by CJP § 3-801(s):

(s) “Neglect” means 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
- (2) That the child has suffered mental injury or been placed at substantial risk of mental injury.

As we explained in *In re Priscilla B.*, 214 Md. App. 600, 625–26 (2013):

It makes sense to think of “neglect” as part of an overarching pattern of conduct. Although neglect might not involve *affirmative* conduct (as physical abuse does, for example), the court assesses neglect by assessing the *inaction* of a parent over time. To the extent that inaction repeats itself, courts can appropriately view that pattern of omission as a predictor of future behavior, active or passive: “[it] has long been established that a parent's past conduct is relevant to a consideration of the parent's future conduct. Reliance upon past behavior as a basis for ascertaining the parent's present and future actions directly serves the purpose of the CINA statute.” *In re Adriana T.*, 208 Md. App. 545, 570, 56 A.3d 814 (2012) (citations omitted). Differently put, “[c]ourts should be most reluctant to ‘gamble’ with an infant's future; there is no way to judge the future conduct of an adult excepting by his or her conduct in the past.” *McCabe v. McCabe*, 218 Md. 378, 384, 146 A.2d 768 (1958). And of course, we need not and will not wait for abuse to occur and a child to suffer concomitant injury before we can find neglect: “The purpose of [the CINA statute] is to

protect children — not wait for their injury.” *In re William B.*, 73 Md. App. 68, 77–78, 533 A.2d 16 (1987).

(Emphasis in original). In determining if a parent has neglected a child, the juvenile court “may and must look at the totality of the circumstances.” *Id.* at 621.

Mother argues that there was insufficient evidence presented at the hearing to justify a CINA adjudication based on parental neglect. We disagree.

The evidence at the hearing was undisputed that Mother engaged in dangerous behavior on February 23, 2017, when she left her children alone waiting to be picked up from school, and was enticed by an apparent hallucination to drive to the Wheaton Mall, where she got into an altercation with police officers who were dispatched to check on her because of her suspicious behavior. Her behavior on this occasion led to her involuntary ten-day hospital admission for a mental health evaluation. And, even prior to that episode, Grandmother and Grandfather had noticed a negative change in her behavior, including paranoid thoughts and disrespectful actions. Mother acknowledged being unemployed, and was somewhat cavalier about where the funds would come from to care for the children. She permitted the children (and herself) to live in a house that was in complete disarray, with two non-working toilets (and no evidence of a third working toilet), and an impending water cutoff. Mother acknowledged keeping a 12-inch kitchen knife under her pillow in the house in which her children lived, and she indicated that she carried it in her car at all times. Despite evidence to the contrary, she denied having any mental health concerns, and had failed to comply with the hospital discharge

recommendations to fill her prescriptions for antipsychotic medication and engage in mental health therapy.

The juvenile court, having heard the testimony during the two-day adjudicatory hearing, and having viewed the demeanor of the parties, found by a preponderance of the evidence that the totality of the circumstances indicated that Mother’s “unaddressed significant mental health issues create an immediate threat to the children’s safety, ability to give proper care, and attention to the children’s needs.” The court expressed its concern that the children’s welfare or health was at substantial risk of harm because Mother could have another psychotic episode while she has the children in the house; given her history, it was conceivable that she might use the knife on one of the children, mistaking him or her for someone who is presenting harm to Mother. The court also addressed the unsanitary conditions in the home, Mother’s paranoia, the piles of dirty clothes, the impending water cutoff, all of which supported a finding of neglect and substantial risk of physical and emotional harm to the children. The court’s factual findings were not clearly erroneous, and its ultimate decision adjudicating the children CINA was not an abuse of discretion.

Based upon these same findings and considerations, we find no error or abuse of discretion in the court’s decision to place the children with Grandmother and Grandfather until Mother addresses her mental health.

**ORDER OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY,
SITTING AS A JUVENILE COURT,
AFFIRMED; COSTS TO BE PAID
BY APPELLANT.**