

Circuit Court for Montgomery County
Case Nos. 6-I-19-191, 192, and 193

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
CONSOLIDATED CASES

No. 2094
September Term, 2019

No. 10
September Term, 2020

IN RE: J.N., Z.N, T.N

Reed,
Shaw Geter,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: October 30, 2020

*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.

In November 2019, the Montgomery County Department of Social Services (“the Department”) filed a petition in the Circuit Court for Montgomery County, alleging that J.N. (born July 2007), Z.N. (born July 2009), and T.N., Jr. (born July 2011), the natural children of C.N. (“Mother”) and T.N., Sr. (“Father”), were children in need of assistance (“CINA”),¹ and requested that they be removed from Mother’s home and placed in shelter care.² The circuit court, sitting as a juvenile court, granted the Department’s request for shelter care and later approved the children’s placement with Father, who lives in Indiana.

Mother noted a timely appeal of the juvenile court’s decision to shelter the children with Father. We docketed the appeal as case number 2094, September Term, 2019. Upon Mother’s motion to this Court, we stayed the appeal so it could be consolidated with Mother’s expected appeal from the juvenile court’s decision in the then-pending CINA adjudication and disposition.

Following the adjudication and disposition hearing in January 2020, the juvenile court sustained nearly all of the allegations in the CINA petition but declined to find that

¹ Pursuant to Md. Code, §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 Mother and Father, who divorced in 2012, shared legal custody of the children; Mother had primary physical custody.

the children were CINA because Father remained willing and able to care for them. The juvenile court granted Father sole legal and physical custody and closed the CINA case.

We docketed Mother’s timely appeal of the juvenile court’s adjudication and disposition order as case number 10, September Term, 2020. Upon Mother’s motion, we lifted the stay in case number 2094 and consolidated her two appeals.

Mother asks us to consider whether the juvenile court abused its discretion in granting Father custody when the children’s best interest lay in remaining in her custody in Maryland and whether the court erred in admitting hearsay attributed to J.N. into evidence during the adjudication and disposition hearing. For the reasons that follow, we conclude that Mother’s appeal from the shelter care orders in case number 2094, September Term, 2019, is moot, and we therefore dismiss that appeal. We otherwise affirm the orders of the juvenile court.

FACTS AND LEGAL PROCEEDINGS

The N. family first came to the attention of the Department in 2016, when it received a report that Z.N. had been physically abused by her maternal uncle. The Department received another report in 2018 that Mother had hit J.N. with a belt, causing injury. The Department completed “alternative responses” related to the two incidents and referred the family for services but took no further action.

In May 2019, the Department opened a child sexual abuse investigation after J.N. reported finding Mother’s live-in boyfriend, B.S., masturbating while watching pornography on J.N.’s cell phone; B.S. allegedly showed her the video, continued to masturbate, and told her she would have to wait until he ejaculated before she could have

the phone. B.S. also reportedly asked then-11-year-old J.N. if she ever “played” with herself and told her not to tell anyone what she had seen.

Mother was not cooperative during the Department’s investigation, blaming J.N. for “barging” into the room and suggesting that J.N. was not telling the truth.³ Mother did, however, obtain a protective order against B.S. prior to the closure of the case.

On November 15, 2019, the Department opened a new child neglect investigation after receiving a report that B.S. remained in Mother’s home, despite the protective order. The Department learned that Mother had rescinded the protective order in July 2019 because she “wanted to” and because she believed B.S. had done nothing wrong.⁴ The report also indicated that the children were exposed to ongoing substance abuse and domestic violence between Mother and B.S., and they felt unsafe in the home.⁵ Additionally, B.S. had apparently sold the children’s electronic devices to purchase drugs.

On November 19, 2019, Molly Cupid, the Department social worker assigned to the N. family, asked Mother to meet with her about the allegations. Mother was uncooperative, accused the Department of harassing her, denied any physical violence or drug use other

³ Mother’s mother (“Grandmother”), who sought to be a resource for the children, also believed that “[b]ased on what my daughter told me, there was not a sexual abuse case. I believe that was a lie.”

⁴ The Department later determined that B.S. had an extensive criminal history, including charges of possession and distribution of drugs, burglary, and malicious destruction of property. He was also charged with second-degree assault charges in relation to an April 2019 incident involving Mother, but the State *nolle prossed* the charges because Mother refused to appear as a complaining witness at his trial.

⁵ J.N. reportedly took the younger children to a friend’s house whenever Mother and B.S. fought, as it often became physical.

than marijuana in her home, and repeatedly told Ms. Cupid, “Just take my fucking kids.” Mother expressed unwillingness to do the things that were required to have the children remain in her care.

Ms. Cupid removed the children from Mother’s home and placed them in shelter care with a foster family. Upon the children’s removal, Mother refused to pack them a bag or provide Ms. Cupid with their prescription medication. She also asked that the children’s cell phones be taken from them.

On November 20, 2019, the Department filed a petition requesting that the children be adjudicated CINA and temporarily committed to the Department for 30 days, pending further investigation.

Father, who lived in Indiana with his wife, daughter (the children’s half-sister), and stepson, denied any criminal or child-welfare history. Although Father admittedly had not seen the children regularly since his divorce from Mother, allegedly as a result of “some ongoing issues” with Mother, he agreed to be a resource for all three children.

At a November 21, 2019 shelter care hearing, the Department requested that the children remain in foster care or be placed with Father, pending CINA adjudication. Father, a lieutenant with the Indiana Department of Corrections, testified that during the approximately seven years he had lived in Indiana, the children had visited him twice, during the summers of 2014 and 2017.⁶ He had sought additional visits, but they had not

⁶ Father had driven through the night from Indiana to be present at the shelter care hearing.

occurred, mostly because Mother became angry at him and changed her mind about a visit at the last minute or insisted that the children required summer school. Father said he had also attempted phone calls with the children, but Mother placed the calls on speaker phone, and when Father said something she did not like, she denigrated him in front of the children to the point that he ended the calls. He asked the court to place the children with him because of the “extensive abuse that they’ve endured over the past three years” in Mother’s home.

Mother denied that she had stopped Father from seeing the children, insisting that she kept him constantly updated about their progress but that he made no effort to get in touch with them or send them gifts. She did not want Father to take custody of the children because of his lack of involvement in their lives and because all three children (who suffer from depression and/or ADHD) were in therapy and doing well in their current schools.

Mother said she reported B.S.’s alleged sexual abuse of J.N. to the Department the same day J.N. disclosed it to her therapist; she also sent the child to stay at Mother’s brother’s home, away from B.S. She stated she would sign a safety plan agreeing to have no contact with B.S.

On cross-examination, Mother acknowledged that she had rescinded the protective order against B.S. approximately three months after it was imposed because the protection order was for her, not J.N., and she, personally, no longer felt threatened by B.S. Asked why she let B.S. back into her home after what he did to her daughter, Mother said “it’s hard to get rid of somebody. . . that’s been in your life and your children’s life, which your children call father, to just, literally just disappear[.]” In addition, she said, she needed the

financial support he provided the family. Nonetheless, she said that B.S. had moved out of her home on November 19, 2019, the same day the children had been removed to shelter care.

Grandmother and Mother’s brother offered themselves as resources for the children. Both agreed to follow any court orders regarding the children’s visitation with Mother and Father and restrictions on any interaction with B.S.

In closing, the Department deferred to the juvenile court about whether to shelter the children in foster care or with Father but argued that it was “abundantly clear” that they could not safely stay with Mother. The Department was not fully able to recommend Father, as the Indiana authorities had not yet had time to complete a home visit or background report. Father asserted that he was willing and able to take the children and that the court would have to find good cause not to shelter the children with a biological parent.

The attorney for the children stated that the children wanted to return to Mother’s home, but only if B.S. were not there. Mother’s attorney pointed out that Ms. Cupid had testified that if Mother had simply agreed to a safety plan and calmly worked with the Department from the start, the children would not have been removed from her care. Although Mother initially had “some trouble accepting the situation with her boyfriend,” she was now aware of the situation and would do whatever it took to have the children returned to her home because she feared the harm to them in uprooting their lives to move to Indiana.

The juvenile court ruled that it would continue to shelter the children in foster care, due to concern about sending them to live with Father in another state when he had not previously been involved in their lives, and about the lack of completion of a study of the appropriateness of Father’s home and child welfare history. In light of Mother’s previous combative behavior with the Department and her questionable decision to rescind the protective order against B.S. and permit him re-entry to her home, the court declined to return the children to Mother, despite her promises of cooperation.

On November 26, 2019, the Department requested an emergency hearing because the foster parents would be unable to provide care for the children after December 1, 2019, and the children were therefore in need of a change in level of care. Upon the Department’s request, the Indiana Department of Child Services had quickly conducted a safety assessment of Father’s home, which showed it was of ample size and free of dangers to the children. The Department therefore requested that the children be sheltered with Father, pending the outcome of the CINA adjudication and disposition.

At the emergency hearing held the same day, the Department reiterated that it had “absolutely no evidence or allegations that the father has in any way neglected or abused his children” and that moving them to his care temporarily would preclude having to place them in separate foster homes. Mother argued that it was not in the best interest of the children, who have special needs and were adjusted to school and therapy, to move them out of state with a parent who had not seen them in two years. She requested that the children be returned to her care under an order of protective supervision (“OPS”). The attorney for the children agreed that a return to Mother under an OPS would be appropriate.

The Department did not approve of a return to Mother because Mother’s home was “not a safe environment for the children.” The Department had obtained evidence that the abuse between Mother and B.S. was not just verbal, as Mother had claimed at the prior hearing, but physical and violent. In addition, Mother’s “hostility and lack of cooperation” made the Department “very wary” about returning the children to her, even under an OPS.

And, despite the fact that Grandmother and Mother’s brother had offered themselves as temporary resources for the children, the Department was unable to support either placement. It had not yet accessed records regarding Grandmother’s previous child welfare involvement, and Mother’s brother had become combative with the children’s attorney after the November 21, 2019 hearing, ruling him out as a resource.

The court granted the Department’s request for change of placement to Father, with the conditions that the children immediately be placed in school, engaged in therapy, and provided insurance and necessary medications. The court issued a written order for limited guardianship to Father, giving him the right to make all caretaking decisions, including educational, medical, and travel. Mother timely appealed the juvenile court’s order. We docketed that appeal as case number 2094, September Term, 2019.

The Department filed an amended CINA petition on January 16, 2020, and the juvenile court held an adjudication and disposition hearing on January 17 and 29, 2020. Father, who sought primary physical custody, testified that since picking the children up from the foster parents’ home on December 1, 2019, he had enrolled them in school and in therapy and transferred their Individualized Education Programs (“IEPs”) to their new

schools. He had had issues with insurance because they were still insured in Maryland, but he simply paid for therapy out of pocket.

Reiterating the events that brought the children into care, Ms. Cupid explained that she still did not believe the children would be safe returning to Mother's home. In contrast, Ms. Cupid had spoken with Father numerous times about the children's welfare and had no safety concerns about Father's home or about him as a custodian.

Mother testified that in 2017, despite the plan for the children to spend the summer with Father in Indiana, they had stayed only a month because of Father's alleged work and financial situations and because of an altercation between him and his current wife, which resulted in a child welfare investigation.⁷ Upon their return home, J.N. was upset and angry. Since then, Mother said that Father had not asked to see the children, although she had tried to get him more involved in their lives by suggesting he call them on their birthdays and holidays and send regular text messages.

Mother denied telling Ms. Cupid that she thought J.N. was lying about B.S.'s sexual abuse; instead, she said she "really couldn't say anything because [she] was not there" when it allegedly happened. Questioned about her decision to rescind the protective order against B.S., Mother explained that it was the only way she could get his name off her lease and other household bills they shared. Nonetheless, she denied being in, or planning to be

⁷ The investigation centered on Father's wife as the potential maltreater, not him, and was closed without further action.

in, a relationship with B.S., and she said he had moved out of her house on November 17, 2019, after they got into a fight.⁸

Mother acknowledged having gone to a hospital for suicidal ideation in May 2018 but leaving before receiving treatment. She was, however, in therapy and under the care of a psychologist, which had helped alleviate her angry outbursts. Mother claimed she had stopped using marijuana after the November shelter care hearing and said that she had been attending NA, AA, and anger management meetings since December 2019.

Mother reiterated that she “would not disagree with anything that [the court] would ask of” her to get the children back to Maryland, including having no contact with B.S., because they had been with her in Maryland all their lives and had friends, family, school, and therapists in the state. In her view, the dearth of time spent with Father and lack of therapeutic support in Indiana should weigh against granting custody to Father.

In closing, the Department argued that Mother’s home had been chaotic for the children for three years, partly because of the presence of B.S., and that Mother had “no track record that shows that things are going to be different” in his absence. According to the Department, the sexual abuse of J.N., the domestic violence between Mother and B.S., and Mother’s mental health issues put the children at substantial risk of harm in Mother’s home. On the other hand, Mother had put forth no evidence to show that Father was unable to parent. The Department therefore asked the court to sustain the findings in the CINA

⁸ At the shelter care hearing, she had testified that he moved out on November 19, 2019.

petition, find there was neglect on the part of Mother, rule that the children were not CINA, and dismiss the case in favor of Father. Father and J.N.’s attorney agreed with the Department.⁹

The attorney for Z.N. and T.N. argued that Mother had taken corrective measures, removed B.S. from her home, and gotten herself and the children into therapy, all of which led to a belief that the children would be safe in her home. Mother’s counsel agreed.

The juvenile court sustained most of the allegations against Mother in the Department’s CINA petition, finding they were proven by a preponderance of the evidence. The court went on to find that Mother had neglected the children and was unable or unwilling to give them proper care and attention, although it acknowledged “that doesn’t mean that can’t happen” in the future. The court found that Father, having managed the children’s needs since they were sheltered with him in November 2019, was able and willing to provide care. The court therefore declined to find the children CINA, awarded Father sole physical and legal custody, with reasonable supervised access to Mother, and dismissed the CINA case.

The court filed its written order memorializing its oral ruling on February 13, 2020. Mother timely noted an appeal from the court’s adjudication and disposition order. We docketed the appeal as case number 10, September Term, 2020, and consolidated Mother’s two appeals.

⁹ J.N. had expressed a desire to remain with Father in Indiana rather than return to Mother in Maryland.

DISCUSSION

Standard of Review

We recently set forth the standard of review for CINA matters:

There are three distinct but interrelated standards of review applied to a juvenile court’s findings in CINA proceedings. The juvenile court’s factual findings are reviewed for clear error. Whether the juvenile court erred as a matter of law is determined without deference; if an error is found, we then assess whether the error was harmless or if further proceedings are required to correct the mistake in applying the relevant statute or regulation. Finally, we give deference to the juvenile court’s ultimate decision in finding a child in need of assistance, and a decision will be reversed for abuse of discretion only if well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.

In re J.R., 246 Md. App. 707, 730-31 (2020) (quotation marks and citations omitted).

In reviewing a CINA decision, we must remain mindful that:

‘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. Baynard, 215 Md. App. 82, 105 (2013) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

Appeal in Case Number 2094, September Term, 2019

On November 19, 2019, the juvenile court granted the Department’s request for shelter care and placed the children in foster care. When the foster parents advised they would be unable to provide care for the children after December 1, 2019, the juvenile court, at a November 26, 2019 emergency hearing, granted temporary custody of the children to

Father, pending CINA adjudication and disposition in January 2020. That decision forms the basis for Mother’s appeal in case number 2094.

Following the adjudication and disposition hearing, the juvenile court declined to find the children CINA, granted sole legal and physical custody to Father, and closed the CINA case. That decision forms the basis for Mother’s appeal in case number 10. As argued by the Department and J.N. in their briefs, the final custody order rendered the decision on the temporary custody order in the shelter care matter moot and necessitates the dismissal of Mother’s appeal in case number 2094.

“It is a long-held fact that a question is moot if ‘at the time it is before the court, there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide.’” *In re J.R.*, 246 Md. App. at 743-44 (quoting *In re Karl H.*, 394 Md. 402, 410 (2006)). And, importantly, “it is well-recognized that once a CINA determination has been made, it supersedes any shelter care orders or orders controlling conduct that directed the transitional care of the child.” *Id.* at 744.

Here, the court granted the Department’s request for shelter care for good cause in November 2019 and changed the children’s placement from the foster family to Father in December 2019, due to their inability to be safe in Mother’s home. The shelter care order placed the children in Father’s *temporary* care. The January 2020 CINA adjudication and disposition ruling superseded the shelter care order and placed the children in Father’s *permanent* care. See *In re O.P.*, 240 Md. App. 518, 553 (2019), *aff’d in part, rev’d in part*, 470 Md. 225 (2020) (“[S]helter care is designed to provide emergency protection for a child only until a juvenile court rules on the merits of a CINA petition[.]”).

Therefore, Mother cannot challenge the shelter care order because it is no longer in effect.¹⁰ The issue regarding the merits of the temporary order is moot, as there is no relief this Court can effectively grant Mother in regard to an order that is no longer applicable. *In re J.R.*, 246 Md. App. at 747. We therefore dismiss Mother’s appeal in case number 2094, September Term, 2019.

Appeal in Case Number 10, September Term, 2020

A. Grant of Custody to Father

Mother argues that the juvenile court abused its discretion when it granted custody of the children to Father in Indiana, claiming that it was in their best interest to be returned to her in Maryland. Acknowledging that the juvenile court is permitted to determine that children are not CINA if one parent is willing and able to care for them, Mother points out that the court has discretion as to whether to order custody to that parent. Because she alleviated the Department’s safety concerns by having B.S. move out of her home, Mother insists that it would be in the children’s best interest to return to her care in Maryland, where they would have stability and continuity of care.¹¹

The broad policy 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

¹⁰ We also point out that Mother makes no argument in her brief relating to the juvenile court’s shelter care orders.

¹¹ Despite Z.N. and T.N.’s stated preference that they be returned to Mother, it was the opinion of their attorney, based on her conversations with the children and review of the juvenile court’s record, that Z.N. and T.N. “do not possess considered judgment” in making that decision and that continued placement with Father was in their best interest.

interests when court intervention is required.” *In re Najasha B.*, 409 Md. 20, 33 (2009). The only justification for the direct and continuing supervision of the juvenile court in a CINA case is when the court has determined that intervention is required to protect the child’s health, safety, and well-being. *Koffley v. Koffley*, 160 Md. App. 633, 640-1 (2005) (citing *Frase v. Barnhart*, 379 Md. 100, 120-23 (2003)).

If, on the other hand, the juvenile court has no concerns about the child’s health, safety, and well-being and believes, after reviewing the evidence, that the child may safely be returned to the care and custody of one or both of her parents, there is no justification for keeping the CINA case open, as the goals of the CINA statutes have been reached. *In re Russell G.*, 108 Md. App. 366, 376-77 (1996). Pursuant to CJP §3-819(e):

[i]f the allegations in the [CINA] 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.

Here, although not disputing that the juvenile court sustained facts, as asserted in the CINA petition, against her, Mother avers that the juvenile court “erred when it ordered that the children remain in Indiana in the custody of their father, which was not in their best interest.” The juvenile court, in determining that Mother had neglected the children and in granting Father sole legal and physical custody, went through the allegations in the CINA petition paragraph by paragraph. The court specified that its decision centered on the facts that “Mother is not able or willing at this time to give proper care and attention to them,” while Father “is able and willing, and he has managed the children’s needs since they went to him.”

Based on what the court had heard at the adjudication and disposition hearing, it ruled that “custody should be awarded to Mr. N,” implicitly finding that custody to Father was in the children’s best interest. The evidence adduced at the shelter care and adjudicatory hearings amply supports the court’s ruling.

In 2016 and 2018, Mother had two interactions with the Department related to inappropriate physical discipline of the children. Although those incidents apparently did not require Department interference, other than a referral for services, we have long recognized that a parent’s past conduct is relevant as a predictor of future conduct. *See In re Dustin T.*, 93 Md. App. 726, 732 (1992) (“Relying upon past actions of a parent as a basis for judging present and future actions of a parent directly serves the purpose of the CINA statute.”); *see also In re Adoption/Guardianship of Quintline B.*, 219 Md. App. 187, 197 (2014) (“[W]here the health and safety of [a] child is of concern, the court may look to past conduct to predict future conduct.”).

Then, in May 2019, J.N. disclosed sexual abuse at the hands of B.S., Mother’s live-in boyfriend, which Mother initially did not believe and then downplayed to Ms. Cupid, the Department social worker. To her credit, Mother did obtain a protective order against B.S. in relation to those incidents, but she rescinded it less than three months later because she, personally, no longer felt in danger from B.S. and needed his financial contributions to the household. Notably absent in her decision-making was any concern about the children and their interaction with B.S.

Mother admitted to marijuana use with B.S. but denied the use of other illicit substances, despite evidence that B.S. had been convicted of distribution of controlled

dangerous substances, was so desperate to obtain drugs that he sold electronic devices belonging to him and the children, and stole Mother's credit card. Mother also denied physical violence between her and B.S., but the children told their school guidance counselors and Ms. Cupid that the violence between the pair was frequent and so bad that J.N. took the younger children and the family pet out of the house when it occurred. In addition, B.S. was prosecuted for assaulting Mother in April 2019.

In November 2019, when the Department learned that B.S. was back in Mother's home with the children, Mother was uncooperative and openly hostile with Ms. Cupid, telling her to just take the children. Learning that the children would be placed in shelter care, Mother refused to pack bags for them and took their cell phones away, leaving them with no way to communicate with her, other family members, or friends.

In contrast, the Department asked its Indiana counterpart to conduct a home safety assessment of Father's home, which yielded no concerns. Father drove through the night to be present in court for the shelter care hearing and repeated the approximately nine-hour drive a few weeks later to take the children back with him to Indiana. Once there, he immediately enrolled them in school, provided information about their IEPs, and started them in therapy, despite being unable to place them on his health insurance plan until they were no longer insured in Maryland. Although he had limited contact with the children while they lived in Maryland, partly due to Mother's interference, Father maintained a positive relationship with them, especially after the two older children were given cell phones they could use to communicate with him more often.

Because the Department recommended, and the juvenile court agreed, that one of the children’s parents was willing and able to provide for their welfare in a safe manner acceptable to the Department and the court, the juvenile court acted well within its discretion in determining that it was in the children’s best interest to grant custody to that parent—Father—and terminating the CINA case.

B. Admission of Hearsay Statements

Mother also avers that the juvenile court erred by admitting hearsay statements uttered by J.N. into evidence through Father’s testimony during the adjudication and disposition hearing. Counsel for J.N. responds that the statements were properly admitted as exceptions to the rule against the admission of hearsay, while the Department, Father, Z.N, and T.N. concede that the statements were erroneously admitted but argue that any error in their admission was harmless.

During the hearing, Father’s attorney attempted to introduce into evidence an email Father had written to Ms. Cupid relating to an outburst Z.N. had had. Mother’s attorney objected, and counsel for the Department argued that Father should be permitted to explain what Z.N. had said because she wanted to be returned to Mother, so her statement as a party adverse to Father and the Department was admissible as an exception to the rule against the admission of hearsay. The court agreed and permitted Father to testify that Z.N. had told him that “nobody loves her” because when she and T.N. argued, Mother sent her to Grandmother’s house.

When Father segued into explaining something J.N. had said to him, Mother’s attorney again objected, on the ground that J.N. wanted to remain with Father in Indiana,

so her hearsay statements were not against her interest and therefore inadmissible. The court ruled, “I think [Father] is here primarily to give testimony about how it came to pass that the children were with him and what’s happened since then. . . . It’s almost impossible to talk about this without saying something that the children said. But I would just suggest that perhaps we attempt to do it that way so that we can move a little more quickly.” Father was then permitted to explain that J.N. had told him that Mother “gave her edibles” and “promised her that she would be coming home on December 14, 2019,” which caused J.N. to throw the phone down and proclaim that she did not want to go home to Mother because Mother calls her a bitch and a whore all the time.

“In general, the rules of evidence, including the rules regarding hearsay, apply in juvenile adjudicatory hearings. *In re Michael G.*, 107 Md. App. 257, 265 (1995). Hearsay, “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted,” is generally inadmissible. Maryland Rules 5-801(c) and 5-802. Typically, “hearsay must fall within an exception to the hearsay rule or bear ‘particularized guarantees of trustworthiness’ in order to be admitted into evidence.” *Marquardt v. State*, 164 Md. App. 95, 123 (2005) (quoting *Ohio v. Roberts*, 448 U.S. 56, 66 (1980)).

Assuming, without deciding, that J.N.’s statement to Father comprised hearsay that was not subject to a recognized exception for its admission and that the juvenile court erred by overruling Mother’s objection and admitting J.N.’s statement into evidence through Father’s testimony, we conclude that any error was harmless. *See In re Yve S.*, 373 Md.

551, 616 (2003) (citing *Beahm v. Shortall*, 279 Md. 321, 330 (1977)) (It is this Court’s policy “not to reverse for harmless error.”).

Although “there is no precise standard, a reversible error must be one that affects the outcome of the case, the error must be ‘substantially injurious,’ and ‘[i]t is not the possibility, but the probability, of prejudice’ that is the focus.” *In re Adoption /Guardianship of T.A., Jr.*, 234 Md. App. 1, 13 (2017) (quoting *In re Yve S.*, 373 Md. at 618). Harmless error review “must be on a case-by-case basis and must balance ‘the probability of prejudice in relation to the circumstances of the particular case.’” *Id.* (quoting *In re Yve S.*, 373 Md. at 618). The burden is on the opponent of the admission of the hearsay to demonstrate prejudice and a negative effect on the outcome of the case as a result of the court’s error. *In re Ashley E.*, 158 Md. App. 144, 164 (2004).

Here, Mother argues only that J.N.’s statements do not fall under any recognized exception to the rule against the admission of hearsay. She provides no argument, and points to no evidence, of any prejudice she suffered from their admission into evidence, nor can she.

The juvenile court, in its ruling following the two-day adjudication and disposition hearing, made no reference to the existence or substance of J.N.’s isolated statements, instead relying on the Department’s and Father’s ample evidence that Mother had neglected the children and that it was in the best interest of the children to be placed in Father’s custody, as explained in detail in section A., above. We find it extremely unlikely that 12-year-old J.N.’s statements that Mother gave her “edibles” (while providing no definition of the term) and that she did not want to return to Maryland because Mother

called her names had any direct bearing on the juvenile court’s decision to grant custody to Father in light of the overwhelming evidence of Mother’s allowance of the children to be exposed to sexual abuse, drug use, and domestic violence. Because we are not persuaded that Mother has met her burden of proving that she suffered any prejudice by the admission of J.N.’s statements, we find any error in their admission harmless.

**APPEAL IN CASE NUMBER 2094,
SEPTEMBER TERM, 2019, DISMISSED AS
MOOT; ORDER OF THE CIRCUIT
COURT FOR MONTGOMERY COUNTY,
SITTING AS A JUVENILE COURT, IN
CASE NUMBER 10, SEPTEMBER TERM,
2020, AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**