Circuit Court for Howard County
Case No. C-13-JV-20-000022

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2513

September Term, 2019

IN RE: S.N.

Kehoe,
Gould,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: October 27, 2020

Mother and Father, the parents of S.N., appeal the Order of the Circuit Court for Howard County finding S.N. a child in need of assistance ("CINA"), and committing him to the custody of the Howard County Department of Social Services (the "Department") for placement with his maternal aunt, Ms. L.W.B., in San Diego, California.

They present four questions, which we have consolidated and rephrased:[1]

I. Did the court err in finding that it had jurisdiction in this case?

II. Did the court err by allowing a Department employee to testify to information received from Mother's medical providers?

[1] Mother asked:

I. Where [Mother] gave birth to S.N. in Louisiana, placed him in California, and he had never lived in Maryland, did the court err in finding Maryland to be S.N's home state so that it could exercise jurisdiction and make a custody determination?
II. Did the court commit error when it allowed the department worker to give testimony about information he received from [Mother's] medical providers in violation of compulsory process protecting her confidentiality?
III. Did the court commit error when it did not hold a dispositional hearing that was separate from the adjudication hearing?
IV. Did the court err in finding S.N. to be a CINA because he was not abused or neglected by [Mother] and did not require the court's intervention when he was safe in California?

Father asked:

I. Did the [c]ourt abuse[] its discretion by exercising jurisdiction over the minor child when he was born in Louisiana, stayed in Virginia, lives in California and has never been to Maryland?
II. Did the [c]ourt err in finding the child to be a Child in Need of Assistance where the Department failed to prove that the child was abused and/or neglected and the child was not placed at substantial risk of harm?

III. Did the court err by not holding a dispositional hearing separate from the adjudication hearing?

IV. Did the court err in finding S.N. to be a CINA?

For reasons that follow, we affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father are married and reside in Maryland. Their first child was born in June of 2016, their second child was born in December of 2017, and their third child, S.N., was born in January of 2020.

The Department's Past Involvement

In June of 2018, the parents and their children were living in Laurel, Maryland when the Department learned that Mother was tying the second child to her bed. [App. 35, 44]. As a result, the Department entered into a safety plan with Mother, and provided ongoing services until November of 2018. Because Mother had "refused to provide the social worker with information about what she feeds her child[ren], only that [the youngest child] is fed breast mil[k],"[2] she was "educated about the need of children to eat a broad variety of foods rather than just breast milk." In addition, Mother met with a psychologist who explained that the two children did "not need[] 17 hours of sleep."

Two months after services ended, the Department received a report that Mother was again tying the children to their beds. On January 16, 2019, Emmett Woodard, a Department social worker, responded to the home and found both children "tied up and

[2] Some of the breast milk was "donated and not screened," and came from unregulated online sources. [App 13, 44]

blindfolded." The two-year old's "face was flushed red," and she "was tied tightly to the bed, her arms behind her back, with a cloth[] around her arms and torso." The infant was "bound in a swaddler made for children to sleep on their backs." Mother explained that the infant did not "sleep well at night."

Both children were sheltered to the Department's custody on January 17, 2019 by the Circuit Court for Howard County. At that time, Mother had obtained a protective order against Father for domestic violence, which she allowed to lapse days later. On February 27, 2019, the court determined that Father had "willingly allowed the mother to tie up and abuse" the children, whom it found to be CINAs.[3] They were ultimately placed with their maternal aunt, Ms. L.W.B., in San Diego, California.

The Present Investigation

Upon receiving a report that S.N. had been born on January 6, 2020, the Department initiated a child protective services investigation. The following week, Mr. Woodard learned that the parents were staying at a hotel in Howard County, and went to the hotel.[4] There, he found Mother, but observed no signs of a baby in the hotel room or

[3] On June 6, 2019, Mother was charged with multiple criminal offenses stemming from her abuse of the children. Pending trial, she was ordered to remain in Maryland, except that she was permitted to go to Washington, D.C., and northern Virginia for employment purposes. She was also barred from unsupervised contact with any minor children.

[4] Mr. Woodard testified:

> [Mr. Woodard]: So upon receiving that report we didn't really have any, like a location of the family at that point. Although we were familiar with the family we also knew that they had been homeless in the past and so

her car. Mother refused to tell him "where the baby was or who the baby was with." She also refused to share any photographs of S.N. that could demonstrate that "the baby at least appeared healthy." When Mr. Woodard telephoned Father later that day, Father stated that Mother had not given birth to S.N.

Mr. Woodard then contacted the agent responsible for Mother's pre-release conditions in the criminal case and learned that Mother had a check-in scheduled with the agent on January 17. Mr. Woodard met Mother and Father at that appointment. Mother again refused to identify S.N.'s location, and Father told Mr. Woodard that he "would never find" the child and that "there was no baby." Mr. Woodard presented Mother and Father with a Shelter Authorization Order to produce the child to the Department. When asked why he did so "even though [S.N.] was physically not present," he responded:

> So to kind of put, to put [S.N.] under the court's supervision so that [it was] aware that there was a child, a mother that numerous people knew that was pregnant just by her physical appearance, that she had mental health issues that are very specific to her children and how she should care for them that put her children in harm's way.

(…continued)

> that, you know, they hadn't always been in the same location. But then on January 13th, on January 13th we got another call with a location of the family.
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> [Department's counsel]: So on January 13th from whom did you receive this call?
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> [Mr. Woodard]: Someone from the courts.
>
> [Department's counsel]: From the Howard County courts?
>
> [Mr. Woodard]: Yes, ma'am.

> I had concerns for [Father] due to his substance abuse history and the DV history between them. And you know, for those kinds of reasons, like I didn't think that it was safe for [S.N.], or for the court not to be aware that this child was born and the whereabouts were unknown.
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> * * *
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> To be honest, I lost sleep. Every day that went by after January 6th, I was, quite honestly, I was afraid that the child was dead. I believed and was very concerned that [Mother] had again due to her mental health issues had done something that she thought was safe and accidentally killed her child. And every day I was worried about that.

The Present CINA Proceeding

On January 21, 2020, the Department filed a CINA petition requesting that the court shelter S.N. to its custody and order the parents to produce the child for that purpose. At a Magistrate's hearing on the petition that same day, Mother and Father refused to confirm that Mother had given birth to S.N. or identify his whereabouts:

> [Department's counsel]: [Mother], where is the current location of [S.N.]?
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> [Mother]: I plead the Fifth.
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> [Department's counsel]: [Mother], did you give birth to a male child on January 6th of this year, 2020?
>
> [Mother]: I plead the Fifth.
>
> [Department's counsel]: And [Mother], are you listed as the mother for any child born in the United States in the year, 2020?
>
> [Mother]: I plead the Fifth.
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> * * *
>
> [Department's counsel]: [Mother], when is the last time you saw [S.N.]?

> [Mother]: I plead the Fifth.
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> [Department's counsel]: [Mother], are you currently breastfeeding?
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> [Mother]: I plead the Fifth.
>
> [Department's counsel]: [Mother], have you gone outside of State to deliver a baby known as [S.N.]?
>
> [Mother]: I plead the Fifth.

When Father was asked if his "wife g[a]ve birth to your son on January 6th, 2020, a child, a male child by the name of S.N.," he too "plead[ed] the Fifth." At the conclusion of the hearing, Mother and Father were ordered to return the next morning with the child.

When Mother and Father did not bring S.N. the next day, the circuit court, sitting as a juvenile court (the "court"), found Mother and Father to be in direct contempt of the January 21 order. In response, Mother's counsel proffered that S.N. was in San Diego, California, in the home of Ms. W, a maternal aunt.[5] And Mother addressed the court directly:

> Just that, just to explain a little bit about my safety fears was that my husband [] when he was in foster care as a child he was molested and I have had concerns and some of my family members have had concerns about inappropriate touching in foster care in certain families and I didn't want that to happen to my son.
>
> And my two older children pretty much every visit that we would go to and see them while they were here, before placed with family there were either fresh bruises on them that usually were unexplained or there were diaper rashes on them that were also unexplained. . . . So I just didn't feel like they

[5] Mother would not disclose Ms. W's address.

were caring about the well-being of my children and so I don't want the same thing to happen to my newborn.

And then I just wanted to share that my newborn has not been in the State at all. And that my two oldest it was the end of February until the beginning of July the first of July that they had to wait to be transitioned over through the ICPC[6] to California to family. So I didn't want that process to take so long, I just wanted them there with family immediately like my newborn.

* * *

The fact that I don't have custody or possession of the baby is why I could not produce the baby. I have written and notarized and signed with my husband a power of attorney and temporary guardianship document it applies to the State of California so that's why it says in that document that I don't have custody and that my sister is the legal guardian. And I did that and the revoking page I actually wrote down that I'm not the one that's going to be able to revoke that document, my sister's going to be the one to do that.

I'm not trying to put my child in a bad situation or even go against the Court Order that said that I'm not supposed to be around children unsupervised that's why I tried to get him out of here as quickly as I could. And with family and . . . he had to be seven days old before he could fly, that's why it took a few days before he could leave this area.

At the end of that day's proceeding, the court continued the hearing to January 27, 2020. Mother, on January 24, 2020, filed a motion, supported by Father, to dismiss the CINA petition arguing that the court lacked jurisdiction, which the court ultimately denied. Mother and Father did not produce S.N. at the January 27 hearing.

On January 27, 2020, the court proceeded to consider an appropriate shelter care order that would best serve S.N.'s interests. It accepted a proffer from the Department

[6] The "ICPC" is the Interstate Compact on the Placement of Children.

that the California caseworker responsible for S.N.'s siblings' cases had been able to locate S.N., and had visited him, and had determined that he was "safe and well cared for" in Ms. W's home. The court, taking the matter under advisement, continued the hearing to January 29, 2020.

On January 29, 2020, the court continued the shelter order and granted temporary guardianship to the Department with placement of S.N. in the care of Ms. L.W.B. A hearing on the CINA petition was scheduled for February 19, 2020.

The CINA Hearings

The court, on February 19, 2020, convened a hearing, on the amended CINA petition that contained allegations regarding Mother's and Father's conduct since S.N.'s birth. Although both Mother and Father were incarcerated,[7] they were present at the hearing and represented by counsel. S.N. was represented by court-appointed counsel.[8]

At that hearing, the court took judicial notice of its prior orders in the present proceedings, as well as its orders in S.N.'s siblings' CINA cases, and Mr. Woodard and Mother testified.

Mother testified that she gave birth to S.N. in Baton Rouge, Louisiana on January 6, 2020. After being discharged, she and S.N. "headed towards Virginia" to her "dad's

[7] Mother's pre-trial release had been revoked on the criminal child abuse allegations regarding the two older children; Father was incarcerated on unrelated charges.

[8] On February 4, 2020, the court appointed counsel to represent S.N.

cousin's son's house." When asked by her counsel what she did when she arrived at the house, she responded:

> So my mom had already spoken to him and he had given consent to watching the baby. So I just asked him, you know, like here is his stuff and like, you know, like can you take care of him, just reassuring like I'm not going to be here to take care of the baby and he's okay with it.
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> * * *
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> [Mother's counsel]: Okay. And what did you do after that?
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> [Mother]: I just left to go back to Maryland, back to the hotel room.
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> * * *
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> [Mother's counsel]: Okay, and have you physically been in the presence of your child since then?
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> [Mother]: No, I have not.
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> * * *
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> [Mother]: So we had already planned, like, me, my mom, my sisters had already planned that I was going to give custody to [Ms. W]. And I had filled out the paperwork to get that done. And had it done at a notary like my signature witnessed.
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> * * *
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> [Mother's counsel]: Okay. So why had you made the choice to send the child rather than keep the child yourself?
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> [Mother]: Because one I do know that, and I'm not trying to be disrespectful to the [c]ourt or raise any concerns with DSS, I was trying to pass on my baby to my family as quickly as possible, as I could as the[y] could release me from the hospital. And I didn't want him going through foster care because of the experiences we had with our two older children that we felt like they were not handled well, like w[e] saw bruises on them that should not have been on them et cetera. So and like my husband's

> prior experience. So all those things considered we just didn't think it was going to be a good idea to not leave the baby with family.
>
> [Mother's counsel]: But my question is why didn't you believe that you were in a position to keep custody?
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> [Mother]: Because the [c]ourt doesn't want me to and DSS doesn't want me to and until all of that stuff is litigated, I didn't want to make my situation worse.
>
> [Mother's counsel]: Okay. Did you believe that you had the proper housing and resources for an infant?
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> [Mother] No, so that's why I don't have my two older children and I was not able to, you know provide the roof over the head of my newborn like I did my other two before we had left our townhouse. So I didn't think it was the best situation for him. So I thought the best situation would be for him to be with my sister.

According to Mother, S.N. went to California on "the 14th or the 15th, no later than the 15th of January."

At the conclusion of the evidence on adjudication, the court, on the record, contemplated delaying disposition to the following week. The Department argued that disposition should not be delayed, and after hearing argument, the court decided to proceed to disposition.

Mother and Father argued that the court should not find S.N. to be a CINA. Mother took issue with Mr. Woodard's testimony about "his concerns regarding these parents . . . because of their mental health," as those "concerns carried over from 2018" and related to Mother's care of her two older children "but there was no basis today for those concerns." And if the court declared S.N. to be a CINA, it was their position that the child should be placed with Ms. W.

When arguments concluded, the court ruled:

All right, the [c]ourt has considered the testimony and mainly the testimony of Mr. Woodard as well as the testimony of [Mother]. *And to be candid based on her responses on the witness stand I made a few little asterisk notes, not credible, not credible, not credible. Especially when answering some of the most basic questions.* . . . She would not, *she was trying to be too evasive for this [c]ourt to find any of her testimony credible at all*.

What we clearly have here is we have a situation where the two prior children, the [c]ourt has taken judicial notice of the prior orders. That they were in fact, and it was uncontradicted that they were tied up and they were blindfolded which led to them being found CINA.

The Department had concerns when they learned, I guess, that she was pregnant. They did in fact receive notification that a child was born and it was an attempt to place that child which is when DSS became involved. And what also throws up red flags is, when you contact the parent who have already been found to have two children to be CINA and they won't even acknowledge that she was pregnant or even that a child was born. And then you go to the place where they're living and there's no signs, or no indication that there are toys, bassinets, babies. And so when Mr. Woodard pretty much said he believed and it kept him up nights thinking this child was killed because of the history of the mother of tying these children up and blindfolding them and the father being complacent with that. That's really what led to the CINA.

So and the mental health issue, I think, and I disagree with [Father's counsel], the mental health is not she's psychotic, she's walking around and she's insane or in another world. No. The testimony was her mental health issues in caring for the children, thinking that tying them up and blindfolding them are okay. That's what I took from the testimony, not that she's saying, in any form of psychosis. So I don't see where that's being missed.

So clearly when I'm looking at the allegations in the Amended Petition the Court is satisfied by a preponde[rance] of evidence that all of the allegations -- and because of the late hour I'm going to list them, each and every that I find in my written order. But I am finding that the facts contained in the Petition were in fact sustained. That this child based on the parent's conduct and responses to their questions was placed in

> substantial harm, was in fact neglected. And I am going to find that he is in fact a CINA.
>
> I mean the mother will go to the extent to where she is willing to violate her criminal conditions of not leaving the State, not being left alone with the child. And she admitted she did this on her own. Drove from Baton Rouge, Louisiana.

(Emphasis added).

In its written order, the court stated:

> [S.N.'s] mother has been charged criminally with child abuse and neglect of her older children. It has been alleged that [Mother] has a history of tying up her children in ways that compromise their safety and development. She left the state of Maryland and the surrounding area to deliver [S.N.] in order to avoid the child being placed in care by DSS. The mother admitted that she willfully violated her pre-trial conditions to travel to Louisiana in order to deliver the child and was alone with him while travelling from Louisiana to the Virginia area. With her history, [S.N.] was placed in serious immediate danger. [S.N.'s] father has willingly allowed the mother to tie up and abuse the older children and refused to cooperate with DSS in performing a safety assessment of [S.N.].
>
> The [c]ourt further finds that there is no local parent, guardian, or custodian or other person able to provide supervision and continued placement in the home is contrary to the welfare of the child. Because of the emergency situation, removal from the parental home is reasonable under the circumstances to provide for the safety of the child. Reasonable but unsuccessful efforts were made to prevent or eliminate the need for removal from the child's home, including: Attempts to confirm with [S.N.'s] mother that she was pregnant were unsuccessful as she refused to cooperate with DSS and the father's refusal to confirm that the mother had been pregnant, and had delivered a child and attempts to plan for a safe environment for the child prior to delivery were not successful.

Based on its findings, the court found S.N. to be a CINA, and committed him to the Department's custody for placement with Ms. L.W.B.

Mother and Father filed this timely appeal. Further facts will be added in the discussion of the questions presented.

STANDARD OF REVIEW

As the Court of Appeals recently explained:

> The standard of review applicable to CINA proceedings is well-established: (1) we review factual findings of the juvenile court for clear error, (2) we determine, "without deference," whether the juvenile court erred as a matter of law, and if so, whether the error requires further proceedings or, instead, is harmless, and (3) we evaluate the juvenile court's final decision for abuse of discretion. *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018).

In re O.P., 240 Md. App. 518, 546, *cert. granted*, 464 Md. 586 (2019), and *aff'd in part, rev'd in part*, *In re O.P.*, 470 Md. 225 (2020).

DISCUSSION

I.

Jurisdiction

In Mother's motion to dismiss the CINA petition, she argued that, under Maryland's Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), Maryland was not S.N.'s home state:

> [S.N.] never lived in Maryland. He was in fact born in Louisiana. . . . He was then taken to Virginia with relatives, and then was sent to California by his parents, in the proper exercise of their natural guardianship rights, to live with his aunt.

The Department and S.N.'s counsel opposed the motion. S.N.'s counsel argued:

> I would just state that again, over and over again within this [motion] is a statement that the child has literally never lived in Maryland. When there are facts that are not before the [c]ourt, an affidavit is required. There is no

affidavit attached to this, stating under oath that, in fact, the child has never lived in Maryland.

We don't have an address in Virginia that supposedly this child was at for a certain period of time. We don't even have the name of the relative in Virginia that they indicate that they took the child to after its birth.

[Referring to the alleged guardianship dispute and that only the court] could revoke it -- but we have nothing to show this document. We don't have a copy of it, we don't have a copy of it from California -- we have no idea what it says. There is absolutely nothing filed in any court that I know of -- either California or here -- that would give that maternal aunt the power to retain that child even if the parents showed up on the doorstep.

Department's counsel argued:

[Mother's] proof that [was] attached to the motion to dismiss -- the only documentation of proof offered to the [c]ourt that in fact, this child was born in Louisiana.

And the parents' assertion -- again, not proven -- that there was a small amount of time in Louisiana for purposes of evading this [c]ourt and having the child out of state. Then there was a small amount of time, according to the parents -- an assertion that they were -- that the baby was in Virginia, and then an assertion that the baby was moved to California on or about January 14th.

It is interesting to me that in the attachments to this motion to dismiss, the only proof that the parents offered about those three facts to support their notion that Maryland is not the home state is that the baby was, in fact, born in Louisiana.

* * *

We know two things: he was born in Louisiana, and he is currently in California. Where he has been in his ensuing days from the time he was born on January 6th in Louisiana, is absolutely not proven before this [c]ourt and there is no documentation that has been provided to this [c]ourt.

How do we know he has not been back in Maryland? The parents are both Maryland residents. They gave to you their current addresses where they have been residing for some time, at the Boulevard Motel.

* * *

There is nothing -- if the [c]ourt would find that this is not the home state and the [c]ourt does not have its right to exercise its subject matter jurisdiction over the parents, there is absolutely nothing to say that one or both of these parents could not leave the State of Maryland today, go to California, and retrieve that boy and bring him back.

There would be nothing other than a court order that would prohibit [Mother] from doing that, but she has proven to this [c]ourt she is more than willing to violate that order. [Father] has no such barriers to his travel, and so there is nothing -- proof. There is no proof, there is no documentary evidence before this [c]ourt that says that that child is to stay in California further.

* * *

Now if you recall, [Mother] claims she did not have any address to provide to this [c]ourt about her sister. Well, the worker in California found it really quick. You know how? Because she looked in her database. Because, in fact, this sister had an old -- absolutely -- an old report made against her that was on file in the database in the San Diego County child welfare system.

That's how they quickly found her address and were able to dispatch their worker.

The court determined:

[W]hen you look at the definition of "home state," as you indicated, as to § 9.5-101(h) -- it looks like (2): "In the case of a child less than six months of age, the state in which the child lived from birth with any of the persons mentioned…" -- meaning the parents or somebody who is acting in their capacity -- "[] including any temporary absence."

"Temporary absence," under *Drexler vs. Bornman*, . . . 217 Md. App. 355 [(2014)], "[t]he proper way to determine if the child's absence from a state is [] 'temporary'. . . is to examine all the circumstances

surrounding that absence . . . a totality of the circumstances test," which "[] would encompass both the duration of the absence and whether the parties intended the absence to be permanent or temporary, as well as 'additional circumstances that may be presented[.]'["] This test . . . provides courts with the necessary flexibility in making this determination."

So, what we have is, we have a situation where the siblings have been found CINA. They were removed and they were placed with family in California.

* * *

All right. And as I said, looking at the totality of the circumstances -- and as [Father's counsel] has indicated, when you look at the totality of the circumstances, you have a situation where the mother has had two -- and the father -- have had two children removed.

The mother is pending criminal abuse charges. A condition of her pre-trial release is that she cannot leave the State of Maryland. And then, even when I asked her on Wednesday about where the child was born -- when she wanted to address the [c]ourt against Counsel's recommendation -- she did, and I even asked her, "Where was the child born?"

And she said, "Well, I'd rather not answer that, but I am allowed to leave the state and stay in the Washington, D.C., and Virginia area," which led this [c]ourt to believe the child was born in either D.C. or the northern Virginia area, based on her comment to the [c]ourt -- because she is allowed to travel there for work purposes because she is an Uber driver.

So, we're now presented with a birth certificate from Baton Rouge, Louisiana, which clearly shows to this [c]ourt she intended on leaving the jurisdiction of this [c]ourt in order to avoid having the child taken away.

* * *

So, it's clearly, by -- under the totality of the circumstances -- she left the jurisdiction of this [c]ourt to deliver this child to be out of the realm of DSS. *And that's all we know.*

* * *

> That's why I find that wherever he was -- we know he was in Baton Rouge, Louisiana, because there's -- other than -- nothing else other than her testimony, *assuming this [c]ourt believes it* -- and clearly, based on her conduct in this case, *I don't believe it*. The child was in Baton Rouge, Louisiana, and ended up in California. That's it. So, under the totality of the circumstances -- considering the fact that the parents are residents here, they intentionally left this jurisdiction to avoid the child being taken into custody upon the child's birth based on the history of the abuse, neglect, and the pending criminal charges -- that I find that Maryland -- like I said, I know this is going to Annapolis -- is the home state of the child.
>
> And we do have jurisdiction. Initially, when [the CINA petition] was filed, based on the assertion that the mother is known to tie up the children; she has criminal charges -- she was pregnant, we know the child was born. We exercised -- I would say we would exercise emergency jurisdiction. But I also note: no one has presented to the [c]ourt -- there's any documents concerning custody and guardianship.
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> * * *
>
> . . . And *no other [c]ourt has seemed to exercise any jurisdiction at all, other than the State of Maryland*, from when this was filed. So, I find this [c]ourt is the home state of the children, and the motion to dismiss for lack of jurisdiction shall be denied.

(Emphasis added).

Contentions

Mother challenges the court's determination that "Maryland was S.N.'s home state because the parents still lived in the state and that S.N.'s absence was a temporary one 'to avoid this child being placed.'" She contends that "Maryland was not S.N.'s home state," because he "never lived in Maryland at all, let alone lived there with a parent or a person acting as his parent." In her view, "[t]he placement of all of [Mother's] children in California with relatives shows that the family's connections are more strongly in California than Maryland." She adds that "[e]ven though [she] was living in Maryland

prior to S.N.'s birth in Louisiana and returned to stay there, her situation in Maryland was not a permanent one"; she "was living in a motel" and "could not leave Maryland due to a prerelease condition of her pending criminal case." Instead, "[w]hat *was* permanent was [her] desire for S.N. to live outside of Maryland, in California, with her family."

Similarly, Father contends that "the court abused its discretion by exercising jurisdiction over the child when he was born in Louisiana, stay[ed] in Virginia, lives in California and has never been to Maryland." He argues that the court, in finding that S.N.'s absence from Maryland was a temporary absence, "failed to appropriately and accurately apply the 'totality of the circumstances' test" because S.N.'s absence from Maryland "was clearly meant to be permanent." And that "Mother and Father went to great lengths to prevent S.N. [from] even entering the State of Maryland." He argues that "[e]ven if the [c]ourt determined that the [Mother's] testimony lacked credibility, there was still sufficient independent evidence to substantiate the fact that S.N. did not live in Maryland and that the parents meant for S.N.'s stay in California to be permanent." In support of that argument, he states that Mr. Woodard, "[t]he Department's own witness," testified that "he did not observe any evidence that a child was s[t]aying at the home" when he visited it on January 13, 2020.

The Department contends that "Maryland is S.N.'s 'home state'" under the UCCJEA. It argues that the parents did not "introduce[] credible evidence to support their claim that neither Mother nor Father cared for and lived with S.N. after they returned to Maryland and prior to S.N.'s departure to California." It points to Mother's

admission "that she hurriedly arranged S.N.'s departure to California to get him 'out of *here* as quickly as I could,'" suggesting "that S.N. was 'here'—in Maryland—following his birth." It adds that not a single witness was called "who claimed to have cared for S.N. outside of Maryland prior to his arrival in California." Quoting the circuit court, the Department argues "it must be remembered that S.N. was born in Louisiana for one reason: '[T]o avoid the child being taken into custody.'" And that the parents "should not be rewarded for their attempts to circumvent the jurisdiction of Maryland courts, especially when the natural consequences would be borne by this infant child."

S.N.'s counsel also contends that the court has home state jurisdiction. Citing *In re John F*, 169 Md. App. 171, 181-84 (2006), she argues that "a *prima facie* presumption of jurisdiction arises from the exercise of jurisdiction by the trial court" and the burden was on the parents to rebut it. As she sees it, "[h]ow S.N. ended up in California is unclear unless you believe the statements of the parents whom the trial court justifiably found untrustworthy based on their past actions and their demeanor and testimony at trial." She adds that this case "is not a custody dispute between parents; rather, it is the State acting to protect a vulnerable child whose siblings have been savagely mistreated by their parents who were found to have neglected siblings." Alternatively, she argues that if Maryland was not S.N.'s home state, "there was no 'home state' so the trial court lawfully exercised jurisdiction once a CINA Petition was filed."

Analysis

"The Maryland judiciary may only exercise its authority in cases over which it has both personal and subject matter jurisdiction."[9] *Pilkington v. Pilkington*, 230 Md. App. 561, 578 (2016). Maryland Code (1973, 2019 Repl. Vol.), §§ 3-801(i) and 3–803(a) of the Courts & Judicial Proceedings Article ("CJ") grants exclusive original jurisdiction over proceedings arising from a CINA petition to circuit courts sitting as juvenile courts. And Maryland Code (1984, 2019 Repl. Vol.), Family Law ("FL"), § 9.5–101(e)[10] provides that the UCCJEA applies to all child custody proceedings, including CINA proceedings.

It sets forth when a Maryland court may exercise subject matter jurisdiction in child custody proceedings. FL § 9.5–201(a)(1)–(4) provides:

> (a) Except as otherwise provided in § 9.5-204[11] of this subtitle, a court of this State has jurisdiction to make an initial child custody determination only if:

[9] Personal jurisdiction over Mother and Father is not an issue in this case.

[10] FL § 9.5–101(e)(1)-(e)(2) provides:

> (e)(1) "Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue.
>
> (2) "Child custody proceeding" includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear.

[11] FL § 9.5–204 provides for "temporary emergency jurisdiction" for a child present in the State who has been abandoned or is "subjected to or threatened with mistreatment or abuse."

> (1) this State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State;
>
> (2) a court of another state does not have jurisdiction under item (1) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under § 9.5-207 or § 9.5-208 of this subtitle, and:
>
> (i) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and
>
> (ii) substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;
>
> (3) all courts having jurisdiction under item (1) or (2) of this subsection have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under § 9.5-207 or § 9.5-208 of this subtitle; or
>
> (4) no court of any other state would have jurisdiction under the criteria specified in item (1), (2), or (3) of this subsection.

The determination of jurisdiction and the propriety of its exercise, under the UCCJEA, involves the court in a three-step process:

> *First*, it must ascertain whether it has jurisdiction.
>
> *Second*, it must determine whether there is a custody proceeding pending or a decree in another state which fits the definition of "home state." If so, the court must usually decline its jurisdiction, except in the case of an emergency.
>
> *Third*, assuming the court has jurisdiction and there is not a proceeding pending or a decree, the court must determine whether to exercise its jurisdiction if there is a more convenient forum.

Fader's Family Law §8.5(b) (2019).

Once jurisdiction is exercised, "[i]t is presumed that jurisdiction over the subject matter and parties has been rightfully acquired and exercised." *In re John F.*, 169 Md. App. 171, 180 (2006) (quoting *In re Nahif A.*, 123 Md. App. 193, 212 (1998)). The party challenging jurisdiction bears the burden to rebut that presumption. *Id.* at 181. "[E]very presumption not inconsistent with the record is to be indulged in favor of such jurisdiction, at least when the allegations of the petition show jurisdiction." *Id.* at 180-81.

Under the UCCJEA, the focus in a jurisdiction determination is directed at the child's "home state." Fader's Family Law §8.5(c)(1) (2019). The "home state" of "a child less than 6 months of age" is "the state in which the child lived from birth with any [parent or a person acting as a parent], including any temporary absence." FL § 9.5–101(h)(2).[12]

In *Garba v. Ndiaye*, 227 Md. App. 162, 173–74 (2016), *cert. denied*, 448 Md. 30 (2016), we explained that:

> courts have developed three tests to determine whether absences are temporary or permanent: duration, intent, and totality of the circumstances. Some courts focus solely on the length of the absence. Other courts consider the intent of the parties, specifically whether parties intended to be away for a limited amount of time and which state they viewed as their place of permanent domicile.

[12] As pointed out in *Garba v. Ndiaye*, "lived" is "generally" construed to "mean the place where the child is 'physically present,'" without regard "for the child's legal residence or domicile." 227 Md. App. 162, 171 (2016) (citing *Powell v. Stover*, 165 S.W.3d 322, 326 (Tex. 2006)).

In the more flexible "totality of the circumstances" test, adopted in *Drexler v. Bornman*, 217 Md. App. 355, *cert. denied*, 440 Md. 116 (2014),[13] the court:

> examine[s] all the circumstances surrounding [the] absence, an analysis that encompasses these considerations: the duration of the absence and whether the parties intended the absence to be permanent or temporary, as well as additional circumstances that may be presented in the multiplicity of factual settings in which child custody jurisdictional issues may arise. We embraced this approach over more rigid tests because it "provides courts with the necessary flexibility" to make child custody jurisdiction determinations, *Drexler*, 217 Md. App. at 363, and to assign the appropriate weight to each factor.

Id. at 173–74 (cleaned up).

In *Garba*, the child had been in Maryland for less than six months and had lived with his mother for less than six months and had lived with his mother in three previous countries for a year at a time during the life on the case. *Id*. at 171-72. The mother, a

[13] In *Drexler*, we "agree[d] with those state appellate courts that have concluded that the proper way to determine if a child's absence from a state is a 'temporary' one, under the [UCCJEA], is to examine all of the circumstances surrounding that absence." *Id.* at 362. In that case, the child had lived between Maryland and Indiana throughout his life. He had lived in Indiana for a year and five months prior to the custody action, which was filed in Maryland by the maternal grandparents. *Id.* at 357, 359. In the six months prior to the filing, the mother and child had spent a week in Maryland, and we were asked to decide if that absence from Indiana was temporary. *Id*. at 357. Testimony indicated that the mother moved from Indiana because the "relationship with her girlfriend had begun to 'deteriorate,'" and that when the mother and child moved to Maryland, she left personal items in Indiana in storage. *Id.* at 358. The grandmother testified that the mother intended to stay in Maryland at the time of her move. *Id.* When the mother reconciled with her girlfriend after her relocation to Maryland, she returned to Indiana with the child. *Id.* at 358–59. Adopting the totality of the circumstance test, and noting that the mother has taken "no steps to finalize or formalize her intent to stay in Maryland," we held that the child's stay in Maryland was a "temporary absence" from Indiana and, thus, counted as part of the six months for determining the child's "home state" under the UCCJEA. *Id.* at 365.

resident and owner of properties in Maryland, was employed by the United Nations and served for assignments of one year in a country before returning to Maryland. *Id.* at 174. In analyzing the "totality of the circumstances" surrounding the child's extended absence from Maryland, the Court determined that the reasons for the child's absence were more important than the length of the absences, and held that the facts "support[ed] a finding that Mother's and therefore [the child's] absences during the period before filing were temporary, and that Maryland [was] the home state for the purposes of the UCCJEA." *Id.* at 175.

In this case, the circuit court, after noting that no other court appeared to "exercise any jurisdiction at all," concluded:

> I do find Maryland is the home state of this child, just based on the totality of the circumstances in this situation. She intentionally left this jurisdiction to have a child in Baton Rouge, Louisiana, to avoid this child being taken into care. *They have returned here. They live here. So, this -- I think -- is the child's home state.*

(Emphasis added).

Mother asserts that "the court's inference that S.N. was physically present and lived in Maryland is not supported by the evidence." The evidence that she points to is her uncorroborated testimony "that she drove to her cousin's home in Virginia where she dropped off S.N. and did not stay longer than thirty minutes before returning to Maryland alone," and Mr. Woodard's testimony that he did not see any signs of a baby during his

January 13 visit to her hotel.[14] The most obvious flaw in that argument is the court's clear finding that Mother "was trying to be too evasive for [it] to find any of her testimony credible at all." As an appellate court, we do not "second-guess the trial judge's assessment of a witness's credibility." *Gizzo v. Gerstman*, 245 Md. App. 168, 203 (2020).

Mother and Father produced no third-party evidence—such as a plane ticket or boarding pass—to establish when and from where S.N. departed for California. Mother testified that it was "approximately early last week, I believe it was Tuesday, give or take a day." S.N. was in Mother's care when they left Louisiana, and no witness claimed to have cared for S.N. outside of Maryland prior to his arrival in California. The only credible evidence was a birth certificate and the report to the Department from the child welfare worker in California on January 22, 2020. After discounting Mother's testimony, the court summarized the remaining evidence: "The child was in Baton Rouge, Louisiana, and ended up in California. That's it."

The only "objective and undisputed facts" indicate that, after S.N.'s birth, Mother left Louisiana with S.N. in her care, returned to Maryland, and that S.N. was in California as of January 22, 2020. *Garba*, 227 Md. App. at 174-75. Simply put, where and with

[14] Mr. Woodard's testified that he saw no signs of a baby, and that after his January 13 visit to the motel, he made another attempt to contact Mother to get the location of S.N. to no avail. And when he contacted Father, Father said "that there was no baby that was born." Mr. Woodard's testimony was limited to his observation of the motel room and Mother's car on January 13. It did not eliminate the possibility that S.N. was not somewhere in Maryland or that he had never been in Maryland.

whom S.N. was between his birth on January 6, 2020 and his presence in California on January 22 was not established. That evidentiary void rests squarely on Mother's and Father's refusal to provide any meaningful information as to his whereabouts. Mother's past history, her current legal situation, and both parents' persistent evasiveness as to where and with whom S.N. was between when he left the hospital with Mother to when he arrived in California permitted an inference that S.N. was or had been with her or Father in Maryland at some point in time prior to his arrival in California. And that, in turn, supports the court's home state determination, and its conclusion that any absence of S.N. from Maryland during the period was essentially a "temporary absence." In its temporary absence calculus, the court, as did the *Garba* court, focused on the reason for S.N.'s absence from Maryland, which, based "on the history of abuse, neglect, and the pending criminal charges" and Mother's own admission, was to avoid his being taken into custody. Under the facts of this case, we perceive no error.

Moreover, and alternatively, if Maryland was not S.N.'s home state when the CINA petition was filed, he did not have a home state. In such circumstances, FL § 9.5-201(a)(4)[15] is a "catch-all 'vacuum jurisdiction' provision" that allows "a court in this State to exercise jurisdiction where no other state . . . can." *Toland v. Futagi*, 425 Md. 365, 376 (2012).[16]

[15] FL § 9.5-201(a)(4) provides for jurisdiction when: "no court of any other state would have jurisdiction under the criteria specified in item (1), (2), or (3) of this subsection."

[16] As explained in Fader's Family Law § 8-5(c)(3) (2019):

Mother, citing *In re D.S.*, 840 N.E.2d 1216 (2005),[17] argues that Maryland would not have jurisdiction under this provision because "[t]he placement of all of [Mother's] children in California with relatives shows that the family's connections are more strongly in California than Maryland." In that case, the mother, who had had six children removed from her custody by the Illinois Department of Children and Family Services ("DCFS"), was pregnant with her ninth child and living in Illinois. *Id.* at 1218-19. The father was living in Tennessee with their two youngest children. *Id.* at 1218. In labor, and to keep the State of Illinois from removing the child from her custody, she drove

(…continued)

> If Maryland is not the Home State, and the significant connection/substantial evidence basis is inapplicable, the [UCCJEA] provides two other bases for Maryland to assume non-emergency jurisdiction. The first is that all other states having jurisdiction pursuant to the Home State or significant connection/substantial evidence tests have declined to exercise jurisdiction because Maryland is the more appropriate forum. *The second is the default basis: if no other state has jurisdiction pursuant to the criteria previously detailed, Maryland may assume jurisdiction.*

(Emphasis added).

[17] The Department also cites *In re D.S.*, 840 N.E.2d 1216 (2005), to argue that "[a]though Mother gave birth to S.N. in Louisiana, this temporary absence did not negate Maryland's status as S.N.'s 'home state.'" Quoting *In re D.S.*, 840 N.E.2d at 1223, it states "[w]hen people speak of where a mother and a newborn baby 'live,' they do not speak of the maternity ward. Instead, they speak of the place to which the mother and baby return following discharge from the hospital."

S.N. cites *In re D.S.* for the proposition that "there is no home state" when a "mother merely goes to another state just to have the child and has no intention of staying in that State but rather to evade the real 'home state.'"

from Illinois in an effort to get to Tennessee. *Id.* at 1219. She was forced to stop in Indiana, where she gave birth to D.S. *Id.* at 1223. The following day, the State of Illinois filed a "petition for adjudication of wardship," and the trial court granted the department custody of the child. *Id.* at 1218. The mother appealed, arguing the trial court lacked subject matter jurisdiction because the child had never lived in Illinois when the petition was filed. *Id.* at 1219. More specifically, she argued Indiana was the child's home state because the child was less than six months old when the proceedings began, the child was born in Indiana, and the child "lived his entire life with his mother within the State of Indiana prior to being brought to Illinois by DCFS." *Id* at 1221. The Illinois Supreme Court rejected that argument:

> [Mother's] own testimony established that she had no connection to Indiana and no intention of remaining there following D.S.'s birth. On the contrary, [mother] testified that she is a longtime resident of Illinois who, fearful of losing custody of D.S., intended to move to Tennessee. En route, she entered active labor and checked herself into the nearest hospital, which happened to be in Crawfordsville, Indiana. By itself, this temporary hospital stay in Indiana is simply insufficient to confer "home state" jurisdiction upon that state. As importantly, neither party makes any attempt to argue that any other state possessed "home state" jurisdiction over D.S. when the wardship petition was filed. We therefore agree with the State's assessment that D.S. lacks a "home state" for UCCJEA purposes.

Id. at 1223.

The record before us reflects no evidence other than Mother's assertion that the family's connections are more strongly California. Mother and Father have lived in Maryland for some time, and the two other children, who are in the custody of the

Department, were placed in California. And S.N. was sent there by the parents to avoid his being taken into custody by the Department in Maryland.

Mother also argues that Ms. W "filed for custody of S.N. in California and a temporary guardianship hearing was scheduled . . . for March 11, 2020" and that Mother "had signed documents consenting to the guardianship of S.N." But, as the Department points out, she "did not produce a copy of the purported guardianship papers and could not disclose Ms. W's address." Because the court discounted the credibility of Mother's testimony, there is nothing in the record before us that any proceeding regarding S.N.'s custody had been filed as of January 21, 2020.

In short, the UCCJEA provides that a forum be available to make child custody determinations when the facts do not fit squarely within the rubrics of FL §§ 9.5–201(a)(1)-(3). Therefore, even if Maryland is not S.N.'s home state, we are persuaded that on this record, it would have jurisdiction under FL § 9.5–201(a)(4).

This case concerns an infant's immediate health and safety. What will serve S.N.'s future best interests is for another day. If, for any reason, that involves multiple tribunals or inconvenient forum issues, FL § 9.5–206 and FL § 9.5–207 may provide guidance.

II.

Procedural Error

At the conclusion of the adjudicatory portion of the CINA proceedings on February 19 2020, the court contemplated scheduling the disposition hearing the following week:

> Okay, and just so you know, this is what I'm thinking and considering only because I have to look up the other two children's cases and review all of those orders. My actual initial thought was to put whatever findings and ruling on the record next week since you all have to be here Wednesday of next week. So I can hear whatever closings you want to make and then look into those other cases and then put my findings on the record and go from there.

Counsel for the Department requested and the court granted her permission to argue that the parties should proceed to disposition that day. And after presenting the Department's arguments related to adjudication, she presented argument for disposition that day:

> Given all of the background that we now know about [S.N.'s] entry into the world, the neglectful manner in which it was handled, the multiple and contemptuous ways that they, parents acted to evade the jurisdiction of the Department and the [c]ourt I am going to ask that in its dispositional finding this [c]ourt indeed find that [S.N.] is a Child in Need of Assistance.
>
> And I'm going to get into sort of these dispositional issues that the [c]ourt, I believe needs to know about. When we were last before you, Your Honor, you issued the Court Order of January 29th. And in that Order, you did direct that [S.N.] be placed with [Ms. L.W.B.] who was the . . . placement for [the two older siblings] under the auspices of the ICPC as the girls remain in the custody of the Howard County Department of Social Services. And the reason that that option was chosen as the [c]ourt recalls is because there would be nominal supervision that could be provided.

At this point, Mother's counsel objected, stating that the Department's information related to disposition was "outside any evidence that was presented to the [c]ourt." The court responded that Department's counsel "is giving me the reasons why that I should

not delay disposition until next week." Mother's counsel responded, "Okay, I didn't catch that, all right."

After hearing the Department's argument for not delaying disposition, the court, for different reasons, proceeded with disposition: "All right, and just so you know, my clerk passed me a note. Case time standards, I have to make a decision by . . . . February 21st."

In its arguments related to disposition, the Department asked the court to find S.N. to be a CINA and to direct the California child welfare agency to place S.N. with Ms. L.W.B. In their closing arguments, Mother and Father responded. Mother's counsel argued:

> [W]e object to essentially proceeding to disposition *because we object to a finding that the child has been, this child has been neglected*. There's a series of cases in Maryland which deal with the question of when there's an afterborn child, after the finding of CINA for others, the leading case is In Re Nathaniel A, which talks about circumstances under which there can be a finding of neglect without anyone pointing to anything that was done to this particular child. And their conclusion is that the child may be considered neglected before actual harm occurs as long as there is a fear of harm in the future, fear of harm in the future based on hard evidence and not merely a gut reaction.
>
> * * *
>
> But I understand we want to move this thing along.
>
> * * *
>
> Assuming that you are going to disposition, we do agree that the child should be with the aunt in California. Obviously, which one, my client would prefer [Ms. W].
>
> * * *

> So we're asking, first of all that you not find neglect, and therefore not go to disposition. But if you do go to disposition and believe that the child should be in the custody of the Department of Social Services for placement. That you not specify that the child be swooped up by the Department, by San Diego DSS until Ms. L.W.B. is approved.

Father's counsel argued:

> Your Honor, on behalf of [Father], we would be asking from the adjudication perspective that this [c]ourt not find [S.N.] to be a child in need in of assistance.
>
> * * *
>
> If the [c]ourt were inclined to disagree with me and we proceed to disposition, I would be asking the [c]ourt to leave the child, and I just want to make sure I say the right name. Asking the [c]ourt to leave the child with [Ms. W]. Which is where the child is presently placed.

After hearing arguments on both adjudication and disposition, the court, not "find[ing] the testimony of [Mother] to be credible based on, based on her demeanor and the way she testified," had "no problem finding this child to be a CINA," and awarded custody to the Department for placement with Ms. L.W.B.

Contentions

Mother and Father contend on appeal that the court erred by making "a disposition without holding a disposition hearing that was separate from the adjudication hearing," as required by Maryland Code, Courts & Judicial Proceedings Article ("CJ"), § 3-819(a).[18]

[18] CJ § 3-819(a) provides:

> (1) Unless a CINA petition under this subtitle is dismissed, the court shall hold a separate disposition hearing after an adjudicatory hearing to determine whether the child is a CINA.

Mother argues that the failure to do so was not harmless because it "prejudiced [her] in her ability to present the court with additional dispositional options." She adds that "[b]ecause the court improperly transitioned directly from closing arguments regarding adjudicatory facts into recommendations regarding what should be done with S.N.'s placement," she was denied "a full hearing about whether [S.N.] was abused or neglected." Therefore, we "should remand the case for a full disposition hearing." Similarly, Father contends that the error was harmful because "the parents were not given an opportunity to present additional dispositional evidence and testimony."

S.N.'s counsel, acknowledging that the court committed procedural error by not having separate adjudication and disposition hearings, contends that the parents were not prejudiced. She points out that the trial court first discussed a separate hearing on disposition, but "moved to Adjudication and Disposition" only because of "the urgency of resolv[ing]" this case. But, all parties were given the opportunity to argue whether S.N. was a CINA. And "[t]here was evidence regarding the current relative placement as well as the proposed relative who was caring for the siblings, for the trial court to

(…continued)

> (2) The disposition hearing shall be held on the same day as the adjudicatory hearing unless on its own motion or motion of a party, the court finds that there is good cause to delay the disposition hearing to a later day.
>
> (3) If the court delays a disposition hearing, it shall be held no later than 30 days after the conclusion of the adjudicatory hearing unless good cause is shown.

consider for dispositional purposes." In addition, she argues that neither parent has offered "what they were prohibited from presenting to the court at Disposition."

The Department contends that it was proper for the court to hold "the dispositional hearing on the same day as the adjudicatory hearing." And it "urg[ed] the [c]ourt not to wait an additional week" before proceeding to disposition. It argues "as a factual matter" that the "court *did* conduct a separate disposition hearing after announcing its decision on the record," and that Mother's and Father's closing arguments were "dedicated solely to dispositional issues without offering any new dispositional evidence." Because "[n]o party requested the opportunity to submit dispositional evidence," the Department contends Mother and Father "acquiesced to the proceeding and lost the right to challenge the matter on appeal."

Analysis

A. Preservation

Before addressing the merits of Mother and Father's contention that the court failed to conduct a "separate" adjudicatory and dispositional hearing, we must consider whether the issue has been adequately preserved for our review. Md. Rule 8-131(a) provides that if an issue does not "plainly appear[] by the record to have been raised in or decided by the trial court," we "[o]rdinarily . . . will not decide [the] issue."

In this case, Mother made two objections to proceeding to disposition: 1) that the Department's information regarding Ms. W was "outside any evidence that was presented to the [c]ourt," and 2) "to a finding that the child has been . . . neglected." When she

made the first objection and was advised by the court that the Department was explaining why disposition should not be postponed, counsel responded "Okay, I didn't catch that, all right." Father, without expressly objecting to proceeding to disposition, argued that "from the adjudication perspective," S.N. was not a CINA but if the court disagreed and "we proceed to disposition" that the court leave the child with the aunt to whom he was sent.

We are not persuaded that Mother and Father adequately preserved their argument regarding the court's failure to conduct separate adjudicatory and dispositional hearings for appeal but, as we explain below, they would fare no better had they done so.

B. The Adjudicatory and Disposition Stages

As recently explained by the Court of Appeals:

> The juvenile court proceeding to determine whether the child is a CINA consists of two stages – an adjudicatory hearing and a disposition hearing.
>
> ***Adjudicatory Stage***
>
> As a first stage in resolving a CINA petition, the juvenile court is to hold an adjudicatory hearing to determine whether the department's factual allegations in the CINA petition are true. CJ §§ 3-801(c), 3-817(a); Maryland Rule 11-114. At the adjudicatory hearing, the rules of evidence apply and the allegations in the petition must be proved by a preponderance of the evidence. CJ § 3-817(b)-(c); Maryland Rule 11-114(e).
>
> ***Disposition Stage***
>
> If the court finds that the allegations in the petition are true, the court then holds a separate disposition hearing to determine whether the child is, in fact, a CINA and, if so, the nature of any necessary court intervention. CJ §§ 3-801(m), 3-819(a). Although the disposition hearing is "separate" from the adjudicatory hearing, the two hearings are ordinarily to be held on the same day. CJ § 3-819(a). At the disposition stage, it is left to the discretion of the juvenile court whether to insist on strict application of the rules of

> evidence. Maryland Rule 5-101(c)(6). The court may find that the child is not a CINA and dismiss the case. CJ § 3-819(b)(1)(i). Alternatively, the court may determine that the child is a CINA, in which case it may take one of three actions: (1) decide not to change the child's current custody; (2) commit the child to the custody of a parent, relative, or another suitable individual; or (3) commit the child to the custody of the local department of social services or the Maryland Department of Health. CJ § 3-819(b)(1)(iii). If the child is placed out of the home, the court must later hold a permanency planning hearing to determine a permanency plan for the child. CJ § 3-823(b).

In re O.P., 470 Md. 225, 236-37 (2020).

All parties look to *In re J.R.*, 246 Md. App, 707 (2020), for support of their respective positions. In *J.R.*, we determined that "even though the disposition was held on the same day as the adjudicatory hearing," "the hearing was not separate, as required [CJ] § 3-819(a)(1)" because "there is no indication as to where the adjudication hearing ends and when the disposition starts." *Id*. at 756. And that it was harmful because the parents "were not given the opportunity to present evidence as to why they would be able to provide J.R. with the proper care and attention, nor did the court outline specific findings as to why the court felt the need for removal." *Id*. at 757.

Here, unlike in *J.R.*, the record in this case reflects when the evidentiary portion of the adjudication stage had ended and when the disposition stage began. During the adjudicatory hearing, the court heard testimony and received evidence presented by the Department and the Mother. At its conclusion, the court discussed with the parties and their counsel scheduling disposition the following week when it would hear arguments and put its findings on the record "and go from there." Only the Department objected to doing so, and the court ultimately decided to continue with disposition that day. In

hindsight, as S.N.'s counsel has stated, "the correct procedure would have been to sustain the proven facts as stated in the Amended CINA petition then hear arguments whether Disposition should be bifurcated and if there was no good cause to bifurcate, move into Disposition."

That said, we are not persuaded that proceeding as the court did was harmful to the parents in this case. Unlike *In re J.R.*, Mother and Father never contended that they were in a position to physically care for S.N. But they were permitted to present evidence and to argue against a finding of neglect because they were providing proper care for S.N. by placing him with Ms. W.[19] They point to medical records and the California social worker's report to support their position that S.N. was receiving proper care and attention from Ms. W. Their closing arguments were dedicated to both adjudication and dispositional issues without offering or attempting to offer any new evidence related to adjudication or disposition, Mother argues that "the court's failure to hold a separate hearing also prejudiced [her] in her ability to present the court with additional dispositional options," but she does not advance any proffers as to what those options might have been, nor did she do so in the circuit court.

Our review of the record indicates that the only dispositional options—short of not finding S.N. to be a CINA—related to placement. The parents' overarching goal was to place S.N. in the care of Mother's family in California. Mother, and presumably Father,

[19] Mother would not disclose Ms. W's address in her testimony. It was discovered by the California DSS based on a prior complaint against Ms. W in its records. Only then could a social worker visit her residence and assess S.N.'s well-being.

preferred that he be with Ms. W but they advanced no cogent objection to his placement with Ms. L.W.B. and his siblings.

In short, we hold that any procedural error was harmless in this case.

III.

Evidentiary Error

At the February 19, 2020 hearing, Mr. Woodard testified about the Department's investigation concerning S.N. It began when he received a January 8, 2020 report "from a treatment foster agency that does . . . respite [] placements" regarding Mother and a child "likely born on January 6th, 2020." And, after learning on January 13, 2020 that Mother and Father "were staying at a hotel on Washington Boulevard" in Laurel, Maryland, Mr. Woodard went to the hotel. There, he "tr[ied] to work with [Mother] to make a safe plan for [S.N.]," but she "refused to tell [the Department] where the baby was or who the baby was with."

Later he:

> was able to get records from Signature OB that confirmed that on May 8th, 2019 [Mother] had gone there for treatment in her first trimester with a child. And then on December 30th, 2019 she had discussed with the provider a planned delivery that would have ranged between January 1st and January 6th.[20]

[20] He also contacted the former pediatricians for S.N.'s two older siblings to inquire whether they had discussions or information about Mother, but they had no contact with Mother since the two older children "were taken out of their care."

When the Department's counsel asked "did the OBGYN records indicate whether or not [Mother] had gone ahead with that practice and delivered her child," Mother's counsel objected on hearsay grounds. Department's counsel responded that the information in the records was "the basis for what he did next" in his investigation and "inform[ed] the choices that he" took. The court overruled the objection and counsel continued her direct examination:

> [Department's counsel]: Did the information that you obtained from OBGYN indicate whether or not [Mother] had gone ahead and delivered her baby with that practice?
>
> [Mr. Woodard]: It did not indicate that.
>
> * * *
>
> [Department's counsel]: Okay, and what did you do next in your investigation after January 13th?
>
> [Mr. Woodard]: So after January 13th was when I requested medical records, that would have been on the 14th. And then on the 15th, January 15th, 2020 I spoke to [Mother's] probation agent or pre-release agent.

In her cross-examination, Mother's counsel questioned Mr. Woodard about obtaining Mother's medical records:

> [Mother's counsel]: And you indicated that you got medical records from her OBGYN?
>
> [Mr. Woodard]: Yes.
>
> [Mother's counsel]: And you had first obtained a release from my client, is that correct?
>
> [Mr. Woodard]: No.

> [Mother's counsel]: Okay so you are saying that you went there and got records –
>
> [Mr. Woodard]: Yes.
>
> [Mother's counsel]: Without my client's permission?
>
> [Mr. Woodard]: Yes.

Mother's counsel moved to strike any reference to the medical records because they were obtained without Mother's consent. The following exchange resulted:

> [Department's counsel]: Your Honor, Mr. Woodard is a CPS worker, and as such is entitled under law to receive those records and he did so and that is why they were permitted to be seen or viewed.
>
> [Mother's counsel]: That makes no sense.
>
> [Father's counsel]: Your Honor, at that time there was no open case, there was no authority by which he would have been permitted to obtain those documents. I mean, she's protected under HIPAA for those records. The court typically would provide an order that would allow persons to obtain records. There was no open case at that time. I'm not certain what authority Counsel is believing that he would have to obtain those records.
>
> * * *
>
> [Department's counsel]: There doesn't need to be an open case, he was investigating a report in the due course of his job and that is the type of thing[] that the investigators routinely do pursuant to a report received by the CAC.[21] This is common practice.

The court, agreeing with the Department, denied Mother's request to strike.

Contentions

[21] CAC presumably refers to the Child Advocacy Center.

Mother contends that "the court erred when it admitted evidence through the Department worker's testimony regarding [Mother's] medical records obtained without consent." She argues that "Maryland Code, Health[-]General Article, § 4-306, describes the compulsory process regarding the disclosure of a medical record of a person in interest by a health care provider," that was not followed by Mr. Woodard. And with that information, he sought shelter care of a child on January 17, 2020 "that he had not yet confirmed." She adds that "[e]ven if the neglect report received by [Mr.] Woodard then entitled him to [Mother's] confidential medical information, he, and through him, the [D]epartment, [were] not relieved of their obligation to adhere to a process which requires notice to [Mother] and an opportunity for her to object."

The Department contends that "Mother's claimed evidentiary error is meritless." It argues that § 4-306 "generally prohibits a *health care provider* from disclosing medical records, except under specific circumstances," but that "Mother cites no rule that required the juvenile court to exclude the evidence provided through the Department's caseworker, who is not a health care provider."

S.N.'s counsel contends that "the trial court did not err in allowing testimony by the social worker regarding mother's medical records." She argues that "Mr. Woodard's testimony was he requested medical records" but "there was no follow up testimony as to which records he referenced." In addition, "the only information presented was the fact that a child was born," which Mother testified to later. Therefore, "it can hardly be said that Mr. Woodard's testimony amounted to any harm in this matter." She adds that

"much of the information [Mr. Woodard] testified to was contained in the orders to which the trial court took judicial notice and through Mother's testimony," therefore, allowing the testimony was "at worst" harmless error.

Analysis

Maryland Code, Health-General Article ("H.G."), § 4-306, generally prohibits a "health care provider" from disclosing medical records, except under specific circumstances.[22] But the "disclosure" in this case was limited to a first trimester pregnancy and a projected birth date, and came in through Mr. Woodard, who is not a "health care provider."

[22] H.G. § 4–306(b) provides, in pertinent part:

> A health care provider shall disclose a medical record without the authorization of a person in interest:
>
> (1) To a unit of State or local government, or to a member of a multidisciplinary team assisting the unit, for purposes of investigation or treatment in a case of suspected abuse or neglect of a child or an adult, subject to the following conditions:
>
> (i) The health care provider shall disclose only the medical record of a person who is being assessed in an investigation or to whom services are being provided in accordance with Title 5, Subtitle 7 or Title 14, Subtitle 3 of the Family Law Article;
> (ii) The health care provider shall disclose only the information in the medical record that will, in the professional judgment of the provider, contribute to the:
> 1. Assessment of risk;
> 2. Development of a service plan;
> 3. Implementation of a safety plan; or
> 4. Investigation of the suspected case of abuse or neglect; and
> (iii) The medical record may be redisclosed as provided in §§ 1-201, 1-202, 1-204, and 1-205 of the Human Services Article[.]

The records did not come into evidence and Mr. Woodard's testimony regarding the medical records was admitted not for its truth but to explain the basis for his investigation. In addition, the limited disclosure related to delivery and clearly contributed to the investigation of the suspected child of abuse or neglect. Under these circumstances, we are not persuaded that seeking Mother's permission was necessary, but even if it was, we are satisfied that any error was harmless.[23] To be reversible, an error must be "substantially injurious" and affect the outcome of the case; "'[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) (citation omitted). In a harmless error review, we balance "the probability of prejudice in relation to the circumstances of the particular case." *Id.* at 13 (citation omitted).

[23] In *David N. v. St. Mary's Cty. Dep't of Soc. Servs.*, 198 Md. App. 173, 182 (2011), we explained:

> The reporting sections of subtitle 7 mandate [of Title 5 of the Family Law Article], with some exceptions, the duties to report suspected child abuse or neglect owed by certain professionals, and then by the population at large. Section 5–704 obligates identified professionals (health care practitioners, police officers, educators, and human services workers) to report suspected child abuse to the local department of social services or the appropriate law enforcement agency and to report suspected child neglect to the local department of social services. It draws no distinction in this reporting duty between child victims living inside or outside Maryland or between suspected abuse or neglect thought to have happened inside or outside Maryland. As long as the victim is a child *and the mandated reporter is acting in his or her professional capacity in Maryland*, the report must be made. The section, which has no exceptions, specifies the manner, timing, and contents of such a report.

In this case, Mother admits that the actual medical records were not admitted into evidence or even provided to the court.[24] The evidence she challenges on appeal is Mr. Woodard's testimony that he learned that she had obtained prenatal care early in her pregnancy and had been advised as to a delivery date. She argues that it was this information that triggered the "authorization for shelter care of a child that [Mr. Woodard] had not yet confirmed existed." But according to Mr. Woodard's testimony, he had already learned that a child "was likely born on January 6th, 2020" from a January 8, 2020 report "from a treatment foster care agency that does . . . respite kind of placements." And it was Mother who testified that her obstetrician had advised her to deliver S.N. in early January:

> [Department's counsel]: [Mother], you indicate that in response to your Counsel's questions that your son [S.N.] was born in Baton Rouge, Louisiana, is that correct?
>
> [Mother]: Yes.
>
> [Department's counsel]: And that was on January 6th of 2020, is that correct?
>
> [Mother]: Yes.

[24] In her brief, she states:

> It is unknown whether the medical information received by [Mr.] Woodard included mental health records, which would be subject to additional confidentiality requirements, or whether it conforms to the requirements of § 4-306(b)(1)(ii). *See* Maryland Code, Health General Article, § 4-306(b)(6)(i). [Mr.] Woodard testified about what he learned from [Mother's] medical records but the [D]epartment did not provide the medical records to counsel or the court nor did they admit the medical records as an exhibit.

> [Department's counsel]: And you were aware that by going to the State of Louisiana to give birth you were aware that you were violating a Court Order that didn't allow you to do that, isn't that correct?
>
> [Mother]: Yes.
>
> [Department's counsel]: And you were aware that you were approximately forty three weeks pregnant at that time, is that correct?
>
> [Mother]: Yes.
>
> [Department's counsel]: *And that you had been advised by a prior obstetrician in the State of Maryland to give birth two weeks prior to that, isn't that right?*
>
> [Mother]: No, it was actually the Friday. So, I had the baby on Monday, it was that Friday prior, so Friday, Saturday, Sunday, Monday, *so it was three days after she recommended that I have the baby that I had the baby*. But I actually went to the hospital two days after she had recommended. Which she said was not unsafe as long as I had the baby before I reached the forty second week mark, which was going to be on that Wednesday.

(Emphasis added).

In short, any error in admitting Mr. Woodard's testimony regarding Mother's medical records or denying the motion to strike that testimony was not so "substantially injurious" or prejudicial to be reversible error.

IV.

The CINA Determination

Contentions

Mother contends that "S.N. was not at substantial risk of harm, therefore he was not neglected, and he did not require the court's involvement because [she] placed him in California with her sister where he was safe and well-cared for." As she sees it, placing S.N. under the care of her family in California demonstrates her desire "to keep him safe

and healthy outside of her care," and that she was "acting in his best interest and the opposite of neglecting him." She argues that "[t]he court's disdain for [her] actions or motives [was not] a sufficient basis for finding that she neglected her child."

Acknowledging that "[t]he purpose of the CINA proceeding is to protect the children and promote their best interest," Father contends that "this must be done within the confines of balancing the best interest of the child with the fundamental liberty interest of the parents." And that in this case, "the court erred in finding the child CINA" because "the Department failed to prove that the child was abused and/or neglected and the child was not placed at substantial risk of harm."

The Department responds that the "court properly found S.N. to be a CINA" because "Mother's history of leaving her children unattended, blindfolded, and tied to their beds, combined with Father's history of willingly allowing Mother's abuse, placed S.N. at a substantial risk of harm and therefore constituted neglect." It argues that "the juvenile court had no obligation to wait for S.N. to suffer an injury before it could find 'neglect'" in light of both parents' refusal "to disclose the baby's location," and "to provide information concerning the child" or to bring the child to court.

S.N.'s counsel also contends that the court "correctly ruled that S.N. was CINA at the disposition hearing based on the sustained facts." She argues that when the parent's past behavior is considered, "along with mental health, substance abuse[,] and other parenting deficiencies" in their totality, it "clearly establishes neglect."

Analysis

"The purpose of CINA proceedings is 'to protect children and promote their best interests.'" *In re Priscilla*, 214 Md. App. 600, 621 (2013) (quoting *In re Rachel T.*, 77 Md. App. 20, 28 (1988)). And because those proceedings "are very often fact-intensive . . . trial courts are endowed with great discretion in making decisions concerning the best interest of the child." *In re Adoption/Guardianship of Amber R.* 417 Md. 701, 713 (2011) (internal citations and quotation marks omitted). "Neglectful behavior toward a child may seem more passive in character, but a child can be harmed as severely by a failure to tend to her needs as by affirmative abuse." *In re Priscilla*, 214 Md. App. at 621.

CJ § 3–801(s) defines neglect:

> (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.

"In determining whether a child has been neglected, a court may and must look at the totality of the circumstances . . . and must find the child a CINA by a preponderance of the evidence." *In re Priscilla B*, 214 Md. App. at 621 (citations omitted). Neglect can be thought of as "part of an overarching pattern of conduct," i*d*. at 625, that can occur "without actual harm to the child"; a "'substantial risk of harm' constitutes 'neglect.'" *In re Andrew A.*, 149 Md. App. 412, 418 (2003).

The court "need not wait for the abuse to occur and a child to suffer concomitant injury before [it] can find neglect: 'The purpose of [the CINA statute] is to protect

children—not wait for their injury.'" *Priscilla B*, 214 Md. App. at 626 (quoting *In re William B.*, 73 Md. App. 68, 77–78 (1987)). For that reason, "'a parent's past conduct is relevant to a consideration of the parent's future conduct,'" and the court's "'[r]eliance upon past behavior as a basis for ascertaining the parent's present and future actions directly serves the purpose of the CINA statute.'" *Id.* at 625-26 (quoting *In re Adriana T.*, 208 Md. App. 545, 570 (2012)).

Here, viewing the totality of the circumstances, the court found that S.N. "was in fact neglected" by Mother and Father. The evidence established that Mother had a history of leaving her young children unattended, blindfolded, and tied to their beds. In 2018, the Department provided Mother with psychological and parent-education services over five months. But it was later determined that Mother was continuing to tie her children to their beds, and, as the court had found, that Father "willingly allowed[] [M]other to tie up and abuse the older children."

The older siblings had been sheltered to the custody of the Department and were found to be CINA in January of 2019. Mother was criminally charged for child abuse in June of 2019. When S.N. was born, Mother was facing criminal charges for child abuse, was barred from having any unsupervised contact with children, and ordered to remain in Maryland, except for employment-related travel to Virginia and Washington, D.C. Mother violated these orders, travelling to Louisiana to give birth to S.N. "to avoid the child being placed in care by [the Department]."

Upon returning to Maryland, Mother and Father "refused to disclose the whereabouts of [S.N.] including any details about his birth" and "refused to present [S.N.] for a safety assessment." During the January 21, 2020 shelter hearing, the court "issued an Immediate Order for the parents to produce the child at a hearing the next morning," but they failed to do so. The court again ordered S.N. be produced at a hearing on January 29, 2020, but S.N. "was not produced." Faced with the parents' past and ongoing conduct and with no credible information as to S.N.'s actual welfare and whereabouts, the court was not required to wait for S.N. to suffer harm before it could find neglect.

Mother argues that her "conduct demonstrates that she was cognizant of the welfare of her child" pointing to her testimony that "she could not provide the necessary care for her newborn son and wanted him to be with his caring family in California." But simply sending an infant to California did not overcome the potential risk of harm. As the Department argued at the January 27 hearing:

> If the [c]ourt does not have its right to exercise its subject matter jurisdiction over the parents, there is absolutely nothing to say that one or both of these parents could not leave the State of Maryland today, go to California, and retrieve that boy and bring him back.
>
> There would be nothing other than a court order that would prohibit [Mother] from doing that, but she has proven to this [c]ourt she is more than willing to violate that order. [Father] has no such barriers to his travel, and so there is nothing – proof. There is no proof, there is no documentary evidence before this [c]ourt that says that that child is to stay in California further.

In addition, the court could not be assured that S.N. would be provided with the proper care and attention in California. When asked "[w]hat's your sister's address?" Mother responded that her sister has "not told me what her address is. Nobody in the family knows her address."

On this record, we are persuaded that the court acted well within its discretion in finding S.N. to be a CINA and committing him to the custody of the Department for placement with Ms. L.W.B.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.