

Circuit Court for Montgomery County
Case No. 06-I-18-197

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2544

September Term, 2019

IN RE: S. R.-F.

Fader, C.J.,
Berger,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: July 23, 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.

This case is before us on appeal from an order of the Circuit Court for Montgomery County, sitting as a juvenile court, closing the child welfare case regarding respondent child S.R.-F. The juvenile court, having determined that there were no further child welfare issues, terminated S.R.-F.’s Child in Need of Assistance (“CINA”) proceeding on February 19, 2020 and awarded legal and physical custody of S.R.-F. to his mother, Ms. R. (“Mother”).¹

S.R.-F.’s father, Mr. F. (“Father”), appealed the juvenile court’s order, presenting three issues for our consideration, which we have consolidated as two issues as follows:²

- I. If considered, whether the juvenile court erred by continuing S.R.-F.’s foster care placement following the

¹ A “CINA,” or “child in need of assistance,” is “a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” Md. Code (1974, 2013 Repl. Vol., 2019 Supp.), § 3-801(f)(1)-(2), of the Courts and Judicial Proceedings Article (“CJP”).

² The issues, as presented by Father, are:

- A. Was the Trial Court’s refusal to discharge S.R.-F. from foster care in November 2019 factually erroneous, legally incorrect, and/or an abuse of discretion that must be reversed?
- B. Was the Trial Court’s failure to Order that S.R.-F. “return home” to his Father factually erroneous, legally incorrect, and/or an abuse of discretion requiring reversal?
- C. Was the Closure Order award of sole legal and physical custody of S.R.-F. to Mother factually erroneous, legally incorrect, and/or an abuse of discretion requiring reversal?

November 2019 permanency plan and CINA review hearing.

- II. Whether the juvenile court erred by awarding sole legal and primary physical custody of S.R.-F. to Mother.

As we shall explain, the first issue presented by Father is moot and we shall not address its substance. We shall hold that the juvenile court neither erred nor abused its discretion by granting custody of S.R.-F. to Mother at the conclusion of the CINA case. Accordingly, we shall affirm the judgment of the juvenile court.

FACTUAL AND PROCEDURAL BACKGROUND

S.R.-F. was born on January 26, 2018. When S.R.-F. was born, Mother was twenty-five years old and Father was sixty-six years old. Father has been married to his wife, Ms. V., since January of 1990, but they have a long-distance marriage. Ms. V. resides in the Philippines, and Father resides in Potomac, Maryland. Father generally sees his wife during several multi-week visits per year in Maryland, New York, Hong Kong, or the Philippines. Father and his wife have no children. Father is independently wealthy and has not worked since 2003. Ms. V.’s family is “extremely wealthy” and “worth well over ten billion.” Ms. V. resides in the Philippines while working in her family’s property development business.

S.R.-F. is Mother’s middle child; her oldest child, D., was born in September 2008 when Mother was sixteen years old, and her youngest child was born in the fall of 2019. Mother and Father met through Mother’s involvement in the escort business when Father solicited Mother for sex work in the fall of 2016. Mother lived in Ohio but came to

Washington, D.C. to work as an escort. Mother would travel to D.C. for three days each week for work. While Mother was out of town, her grandmother cared for her child.

Mother met Father approximately six weeks after she began working as an escort. According to Mother, Father was a “coke-head” and was often drunk, but Mother continued working for him because he paid her a considerable sum of money.³ After approximately five months of spending weekends with Father, Mother became pregnant. Father initially seemed excited when Mother told him she was pregnant. During her pregnancy, Mother primarily resided in Ohio. Father would send her flowers and they talked on the phone regularly. Mother began to hope that they would be able to live together as a family, which she later acknowledged was a “fantasy world.”

After S.R.-F.’s birth on January 26, 2018, Mother resided with S.R.-F. in Ohio, but Mother and Father continued to see each other. Mother would travel with S.R.-F. to visit Father in Maryland, but the parents’ relationship was conflictual. Both Mother and Father sought protective orders against each other in March 2018, but both petitions were dismissed when neither Father nor Mother appeared at the final hearings. A notable altercation occurred between Mother and Father on April 3, 2018. Mother asserted that she became upset after Father hosted a party at which alcohol and cocaine were being consumed in the presence of Mother and then-two-month-old S.R.-F. Mother claimed that she became upset when Father began discussing his sexual fantasies about another woman,

³ Father paid Mother as much as \$10,000.00 per weekend for her services.

whom Father had allowed to spend the night due to her intoxication. Mother alleged that Father, while intoxicated, attempted to restrain her. Father claimed that he was trying to protect S.R.-F. During the altercation, Mother bit Father. Mother also “keyed” Father’s vehicle. Father further claimed that Mother attempted to hit him with her vehicle while she was holding S.R.-F. on her lap.

After the altercation, Father contacted his lawyer, who called the police the next morning. Mother was subsequently arrested for second-degree assault and malicious destruction of property; she was released the next day on bond. The State entered a *nolle prosequi* on the second-degree assault charge. Mother received probation before judgment and was ordered to pay restitution for the malicious destruction of property charge.

In addition to pursuing criminal charges following the incident, Father filed a family law action in the Circuit Court for Montgomery County on April 5, 2018. He sought and was granted emergency temporary custody of S.R.-F. on April 10, 2018. Mother filed a second request for a protective order but again failed to appear for the final hearing. While Father had custody of S.R.-F., Mother initially had supervised visitation. Mother reported that Father offered her a financial settlement if she gave up her parental rights. Mother further reported that Father offered her an arrangement of “sex for access” to S.R.-F.

In August of 2018, a *pendente lite* custody hearing was held before a magistrate in the Family Law case. The magistrate heard the report of the circuit court’s custody evaluator, who recommended that Mother be granted *pendente lite* custody. The magistrate did not issue a recommendation on that day. Also in August of 2018, the Department began

working with the family through the alternative response track.⁴ Father reported a lengthy domestic violence history between himself and Mother. The Department offered Father participation in an abused persons program, but he declined. Mother admitted that she had used marijuana occasionally in the past. Father participated in a substance abuse evaluation in September 2018 and disclosed past cocaine and marijuana use, as well as the use of alcohol for stress relief. The addiction and recovery specialist who completed Father’s evaluation concluded that Father had a “high probability” of a substance abuse disorder. The evaluator recommended that Father participate in an intensive outpatient treatment program, and Father signed a safety plan in which he agreed to not use any illegal substances or alcohol when caring for S.R.-F. On September 7, 2019, the magistrate recommended awarding *pendente lite* custody of S.R.-F. to Mother. Father filed exceptions.⁵

⁴ The alternative response track for child welfare investigations is utilized in certain low risk child abuse and neglect cases. The alternative response track includes a “comprehensive assessment of: (i) risk of harm to the child; (ii) risk of subsequent child abuse or neglect; (iii) family strengths and needs; and (iv) the provision of or referral for necessary services.” Md. Code (1984, 2019 Repl. Vol.), § 5-706(a)(1) of the Family Law Article (“FL”). An alternative response “does not include . . . an investigation . . . or a formal determination as to whether child abuse or neglect has occurred.” FL § 5-706(a)(2).

⁵ From the record, it is difficult to ascertain what came of Father’s exceptions and when, if ever, an order was ever entered by a circuit court judge in the family law case following the recommendation of the magistrate. It appears that S.R.-F. remained in Father’s custody pursuant to the April 10, 2018 emergency temporary custody order until his removal in December 2018.

The Department asked both parents to participate in a Family Involvement Meeting (“FIM”) on September 20, 2018 following the magistrate’s findings in the family law case. The FIM did not occur. At the time, the Department believed that Father had tested positive for cocaine. The Department later learned that the positive test had been erroneous, and all of Father’s remaining tests for cocaine were negative.

On October 16, 2018, Father told the Department’s social worker that he had stopped using all substances other than alcohol and that he had hired three babysitters, each of whom would work an eight-hour shift, to supervise his interactions with S.R.-F. When the Department arrived for a home visit at Father’s home on October 25, 2018, Mother was staying at Father’s home with S.R.-F.⁶ The parents advised the Department that they were attempting to resolve their custody dispute proceeding before the first day of trial in the family law case, which was scheduled for October 30, 2018. The Department’s social worker attempted to present strategies for effective conflict resolution to Mother and Father.

On November 6, 2018, Father informed the Department, through counsel, that he would no longer participate in any further urinalysis or contact with the substance evaluator. Father also declined additional services from the Department and asserted that, due to his financial resources, he was the more fit parent.

⁶ Mother and Father had at some point resumed their relationship, but precisely when this occurred is unclear from the record. Mother later reported that Father was physically aggressive to her during their resumed relationship.

On November 9, 2018, the police responded to Father’s residence to investigate a possible physical assault on Mother by Father. The police contacted the Department, and the Department sent its on-call social workers to Father’s residence. Both parents admitted to having consumed alcohol at three restaurants and then driving home with S.R.-F. in the vehicle. Mother admitted to having taken shots of tequila during the evening. Father smelled strongly of alcohol, stumbled when he stood, and had slow and slurred speech. Father became agitated and told police that he had an unsecured Glock in his bedroom. Father said that he had “fired” and “excommunicated” the Department’s social workers. Father told the social workers that he would have “armed guards” to “blockade” them.

Father was unwilling to let Mother take S.R.-F. and refused to let neighbors care for S.R.-F. Father agreed to allow a nanny, Ms. B., to move into the home for the weekend to stay with S.R.-F. while he went to a hotel. Mother expressed concern that Ms. B. was a sex worker. The Department permitted Ms. B. to care for S.R.-F. after confirming that she had no child welfare or criminal history, was familiar with S.R.-F., and was appropriate when she arrived at the residence. As Father was leaving the residence, he invited one of the police officers to come to the hotel with him, stating that they would “get drunk and get some hookers” and commenting that Mother “gives one hell of a blow job.” Father signed a safety plan agreeing that Ms. B. would be S.R.-F.’s primary caregiver until a FIM scheduled for November 13, 2018. Both parents agreed to suspend their contact with S.R.-F. until the November 13 meeting.

At the FIM on November 13, 2018, Father agreed to have another adult present at all times to supervise his contact with S.R.-F. until the custody hearing that was then scheduled for November 20, 2018. The hearing did not occur on November 20, 2018, and, on November 21, 2018, the Department met with Father and he agreed to continue the supervised contact arrangement. Ms. B. and Father's wife, Ms. V., were identified as approved supervisors.

In late November 2018, Father, S.R.-F., Ms. B., and Ms. V. went to New York City for the Thanksgiving holiday. On November 23, 2018, Ms. B. and Ms. V. brought S.R.-F. to the Mount Sinai Hospital emergency department; Father did not come to the hospital. Physicians determined that S.R.-F. had sustained a femur fracture. Father, Ms. V., and Ms. B. gave inconsistent accounts of how the injury had occurred. After Father's attorney notified Mother of S.R.-F.'s injury, Mother contacted the Department. S.R.-F. was examined at Children's National Medical Center. Medical staff from Children's National Medical Center advised the Department that femur fractures are usually intentional, but it was unclear whether S.R.-F.'s fracture was accidental or non-accidental. Due to S.R.-F.'s femur fracture, as well as ongoing domestic violence and substance abuse concerns, S.R.-F. was placed in shelter care on November 28, 2018.⁷

On December 18, 2018, S.R.-F. was found to be a CINA. Custody was granted to the Department for placement in foster care. Neither parent contested the allegations in the

⁷ “‘Shelter care’ means a temporary placement of a child outside of the home at any time before disposition.” CJP § 3-801(bb).

Department's petition. The juvenile court ordered both parents to participate in psychological and substance abuse evaluations and follow all treatment recommendations, submit to random urinalysis, abstain from the use of alcohol, illegal drugs, and non-prescribed medications, and participate in parenting coaching. The court further ordered that Father continue participating in psychiatric treatment until otherwise therapeutically indicated. The juvenile court ordered that both parents have supervised visitation at a minimum of once weekly for two hours.

On February 6, 2019, Mother incidentally discovered a GPS tracking device on her vehicle during a routine oil change; it was unclear how long the tracking device had been on her vehicle. Mother had reported to the Department's workers that she was fearful of Father based upon his past behaviors and she was "very shaken and disturbed" and filed a police report. When the Department asked Father about the tracker, Father informed the Department's social worker that, in his view, "it was legal to [place the tracker] and that his attorney would not condone any illegal behaviors." When asked why he placed the tracker on Mother's vehicle, Father explained that "they" had concerns that Mother was still "hooking" and "this way they could monitor her activities." Father "did not seem to have any reservations about this behavior and justified it as such."

After S.R.-F. was found to be a CINA, both parents participated in evaluations and services as required by the court. Father participated in a psychological evaluation with Katherine A. Martin, Ph.D. over four dates in February and March 2019. Dr. Martin concluded that Father did not accept responsibility for his past actions. He "presented as

narcissistic and consistently used language to emphasize his power, wealth, and perceived importance.” Father told Dr. Martin that he was not accountable for the Department’s involvement and “often talked about how he was going to ‘change the system’ through his considerable financial means.” Father self-reported “financial resources . . . adequate to accomplish abduction” and “utilization of off-duty police and bodyguards on his payroll.” Father told Dr. Martin that he was “not a call girl kind of guy” although he admitted to having hired twelve different sex workers in his life. Father completed outpatient drug treatment as ordered by the juvenile court but minimized the value of treatment and continued to deny any substance abuse issues. Father told Dr. Martin that completing substance abuse treatment helped him have better insight to mother’s behavior because most people in substance abuse treatment and Alcoholics Anonymous were of Mother’s socioeconomic class. Father told Dr. Martin that the Department misunderstood a photograph showing him with cocaine because the Department’s workers “came from a lower socioeconomic status and did not understand the pattern of cocaine use by wealthy people.”

Dr. Martin concluded that Father had an “inflated sense of self-importance” and a “pattern of relying on intellectualization and rationalization to avoid his role in personal difficulties.” Dr. Martin found that Father “tends to engage in controlling and dominance behaviors in order to get what he wants” and “tries to utilize [his] considerable financial resources to establish power and control.” Dr. Martin found Father to be “preoccupied with his own needs, potentially at the expense of others.” Dr. Martin opined that Father

“demonstrated little insight into his role in his problematic relationship with” Mother. Dr. Martin diagnosed Father with Narcissistic Personality Disorder and Alcohol, Stimulant (Cocaine), and Cannabis Use Disorders. Dr. Martin further expressed concerns about Father’s “ability to cooperatively parent with” Mother due to his issues including “privacy (such as surveilling the other parent).”

While S.R.-F. remained in foster care, both parents progressed from supervised to unsupervised and overnight visits with S.R.-F. Mother’s visits included five-day overnight visits in Ohio, and Father’s visits progressed to three overnight visits per week. On November 12, 2019, Father filed a “Motion for Discharge of CINA Case, Implementation of Permanency Plan, and [S.R.-F.] Return to Father’s Custody.” Father attached to his motion, *inter alia*, a letter from the New York State Office of Children and Family Services that provided that it had, after review, “decide[d] to legally seal the report” of the New York State Child Abuse and Maltreatment Register stemming from S.R.-F.’s femur fracture. The letter further provided that “the report has been amended to show it is unfounded.” Father also attached a letter and medical records from Shady Grove Orthopedics concluding that S.R.-F.’s femur fracture was “at least 6 weeks old” as of December 6, 2018.⁸

⁸ The documents from the New York State Office of Children and Family Services and Shady Grove Orthopedics were not entered into evidence at any hearing.

The juvenile court held a permanency planning hearing on November 21, 2019. The Department submitted a court report, in which it recommended that the juvenile court continue to find S.R.-F. a CINA. The Department asked the juvenile court to hold a review hearing in sixty days in order to allow the parents to establish a viable custody plan. Father requested that the juvenile court close the CINA proceeding and grant him custody pending further proceedings in the family law case. Mother also requested that the CINA proceeding be closed but with custody awarded to her. The juvenile court explained that it had “no intention of disrupting [S.R.-F.’s] situation at present” and continued S.R.-F.’s placement in foster care.

In a written order dated November 27, 2019 and docketed December 3, 2019, the juvenile court continued S.R.-F.’s plan of reunification, continued S.R.-F.’s overnight visitation with both parents, and continued S.R.-F.’s custody with the Department. The juvenile court scheduled a review hearing for January 23, 2020, which was subsequently rescheduled to February 6, 2020 due to scheduling conflicts. Father filed an appeal to this Court, but Father’s appeal was dismissed pursuant to Maryland Rule 8-602(b)(1) as not allowed by law.

During the two-month period leading up to the February hearing, both Father and Father’s attorney “sent multiple correspondences to the Department containing photos of [Mother] allegedly advertising herself for sex on escort websites.” Father also sent the Department photographs of Mother in various locations. Based upon the correspondence, the Department had concerns about Father’s “seemingly constant tracking of [Mother’s]

activities in an effort to defame her and portray her as an unfit parent rather than to just focus on himself and his relationship with” S.R.-F.

The parties returned to the juvenile court on February 6, 2020 for a review hearing. The Department, both parents, and S.R.-F.’s counsel all agreed that there were no remaining child welfare concerns. All parties agreed that the CINA case should be closed, but the parties disagreed as to how the juvenile court should address custody of S.R.-F. when closing the case. At this time, S.R.-F. was doing well in his foster home and there were no concerns regarding his visitation with either parent. The Department had visited Father’s home and determined it to be appropriate. The Department had worked with the Franklin County Department of Social Services in Ohio to complete a home study of Mother’s home, which included a child protective services and criminal background clearance for Mother as well as the father of Mother’s youngest child, with whom Mother resided. Mother’s home was determined to be appropriate.

Father testified that he believed that S.R.-F. should remain in Maryland in order for there to be “continuity with his life” and maintain contact with his foster parents, who Father had welcomed into his life “as an extended family.” Father envisioned S.R.-F.’s relationship with the foster parents continuing “indefinitely” even “into adulthood.”

Father testified that he believed it would be appropriate for S.R.-F. to spend “a week or so a month in Ohio” with Mother. Father expressed concerns about “so many unknowns” with Mother in Ohio and an uncertain plan for S.R.-F.’s future in Ohio. Father explained that Mother’s “hands are full” dealing with her two other children and that it

“may not be the right time for her to have a majority of the time with” S.R.-F. Although Mother’s home in Ohio had been investigated, Father maintained that the investigating agency “ha[d] no clue as to what’s going on” and that the investigation was “on the surface” and was a “superficial, lackadaisical effort.” Father testified that he had “delegated” to his attorney to “check things” regarding Mother and her family in Ohio. Father explained that he would give his attorney “objectives and tasks” and she would “follow[] through on these objections” and “handle[] certain things.” Father would “get information on certain aspects from time to time” but “this [wa]s [his attorney’s] battlefield.”

Father further testified that he “delegate[d] to [his attorney and] anybody else that she brings on board to take care of things” and that he was “at arm’s length sometimes on certain aspects of this.” Father explained that there were “certain aspects of this that would best be handled with simply attorney privilege in place” and that “it may not be wise for [Father] to be involved,” including “possible surveillance” and “things like that.” Father acknowledged that he had received multiple reports from private investigators “from time to time” including “several” in the two months proceeding the February hearing. Father testified that the purpose of the surveillance was “for [S.R.-F.’s] safety,” emphasizing again that, in Father’s view, “Ohio is an unknown.” Father also testified that he had seen Mother’s photograph on a website advertising her escort services as recently as January 2020. Father also produced a photograph of the advertisement.

The juvenile court also heard and considered testimony from Mother. Mother testified that visits with S.R.-F. in Ohio had gone well and that S.R.-F. enjoyed spending

time with Mother and other family members, including S.R.-F.'s eleven-year-old brother and infant sister. Mother testified that she was enrolled in a dual program of Columbus State Community College and the Ohio State University, from which she hoped to graduate in mid-2020. Mother explained that she had identified a preschool for S.R.-F. to attend if he were to live with her in Ohio and that S.R.-F. could go to the same pediatrician she already used for her two other children. Mother testified that she had not worked as an escort since December 1, 2019 and that she did not know where the photograph produced by Father had come from.

The Department acknowledged in closing argument that the juvenile court needed to decide “what happens at the end of a CINA case.” The Department did not advocate for a specific arrangement but did express concerns that Father’s “obsessing about what [Mother is] doing makes [Father] look very unreasonable.” The Department argued that Mother’s demeanor on the witness stand showed her to be “genuine and honest” while Father “seems at best to be deflecting and insincere and it doesn’t help him.” Counsel for S.R.-F. argued that “it would be good for [S.R.-F.] to be able to settle in one spot” but that S.R.-F. “needs to see both parents.”

In closing, Father argued that he had no objection to the parties having equal time with S.R.-F. Father argued that his focus was on ensuring “that the child is going to be safe.” Father asserted that “moving to Ohio would disrupt” S.R.-F.’s “transition with the foster parents and would make it more difficult to maintain [S.R.-F.’s] relationship [with

the foster parents], at least in the early months.” Mother argued in closing that it was in S.R.-F.’s best interests to be with Mother in Ohio full-time.

At the conclusion of the hearing, the juvenile court expressed concerns about Father’s surveillance of Mother and Father’s explanation that the surveillance of Mother was “his lawyer’s job,” which the court found suggested that Father “ha[s] people who do [his] bidding.” The court found Father’s surveillance of Mother to be “border[ing] on stalking.” The juvenile court agreed “with the Department that it’s time to close this case” but explained that it “s[aw] some serious child welfare issues because of . . . what has been Father’s modus operandi during this process.” The court was “very worried about [Father’s] ability to understand where the lines are.” The juvenile court explained that it would “close the case” and would “very briefly” take the matter under advisement to “set[] up . . . the parenting time and the going forward.” The court observed that “[i]t’s rather rare that we have two parents in the CINA world who come out of it in a position where they are both able to be parents, although not together”

On February 19, 2020, the juvenile court issued an order closing S.R.-F.’s CINA case, rescinding the jurisdiction of the juvenile court, and terminating the protective supervision of the Department. The court found that “Mother and Father have a contentious relationship,” and the juvenile court was “particularly troubled by Father’s relentless surveillance of Mother and her whereabouts, including Father placing a tracking device on her vehicle.” The juvenile court further referred to Father’s testimony “that the surveillance was necessary to monitor Mother’s activities in Ohio” and observed that “[o]n

cross-examination, [Father] refused to answer questions about the surveillance and claimed that surveillance was ‘delegated to his attorney’ and the parties would have to ‘talk to [his attorney] about that.’” The juvenile court concluded that Father’s attitude of “disdain and disregard” toward Mother, as well as his surveillance of Mother and “refusal to face reality . . . demonstrates an inability to co-parent.” The Court granted Mother primary residential custody and sole legal custody of S.R.-F. and granted Father “parenting time with [S.R.-F.] as the parties agree.”

This appeal followed.⁹ Additional facts shall be discussed as necessitated by our consideration of the issues on appeal.

DISCUSSION

I.

The first issue raised by Father on appeal is that the juvenile court erred by continuing S.R.-F.’s foster care placement following the November 21, 2019 permanency plan hearing. Father asserts that the continuation of S.R.-F. in foster care at that time, when no child welfare issues remained, constitutes reversible error. We shall not address this issue because it is moot.

An issue is moot when there is no longer an existing controversy or when there is no longer an effective remedy the Court could grant. *Suter v. Stuckey*, 402 Md. 211, 219

⁹ Father, Mother, and the Department all filed briefs and participated in argument in this appeal. S.R.-F. did not participate separately in this appeal, but joined the brief filed by the Department.

(2007). Only in rare instances will a reviewing appellate court exercise its discretion to address the merits of a moot case. *Id.* at 220 (“Under certain circumstances, however, [the Court of Appeals] has found it appropriate to address the merits of a moot case . . . If a case implicates a matter of important public policy and is likely to recur but evade review, this court may consider the merits of a moot case.”)

This issue is moot because there is no effective remedy that we could grant Father. Even if we were to agree with Father that the juvenile court erred by not closing S.R.-F.’s CINA case earlier, there is no appropriate remedy to order. The juvenile court ultimately closed S.R.-F.’s CINA case in February of 2020. We are unable to turn back the clock and require that S.R.-F. be found to no longer be a CINA three months earlier. We decline to exercise our discretion to review a moot issue in this case. We, therefore, shall not address the merits of Father’s assertion that the juvenile court erred by continuing S.R.-F.’s foster care placement in November 2019.

II.

Father further contends that the juvenile court erred by granting primary physical and sole legal custody of S.R.-F. to Mother. Father contends that the juvenile court was required to “return [S.R.-F.] home” at the close of the CINA case and that the meaning of “return home” in this case was to Father’s custody because Father was the most recent

custodian of S.R.-F. prior to the commencement of the CINA case pursuant to the April 10, 2018 emergency temporary custody order.¹⁰

The Department, S.R.-F., and Mother assert that Father did not specifically argue before the juvenile court at the February 6, 2020 hearing that he should be granted sole custody and that the April 2018 emergency custody order should be revived, and, therefore, that this issue is not properly before us for our consideration on appeal. *See* Md. Rule 8-131(a) (“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court”). Indeed, the record reflects that Father argued in closing that he did not “want for the child to go to Ohio full time” and that he was “not asking for full-time custody here today” and that “[e]ven equal time” would be acceptable. Father did, however, argue in his Motion for Discharge of CINA Case, Implementation of Permanency Plan, and [S.R.-F.] Return to Father’s Custody that S.R.-F. should “be returned to Father, [S.R.-F.’s] previously [o]rdered sole custodian.” Father ultimately conceded that he would be content with something less than full custody, but he continued to maintain that he should be granted primary physical custody. Because this issue is at least arguably preserved, we shall address it on appeal.

¹⁰ Father devotes several pages of his brief to his argument that the juvenile court should have awarded custody to Father because that was the “*status quo ante*” of the CINA action, but elsewhere asserts that the juvenile court’s “only task was to release S.R.-F. to both parents . . . and let the Family Division rule on custody, access, etc.”

Courts have broad authority to protect a minor child’s best interests, particularly when the child has come under the jurisdiction of the court due to allegations of abuse or neglect. *In re Najasha B.*, 409 Md. 20, 33-34 (2009). The Court of Appeals has explained:

The broad policy of the CINA Subtitle is to ensure that juvenile courts (and local departments of social services) exercise authority to protect and advance a child’s best interests when court intervention is required. *See* CJP §§ 3-801(f) and 3-802. The State of Maryland has a *parens patriae* “interest in caring for those, such as minors, who cannot care for themselves” and “the child’s welfare is a consideration that is of transcendent importance when the child might . . . be in jeopardy.” *In re Mark M.*, 365 Md. 687, 705-06, 782 A.2d 332, 343 (2001) (internal quotation marks omitted) (stating that visitation may be restricted or even denied when the child’s health or welfare is threatened). In furtherance of this interest, we have “recognized that in cases where abuse or neglect is evidenced, particularly in a CINA case, the court’s role is necessarily more pro-active.” *Id.* The juvenile court, “acting under the State’s *parens patriae* authority, is in the unique position to marshal the applicable facts, assess the situation, and determine the correct means of fulfilling a child’s best interests.” *Id.* at 707, 782 A.2d at 343-44.

In re Najasha B., *supra*, 409 Md. at 33-34.

The “return home” language upon which Father focuses when arguing that the juvenile court should have restored the April 2018 emergency custody order granting him sole custody is set forth in CJP § 3-823, which addresses permanency planning hearings. Section 3-823(f) of the Courts and Judicial Proceedings Article includes the term “return home” in the following context:

The court may not order a child to be continued in a placement under subsection (e)(1)(i)5 of this section unless the court finds that the person or agency to which the child is committed has

documented a compelling reason for determining that it would not be in the best interest of the child to:

- (1) Return home;
- (2) Be referred for termination of parental rights;
or
- (3) Be placed for adoption or guardianship with a specified and appropriate relative or legal guardian willing to care for the child.

Notably, CJP § 3-823(e)(1)(i)5 addresses only “a child at least 16 years old” for whom “another planned permanent living arrangement” is recommended. S.R.-F. is two years old and does not have a permanency plan of another planned permanent living arrangement. The “return home” language cited by Father, therefore, addresses a factual circumstance that is not presented in this appeal.

The Department asserts that Section 3-804 of the Courts and Judicial Proceedings Article, which governs the jurisdiction of the juvenile court in CINA cases, would be rendered meaningless if we adopted Father’s argument that a juvenile court cannot make custody determinations when terminating a CINA proceeding but instead is required to revive a previous custody order. Section 3-804 provides in relevant part:

(b) If the court obtains jurisdiction over a child, that jurisdiction continues in that case until the child reaches the age of 21 years, unless the court terminates the case.

(c) After the court terminates jurisdiction, a custody order issued by the court in a CINA case:

- (1) Remains in effect; and
- (2) May be revised or superseded only by another court of competent jurisdiction.

Section 3-804(c) specifically applies in circumstances when a juvenile court terminates jurisdiction in a CINA case.

We do not read CJP § 3-804 as establishing the authority for the juvenile court to issue a custody order in circumstances such as those presented in this case, but it does acknowledge the juvenile court’s authority to issue custody orders that remain in effect after the juvenile court terminates jurisdiction. In our view, the juvenile court’s authority to issue a custody order at the close of a CINA case stems from the court’s inherent *parens patriae* authority. See *In re Najasha B.*, *supra*, 409 Md. at 33-34. The juvenile court has a “pro-active” role while “acting under the State’s *parens patriae* authority” to “determine the correct means of fulfilling a child’s best interests.” *Id.* (quotation and citation omitted). This authority includes the ability to determine an appropriate custodial arrangement for a child at the close of the CINA case. We, therefore, reject Father’s assertion that the juvenile court exceeded its authority by making the custody determination at issue in this case.

We next turn to whether the juvenile court’s determination that granting primary physical and sole legal custody of S.R.-F.’s to Mother served S.R.-F.’s best interests constituted reversible error. In child custody and termination of parental rights cases, this court utilizes three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003).

The Court of Appeals described the three interrelated standards as follows:

We point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131 (c)] applies. [Second,] if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be

required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

Id. at 586.

Our review of the record indicates that the juvenile court's factual findings in this case were not clearly erroneous. The juvenile court had the opportunity to observe Father's tone and demeanor in the courtroom, including his refusal to fully answer questions about his surveillance of Mother during cross-examination. The juvenile court was presented with evidence that Father had surveilled Mother (or arranged for other people to surveil Mother on his orders) and failed to recognize any harm that his surveillance might have caused to Mother or the effect that his surveillance of Mother may have on the parties' ability to co-parent. The juvenile court also had the benefit of the Department's reports based upon the Department's social workers' observations about the family as well as the thirteen-page report of the psychological evaluation of Father performed by Katherine A. Martin, Ph.D. Dr. Martin expressed significant concern about Father's "controlling and dominance behaviors," lack of "insight into his role in his problematic relationship with" Mother, and Father's poor "ability to cooperatively parent with" Mother due to his issues including "privacy (such as surveilling the other parent)."¹¹

¹¹ Father emphasizes that the juvenile court did not expressly state any reliance upon either parties' psychological evaluations. The evaluations, however, were part of the record before the juvenile court. The juvenile court's Child Welfare Closure Order

The juvenile court was presented with evidence that Mother had complied with the Department's requests and was ready, willing, and able to provide care for S.R.-F. at her home in Ohio. Mother participated in a psychological evaluation that revealed no significant concerns, although Mother did present as "being under considerable stress" and was at times "at risk for irritability or even abrupt angry outbursts." Mother presented evidence of her plans for S.R.-F.'s education and medical care in Ohio as well as evidence of S.R.-F.'s close relationships with his siblings and other family members in Ohio.

The juvenile court observed that this case presented a "rather rare" situation in that both parents were fit parents able to care for S.R.-F., "although not together." In this unusual case, the juvenile court was reasonably concerned about the potential negative impact of the parents' contentious relationship on S.R.-F., a child who had already been subject to significant disruption and child welfare involvement in his life at two years of age. The record reflects that the juvenile court carefully considered S.R.-F.'s best interests -- the "transcendent standard" in custody disputes, *see In re Adoption/Guardianship of Cadence B.*, 417 Md. 146, 157 (2010) -- when determining an appropriate custody arrangement.

Father argues that he presented evidence that would support a conclusion that he should have primary, or at least equally shared, custody of S.R.-F. Specifically, Father

specifically provided that the court had considered "the entirety of the information presented and received." We disagree with Father that the psychological evaluations or any other pieces of evidence in the record are irrelevant, regardless of whether the juvenile court specifically referenced them.

points to his close relationship with S.R.-F., Father’s past efforts to ensure that S.R.-F. had appropriate medical and dental care, the close relationship that Father had developed with S.R.-F.’s foster parents, the location of Father’s home, Father’s availability to parent S.R.-F. in light of Father being retired, as well as several other factors. We shall not re-weigh all of the evidence presented before the juvenile court and second-guess the juvenile court’s custody determination. As an appellate court, it is not our role to serve as fact-finder or to make an independent determination as to what custody arrangement would serve S.R.-F.’s best interests. The juvenile court “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.” *Yve S.*, *supra*, 373 Md. at 568.

Furthermore, the juvenile court had reasonable concerns about Father’s willingness to co-parent with Mother. As we discussed *supra*, the psychologist who completed Father’s psychological evaluation had significant concerns regarding this issue. The ability of the parents to communicate effectively is “the most important factor” for a trial court’s consideration when determining whether to award joint custody. *Taylor v. Taylor*, 390 Md. 290, 304 (1986) (“Rarely, if ever, should joint legal custody be awarded in the absence of a record of mature conduct on the part of the parents evidencing an ability to effectively communicate with each other concerning the best interests of the child, and then only when it is possible to make a finding of a strong potential for such conduct in the future.”). The

location of the parents' residences in Maryland and Ohio would further complicate a shared custody arrangement.

We touch briefly upon Father's assertion that the juvenile court's ruling was the result of the trial court's improper personal bias. Father alleges in his brief that the juvenile court was biased against Father based upon "his age (68), his sex (male), or his social economic status (a resident of Potomac able to afford private counsel)." First, we observe that Father did not raise this precise issue of improper bias before the trial court, and, therefore, this issue is not properly before us on appeal. Md. Rule 8-131(a). Furthermore, assuming *arguendo* that this issue was preserved, we see no merit to Father's allegations of bias. The juvenile court's conclusions regarding Father were supported by the evidence in the record and permissible inferences drawn therefrom.

In this unusual CINA case involving two parents who were both ready, willing, and able to provide care for S.R.-F., although not together, the juvenile court was tasked with determining an appropriate custodial arrangement for the child following the close of his CINA case. Having reviewed the record, we conclude that the juvenile court's custody determination in this case was supported by competent evidence. The juvenile court's custody determination appropriately focused on S.R.-F.'s best interests and stability and was premised upon factual findings that were not clearly erroneous. Furthermore, as we have explained, the juvenile court's determination that S.R.-F.'s best interests would be served by an award of sole legal and primary physical custody to Mother was not "well removed from any center mark imagined by the reviewing court and beyond the fringe of

what [we] deem[] minimally acceptable” and does not constitute an abuse of discretion. *Yve S., supra*, 373 Md. at 583-84. We, therefore, shall not disturb the juvenile court’s custody determination on appeal. Accordingly, we affirm.

We note, however, that the juvenile judge was determining what custody arrangement would serve S.R.-F.’s best interests at the close of the CINA case and did not undertake a full analysis of the custody factors set forth in *Montgomery County DSS v. Sanders*, 38 Md. App. 406 (1977), and *Taylor v. Taylor*, 306 Md. 290 (1986). Furthermore, at the time of the juvenile court’s ruling at the close of S.R.-F.’s CINA case, an active custody case was pending before the Family Division of the Circuit Court for Montgomery County. Because Father had already filed a complaint for custody of S.R.-F., which was pending at the time of the juvenile court’s ruling, and because the juvenile court did not undertake a full custody analysis in this case, Father would not be required to demonstrate a material change of circumstances in that custody case from the time of the juvenile court’s ruling in February 2020.

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