

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2822

September Term, 2018

IN RE: C.M.

Meredith,
Kehoe,
Gould,

JJ.

Opinion by Meredith, J.

Filed: July 16, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In this case, Ms. M. (“Appellant” or “Mother”) is appealing two orders of the Circuit Court for Frederick County, sitting as the juvenile court. The first decision was rendered after a hearing on November 5, 2018, and resulted in a finding that Mother’s seven-year-old daughter, C.M., was a child in need of assistance (“CINA”), pursuant to Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article (“CJP”), § 3-801 *et seq.* The court accepted the recommendations of the Frederick County Department of Social Services (“DSS” or “the Department”), appellee, and placed C.M. in the custody of her father (“Father”), under an order of protective supervision, with Mother to have supervised visitation at least twice a week.¹ The court ordered DSS to “ensure that all children see the mother during the holidays for an appropriate amount of time, all of which to be determined by the Department.”

The Thanksgiving visit was not conducted in accordance with DSS’s directions, and Father contacted DSS shortly thereafter to inform the Department that he could no longer care for C.M. Accordingly, following an emergency shelter hearing for C.M. on December 3, 2018, the court ordered C.M. to be placed in licensed foster care, with each parent to have one weekly visit.

The merits hearing on the removal of C.M. from her placement in Father’s custody was conducted on December 12, 2018. At the end of that hearing, the court found that it was not appropriate either to return C.M. to Father’s custody, or to place her in the

¹ Although Father was a party to, and represented by counsel at, the circuit court proceedings, he did not file a brief in this appeal.

custody of Mother. The court ordered C.M. to remain in licensed foster care, with Father to have a minimum of one unsupervised visit a week, and Mother to have supervised visitation as previously ordered. Mother filed two notices of appeal, the first challenging the November 5, 2018 CINA finding, and the second challenging the December 12, 2018 order continuing C.M.'s placement in foster care.

QUESTIONS PRESENTED

Mother presents two questions:

- I. Was it improper to find a child CINA and eventually place the child i[n] foster care when there was a parent ready[,] willing[,] and able to take custody[?]
- II. Was it improper of the court to send the child to foster care rather than return her [to Mother] after the placement with [Father] failed[?]

Mother did not preserve any challenge to the November 5, 2018 CINA order. And Mother has failed to persuade us that the court either erred or abused its discretion in its order of December 12, 2018. Accordingly, we will affirm the judgments of the juvenile court.

FACTS AND PROCEDURAL BACKGROUND

The facts adduced at the hearings in this matter revealed the following. Mother and Father met in drug treatment in 2009, and began a relationship, although they never married. They had one child together, C.M.

C.M. was born on March 1, 2011, and resided in Frederick with Mother, Maternal Grandmother, and her half-siblings J.B. (who was born on October 17, 2001) and A.B.

(who was born on August 9, 2003). C.M.'s adult half-brother, A.M., lived with the family at various points, but, at the time of the hearings in this matter, he resided in a one-bedroom apartment in Hagerstown. Father lived in Walkersville with his wife, their son, and two stepdaughters. Pursuant to an order of court filed on February 28, 2014, Mother was granted sole legal and primary physical custody of C.M., with visitation to Father pursuant to a memorandum of understanding incorporated, but not merged, into the order. As a result of Father's incarceration for possession of cocaine with intent to distribute, Father had limited contact with C.M. before March 2018.

Mother had a long history of drug abuse and involvement with DSS. The case at issue began on October 11, 2018, when DSS filed a Petition for Continued Shelter Care and CINA Petition regarding all three of her children. The petition noted that the children had been sheltered as of 3 p.m. on October 10, 2018. A supplement detailing DSS's allegations was attached. Shelter care was continued pending a further hearing on October 15, 2018, and, after that hearing, was continued again pending a further hearing on October 31, 2018.

On October 25, 2018, DSS filed an Amended CINA Petition, alleging a history of abuse and neglect by Mother, and asking that C.M. be placed with Father under the

protective supervision of DSS.² CJP § 3-809. The October 31 adjudication hearing was continued, by consent, to November 5, 2018.

On November 5, 2018, prior to the hearing, DSS filed a Second Amended CINA Petition, and Mother agreed --- without affirming or denying the allegations --- that the allegations therein, if proved, would justify a CINA finding. The court found that the allegations had been sustained and found the children to be CINA. Although the case on appeal pertains only to C.M., the uncontested facts included the following statements relevant to the care provided by Mother:

7. That the facts on which the Department alleges that the child is a CINA are as follows:
 - A. The family has a history of contact with the Department for issues of both abuse and neglect.
 1. In February 2009, neglect of [A.M., J.B., and A.B.] was “indicated” due to strangulation of the children by [J.B. and A.B.’s father, Mr. B.], domestic violence, and substance abuse by both [Mother] and [Mr. B.].
 2. In October 2015, [C.M.] reported that [Mother] beat her up. [C.M.] exhibited concerning behaviors while the Department’s social worker was in the home, including kicking and hitting her grandmother, mother, and the social worker.
 3. In August 2017, [J.B.] found [Mother] unconscious in the bathroom, having overdosed on heroin.

² Separate CINA cases were opened for each child --- C.M.’s case was designated C-10-JV-18-000244 --- but the cases were all tried together. C.M.’s is the only case on appeal.

4. In April 2018, [Mother] threw a coffee mug at [A.B.] during an argument, which caused cuts and swelling on his ankle.
 5. In July 2018, the Department learned that [A.B.] was a victim of sex trafficking by a man he met on social media.
- B. The children have ongoing significant mental health, physical, and educational needs that have not been met while in the[ir] mother's care.
1. [J.B.] is currently diagnosed with Post Traumatic Stress Disorder (PTSD), Attention Deficit Hyperactivity Disorder (ADHD), and Intermittent Explosive Disorder.
 2. [A.B.] is currently diagnosed with PTSD, ADHD, Generalized Anxiety, and Disruptive Mood Disorder.
 3. [C.M.] is currently diagnosed with PTSD, Oppositional Defiant Disorder, Disruptive Mood Disorder, and Separation Anxiety.
 4. The children have not been provided psychiatric treatment.
 5. The family has been receiving ineffective mental health treatment since 2013.
 - a. [Mother and J.B.] often engage in verbal altercations.
 - b. [C.M.] continues to display out of control and aggressive behavior.
 - c. [Mother] continues to exhibit poor boundaries with her children and lack of appropriate discipline.
 6. In September 2018, [C.M.] attended Brook Lane's partial hospitalization program.

7. [Mother] is often unaware of [A.B.]’s whereabouts.
8. [J.B.] requires eyeglasses but [Mother] has not provided them for her.
9. [Mother] has failed to provide [J.B.] with appropriate gynecological care.
10. [J.B.] had braces and a retainer that she lost. [Mother] failed to follow up with orthodontic care and, as a result, [J.B.]’s teeth have shifted.
11. [Mother] has failed to ensure [that] the children have regularly attended school.
 - a. [C.M.] missed 47 days of school during the 2016-17 school year.
 - b. [C.M.] missed 50 days of school during the 2017-18 school year before [Mother] withdrew her from school on March 24, 2018.
 - c. [C.M.] is now home-schooled by [Mother].
 - d. [A.B.] missed 33 days of school during the 2017-18 school year.
 - e. [J.B.] missed 17.5 days of school during the 2017-18 school year.

C. [Mother] has ongoing substance abuse issues that inhibit her ability to parent her children.

1. [Mother] has been abusing substances since at least 2009.
2. [Mother] participated in the Frederick County Circuit Court’s Drug Court.
3. [Mother] overdosed on heroin in August 2017.

4. [Mother] failed to comply with substance abuse treatment at Serenity Treatment from July 2018 until September 2018.
 5. [Mother] failed to comply with substance abuse treatment at Frederick Institute and terminated treatment there in October 2018.
- D. [C.M.]’s father [,Father,] is an appropriate caregiver.
1. [Mother] has sole legal and physical custody of [C.M.].
 2. Despite concerns raised of domestic violence, marijuana use, and a criminal history, the Department has assessed [Father] to be an appropriate caregiver.
 3. [Father] is ready, willing, and able to provide appropriate care for [C.M.].
 4. [Mr. B.] is not available to provide proper care and attention [to J.B. and A.B.] as he is incarcerated at the Jessup Correctional Institute.

As noted, the court accepted the agreement of the parties that the allegations proffered in the Second Amended Petition would suffice to support a CINA finding by a preponderance of the evidence, and so found. Mother expressed no dispute with either the specific facts alleged, or that the court could find the children CINA. It was the Department’s recommendation that Father be given care of C.M. under an order of protective supervision of the Department.

At the November 5 hearing, despite agreeing that the allegations in the Second Amended CINA Petition would be sufficient to find C.M. to be a CINA, Mother expressed reservations “with regard to [the Department’s suggestion of Father] being an

appropriate caregiver[.]” She later argued that “we disagree with the placement issue. We believe that this case should be one of an order of protective supervision.” And she presented the testimony of A.M. and the 83-year-old paternal grandmother of J.B. and A.B., and urged the court to consider those two individuals as potential placement alternatives for all three children.

A.M. testified that he is the older brother of the children, was working as a caregiver and cook, and living in Hagerstown. He had custody of the children for about a month, in the late summer of 2018, pursuant to a safety plan from the Department.

Jessica Beall, the supervising social worker for the children’s cases, testified that, although the children had been placed with A.M. temporarily under a safety plan in August 2018, A.M. had been informed that he would not be considered a placement resource if the children were sheltered to the Department because his one-bedroom apartment did not provide sufficient space for the children.

The paternal grandmother of J.B. and A.B. testified that she is the mother of Mr. B., and came to Maryland from Alabama to be a resource for the children and assist in keeping them together. Her plan was to reside in Mother’s home, with Mother and Mother’s mother, to care for the children. The Department expressed concern about sending the children back to the home which was the site of all the abuse and neglect in the case, where the perpetrator still resided.

At the conclusion of the hearing, the court ordered that C.M. would be placed in the care of Father under an order of protective supervision. In light of the upcoming

holidays, the court ordered the Department to “designate family members for Thanksgiving and Christmas holidays” and to “ensure that all children see the mother during the holidays for an appropriate amount of time, all of which is to be determined by the Department.”

C.M.’s time in Father’s care was short-lived. On November 30, 2018, the Department filed a petition for continued shelter care, but with a change to foster care. CJP § 3-815. The Department attached two affidavits that explained why Father was no longer willing to provide care for C.M. The first affidavit explained why the Department was acting in an emergency fashion to change C.M.’s placement to licensed foster care, and stated:

On November 5, 2018, [C.M.] was found to be a Child in Need of Assistance due to mother’s substance abuse issues, mother’s mental health issues, and family history with the Department regarding neglect. It was ordered that [C.M.] be placed in the care and custody of [Father] under an Order of Protective Supervision.

As of November 30, 2018 the child resided with [Father] at [Father’s address].

On November 30, 2018, [Father] called CPS worker Sharon Dalessandro at 9:03 a.m. and said that he had had enough, he was leaving his wife and home and the Department needed to pick [C.M.] up from school and put her into Foster Care. [Father] said he did not want [C.M.] to remain in his home.

[Father] stated that he was going to be, “Homeless, no cell phone and no money.” He said he had no idea where he was going to be, maybe Baltimore. “I just need you to take care of this[,] Sharon.”

Multiple attempts were made to contact [Father] but they were unsuccessful. There are currently no alternative family members that [C.M.] can be placed with.

The second affidavit detailed what had occurred the previous week at the Thanksgiving visit with Mother:

As discussed and directed in Court on November 5, 2018, the Department set up a holiday visit to be supervised by family members. On November 21, 2018[,] this worker communicated with [Mother's sister, with whom J.B. had been placed in a kinship care arrangement as ordered by the court on November 5] and [paternal grandmother of J.B. and A.B.] in an attempt to arrange visitation for [Mother] and her children on Thanksgiving Day. It was made clear to both women that the children were not allowed to be in the home where they were removed from and the Thanksgiving visit could not take place there. [The grandmother] was planning to transport [Mother], [J.B.], and [C.M.] to Baltimore to visit with [A.B.] at his placement.

It was then learned that [A.B.] was approved for overnight visit. This worker spoke to [Mother's sister] after learning from the therapist at Arrow Diagnostic Center that [A.B.] had been approved for an overnight visit in Frederick, Maryland and [Mother's sister] agreed to have him at her home. This worker verified this with [Mother's sister] and again clarified that none of the children were allowed to go to the family home of [Mother] and that the Thanksgiving visit needed to take place at [Mother's sister's] home or elsewhere. [Mother's sister] had been told previously at the onset of this case by other Department workers that the children are not allowed to go to the family home from which they were removed.

This worker also spoke to [the grandmother] to make her aware that [A.B.] was approved for overnight visits to Frederick, Maryland and he would be staying at [Mother's sister's] home during his visit. [The grandmother] agreed to transport [A.B.] to and from his placement since [Mother's sister and her husband] were not willing to drive out to Baltimore.

This worker sent a text message to [Father] to make him aware of [A.B.]'s visiting in Frederick over the holiday and that there was no need for travel to Baltimore, Maryland. This worker reminded [Father] that the visit was ordered by the Court and it is important for him to follow through with Court ordered tasks.

On November 26, 2018[,] this worker learned from Jessica Williams, the Family Preservation worker for [Father] and [C.M.], that

Thanksgiving dinner was held at the family home on East South Street where [Mother] resides. [Father] later contacted this worker to vent about his concerns of [C.M.]’s behavior when she returns to his home. [Father] also complained that the older brother, [A.M.], sent the police to [Father’s] home to do a welfare check on [C.M.].

This worker met with [Mother], [A.M.], and [the grandmother], who stopped by the Department, and they verified that the Thanksgiving visit took place at [Mother’s] home. [The grandmother] stated that [Mother’s sister] stated it was fine for the children to visit at [Mother’s] home and both [A.B.] and [J.B.] were dropped off at [Mother’s] home. This worker was told by [A.M.] that he did send the police to [Father’s] home because he was concerned for her safety. [A.M.] showed this worker a picture on his phone of a message. [A.M.] stated the message was from [Father’s] wife and it stated that [Father] is crazy and she was getting a peace order. The date on the message was for September 31st and this worker informed [A.M.] he should not have called the police. This worker later spoke to [Mother’s sister] who stated she was told by [the grandmother] that she had everything worked out.

At this time[,] the Department has found no family members that are appropriate to supervise visitation. The Department will continue to follow the current Court order related to visitation and will continue to assess for an appropriate designee to supervise family visits.

On December 3, 2018, the court conducted a shelter care hearing for C.M. based on the Department’s petition. The Department informed the court that, given the Thanksgiving incident, it would no longer approve “any of those people to supervise, to even supervise visits anymore, certainly not for a placement.” The Department noted that, because there was no relative available or appropriate to provide kinship care, and Father had informed the Department that he could no longer care for C.M. due to constant harassment by Mother and A.M., and Mother was not a suitable option, the court should continue C.M.’s placement in licensed foster care, which was going well.

Mother contended that she was “willing and able to care for” C.M., and that the child should be placed with her. The court questioned Mother about her defiance of the parameters of the Thanksgiving visit that had been established by the Department, but Mother’s responses did not allay the court’s concerns, as demonstrated in the following colloquy:

[BY THE COURT]: Well, this is very sad. I’m sorry to see this disrupted. The child should have been with family. I’m not satisfied that [Mother] is, can provide a safe environment for the children at this time. I’m not satisfied she can comply with court orders. I’m not satisfied that she, I need to see more information regarding the drug testing. I’m very unhappy that a visit occurred contrary to the direction of the Department. The Court, the Court specifically gave the Department authority to provide for supervision, provide for setting up the Thanksgiving visits. So, I’m seeing a lack of compliance that’s concerning the Court.

I’m disappointed that because of this dysfunction of this family that the child is now in foster care instead of with her father. And I’m disappointed about that. I have no doubt that she’s being care[d] for well in her foster home and I think this was traumatic for this child.

[BY MOTHER]: I’m sorry, Your Honor.

[THE COURT]: It was --- you’re sorry?

[MOTHER]: Please, can I please ---

[THE COURT]: It’s up to your lawyer whether she wants you to speak. Your client wants to speak, [Mother’s attorney]. I’m leaving that up to you. You can tell her whatever you want.

[MOTHER’S ATTORNEY]: Your Honor, Your Honor, she can talk. That’s fine.

[MOTHER]: I’m not here to deny anything, but the things that are being said are not exactly how things were. I’m not going to sit back and say I’m perfect in any way or I didn’t do anything wrong.

[THE COURT]: Okay.

[MOTHER]: But the acknowledgment of, of the text message and all that, I sent text messages back, yes, I mean it's all proof, it's, it's on my phone. I mean I've copied the texts, everything. I've kept every text message. I have been harassed. I have been harassed. I have not got my visits with my children. I have been at every visit and I have not got my visits. I want what's best for my children. That's all that matters. But I have been in compliance with all of my drug treatment, all of it. I am begging you to please have mercy, please, please, I'm begging you for my children first.

[THE COURT]: Then you've got a lot of hard work to do.

[MOTHER]: I have no problem proving that ---

[THE COURT]: You got a lot of hard work to do.

[MOTHER]: --- to you, ma'am. I have no problem. You can give me everything you want me to do. I promise you will see that happen. I promise with all, you're going to see that happen. I've proved it on here. I'm going to continue proving that. Please let my little girl come home.

[THE COURT]: Well, why would I let her come home to you now if you're admitting to me that you did not follow the Court's orders and you did not follow the direction of the Department and you interfered with her placement with her father?

[MOTHER]: I didn't interfere with her placement with her father. I had --- I don't want to say I had, I had nothing to do with the arrangements that were being made and [Father] did tell me on my cellphone that I could come along to show her where she lived.

[THE COURT]: Yeah, but that's not what this Judge ordered. I don't care what [Father] said.

[MOTHER]: I, I just, I went. He said I could go. I went.

[THE COURT]: This is who I'm relying on, this lady here. I'm giving her the authority to make the decisions which are in your child's best interests with regard to everything I've ordered.

[MOTHER]: Ma'am, I have stayed clean and sober. I have been in compliance with everything, everything to prove that my kids mean everything to me. I am lost as they are without me, I am without them. I am not perfect by any means. I've made mistakes, but I'm doing everything in my power to change every mistake that I've ever made in my life because I don't want anything but my children to be happy and be with me and that is where they want to be. Please, please. Thank you.

[THE COURT]: You're welcome. Thank you. I, we are here today on a shelter care hearing in the matter of [C.M.]. This is Case No. 10-JV-18-244. The presence of the child has been waived[;] however, she's represented by her attorney, Ms. Austin, who is present here today.

Mr. Bokman is present on behalf of the Department and Ms. Richards is here on behalf of the Department. [Mother] is present. Mother's counsel is present by phone. Father's presence has been waived. He's represented here today by Ms. Gastley.

The Court has, has previously determined that IPWA [sic-Indian Child Welfare Act, or ICWA] does not apply. The Court does find that as [sic] contrary to the children [sic] to remain in her home. She was last in the custody of [Father] which was Friday right, November 30th?

[ATTORNEY FOR THE DEPARTMENT]: Correct.

* * *

[THE COURT]: I'm simply going to say [F]ather can no longer care for the child due to dysfunction among all family members.

And I do find the Department has made reasonable efforts to include and placement with [F]ather under an order of protective supervision. Now there is an emergency situation. Father can no longer . . . care for [C.M.].

In light of the above, I am granting, I'm granting shelter care. I am ordering that the child, [C.M.], be placed in licensed foster care under the temporary care, custody, limited guardianship of the Department.

I order that [Mother] be granted supervised visitation one time per week. I order that [Father] be granted unsupervised visitation one time per week. I order that all other provisions of this Court's adjudication and

disposition hearing order of November 8th, not inconsistent with this, this order remain in full force and effect.

The merits of the change in care were heard on December 12, 2018. DSS argued that C.M. should remain in licensed foster care because Mother could not demonstrate that there was no further likelihood that C.M. would not suffer further abuse and neglect under Mother's care. C.M.'s attorney told the court that C.M. missed Father and wanted to go back home with him; that she did not "voice any opposition to [Mother's] home"; and that she had "indicate[d] that she was perfectly fine remaining in a foster home." Father testified that he was ready, willing, and able to have C.M. in his custody, but that "harassment" by Mother and A.M. was intolerably disruptive to his current wife and children. Father told the court that C.M. was always welcome at his house, but "whatever decision you all are going to make you should make it. As long as it is best for [C.M.] and she is happy and she is safe and she is healthy." As noted above, Father has not appealed the court's decisions in this matter.

Mother testified that C.M. should be returned to her because "I'm her mother." Mother argued that she was "willing and able" to care for C.M. She claimed that she was not aware that the Thanksgiving visit needed to occur at her sister's house and not her own: "I didn't make those arrangements. [Father, Mother's sister, and the paternal grandmother of J.B. and A.B.] did." Mother contended that she was succeeding in the drug rehabilitation program she had been attending since July 2018, and that she would immediately enroll C.M. in school should custody be granted to her.

The court granted the Department's petition, explaining:

[THE COURT]: This is the most painful case that I think I've had in CINA. It's very[,] very painful. I need to make sure it is less painful for [C.M.] and her siblings. We are here for [a] removal hearing because [Father] basically couldn't take it anymore. [C.M.] wasn't with him for a very long while but I can understand his frustration but he couldn't take it anymore. That resulted in a very traumatic --- that removal for [C.M.] was a trauma.

It was an adverse childhood experience. And it will affect her. The court does not find that it is appropriate to return [C.M.] to [Mother's] home at this time. I hope the time will come when everybody can find reunification. The Department's involvement with [Mother]'s home goes back nearly 10 years before [C.M.]'s birth when there was violence in the home. There was violence to [A.B.] in the home and [Mother] was named as a maltreater. There was a physical abuse investigation in 2015 with [C.M.] when [C.M.] said that when [Mother] gets mad she beats [C.M.] up.

During a home visit --- excuse me --- during a visit[, C.M.] exhibited concerning behaviors to include kicking and hitting her grandmother, her mother, and a worker and spitting on the worker. I get it. She was a little girl there. She is still a little girl now. In August of 2017[, J.B.] found [Mother] unconscious in the bathroom overdosed on heroin. In April 2018[,] the Department investigated another physical abuse situation in the home, this time regarding [A.B.].

In July, it was learned that [A.B.] was the victim of child sex trafficking. [Mother] used [A.B.]'s phone to contact the trafficker. Dressed [J.B.] in [A.B.]'s clothing [and] had her stand on the corner as a bait.

[MOTHER]: That's not true. That is not true.

[THE COURT]: And then [Mother] and her adult son, [A.M.], physically attacked the trafficker.

[MOTHER]: It's lies. It's lies. He just lied. They're lies.

[THE COURT]: And then in October[, Mother] and [A.B.] were observed in an altercation.

[MOTHER]: That's not true either.

[THE COURT]: . . . [C.M.] has been diagnosed with PTSD, opposition defiant disorder, disruptive mood disorder, and separation anxiety. She was not getting the proper care in her home to treat those disorders. There have been difficulties in the past keeping the children in treatment. When [C.M.] was in a temporary Brook Lane partial hospitalization program, there were --- there had been behaviors demonstrated by [C.M.] that were very frightening. This was just in September.

This is just in September. Three months ago. Less than three months ago. There has been ongoing turmoil in this home for nearly 10 years. There are concerns regarding the care of [C.M.]’s siblings in the home and their failure to be properly monitored and supervised and cared for. [C.M.] missed 47 days of school in the 2016/2017 [school year] and another 50 days before [Mother] started homeschooling[,] but now I’m hearing [C.M.] is doing fine in school and loves to go to school. Her siblings missed a significant amount of school.

[Mother] has been struggling with her substance abuse issues for many[,] many years. I am very pleased that since --- I think it was July. Let me see. July which started out rocky but ended well with her intensive outpatient treatments with Mr. Martin. She has a long way to go. There is a lot of confusion in following the Department’s directives.

They have care, custody, and guardianship of these children. I can understand some of that frustration. Some of the communication --- maybe next time we need to consider having everybody in the room. Okay? But at this time the Court will not return [C.M.] to [Mother]. I do not find --- I find that it would be contrary to her welfare to return her to [Mother] for all those reasons previously stated. At this moment, I find it is contrary to her welfare to return her to [Father]. I need to see some consistency.

Mother then filed her second notice of appeal.

STANDARD OF REVIEW

In *In re Yve S.*, 373 Md. 551 (2003), the Court of Appeals described the standard of appellate review applicable to child custody proceedings:

For cases involving the custody of children generally, our precedents establish a three part review of the decisions of the lower courts, addressing the findings of fact, conclusions at law, and the determination of the court

as a whole. We set forth the rule for review of custody cases in *Davis v. Davis*, 280 Md. 119, 372 A.2d 231 (1977), where we explained:

Maryland Rule 886 (applicable to this Court) and, in identical language, Rule 1086 (applicable to the Court of Special Appeals) provide the standard of review of actions tried without a jury.³ In such actions, the appellate courts of this State “review the case upon both the law and the evidence, but the judgment of the lower court will not be set aside on the evidence unless clearly erroneous and due regard will be given to the opportunity of the lower court to judge the credibility of the witnesses.” Rule 886 & 1086. . . .

Having determined that Rule 886 is controlling in child custody cases, we now consider the extent to which the “clearly erroneous” portion of it applies in such appeals. The words of the rule itself make plain that an appellate court cannot set aside factual findings unless they are clearly erroneous, and this is so even when the chancellor has not seen or heard the witnesses. On the other hand, it is equally obvious that the “clearly erroneous” portion of Rule 886 does not apply to a trial court’s determinations of legal questions or conclusions of law based upon findings of fact.

Although these two propositions are clear, there is some confusion in our cases with respect to the standard of review applicable to the chancellor’s ultimate conclusion as to which party should be awarded custody. . . . [I]t is within the sound discretion of the chancellor to award custody according to the exigencies of each case, and as our decisions indicate, a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion. Such broad discretion is vested in the chancellor because only he sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; he is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and

³ Footnote 11 to the *Yve S.* opinion appeared at this point and noted: “The clearly erroneous standard of Rules 886 and 1086 are now combined in Rule 8-131(c).”

determine what disposition will best promote the welfare of the minor.

In sum, we point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of Rules 886 and 1086 applies. [Secondly,] [i]f it appears that the chancellor 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 chancellor founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the chancellor’s decision should be disturbed only if there has been a clear abuse of discretion.

280 Md. at 122–26, 372 A.2d at 232–34 (some internal citations omitted; emphasis added). See also *Robinson v. Robinson*, 328 Md. 507, 513, 615 A.2d 1190, 1193 (1992); *McCready v. McCready*, 323 Md. 476, 484, 593 A.2d 1128, 1131 (1991); *Lipiano v. Lipiano*, 89 Md. App. 571, 576, 598 A.2d 854, 857 (1991), *cert. denied*, 325 Md. 620, 602 A.2d 710 (1992).

In CINA cases where there has been found a past instance of abuse or neglect, the Legislature dictates that specific supporting facts be determined by the hearing court. Md. Code (1974, 2002 Repl. Vol.), Cts. & Jud. Proc. Article, § 3–801 defines a “child in need of assistance (CINA) as “a child who requires court intervention because: (1) the child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) the child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” As noted *supra*, Md. Code (1974, 2002 Repl. Vol.), Cts. & Jud. Proc. Article, § 3–823(f) requires that the trial court not order long term foster care 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 take care for the child” (emphasis added). As we have pointed out, *supra*, § 3–823(f) sets forth a statutory hierarchy of placement options in descending order of priority. First and foremost, the court must consider returning the child to the child’s parent or parents. *In re*

Adoption/Guardianship Nos. J9610436 and J9711031, 368 Md. at 677–78, 796 A.2d at 784–85; *In re: Adoption/Guardianship No. 10941*, 335 Md. at 105–06, 642 A.2d at 204–05.

Where the child has been declared a “child in need of assistance” because of abuse or neglect, the trial court is further constrained by the requirements of § 9–101. This section directs the court to deny custody to the parent unless the court makes a specific finding that there is no likelihood of further abuse or neglect. Md. Code (1974, 1999 Repl. Vol.), Family Law Art., § 9–101(b); *see also In re Mark M.*, 365 Md. at 706, 782 A.2d at 343. The burden is on the parent previously having been found to have abused or neglected his or her child to adduce evidence and persuade the court to make the requisite finding under § 9–101(b). *See In Re: Adoption No. 12612*, 353 Md. 209, 232–39, 725 A.2d 1037, 1048–52 (1999). The language of § 9–101(b) notwithstanding, it does not require that the hearing judge be a prophet or soothsayer and somehow “know” that there will never be a future incident of abuse or neglect. Such a finding would require unobtainable proof on the part of the parent, and omniscience on the part of the judge. Such a construction would render the statute nonsense. As we pointed out in *In re: Adoption No. 12612*, 353 Md. 209, 238, 725 A.2d 1037, 1051(1999):

Section 9–101 focuses the court’s attention and gives clear direction in the exercise of its discretion. It does not set an insurmountable burden; even upon substantial evidence of past abuse or neglect, it does not require a finding that future abuse or neglect is impossible or will, in fact never occur, but only that there is no likelihood — no probability — of its recurrence. Webster defines likelihood as probability, something that is *likely* to happen. (emphases added).

“The fear of harm to the child or to society must be a real one predicated upon hard evidence, it may not be simply gut reaction or even a decision to err-if-at-all on the side of caution.” *In re Jertrude O.*, 56 Md. App. at 100, 466 A.2d at 894.

373 Md. at 584-88 (footnotes omitted).

See also In re O.P., 240 Md. App. 518, 577-78 (2019) (juvenile court’s ultimate conclusion regarding shelter care is reviewed for abuse of discretion).

DISCUSSION

In this appeal, Mother argues that the court erred in finding C.M. to be a CINA at the hearing on November 5, 2018. But Mother agreed at that hearing that the facts in the Second Amended Petition would be sufficient to sustain a CINA finding, and she raised no dispute as to any of the facts set forth. Although she objected to C.M. being placed with Father, she made no argument that C.M. could not be found to be a CINA. Accordingly, Mother's argument on her first question is not preserved for appellate review.

Mother next contends that the court failed to determine, at the removal hearing on December 12, 2018, "if the circumstances required removal." But the record reflects that the court took testimony, determined that Father was no longer willing to care for C.M., that the court was not satisfied that Mother was able to care for C.M., and that C.M.'s best interest would be served by remaining in foster care. Mother points to no factual findings that she claims the court made in error. Mother argues: "With [her] progress in treatment and the backup in the home provided by the grandmothers, the clear choice was to have the child be at home and not be sent to foster care." But, as explained in *In re Yve S.*, quoted above, it is the province of the trial court, not the appellate court, to weigh the credibility of the witnesses, and make findings regarding the best interest of the child. The Department informed the court that it did not consider the paternal grandmother to be an appropriate visitation supervisor. The maternal grandmother lived in the home with Mother, and the Department made clear that it would not agree to return a neglected or

abused child to the location of the neglect or abuse. Although Mother had completed a few months of rehabilitation, her addiction was not the sole reason the children were taken into care. “[A] parent's past conduct is relevant to a consideration of the parent's future conduct.” *In re Adriana T.*, 208 Md. App. 545, 570 (2012).

“[T]he best interest of the child remains the ultimate governing standard” in these cases. *In re Shirley B.*, 419 Md. 1, 21 (2011). We discern neither error of law or abuse of discretion in the juvenile court’s adherence to that standard with respect to C.M.

**JUDGMENTS OF THE CIRCUIT COURT
FOR FREDERICK COUNTY, SITTING AS
THE JUVENILE COURT, AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**