

Circuit Court for Montgomery County
Case Nos. 6-I-18-172 & 6-I-18-173

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3107

September Term, 2018

IN RE: K.B. AND K.B.

Berger,
Nazarian,
Wells,

JJ.

Opinion by Berger, J.

Filed: July 15, 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.

Following adjudicatory and disposition hearings, the Circuit Court for Montgomery County, sitting as a juvenile court, found siblings, Ks. B. and Kd. B.,¹ to be Children in Need of Assistance (CINA). On appeal, Ms. B., the children’s mother, challenges the juvenile court’s determination of the children as CINA.

For the reasons explained herein, we shall affirm.

BACKGROUND

This case arises from an October 2018 investigation of a report of Ms. B.’s suspected substance abuse and physical abuse of Ks. B. As a result of that investigation, Ks. B. and Kd. B. were placed in emergency shelter care² on October 8, 2018. The following day, the Montgomery County Department of Health and Human Services (the “Department”) filed a CINA petition requesting continued shelter care.

On October 10, 2018, the circuit court granted shelter care pending an adjudicatory hearing. The order indicated that “continuation of the children in Mother’s care is contrary to the Children’s welfare at this time due to the alleged emergency situation involving the mother’s abuse and neglect.” (emphasis omitted). The order also granted the Department a limited guardianship over Ks. B. and Kd. B. and directed that

¹ We shall refer to parties by their initials in order to protect their privacy.

² Shelter care is “a temporary placement of a child outside of the home at any time before disposition.” Md. Code (2018 Supp.), § 3-801(aa) of the Courts and Judicial Proceedings Article.

Ks. B. reside with her paternal grandfather, Mr. B.,³ and Kd. B. reside with his “fictive kin,” Mr. G.⁴ The court granted Ms. B. supervised weekly visits with the children.

On November 7, 2018, the Department filed an amended CINA petition, and on December 21, 2018, the Department filed a second amended CINA petition. The juvenile court held adjudicatory and disposition hearings on November 8, 2018, December 20, 2018, and January 2, 2019. The following evidence was presented at the hearings:

Officer Erin Rorke of the Montgomery County Police Department testified that on October 7, 2018, she responded to Ms. B.’s apartment to perform a welfare check on Ks. B. and Kd. B. following a report of abuse.⁵ Officer Rorke encountered Ms. B., Ks. B., who was then 12 years old, and Kd. B., who was then 6 years old. Ks. B. showed Officer Rorke photos on her phone of things that had happened at home and described what it was like living in the house. With Ms. B.’s permission, Officer Rorke examined Kd. B. for signs of bruising or markings, and found none. Officer Rorke described Ms. B. as cooperative, but Ms. B. would not allow police beyond the entrance of the home. Based on Officer Rorke’s observations, she had “concern” and suggested that Ks. B. stay at a

³ Ks. B.’s father is reportedly deceased.

⁴ Ms. B. initially claimed that Mr. G. was Kd. B.’s biological father. After interviewing Mr. G, the Department learned that he was Kd. B.’s fictive father, not his biological father. Kd. B. has known Mr. G. his entire life and calls him “Daddy.” The location of Kd. B.’s biological father, Mr. M., is unknown.

⁵ Though Officer Rorke testified that she responded to Ms. B.’s apartment for a welfare check on September 28, 2018, she also acknowledged that she “could be wrong” about the date. Officer Rorke’s report, which, she stated, she completed the day after the welfare check, was dated October 8, 2018, and the Department confirmed that it received Officer Rorke’s report on October 8, 2018.

friend's house. Ms. B. agreed with this suggestion. Officer Rorke brought Ks. B. to a friend's house where the friend's mother provided Officer Rorke with additional background information. The police did not take any action at that time with respect to Kd. B.

Karen Lemus, an investigator for the Montgomery County Child Welfare Services, testified as an expert in social work. On October 8, 2018, Ms. Lemus received a report alleging Ms. B.'s substance abuse and physical abuse of Ks. B. Ms. Lemus went to Kd. B.'s school to interview him, but he was absent. Ms. Lemus then went to Ks. B.'s school and interviewed her. Ms. Lemus testified that Ks. B. reported to her that on October 4, 2018, Ms. B. had attempted to call or FaceTime her during school and Ks. B. did not answer because she was at school. When Ks. B. returned home after school, Ms. B. was angry and yelled at her because she had not answered her phone during school. According to Ms. Lemus, Ks. B. told her that Ms. B. was "destroying the home" and Ks. B. believed that Ms. B. was "high." Ks. B. told Ms. Lemus that she discovered a hole in her bedroom wall and observed Ms. B. attempting to pick up a dresser and flip it over. Ks. B. reported that she became upset and left the house.

Ks. B. explained to Ms. Lemus that Ms. B. followed her down the street and asked her to get pizza with her and Kd. B. According to Ks. B., Ms. B. told her that the house was destroyed because someone broke into the home, but Ks. B. did not believe her because she saw Ms. B. destroying the home. Ks. B. reported that Ms. B. began to

scream at her in the restaurant about her phone. Ks. B. left the restaurant and called a friend, and the friend's mother came and picked Ks. B. up.

Ks. B. reported to Ms. Lemus that Ms. B. had a history of smoking on their balcony something that looked like a cigarette and smelled like marijuana.⁶ Ks. B. stated when Ms. B. is high, she always screams at the top of her lungs. As to discipline, Ks. B. stated that Ms. B. “whips” her, but she does not whip Kd. B. Ks. B. showed Ms. Lemus a photo of a black eye that she claimed Ms. B. had given her during the previous summer when Ms. B. was high.

Ks. B. also reported that Ms. B. had been caught shoplifting at Target on the day school started, and that Ms. B. often shoplifts with her and Kd. B. present. Ks. B. also reported that Ms. B. asked her for her urine for drug tests, but she does not know where Ms. B. takes the urine.

Ms. Lemus testified that, on October 8, 2018, she went to Ms. B.'s residence to remove Kd. B. and place him in shelter care. Ms. Lemus observed that Kd. B. was appropriately dressed, happy, and did not appear fearful of Ms. B. Ms. Lemus did not observe any bruises or concerning marks on Kd. B. Ms. Lemus requested to interview Ms. B. and view the home, but Ms. B. refused. In Ms. Lemus' expert opinion, it was not safe for the children to return home due to immediate safety concerns regarding Ms. B.'s reported substance abuse and impairment. Ms. Lemus also testified that she had concerns

⁶ Ks. B. explained that she is familiar with the smell of marijuana because the apartment complex where she used to live smelled like marijuana.

regarding Ms. B.'s repeated lack of supervision of both children, her leaving Ks. B. alone to care for Kd. B., and her ability to ensure that the children's basic needs are being met. According to Ms. Lemus, Ms. B. did not have a plan for the children to be supervised on the evenings that she was not at home.

On November 5, 2018, Sara Kulow-Malavé, a forensic interviewer, interviewed Ks. B. at The Tree House Child Assessment Center.⁷ An audio and video recording of Ms. Kulow-Malavé's forensic interview of Ks. B. was played for the court and admitted in evidence. The video was also transcribed in the record.

In the interview, Ks. B. repeated some of the things she had told Ms. Lemus on October 8, 2018, and also provided additional information. Ks. B. stated that Ms. B. would "get high, yell at [her], and all that." According to Ks. B., Ms. B. went outside on the balcony at night and smoked. Ks. B. stated that she did not know what Ms. B. smoked or what it smelled like, but she observed that it looked like a cigarette. Ks. B. explained that she knew that Ms. B. was getting high because she would "just act crazy" and "you can't act crazy from a cigarette." Ks. B. stated that she could tell when Ms. B. was high by "the way she laugh and she talk" because she talks like she's "stuttering."

Ks. B. also described an incident that occurred approximately one week before school started. She stated that Ms. B. had been smoking outside, and she came inside and told Ks. B. to get out of bed and clean the kitchen. In the kitchen, Ms. B. told Ks. B. to

⁷ The Tree House "is dedicated to reducing trauma and promoting healing for child victims of physical abuse, sexual abuse, and neglect." The Tree House Child Assessment Center (July 12, 2019), <http://www.treehousemd.org>.

go to the bathroom so that she could clean her navel. Ks. B. reported that she told Ms. B. that she could not clean her navel because she thought “that was weird.” Ks. B. claimed that Ms. B. “got mad” because she would not let her clean her navel, “so [Ms. B.] punched [her] in the stomach and then [her] eye.” Ks. B. explained that she tried to go to her room, but Ms. B. took her phone, pulled her out of her room, and started hitting her in the face with a belt from her purse. Ks. B. stated that she had a “big bruise” on her face the next day. Ks. B. showed Ms. Kulow-Malavé a photo that she had taken on the day after Ms. B. hit her, which showed a bruise on her face. Ks. B. reported that she had not received any other injuries from Ms. B. According to Ks. B., when Ms. B. gets mad at Kd. B., she “yells at him sometimes,” but “[h]e’d never get in trouble.”

Ks. B. reported that she and Ms. B. did not really get along because Ms. B. does not like that Ks. B. does not tell Ms. B. about school or her “crush.” Ks. B. stated that she would rather talk to her grandfather about these things. Ks. B. explained that it was hard living with Ms. B. because Ms. B. “never let [her] go anywhere,” she always took Ks. B.’s phone, and she was “always yelling.” According to Ks. B., Ms. B “used to work” but was no longer working.

Ks. B. stated that in the mornings, Ms. B. typically made breakfast for Kd. B., got him ready for school, and took him to the bus stop. After school, no one was home with Ks. B. and Kd. B., and Ms. B. came home at approximately 10:00 p.m. Ks. B. did not know where Ms. B. went at night. Ks. B. stated that she made dinner for Kd. B. and put him to bed. Ks. B. noted that in 2017, Kd. B.’s father had lived with them, and he stayed

home with the children until 10:00 p.m., before leaving for work. Ks. B. claimed that there were occasions when Ms. B. came home at 3:00 or 5:00 a.m. Ks. B. later clarified that Ms. B. came home at 5:00 a.m. only once that year.

Ks. B. reported that one day after school, approximately two weeks prior to the interview, Ks. B. came home from school and found Ms. B. there, “screaming to the top of her lungs.” Ks. B. explained that she ignored Ms. B.’s screaming, and went to get a snack and charge her phone before leaving to meet Kd. B. at his bus stop. Ks. B. claimed that she could hear Ms. B. screaming “down to [Kd. B.’s] bus stop.” When Ks. B. returned home with Kd. B., her “whole room was trashed.” She claimed that there was a hole in her wall, and Ms. B. was trying to pick up her dresser. Ks. B. showed Ms. Kulow-Malavé a video that she recorded showing the condition of the home.

Ks. B. stated that when Ms. B. had drug tests, she made Ks. B. urinate in a cup “every single morning,” except during the summer. Ks. B. does not know what Ms. B. does with the urine. Ks. B. claimed that Ms. B. “steals a lot.” Ks. B. reported that she and Kd. B. were with Ms. B. when she was caught stealing at Target on the first day of school. She stated that they were taken to the store’s security office, but they were allowed to leave because Ms. B. had Ks. B. and Kd. B. with her. Ks. B. claimed that Ms. B. steals so frequently that they “don’t go in one store without her taking some things.”

Ks. B. reported that she was never scared or afraid of Ms. B., nor was she afraid when she was home alone with Kd. B. because she was “used to it.” Ks. B. has a 16-

year-old sister, Ka., who lived with Ms. B. until three years ago, when she went to live with her father because, according to Ks. B., Ka. and Ms. B. “didn’t get along.”

JC Humphries, the Department foster care social worker for Ks. B. and Kd. B., testified as an expert in social work. Ms. Humphries had supervised several of Ms. B.’s visits with the children. According to Ms. Humphries, Ms. B. was late to seven out of ten visits with the children. On her first visit with the children, she brought food for Kd. B., but none for Ks. B. During that visit, Ms. B. did not speak to Ks. B. or attempt to hug her. Ms. B. told Ms. Humphries that she expected Ks. B. to speak to her first because Ms. B. is the adult and Ks. B. “needs to respect [her].” Ms. Humphries ended the first visit early when, after noticing that Ks. B. had her nails done, Ms. B. began arguing with Ks. B., expressing her disapproval. According to Ms. Humphries, the second visit between Ms. B. and the children was “very appropriate.” Ms. B. brought food for both children and discussed school, and, at the conclusion of the visit, they were all smiling.

Ms. Humphries testified that she recalled intervening during Ms. B.’s visit with the children on December 18, 2018 because Ms. B. was repeatedly questioning Ks. B. about not returning Ms. B.’s texts or calls. Ms. Humphries reminded Ms. B. that unsupervised contact with the children, including texting, violated the court’s shelter order.

Ms. Humphries described Ms. B. as affectionate with Kd. B., but stated that she did not observe Ms. B. show affection to Ks. B. Ms. Humphries described Ms. B. and Ks. B.’s relationship as distant, and noted that Ms. B. is often negative and critical of

Ks. B. In Ms. Humphries' expert opinion, Ks. B.'s visits with Ms. B. required continued supervision.

Tessa Eleanor Whitley-Dalton testified that her daughter, Shakira, and Ks. B. are friends. Ms. Whitley-Dalton stated that on October 4, 2018, she picked up Ks. B. at a shopping center near Ks. B.'s home and brought Ks. B. to her home because she thought Ks. B. was in "an unsafe environment" based on information provided to her by her daughter and Ks. B. On October 6, 2018, Ms. Whitley-Dalton accompanied Ks. B. to her home to retrieve some personal items and discovered that the home was "torn apart." Ms. Whitley-Dalton had taken photos and video of the home, which were admitted as evidence. She stated that she had observed two broken televisions with the glass, parts, and debris from the televisions scattered from the living room to Ks. B.'s room. In Ks. B.'s room, she also observed a "huge" hole in the wall and scratches on the wall behind the dresser.

Ms. Whitley-Dalton spoke to Ms. B. on October 6, 2018 about her picking up Ks. B., but they did not discuss what Ms. Whitley-Dalton had observed in Ms. B.'s home on October 4, 2018. On October 7, 2018, Ks. B. returned to Ms. Whitley-Dalton's home, accompanied by police officers, and Ks. B. stayed at Ms. Whitley-Dalton's house for approximately one week.

Ms. B. testified at the hearing. She explained that the condition of her apartment, as depicted in the photos and video in evidence, was the result of persistent flooding from rain leaking inside her apartment. Ms. B. testified that a leaking vent had caused water

damage inside the television, and when she tried to move the television off the wall, she dropped it and it shattered. Ms. B. was home alone at the time. Ms. B. explained that she also attempted to move the dresser in Ks. B.'s room to prevent the children from climbing out of the window without her permission or falling out the window. Ms. B. explained that the TV that was on the dresser tipped over and broke when she attempted to move it. Ms. B. stated that she did not put a hole in Ks. B.'s wall. She believed that the doorknob had caused the hole in the wall because the door did not have a doorstopper. Ms. B. explained that the “debris” in the photos was actually her unfinished home decorating projects.

According to Ms. B., her primary form of discipline is talking to her children, and when talking is unsuccessful, she takes away their electronics for short periods of time. She stated that she does not call Ks. B. during school hours, though her phone may sometimes “pocket dial” Ks. B. Ms. B. stated that she rarely contacts Ks. B., but Ks. B. contacts her to “check on [her] sometimes.”

Ms. B. explained that Ks. B. sustained a black eye when Ms. B. was attempting to “spank” her for being disrespectful to adults at school and activities. Ms. B. explained that she had attempted to spank her on her “hind [parts],” but accidentally hit her in the eye with the strap of her purse. On cross-examination, Ms. B. explained that Ks. B. sustained the black eye prior to the start of the school year. Ms. B. clarified that she disciplined Ks. B. for acting out in school on “a different occasion.”

Ms. B. denied punching Ks. B. in the stomach. She acknowledged that she had attempted to clean Ks. B's navel with a Q-tip, explaining that she wants her children to be clean and "sometimes they miss a spot."

Ms. B. denied allowing Ks. B. to bathe Kd. B., but she stated that Ks. B. helped Kd. B. get ready for school. Ms. B. denied staying out until 5:00 a.m., which she called "totally unacceptable" because she left for work at 5:45 a.m. Ms. B. stated that she has worked with special needs children for over 14 years for an "Operations" contractor of the "D.C. government," but she is not currently working due to a leg injury. Ms. B. stated that she is not on disability as a result of her injury, and she is living off her savings. Ms. B. explained that there were times that she was unable to attend visitation appointments with the children because she was taking her mother to dialysis appointments.

Ms. B. was unaware that the Department was concerned that she was using PCP.⁸ Ms. B. denied using PCP, smoking cigarettes, or having a history of substance abuse. According to Ms. B., Ks. B. was "confused" about having to urinate in a cup. She indicated that on one occasion Ks. B. was required to provide a urine specimen as part of her routine medical care, similar to her immunizations.

⁸ According to its medical definition, PCP (phencyclidine) is used chiefly as a veterinary anesthetic and "sometimes illicitly as a psychedelic drug to induce vivid mental imagery." <https://www.merriam-webster.com/dictionary/phencyclidine> (last visited July 12, 2019.)

Ms. B. stated that she had been arrested for shoplifting at Target in November, 2018, but explained that the State subsequently entered *nolle prosequi* as to the charges. On cross-examination, Ms. B. acknowledged that she had been charged with driving under the influence on October 13, 2016 in the District of Columbia. She stated that she was found not guilty following a trial before a judge. Prior to that trial, Ms. B. was ordered to attend 42 days of residential alcohol treatment. Ks. B. and Kd. B. resided with family members while Ms. B. attended in-patient treatment. Ms. B. stated that she missed her children and wanted her children returned to her care.

Mia Smith-Pittmon testified that Ms. B. is her maternal aunt and Ks. B. and Kd. B. are her cousins. Ks. B. lived with Ms. Smith-Pittmon during the summer of 2017. Ms. Smith-Pittmon stated that she has seen Ks. B. every other weekend since she was placed in shelter care. Prior to that time, Ms. Smith-Pittmon saw Ks. B. once per month.

Ms. Smith-Pittmon stated that she has had concerns regarding Ms. B.'s drug use for more than five years. She described an event in July of 2016, when family members were gathered at her grandmother's house to go on a vacation, and she observed Ms. B. "holding on to a pole, basically, about to fall" and "zoned out" with "no knowledge of basically where she was." After the family arrived at their destination, Ms. Smith-Pittmon told Ms. B. that she wanted her to get herself together.

Ms. Smith-Pittmon also recalled an incident in 2015 at her home when she observed Ms. B. laying on the floor unresponsive for approximately ten minutes while Kd. B. "stuck his finger up her nose." For the last two years, Ms. Smith-Pittmon and

Ms. B. have not spoken often. The last time they spoke was “the Sunday after the incident happened” when Ms. B. went to Ms. Smith-Pittmon’s house to pick up Ks. B. According to Ms. Smith-Pittmon, she told Ms. B. at that time that she “wanted her to get help and she needs to get help.” Ms. Smith-Pittmon has not personally observed Ms. B. using drugs; her concerns that Ms. B. uses drugs are based on her observations of Ms. B.’s actions and behavior.

After considering the witnesses’ testimony, the juvenile court issued its ruling from the bench, explaining:

I have – let me just tell you what I’m going to do, and then I’ll give you my reasons for it. I have reviewed the evidence, and [attorney for Ms. B.], I have looked at the substance of the evidence here, and I do find by a preponderance of the evidence that [Ks. B.] has been abused and neglected and [Kd. B.] has been neglected. The credible evidence showed that on a day just prior to school starting in the fall that [Ms. B.], after smoking some unknown substance, struck [Ks. B.] in the stomach and in the face, causing a black eye. On the date of the incident, [Ms. B.] was making what, to me, seems to have been a bit of an odd request about wanting [Ks. B.] to – as related by [Ks. B.], clean her belly button. [Ks. B.], in the description on the video, said she thought it was a strange or weird request.

Photos of [Ks. B.] confirmed injury to her eye. Other photos confirmed the condition of the apartment. The evidence showed that during the relevant time period of the fall of 2018, that the apartment in which the children resided with their mother was in deplorable condition with broken television sets and debris strewn about the apartment. The evidence was [Ks. B.] was often home alone with [Kd. B.] at a time when [Kd. B.] should not have been alone or in the care of a 12 year old. And indeed, there was evidence of the mother requesting [Ks. B.] to provide urine samples for her.

While [Ms. B.] offered an explanation about the condition of the apartment and offered a different version about what occurred regarding the children, I do not find her explanation credible. Her explanation about the water damage and how the debris came to be in the apartment, again, is simply not credible. It is more likely that the injuries to [Ks. B.] and the damage to the apartment resulted from the actions of someone who indeed was on PCP, someone who, in the words of [Ks. B.], “acts crazy and is all over the place.” And to some extent, that testimony or the statements by [Ks. B.] was to some extent, there was some level of corroboration by Ms. Smith-Pittm[o]n regarding Ms. B.’s drug use.

So I will find by a preponderance of the evidence that [Ks. B.] has been abused and neglected, [Kd. B.] has been neglected, and that Ms. B. is unable or unwilling to provide them with proper care and will sustain the second amended petition.

The juvenile court found both Ks. B. and Kd. B. to be CINA and committed he children to the Department for placement in kinship and fictive kinship care, respectively.

STANDARD OF REVIEW

We review the determination of Ks. B. and Kd. B. as CINA for clear error. *In re Nathaniel A.*, 160 Md. App. 581, 595 (2005). The juvenile court’s CINA adjudication will not be set aside unless clearly erroneous. *See id.*; Md. Rule 8-131(c). In determining whether a juvenile court’s decision was clearly erroneous, we apply three interrelated standards of review as follows:

“When the appellate court scrutinizes factual findings, the clearly erroneous standard ... applies. [Secondly,] if it appears that the [juvenile 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 [juvenile court] founded upon sound legal principles and

based upon factual findings that are not clearly erroneous, the [juvenile court’s] decision should be disturbed only if there has been a clear abuse of discretion.”

In re Adoption/Guardianship of Cadence B., 417 Md. 146, 155 (2010) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

DISCUSSION

Ms. B. contends that the juvenile court erred in sustaining the allegations in the second amended petition because the Department failed to present sufficient evidence in support of each allegation, and the court failed to make a determination as to the truth of each allegation before adjudicating the children to be CINA. She argues that the juvenile court’s judgment should be reversed and the case remanded for further fact-finding and adjudication.

“The purpose of CINA proceedings is ‘to protect children and promote their best interests.’” *In re Priscilla B.*, 214 Md. App. 600, 622 (2013) (quoting *In re Rachel T.*, 77 Md. App. 20, 28 (1988)). A “child in need of assistance” (CINA) is one who requires court intervention because the child has been abused or neglected, or has a developmental disability or mental disorder and the child’s parents or guardian are unable or unwilling to care for the child and attend to the child’s needs. Md. Code (2018 Supp.) § 3-801(f) of the Courts and Judicial Proceedings Article (“CJP”). Abuse includes “[p]hysical or mental injury of a child under circumstances that indicate that the child’s health or welfare is harmed or is at substantial risk of being harmed.” CJP § 3-801(b)(2). Neglect

is “the leaving of a child unattended or other failure to give proper care and attention to a child,” placing the child at “substantial risk of harm.” CJP § 3-801(s).

Ms. B. takes issue with a statement the juvenile court made during Ms. Lemus’ testimony regarding its fact-finding role:

Point two gets me back to the problems that I think I’ve articulated before with the voluminous detail in petitions and the suggestion that I have to find factually whether each and every statement in the petition is “sustained,” and my view of it is that I don’t. That I simply have to make the finding of whether there is abuse or neglect and go from there, without saying that I find that each allegation in the petition is true. So my view of this may differ from other judges. It may differ from the view of a lot of you all who have been doing this a lot longer than I have in terms of these CINA cases. But that’s my view of this.

Ms. B. contends that the juvenile court erred as a matter of law when it asserted that it did not have to make a determination as to whether every statement in the second amended petition was true. The CINA statute defines “adjudicatory hearing” as a hearing “to determine whether the allegations in the petition, other than the allegation that the child requires the court’s intervention, are true.” CJP § 3-801(c). An allegation that a child is a CINA must be proven by a preponderance of the evidence. *In re J.J.*, 231 Md. App. 304, 345 (2016) (citing *In re Nathaniel A.*, 160 Md. App. at 595), *aff’d* 456 Md. 428 (2017); CJP § 3-817(c).

Ms. B. cites *In re Sophie S.*, 167 Md. App. 91 (2006), for the proposition that a juvenile court’s failure to make certain findings before ruling on a CINA petition constitutes reversible error. In that case, a CINA petition alleged neglect of Sophie by

her mother. *Id.* at 94. Her father, the non-custodial parent, requested custody. *Id.* The circuit court dismissed the CINA petition and awarded custody of Sophie to her father without first making a determination as to the allegations in the CINA petition regarding mother's alleged neglect. *Id.* at 95. We determined that the circuit court failed to comply with CJP § 3-819(e), requiring that the court must first find and state that the allegations of a petition against the custodial parent have been sustained before granting custody to the non-custodial parent. *Id.* at 106.

The present case is distinguishable from *In re Sophie S.* because it does not implicate § 3-819(e), and here, the juvenile court found and articulated those allegations in the second amended petition supporting its findings of abuse and neglect before making a custody determination.

Ms. B. also relies on the holding in *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477 (2007), in support of her argument that a court's failure to make certain statutorily required findings is reversible error. *In re Rashawn H.* was a termination of parental rights case in which the circuit court did not relate its evidentiary findings to two of the required statutory factors set forth in § 5-323(d) of the Family Law Article before concluding that termination of the mother's parental rights was warranted. *Id.* at 503-504. The Court of Appeals remanded the case to the circuit court to make specific findings as to each of the statutory factors, and to explain, if warranted, how those findings demonstrated exceptional circumstances sufficient to justify the termination of mother's parental relationship. *Id.* at 504-505.

Ms. B.'s reliance on *In re Rashawn H.* is misplaced. The Court of Appeals' conclusions in that case were based on a completely different set of statutory guidelines and requirements. Unlike FL § 5-323(d), the CINA statute does not set forth a list of specific factors the court must analyze and apply to the facts before ruling on the petition. By contrast, the CINA statute requires that the court determine whether the allegations in the petition demonstrate that the child has been, or is at risk of being, abused or neglected by the parent(s).

In the present case, there was sufficient evidence to support the juvenile court's decision that Ks. B. and Kd. B. were CINA. The juvenile court found that Ms. B. had physically abused Ks. B. by striking her in the stomach and face, leaving Ks. B. with a black eye. The juvenile court further found that Ms. B.'s abuse of Ks. B. and the extensive damage to the apartment, "resulted from the actions of someone who indeed was on PCP, someone who, in the words of [Ks. B.], "acts crazy and is all over the place." With respect to Ms. B.'s drug use, the court found that Ks. B.'s statements were, to some extent, corroborated by Ms. Smith-Pittmon. The court also determined that Ms. B. had neglected Ks. B. and Kd. B. by leaving them home alone "at a time when [Kd. B.] should not have been alone or in the care of a 12 year old."

Ms. B. argues that the allegation that she used PCP was unsupported by the evidence, as the only evidence was Ks. B.'s reported belief that she used PCP and Ms. Lemus' testimony that Ks. B. had told her that she knew what PCP was because she had described it to Ms. Whitley-Dalton, who "knew the signs of PCP." We note, as does Ms.

B., that the court sustained Ms. B.’s objection to the testimony that Ks. B. believed that Ms. B. smoked PCP based on information from Ms. Whitley-Dalton.

The juvenile court did not indicate that it had relied on the objected-to testimony in making its finding that Ms. B.’s actions resulted from PCP use. Indeed, it is unlikely that the court, after sustaining Ms. B.’s objection to the evidence, relied upon that evidence in making its CINA findings. *See Barnes v. State*, 57 Md. App. 50, 62 (1984) (finding that any impropriety in the prosecutor’s comment about credibility of State’s witness was cured when the trial judge sustained the defense counsel’s objection to the comment).

The court specifically relied on the evidence of the damage to the apartment, the injuries sustained by Ks. B., and the statements of Ks. B. and Ms. Smith-Pittmon regarding Ms. B.’s suspected drug use, in finding that Ms. B.’s actions were consistent with PCP use. The court did not find Ms. B.’s explanation for the damage to the apartment credible. The court also observed Ms. B.’s denial of PCP use and substance abuse during her testimony. When reviewing the juvenile court’s factual findings, we “treat the juvenile court’s evaluation of witness testimony and evidence with the greatest respect.” *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 719 (2011). From the evidence presented, the court could reasonably infer that Ms. B.’s actions were consistent with PCP use. *See Mathis v. Hargrove*, 166 Md. App. 286, 310, n. 5 (2005) (explaining that the preponderance standard requires that “evidence (if believed) must either show

directly or support a rational inference of, the fact to be proved”) (citation and internal quotation marks omitted).

In the present case, the evidence relied on by the juvenile court supported its finding, by a preponderance of the evidence, that Ms. B. had abused and neglected Ks. B., and neglected Kd. B. Though the second amended petition also included allegations that Ms. B. “dragg[ed] [Ks. B.] by her hair,” ran “naked into the street,”⁹ and that “[p]olice described [Ms. B.] as ‘high,’”¹⁰ those allegations were not essential to the court’s finding of abuse or neglect, nor was there any indication that the court relied on those allegations in making its decision. *See In re Mark M.*, 365 Md. 687, 707 (2001) (noting that “A trial court ... 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.”).

The juvenile court considered all of the testimony presented. Not all of the evidence presented, however, was pertinent to the allegations of abuse and neglect. The juvenile court articulated the evidence demonstrating Ms. B.’s abuse and neglect of Ks. B., and her neglect of Kd. B., and based on that evidence, we find no error in the juvenile court’s decision to classify Ks. B. and Kd. B. as CINA.

⁹ Ks. B. stated during the forensic interview that Ms. B. had run around naked when Ks. B. was in first or second grade, but “it was a long, long [time ago],” and she “[did not] remember anything that happened.”

¹⁰ The evidence did not indicate that Officer Rorke described Ms. B. as “high.”

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**