

Circuit Court for Baltimore City,
Sitting as a Juvenile Court,
Petition Nos. 818096003, 818096004

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 119

September Term, 2019

In Re: C.W.

No. 3518

September Term, 2018

In Re: T.B.

Fader, C.J.
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: September 26, 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.

These appeals arise out of orders of the Circuit Court for Baltimore City, sitting as a Juvenile Court, in the child welfare cases of siblings C.W. and T.B. The juvenile court found T.B. to be a Child in Need of Assistance (“CINA”) and granted guardianship to the Baltimore City Department of Social Services (the “Department”). J.J., the mother of T.B. and C.W., (“Mother”) was granted supervised visitation with T.B.

In T.B.’s case, Mother appealed. Mother presents two issues for our review, which we have rephrased slightly:

1. Whether the juvenile court committed reversible error by finding T.B. to be a CINA and committing her to the custody of the Department.
2. Whether the juvenile court committed reversible error by granting Mother supervised visitation with T.B.

In C.W.’s case, the respondent child appealed. C.W. presents a single question for our review, which we have rephrased slightly:

1. Whether the juvenile court committed reversible error by denying C.W.’s motion to reopen the CINA proceeding.

For the reasons explained herein, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

C.W., born November 15, 2014, and T.B., born October 26, 2017, are the children of J.J.¹ C.W.’s father is deceased. At the time of the adjudication in this case, T.B.’s father was uninvolved in T.B.’s daily care, but by the time of disposition, T.B.’s father was

¹ This factual background is drawn largely from facts to which the parties stipulated at the adjudication hearing before the circuit court on June 12, 2018.

residing with Mother.² When T.B. was born, Mother tested positive for marijuana and opiates at the time of delivery, and T.B. was a drug-exposed newborn.

After T.B.’s birth, Mother admitted to the Department that she was addicted to Percocet and Suboxone. The Department referred Mother to a drug treatment program. On April 3, 2018, a Department worker visited Mother’s home as a part of ongoing Family Preservation services being provided to the family from the Department.³ Mother told the Department’s worker that she had purchased a box of Suboxone on the street. Mother agreed to participate in an inpatient drug treatment program, and the maternal grandmother agreed to provide support to C.W. and T.B. while Mother attended the inpatient program. On April 4, 2018, Mother was admitted to the Recovery Network’s mother-baby drug treatment program along with her children.⁴ The next day, however, Mother contacted the

² At the time of the adjudication hearing in T.B.’s case, T.B.’s father had recently been released from incarceration.

³ Family Preservation Services are optional services designed to “[a]ssist[] in the preservation of families and rebuilding of lives to prevent out-of-home placement.” Services - Maryland Department of Human Services, available at <http://dhs.maryland.gov/local-offices/baltimore-city/services/> (accessed August 12, 2019).

⁴ “Recovery Network’s residential program is an intensive 6-12 month treatment program” that features “a structured recovery environment . . . staffed 24 hours per day and seven days per week.” Recovery Network, Residential Programs, available at <https://www.recoverynetwork.org/residential-programs> (accessed August 12, 2019). “Residential treatment includes an in-depth bio-psychosocial assessment and treatment planning; individual and group counseling; dual diagnosis evaluation and treatment; referrals for rehabilitation and educational training; coordination of aftercare treatment services; and assistance in utilization of community resources for employment, medical or legal issues.” *Id.*

Department and requested that the Department remove T.B. and C.W. because she was unwilling to continue participating in the drug treatment program. Mother asked that the children be placed in the care of the maternal grandmother. The Department removed the children that day, on April 5, 2018, and placed them in shelter care with the maternal grandmother.⁵ Mother was referred to the Family Recovery Program (“FRP”) and began participation with FRP on April 13, 2018.⁶ In addition to her drug addiction, Mother has a history of Major Depressive Disorder.

An adjudication hearing was held before Magistrate Kristin L. Peacock on June 12, 2018. The parties stipulated to the facts set forth *supra* and the court issued an Adjudicatory Order adopting the facts to which the parties had stipulated. At the time, Mother was participating in and in good compliance with FRP. Disposition was delayed for further investigation. The court granted Mother unsupervised visitation with both children “contingent upon her remaining in GOOD compliance with the Court’s Family Recovery Program and cooperating with [the Department].”

After multiple postponements, a disposition hearing was held in both cases on October 25, 2018 before Magistrate Peacock. The Department’s permanency caseworker, Adrien Bristol, testified on behalf of the Department. Ms. Bristol explained that there was

⁵ Shelter care is “a temporary placement of a child outside of the home at any time before disposition.” CJP § 3-801(aa).

⁶ FRP is a “nationally recognized program provides parents with services and refers parents to appropriate substance treatment.” Family Recovery Program - About Us, <https://frp-inc.org/about-us/> (accessed August 12, 2019). In addition to supportive services, the program includes intensive case management by the juvenile court. *Id.*

a service agreement with Mother pursuant to which Mother was required to acquire stable housing and employment and comply with FRP. Ms. Bristol testified that she had performed a home inspection of Mother's home in July or August of 2018. Ms. Bristol found the home to be in unacceptable condition because there was no lock on the front door and a broken panel on the door prevented the door from being secured. Ms. Bristol testified that, other than the front door issue, "everything else was fine in the home." According to Ms. Bristol, Mother did not at any point ask that the home be re-inspected. Several other individuals were also residing in Mother's home, but Mother did not provide the names of the other individuals to Ms. Bristol. Mother told Ms. Bristol that the other individuals were renting individual rooms and it was not Ms. Bristol's business. Because Mother refused to provide information about the other individuals residing in the property, no criminal or child protective services background checks could be completed on them.

Mother told Ms. Bristol that she had begun a new job at a warehouse the day before the home inspection. Mother did not provide written verification of her employment. Ms. Bristol further testified as to Mother's participation in FRP. Ms. Bristol testified that Mother was not in good compliance with FRP, nor had Mother provided any independent documentation of drug treatment participation. The juvenile court took judicial notice of seven FRP orders from between July and October 2018.

Mother testified that she had not been getting drug tested through FRP, but that she had been contacting her worker to let him know that she had transportation issues. Mother testified that her FRP worker told her "don't worry about it." Mother testified that she had

been enrolled in the Man Alive drug treatment program, but that she was discharged from the program after she became pregnant in September.⁷ Mother did not provide any documentation from the Man Alive program. Mother testified that she was willing to submit to an instant drug test that day and that she would not test positive for any substances she was “not prescribed for.” Mother testified that she has been prescribed Oxycodone and had provided a copy of the prescription to her FRP worker.

Mother testified that she was asking for her children to be returned home. Regarding childcare arrangements, Mother explained that C.W. attends school and T.B. is cared for by Mother’s aunt. Mother testified that she generally transported the children to school and childcare and was able to continue to do so. Mother testified that she had been unaware that her visits had been changed from unsupervised to supervised on August 21, 2018 due to her poor compliance with FRP.

At the conclusion of the hearing, Magistrate Peacock found both children to be CINA and committed them to the Department of Social Services for relative placement. Magistrate Peacock encouraged Mother to reengage with her FRP case manager. Mother was granted supervised visitation with both children and T.B.’s father was granted unsupervised visitation with T.B.

Mother filed exceptions to the magistrate’s ruling, arguing that the magistrate erred in finding the respondents to be CINA. Mother further argued that the magistrate erred in

⁷ Mother testified that she was informed by the program that she could not be provided with Suboxone while she was pregnant.

“failing to articulate the neglect.” T.B.’s father did not note an exception.⁸ An exceptions hearing was held on December 7, 2018 before the Honorable Cynthia H. Jones.⁹ The juvenile court sustained Mother’s exception as to C.W. and found C.W. not to be a CINA.¹⁰ With respect to T.B., the juvenile court held the decision *sub curia*.

On December 18, 2018, counsel for the respondent children filed motions for reconsideration. T.B., through counsel, requested that the court reconsider its decision to allow Mother to have unsupervised visitation. C.W., through counsel, requested that the juvenile court reconsider its order dismissing C.W.’s case. A hearing on the motions for reconsideration was held on January 23, 2019. The Department joined in the respondents’ motions.

⁸ Although T.B.’s father did not himself file any exceptions, counsel for T.B.’s father argued before the juvenile court at the exceptions hearing taking a position similar to that of Mother.

⁹ The exception was “on the record.” *See* Md. Rule 11-111 (“Upon the filing of exceptions, a prompt hearing shall be scheduled on the exceptions. An excepting party other than the State may elect a hearing de novo or a hearing on the record. If the State is the excepting party, the hearing shall be on the record, supplemented by such additional evidence as the judge considers relevant and to which the parties raise no objection. In either case the hearing shall be limited to those matters to which exceptions have been taken.”).

¹⁰ At the hearing, the court stated that it would issue an Order Controlling Conduct pursuant to which Mother would be required to engage in FRP and not test positive for any illegal substances, in addition to other requirements. Later that day, the juvenile court issued a written order that found C.W. not to be a CINA and dismissed C.W.’s case. It appears that the juvenile court misspoke when it announced its intention to impose an OCC. The juvenile court apparently subsequently realized that no such order could be issued in C.W.’s case when C.W. was found not to be a CINA.

At the motions hearing, the juvenile court heard testimony from Desiree Diggs, a paralegal from respondents' attorney's office who worked on the cases of C.W. and T.B. Ms. Diggs testified that she attempted to visit the children at the address provided by Mother, but when Ms. Diggs arrived at the address, it appeared to be a vacant or abandoned house. Ms. Diggs was able to visit with T.B. at the maternal grandmother's residence. Ms. Diggs attempted to communicate with Mother and they connected via telephone, but their schedules "never connected to get to do the home visit." Ms. Diggs had not seen C.W. since the prior hearing.

The court also heard testimony from Ms. Bristol, the Department's caseworker who was still assigned to T.B.'s case. Ms. Bristol had visited with T.B. monthly at the maternal grandmother's residence. Ms. Bristol testified that the maternal grandmother had reported that Mother and T.B.'s father had been utilizing their unsupervised visits with T.B. As to Mother's residence, Ms. Bristol testified that Mother had not provided her address, but Mother did inform Ms. Bristol that she would be moving in twenty days to housing obtained via FRP. Ms. Bristol had not had the opportunity to follow up with FRP regarding the housing.

Mother was also called as a witness. She testified that she was participating in FRP and had seen her case manager the previous Friday. Mother explained that she had not been coming to court for FRP because she had been asked not to bring her child with her to court and her childcare vouchers had been taken from her. Mother testified that she had last attended FRP court "about a month ago." When presented with an FRP report showing

that Mother had tested positive for oxycodone, Mother maintained that she had a valid prescription for oxycodone and that she had not tested positive for anything that had not been prescribed for her. Mother testified that she and her FRP worker had discussed her moving into Sage Housing but that it had not been finalized. Mother explained that her worker had discussed with her the requirements for a move to Sage Housing, including compliance with a curfew, compliance with FRP, and not testing positive for any substance for which she did not have a prescription. Mother acknowledged that her current FRP status was noncompliant, but maintained that it was because she “didn’t go to court, not because [she] didn’t test.” In addition to hearing testimony, the juvenile court took judicial notice of FRP orders dated November 30, 2018, December 21, 2018, January 4, 2019, and January 18, 2019, all of which showed Mother to be in poor compliance with FRP.

At the conclusion of the motions hearing, the juvenile court denied the motion for reconsideration as to C.W.’s CINA status. The court found that C.W. was not a CINA. With respect to T.B., the juvenile court found that T.B. was a CINA and committed her to the Department of Social Services for relative placement. The court continued T.B.’s father’s unsupervised visitation with T.B. and granted Mother supervised visitation with T.B. Mother noted a timely appeal in T.B.’s case.

On February 5, 2019, C.W., through counsel, filed a pleading titled Motion to Reopen Matter Due to New Information asking the juvenile court to reopen C.W.’s CINA case. A hearing was held on the motion on March 6, 2019 and FRP reports were admitted into evidence. The FRP reports showed that on January 23, 2019 and January 24, 2019,

Mother had tested positive for morphine. On February 7, 2019, Mother tested positive for codeine, fentanyl, norfentanyl, and morphine. On February 13, 2019, Mother tested positive for morphine. The reports further showed that Mother had failed to report for additional scheduled drug tests. The juvenile court denied C.W.'s motion to reopen. C.W. subsequently noted an appeal.¹¹

Additional facts shall be discussed as necessitated by our discussion of the issues on appeal.

DISCUSSION

I. Standard of Review

In child custody, CINA, and termination of parental rights cases, this Court utilizes three interrelated standards of review. *In re H.R.*, 238 Md. App. 374, 399 (2018) (citing *In re Adoption of Ta'Niya C.*, 417 Md. 90, 100 (2010)). 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.

¹¹ In C.W.'s case, the Department initially noted an appeal as well, but the Department subsequently voluntarily dismissed its appeal.

In re Yve S., 373 Md. 551, 586 (2003). In our review, we give “due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses.” *Id.* at 584. We recognize that “it is within the sound discretion of the [trial court] to award custody according to the exigencies of each case, and . . . 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 [trial court] because only [the trial judge] 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 determine what disposition will best promote the welfare of the minor.” *Id.* at 585-86.

II. Procedural Framework in CINA Cases

As a parent of C.W. and T.B., Mother is vested with a constitutionally protected fundamental liberty interest in the care and custody of her children, without undue interference by the State. *Koshko v. Haining*, 398 Md. 404, 422 (2007) (explaining that parents “are invested with the fundamental right of parents generally to direct and control the upbringing of their children”); *In re Yve S.*, *supra*, 373 Md. at 565 (“Certain fundamental rights are protected under the U.S. Constitution, and among those rights are a parent’s Fourteenth Amendment liberty interest in raising his or her children as he or she sees fit, without undue interference by the State.”). Indeed, the United States Supreme Court has explained that “the interest of parents in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests recognized by this

Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000). “This liberty interest provides the constitutional context which looms over any judicial rumination on the question of custody or visitation.” *Koshko, supra*, 398 Md. at 423.

This liberty interest, though fundamental, is not absolute. *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497 (2007). A parent’s liberty interest in the care and custody of her children “must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect.” *Id.*

“The Maryland General Assembly has enacted a comprehensive statutory scheme to address those situations where a child is at risk because of his or her parents’ inability or unwillingness to care for him or her.” *In re Adoption/Guardianship No. 10941 in Circuit Court for Montgomery Cty.*, 335 Md. 99, 103 (1994). Pursuant to this statutory scheme, a child can be found to be a “child in need of assistance,” or “CINA.” A CINA 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 (2006, 2013 Repl. Vol.), § 3-901(f) of the Courts and Judicial Proceedings Article (“CJP”).

CINA cases are initiated by the filing of a petition that “allege[s] that a child is in need of assistance and . . . set[s] forth in clear and simple language the facts supporting that

allegation.” CJP §§ 3-809; 3-811. The juvenile court utilizes a two-step process when evaluating whether a child is CINA. At the adjudication hearing, the court determines whether the allegations raised in the CINA petition have been established by a preponderance of the evidence. CJP § 3-817. “The rules of evidence under Title 5 of the Maryland Rules shall apply at an adjudicatory hearing.” CJP § 3-817(b). Unless a CINA petition is dismissed, the court must subsequently hold a disposition hearing. CJP § 3-819.

In making a disposition on a CINA petition, the court shall:

- (i) Find that the child is not in need of assistance and, except as provided in subsection (e) of this section, dismiss the case;
- (ii) Hold in abeyance a finding on whether a child with a developmental disability or a mental illness is a child in need of assistance . . . ; or,
- (iii) Subject to paragraph (2) of this subsection, find that the child is in need of assistance

CJP § 3-819(b)(1). In contrast to CINA adjudication hearings, which require strict application of the rules of evidence, the rules of evidence are discretionary in CINA disposition hearings. *In re Blessen H.*, 392 Md. 684, 690-91 (2006).

III. T.B.

In T.B.’s case, Mother asserts that the juvenile court erred by finding T.B. to be a CINA and committing her to the custody of the Department. Mother further asserts that the juvenile court erred by granting Mother supervised rather than unsupervised visits with T.B. Perceiving no error by the juvenile court in T.B.’s case, we shall affirm the circuit court’s ruling in T.B.’s case.

A. CINA Determination

Mother asserts that there was no justification for the juvenile court’s determination that T.B. was a CINA. Although Mother acknowledges that T.B. was born drug-exposed, Mother asserts that there was insufficient evidence that T.B. was at risk of neglect or abuse or that Mother was unable or unwilling to provide care for T.B.

The definition of “neglect” is set forth in CJP § 3-801(s), which provides:

“Neglect” means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or individual who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:

- (1) That the child’s health or welfare is harmed or placed at substantial risk of harm; or
- (2) That the child has suffered mental injury or been placed at substantial risk of mental injury.

When a child is born drug-exposed, as T.B. was, there is a statutory presumption that a child is not receiving proper care and attention from that child’s mother. CJP § 3-818.¹²

¹² CJP § 3-818 provides:

Within 1 year after a child’s birth, there is a presumption that a child is not receiving proper care and attention from the mother for purposes of § 3-801(f)(2) of this subtitle if:

- (1)(i) The child was born exposed to cocaine, heroin, methamphetamine, or a derivative of cocaine, heroin, or methamphetamine as evidenced by any appropriate tests of the mother or child; or
- (ii) Upon admission to a hospital for delivery of the child, the mother tested positive for cocaine, heroin, methamphetamine, or a derivative of cocaine, heroin, or

At the time of the original disposition hearing, October 25, 2018, T.B. was not yet one year old and the statutory presumption that Mother was not providing proper care and attention to T.B. applied.

Regardless of the statutory presumption, however, the evidence was sufficient to establish that Mother's drug abuse put T.B.'s health and welfare at substantial risk of harm. As a result of Mother's addiction and use of illegal substances, T.B. was exposed to drugs in utero. Mother tested positive for marijuana and opiates at the time of T.B.'s birth. Despite being provided with the opportunity to participate in drug treatment, Mother failed to engage in treatment. Indeed, although the Department referred Mother to a residential drug treatment program and arranged for her participation with her children, Mother left after only a single day. Mother admitted to the Department that she was addicted to Percocet and that she had purchased Suboxone illegally on the street. Later, however, Mother asserted that she had a prescription for opioid medications yet failed to produce evidence of a prescription. Nor did Mother offer any explanation as to why she required opioid medications.

The juvenile court "need not wait until the child suffers some injury before determining that he is neglected." *In re Nathaniel A.*, 160 Md. App. 581, 596 (2005)

methamphetamine as evidenced by any appropriate toxicology test; and

(2) Drug treatment is made available to the mother and the mother refuses the recommended level of drug treatment, or does not successfully complete the recommended level of drug treatment.

(quoting *In re William B.*, 73 Md. App. 68, 77 (1987)). “This would be contrary to the purpose of the CINA statute. The purpose of the act is to protect children -- not to wait for their injury.” *Id.* The Court of Appeals has discussed in detail the ways in which parental substance abuse can negatively affect children:

Unquestionably, parental drug use can negatively impact a child. *See In the Interest of J.A.*, 286 Ga. App. 704, 649 S.E.2d 882, 885 (2007) (“[I]t is a fair inference that use of controlled substances by a parent has an adverse effect on a minor child.”); *see also* Steve Baron, Issue Facing Family Courts: The Scope of Family Court Intervention, 4 J. Center for Fam. Child. & Cts. 115, 121 (2003) (“Several studies indicate that past, as well as current, parental substance abuse increases the risk of child abuse.”). Moreover, given the well-known difficulty of overcoming drug addiction, and the likelihood that addiction will persist if untreated, a court can infer that a parent will continue to abuse drugs unless he or she seeks treatment. *See Adoption of Scott*, 59 Mass. App. Ct. 274, 795 N.E.2d 588, 589 n. 3 (2003) (mother deemed unfit, in part, because she “demonstrated a history of drug addiction which [was] reasonably likely to continue . . . given her resistance to cooperate with needed treatment[.]”); *Adoption of Elena*, 446 Mass. 24, 841 N.E.2d 252, 258 (2006) (“A condition which is reasonably likely to continue for a prolonged indeterminate period, such as . . . drug addiction [,] . . . is not a temporary condition.”). This inference can shift to the parent the burden to produce evidence of sobriety, and if no such evidence is produced, the inference may satisfy the clear and convincing evidence standard. *Cf. In the Interest of J.A.*, 649 S.E.2d at 885 (“[E]vidence of the father’s continued failure to seek drug treatment, [along with other factors,] is sufficient clear and convincing evidence to support . . . the conclusion that . . . parental rights [should be] terminated[.]”).

In re Adoption/Guardianship of Amber R., 417 Md. 701, 721-22 (2011) (footnote omitted).

Although Mother initially had good participation in FRP for approximately ten weeks, she failed to continue participating as required by the court. The juvenile court

found Mother in poor compliance with FRP on June 29, 2018 and on the date of every FRP hearing thereafter. Even after Mother was informed that she could obtain stable housing through FRP, she failed to abide by FRP requirements. Unlike physical abuse, which involves affirmative conduct by a parent, “the court assesses neglect by assessing the *inaction* of a parent over time.” *In re Priscilla B.*, 214 Md. App. 600, 626 (2013).

In this case, the court was well aware of Mother’s inaction with respect to addressing her substance abuse problem as well as her inaction in participation with FRP. The court was also aware of the Department’s concerns regarding Mother’s housing. Contrary to Mother’s assertion that the home was acceptable but for the problem with the front door lock, the Department’s worker testified that she had been unable to investigate the other people residing in the home due to Mother’s refusal to provide information about their identities. The Department has “a right -- *and indeed a duty -- to look at the track record, the past, of [a parent] in order to predict what her future treatment of the child may be.*” *Id.* (quoting *In re Dustin T.*, 93 Md. App. 726, 734 (1992) (emphasis in original)). In this case, Mother’s track record led the court to conclude that T.B.’s health and welfare would be placed at substantial risk of harm in Mother’s care. The court’s conclusion was eminently reasonable given T.B.’s tender age and complete dependence upon her caregiver. The court, therefore, did not err nor abuse its discretion by finding T.B. to be a CINA.

B. Visitation

Mother further asserts that the juvenile court erred by requiring that Mother's visits with T.B. be supervised. Mother contends that the juvenile court's restriction on visitation was not supported by the evidence and was not accompanied by specific findings of actual or potential harm as required by Md. Code (1984, 2012 Repl. Vol.), § 9-101 of the Family Law Article ("FL"). In particular, Mother asserts that because she had previously been granted unsupervised visitation with T.B., the juvenile court erred by requiring her visits be supervised without articulating specific findings of potential harm to the child.¹³

Mother is mistaken that FL § 9-101 requires specific findings of actual or potential harm in order for a court to require visitation be supervised, regardless of whether a party was previously granted unsupervised visitation. FL § 9-101 provides:

(a) In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.

(b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the

¹³ For clarity, we set forth the procedural history relevant to this issue. The Magistrate found T.B. to be a CINA and granted Mother supervised visitation on October 25, 2018. Following Mother's filing of exceptions, the juvenile court held T.B.'s CINA determination *sub curia* and granted Mother unsupervised visitation on December 7, 2018. The juvenile court required Mother to "re-engage in FRP" and "no[t] test[] positive" for illegal substances. The juvenile court did not make any findings pursuant to FL § 9-101 prior to granting unsupervised visitation.

On January 23, 2019, the juvenile court found T.B. to be a CINA and issued an order requiring that Mother's visits with T.B. be supervised.

court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

The court is expressly required to deny unsupervised visitation to a parent who has neglected a child *unless* the court specifically finds no likelihood of further neglect. *Id.* The court is permitted – although not required – to “approve a supervised visitation arrangement that assures” the safety and well-being of the child. *Id.* As we discussed *supra*, the evidence supported the juvenile court’s determination that Mother had neglected T.B., and, accordingly, the juvenile court appropriately limited Mother’s visitation pursuant to FL § 9-101.

Mother contends that the juvenile court was required to articulate specific findings of potential harm to T.B. before changing her visitation with T.B. from unsupervised to supervised. At the January 23, 2019 hearing on T.B.’s motion to reconsider the juvenile court’s prior grant of unsupervised visitation, the juvenile court was presented with evidence that Mother had failed to appear for drug tests on most of the days that she was scheduled to appear for testing. The court further was presented with evidence that Mother had tested positive for Oxycodone on January 7, 2019. Although Mother claimed she had a prescription for the drug, she did not provide the prescription to the court. The juvenile court was reasonably concerned about Mother’s continued failure to address her substance abuse problem. Moreover, Mother is mistaken that FL § 9-101 requires specific findings before the court grants supervised visitation. The statute requires specific

findings prior to the grant of custody or unsupervised visitation, but the statute does not require a court to make any particular finding prior to granting supervised visitation.

Furthermore, “[a]lthough § 9-101 of the Family Law Article lays out specific steps the trial court must take in determining custody and visitation in cases when a parent has been found to have committed abuse or neglect in the past, the source of the court’s authority to make custody and visitation determinations does not stem from § 9-101 alone.” *Baldwin v. Baynard*, 215 Md. App. 82, 108 (2013). “The best interest of the child standard is the overarching consideration in all custody and visitation determinations. In assessing the best interests of the child, ‘[a] trial 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.* (quoting *In re Mark M.*, 365 Md. 687, 706 (2001)).

In this case, the juvenile court was reasonably concerned about T.B.’s safety given Mother’s failure to appear for drug tests as required by FRP, failure to produce a prescription for an opioid drug she admitted taking, and unwillingness or inability to address her addiction through treatment. The juvenile court is charged with protecting the best interests of the child, which is the “transcendent standard” in child welfare proceedings. *In re Adoption/Guardianship of Ta’Niya C.*, *supra*, 417 Md. at 112. Given Mother’s chronic substance abuse problem and failure to engage in drug treatment, the juvenile court reasonably determined that supervision of Mother’s visitation was necessary in order to protect T.B. and serve her best interests. In doing so, the juvenile court did not

commit error. Rather, the court fulfilled its duty to protect T.B.’s best interests. We hold, therefore, that the juvenile court did not err by requiring Mother’s visitation to be supervised.

IV. C.W.

In C.W.’s case, C.W., through counsel, noted an appeal of the juvenile court’s denial of his motion to reopen his CINA case. First, we must consider precisely what action of the juvenile court is challenged on appeal. For clarity, we set forth briefly the relevant procedural history. The disposition hearing in C.W.’s case was held before Magistrate Peacock on October 25, 2018. Magistrate Peacock recommended that C.W. be found to be a CINA. After C.W. noted exceptions to the magistrate’s determination, the juvenile court, the Honorable Cynthia H. Jones presiding, found C.W. to not be a CINA on December 7, 2018. C.W. filed a motion for reconsideration on December 18, 2018, which was denied on January 23, 2019. On February 5, 2019, C.W. filed a Motion to Reopen Matter Due to New Information. Following a hearing, the juvenile court denied C.W.’s motion to reopen on March 6, 2019. On March 28, 2019, C.W. noted an appeal. The notice of appeal stated that C.W. “notes his appeal to the Orders passed by Judge Jones on January 23, 2019 and March 6, 2019.”

A Notice of Appeal to the Court of Special Appeals must be filed “within 30 days after entry of the judgment or order from which the appeal is taken” pursuant to Maryland Rule 8-202(a). C.W.’s notice of appeal was filed within 30 days of the juvenile court’s ruling on the motion to reopen. It was not, however, filed within 30 days of the juvenile

court’s January 23, 2019 ruling on C.W.’s motion for reconsideration. Accordingly, although C.W. indicated that his intention was to appeal both the January 23 and March 6 orders, we consider only the juvenile court’s March 6 order in this appeal.

At the March 6, 2019 hearing on C.W.’s motion to reopen, the juvenile court was presented with evidence that Mother had tested positive for various illegal substances on at least four separate occasions since the January 23 hearing. The juvenile court denied C.W.’s motion. Prior to the March 6 hearing, C.W.’s CINA case had been dismissed and the dismissal had been reaffirmed by the juvenile court in its order denying C.W.’s motion for reconsideration. *See* CJP § 3-819(b)(1)(i) (explaining that when a juvenile court “[f]inds that the child is not in need of assistance,” the court shall, with exceptions not relevant here, “dismiss the case.”). C.W. was not a CINA and had never been found a CINA. The juvenile court, therefore, lacked jurisdiction to consider the allegations of neglect raised by C.W. via the motion to reopen. The juvenile court “has exclusive original jurisdiction over . . . proceedings arising from a petition alleging that a child is a CINA.” CJP § 3-803(a)(2). The juvenile court retains jurisdiction over former CINAs under certain circumstances. CJP § 3-804. Because the proceeding alleging C.W. to be a CINA had concluded and C.W. had been found not to be a CINA based upon the adjudicated facts, we hold that the juvenile court properly denied C.W.’s motion to reopen the proceeding.¹⁴

¹⁴ In non-juvenile civil actions, a notice of appeal from certain post-judgment motions, including a motion for judgment notwithstanding the verdict pursuant to Md. Rule 2-532, a motion for a new trial pursuant to Md. Rule 2-533, and a motion to alter or amend a judgment pursuant to Md. Rule 2-534, extends the time for noting an appeal. Md. Rule 8-202(c). Title 2 of the Maryland Rules does not apply, however, to CINA proceedings.

In so holding, we do not suggest that C.W. had no means to present his concerns to the juvenile court. Indeed, the additional allegations of substance abuse by Mother and their potential effects on C.W. are quite concerning. The proper method of placing these concerns before the court, however, is via the filing of a new CINA petition pursuant to CJP § 3-809. CJP § 3-809(a) provides that “[o]n receipt of a complaint from a person or agency having knowledge of facts which may cause a child to be subject to the jurisdiction of the court under this subtitle, the local department shall file a petition under this subtitle if it concludes that the court has jurisdiction over the matter and that the filing of a petition is in the best interests of the child.” If the Department declines to file a petition, “the person or agency that requested that a petition be filed may request review by the Secretary of Human Services” within fifteen days of notice that the local department has decided not to file a petition, after which “the Secretary of Human Services or the Secretary’s designee, in consultation with the director of the local department, shall review the report and may direct the local department to file a petition within 5 days.” CJP § 3-809(c)-(d). “If the

See Md. Rule 1–101(b) (“Title 2 applies to civil matters in the circuit courts, except for Juvenile Causes under Title 11 of these Rules and except as otherwise specifically provided or necessarily implied.”). A CINA proceeding is a juvenile cause under Title 11. *See* Md. Rule 1-101(k). As a result, the filing of C.W.’s motion to reopen did not extend the period for noting an appeal of the juvenile court’s earlier ruling.

At oral argument, counsel for C.W. asserted that the prior rulings of the juvenile are open to review by this court pursuant to Md. Rule 8-131(d) (“On an appeal from a final judgment, an interlocutory order previously entered in the action is open to review by the Court unless an appeal has previously been taken from that order and decided on the merits by the Court.”) C.W., however, did not file an appeal of the juvenile court’s final judgment finding C.W. to be non-CINA.

Secretary of Human Services or the Secretary’s designee refuses to direct the local department to file a petition, the person or agency that filed the complaint under subsection (a) of this section or caused it to be filed may file the petition.” CJP § 3-809(e).

Based upon the additional information obtained after the conclusion of C.W.’s CINA case, counsel for C.W. could have requested that the Department file a new petition alleging C.W. to be a CINA. If the Department declined to file a petition, counsel for C.W. could, after complying with the requirements set forth above, file a petition herself. Instead, in this case, C.W. filed a motion to reopen a case in which C.W. had already been found not to be a CINA and the case had been closed. The narrow issue before us on appeal is whether the juvenile court abused its discretion by denying a motion to reopen C.W.’s closed CINA case. For the reasons we have explained, we hold that the juvenile court did not abuse its discretion by denying C.W.’s motion.¹⁵ We, therefore, affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT
CHILD IN THE CASE OF IN RE: C.W., NO.
119, SEPT. TERM 2019. COSTS TO BE
PAID BY APPELLANT MOTHER IN THE
CASE OF IN RE T.B., NO. 3518, SEPT.
TERM 2018.**

¹⁵ We take no position whatsoever as to the juvenile court’s earlier order finding C.W. to be non-CINA based upon the sustained adjudicatory facts stipulated to by the parties.