UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 2512, 2513, 2514

September Term, 2014

IN RE: ADOPTION/GUARDIANSHIP OF ANTHONY W., JAMAL E., AND GALISHA W.

Wright,
Berger,
Friedman,

JJ.

Opinion by Berger, J.

Filed: July 22, 2015

This appeal arises out of three orders for guardianship entered by the Circuit Court for Howard County, sitting as a juvenile court, on January 6, 2015, terminating the natural parents' parental rights to four-year-old Anthony W., nine-year-old Jamal E., and eleven-year-old Galisha W. (collectively, the "Children"). The Howard County Department of Social Services (the "Department") petitioned the juvenile court to terminate the parental rights of the Children's mother, Latasha C. ("Mother"), after an investigation into allegations of Mother's neglect and abuse of the Children.

On appeal, Mother presents three issues[1] for our review, which we have reordered and rephrased as follows:

> 1. Did the juvenile court err in permitting the Department to question Mother, during cross-examination, about the removal of her other seven children from her care?

[1] The issues, as presented by Mother, are:

> 1. Where the court believed it had the discretion to relax the application of the Rules of Evidence in a termination of parental rights hearing, did the court err in admitting numerous prejudicial statements in violation of the rule against hearsay?
>
> 2. Did the court err in granting the Department's motion *in limine* to preclude two lay witnesses from testifying on behalf of the mother because the mother did not disclose the witnesses until after the discovery deadline had passed?
>
> 3. Did the court err in permitting the Department to cross-examine the mother regarding the Baltimore City Department of Social Services' removal of her older children from her care when it was beyond the scope of direct?

2. Did the juvenile court err by admitting multiple out-of-court statements in the course of hearing testimony from four of the Department's witnesses?

3. Did the juvenile court err in granting the Department's motion *in limine*, effectively precluding two of Mother's proposed witnesses from testifying?

For the reasons that follow, we affirm the judgment of the Circuit Court for Howard County.

FACTUAL AND PROCEDURAL BACKGROUND

I. Background

The Department opened an investigation of the Children and Mother on September 30, 2011, after receiving a report from a staff member at Galisha's school. The report alleged that Galisha had arrived at school that day with "injuries; specifically bruising to her face [and] black eyes." After receiving this report, the Department assigned a licensed social worker, Sarah Lough ("Lough"), to investigate the family.

In the course of her investigation, Lough learned that Mother had lived with the Children in Baltimore City, Maryland prior to 2009, when they moved to Howard County, Maryland. Lough discovered that while living in Baltimore City, the local department of social services removed the seven oldest of Mother's children from her care. During a surprise visit to the Children's home, Lough observed the Children's older sister Sade babysitting the Children in Mother's absence. Through subsequent interviews with the

Children, Lough learned that Sade had used corporal punishment on Galisha, resulting in the facial bruising she presented at school on September 30, 2011.

After interviewing officials at the schools attended by Jamal and Galisha, Lough learned that Jamal "had recently been suspended for two days from school" and "initially did not return to school after the suspension was up." Lough also was told that Jamal had arrived at school one day wearing an ace bandage on his arm because his sister Sade, allegedly hit him. Furthermore, both Galisha and Jamal had a significant number of school absences and Galisha complained of a lack of food in the Children's home.

The Department received another report alleging abuse of the Children in December of 2011. During a subsequent visit to the Children's home, Lough observed a "linear bruise . . . on [Galisha's] forearem" that "was fairly consistent with being hit by a belt." Interviews with Jamal and Galisha led Lough to conclude that Mother had physically abused Galisha. Mother proceeded to enter into a safety plan with the Department whereby she agreed not to employ corporal punishment with the Children.

In February of 2012, the Department assigned Susan Wybenga ("Wybenga"), a family preservation social worker, to the Children's case. Independent of Lough, Wybenga searched the Department's database to determine if Mother had been investigated by Child Protective Services elsewhere in Maryland. Wybenga learned that Mother had been extensively involved with the Baltimore City Department of Social Service's Child Protective Services and that Mother's seven oldest children had been placed in foster care. Wybenga visited the

Children's home later in 2012 and found that Galisha and Jamal, who should have been at school, had stayed home because they had been allowed to stay up all night watching movies and playing video games. After interviewing officials at Galisha's school, Wybenga discovered that, between 2009 and 2012, Galisha had been absent from school a total of 114.5 days and tardy for 23 days. Similarly, Jamal was absent for 45 days and tardy for 12 days during the 2011-2012 academic year alone. Personnel associated with the Howard County Infants and Toddlers Program informed Wybenga that Anthony had significant developmental delays and "didn't really use a lot of words . . . for a two-year-old" but could "mimic some sounds."

On August 29, 2012, after providing extensive assistance to Mother, the Department placed the Children in shelter care due to Mother's ongoing neglect. In response to petitions from the Department, the Circuit Court for Howard County, sitting as a juvenile court, entered three separate orders on June 15, 2012 declaring each of the Children to be a Child in Need of Assistance ("CINA"). The Children were subsequently removed from Mother's care on August 29, 2012 and placed in a foster home.

Megan Long ("Long"), a licensed social worker with the Department, became involved with the Children's case in October of 2012. She learned, through interviews with guidance counselors at Jamal's school, that "[t]here were behavior modifications that the guidance counselors had put in place because Jamal would threaten his own safety as well as other students' safety in the school."

In the fall of 2012, Brianna Quinlan ("Quinlan"), a social worker at the Kennedy Krieger High School, was asked by the Department to provide individual therapy for Galisha and Jamal after they were placed in foster homes. Quinlan began working with Anthony in 2013 and found that he had significant delays in the development of his speech and language. After interviewing the Children, Quinlan found that Galisha believed that living in her foster home was better for her overall compared to living with her Mother, to whom she remains very attached.

II. Motion *in Limine*

On December 1, 2014, in advance of the termination of parental rights hearing, counsel for Mother sent a letter to counsel for the Department, informing the Department that Mother intended to call as witnesses at the hearing Mr. Ojouri of Optimum Health Care; Kathy Jackson, a Department employee; and Markes F., one of Mother's older children. The Department responded by filing a motion *in limine* on December 3, 2014, requesting that the juvenile court issue an order excluding these potential witnesses. In its motion, the Department highlighted the fact that, pursuant to the juvenile court's scheduling order, Mother and the Department had filed a joint pre-trial statement on September 29, 2014, in which Mother indicated that the only witnesses she would be calling at the termination of parental rights hearing would be herself; her sister; an expert witness, to be determined at a later time; and a social worker, to be determined at a later time.

The Department objected to Mother's stated intent to call Mr. Ojouri and Markes F. as her witnesses at the termination of parental rights hearing, as neither of these individuals were disclosed to the Department in the parties' joint pre-trial statement on September 29, 2014. The Department did not object to Mother calling Kathy Jackson, a Department employee, as a witness at the termination of parental rights hearing given that the parties' joint pre-trial statement put the Department on notice that Mother intended to call a "Social Worker (TBD) observer of visitation." As the termination of parental rights hearing was scheduled to begin before the juvenile court on December 10, 2014, and the Department did not receive Mother's letter until December 2, 2014, the Department argued that Mother's attempt to disclose two new witnesses a mere eight (8) days before the termination of parental rights hearing precluded the Department from being able to depose these witnesses in advance of the hearing.

In its motion *in limine*, the Department asserted that it was "unjustly prejudiced" by Mother's "unexcused and bad faith naming of late witnesses[.]" The juvenile court, in considering the Department's motion, acknowledged that the parties' joint pre-trial statement provided that "Mother reserves the right to supplement and alter or amend her list of witnesses based on information received and developed through discovery and further factual information received in preparation for the trial." Nevertheless, the juvenile court concluded that it was unfair for Mother to introduce two new fact witnesses for the first time eight (8) days before the termination of parental rights hearing, and well after the court's discovery

deadline of November 5, 2014. Counsel for Mother countered by asserting that "[i]f [the Department] want[s] to depose -- if they insist that they -- that they're going to be prejudiced, then let's adjourn this, come back in -- thirty days, and then they can depose."

The juvenile court ultimately agreed with the Department and concluded that "the prejudice is so severe upon [the Department], because they have not had an opportunity to engage and can't properly prepare, and they have this burden" to prove by clear and convincing evidence that it is not in the best interests of the Children to maintain a parental relationship with Mother. The juvenile court further noted that one of the new witnesses that Mother intended to call, Markes F., was Mother's adult son and that Mother must have "known that her adult son could have been a potential witness before December 2nd[.]"

III. Termination of Parental Rights Hearing

In December of 2014, the Department brought Mother before the Circuit Court for Howard County, sitting as a juvenile court, for a five-day termination of parental rights hearing (the "TPR Hearing"). On December 10, 2014, during the TPR Hearing, Mother objected to a statement made by Lough in which she recounted her initial meeting and conversation with Galisha. Lough had arranged to meet with Galisha after the Department had received a report on September 30, 2011 reporting that Galisha has sustained a number of physical injuries, including black eyes and other bruising to her face. Mother objected to Lough's description of the content of the report received by the Department as well as her account of her subsequent meeting with Galisha as follows:

> [COUNSEL FOR THE DEPARTMENT]: And what were the allegations contained in the report received by the Department on September 30th, 2011?
>
> [LOUGH]: The referral came to us regarding -- it was Galisha, eight years old at the time, had had --
>
> [COUNSEL FOR MOTHER]: Objection, Your Honor.
>
> THE COURT: Basis?
>
> [COUNSEL FOR MOTHER]: Hearsay.
>
> THE COURT: Isn't that acceptable at this stage? Overruled. You can answer that.
>
> [COUNSEL FOR MOTHER]: Well -- well, Your Honor, is the Court accepting it for -- to show what she did as a result of it, and not for the truth of the matter? Because she's reporting what came across as a report, as an allegation . . .
>
> THE COURT: Okay. I'm allowing her to testify, 'I received this report as to this, and this is what I did as a result of it'. So that's why I'm overruling the objection. That's all. You can continue to answer.

Later in Lough's direct examination, the following colloquy ensued:

> [LOUGH]: Yes. This was the first time I had met Galisha. In -- in most cases, I am doing initially some rapport-building questions, just getting some basic information from her about school, about family; that she is in first grade. So she kind of talked a little bit more about her background, being that she had not attended kindergarten; again, she was in first grade.
>
> [COUNSEL FOR MOTHER]: Objection, Your Honor, as to Galisha's statement.
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> [COUNSEL FOR THE DEPARTMENT]: I'm sorry; I didn't hear the objection.

> THE COURT: Objection to Galisha's statements to Ms. Lough.
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> [COUNSEL FOR THE DEPARTMENT]: You Honor, I -- I would just -- because I suspect this is going to be ongoing, just proffer for the record that the question for this worker is what did you do and what did you learn, because that forms the basis for what she's going to do next and next after that. It is typical for C.P.S. investigations; they -- they receive information and then they act on information. I suspect that this is going to be a standing problem. We typically do proffer that -- what C.P.S. does, and that they are gathering information that then is the basis of their investigation.
>
> THE COURT: Okay . . .
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> [COUNSEL FOR MOTHER]: Well, Your Honor, she can -- she can testify as a result of her conversation, what she did. She does not have to go into details about all what was said, Your Honor. It's hearsay.
>
> THE COURT: Okay; and no, I do recognize it's hearsay and in CINA cases, in the situ- -- depending on the situation, hearsay is -- is acceptable, or admissible to the Court.

The juvenile court subsequently proceeded to overrule a number of Mother's timely hearsay objections to testimony of the Department's witnesses on these grounds.

IV. Oral Ruling of the Juvenile Court

On December 31, 2014, the court orally ruled that it was "convinced by clear and convincing evidence that [Mother's] parent-child relationship[s] should be terminated, based on clearly the unfitness as well as extraordinary circumstances." In its comprehensive, fifty (50) page oral ruling, the court clearly considered the evidence presented at the hearing as it pertained to all of the factors in § 5-323(d) of the Family Law Article of the Maryland

Code. *See* Md. Code (1984, 2012 Repl.Vol.), § 5-323(d) of the Family Law Article. This statute enumerates a list of factors that courts are required to consider in termination of parental rights cases.

The first such factor requires a court in a termination of parental rights case to consider "all services offered to the parent before the child's placement, whether offered by a local department, another agency, or a professional[,]" focusing on "the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent[,] and . . . the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any[.]" Md. Code (1984, 2012 Repl.Vol.), § 5-323(d)(1) of the Family Law Article. In its oral ruling, the court noted that "there was approximately Sixty-Five Thousand Dollars in [reunification] services offered" to Mother including "the Way Station and services through the Department, and this was all before the Agency really got, or the Court got involved, before [the] removal" of the Children. From February 2012 through August 2012, the Department was involved with the family and continued to "recommend[] that the [C]hildren remain in [Mother's] care." Lough testified that she completed four separate investigations of the Children, worked with Mother's "recurrent problems over and over again[,]" and yet "was committed to [Mother] in not losing her three children."

Nevertheless, "[t]here was never any real change or any improvement by" Mother and, in August 2012, the children were removed from Mother's care and have not since been

returned. Indeed, the court specifically referenced the fact that despite Mother having "been a parent at that point for over twenty years . . . providing basic needs" for the Children, including "toothbrushes, soap, shampoo, hygiene products, you name it" seemed to "escape her." Furthermore, the court highlighted the fact that Mother failed to fulfill her obligations under at least three separate service agreements with the Department's Foster Care Unit, despite the fact that the Department met its obligation under these agreements to provide supportive reunification services to Mother.

Secondly, when ruling in a termination of parental rights case, a court must consider "the results of the parent's effort to adjust the parent's circumstances, condition, or conduct to make it in the child's best interests for the child to be returned to the parent's home[.]" Md. Code (1984, 2012 Repl.Vol.), § 5-323(d)(2) of the Family Law Article. When evaluating this factor, the statute directs courts to take into account the regularity of the parent's contact with the child, the parent's financial contribution to the care of the child, any disabilities that may affect the parent's ability to care for the child, and whether additional services would make it likely that the child could be reunited with the parent within eighteen (18) months. *See* Md. Code (1984, 2012 Repl.Vol.), § 5-323(d)(2)(I)-(iv) of the Family Law Article.

In examining this factor, the court noted that Mother has exhibited "no real progress, no real consistency in the visitation" with the Children, having only attended "between fifty-six and sixty percent" of scheduled visitations, even after the Department "changed the plan in order to help facilitate and increase Mom's visitation and consistency[.]" Even before the

Children's removal from Mother in August 2012, "there was inconsistent communication between [Mother and] the caregiver." The court further found that Mother lacked the ability to financially contribute to the care of the Children, and so did not fault her for failing to financially contribute to their care in the past. The court also noted that, although Mother did not present with any documented disability, it could be argued that Mother's "mental health issues could rise to the level of a disability . . . [that] may cause her to be unable to properly care for the [C]hildren." The court concluded that additional services would likely not make reunification feasible within eighteen (18) months, citing the common theme in Mother's behavior as "not being able or willing to do the things to show that she is able or capable of parenting [the] [C]hildren."

The third factor that courts are required to consider in termination of parental rights cases is "whether . . . the parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect[.]" Md. Code (1984, 2012 Repl.Vol.), § 5-323(d)(3)(I) of the Family Law Article. In addressing this factor, the court referenced the fact that Mother's other seven children "who were all minors at the time, were removed from her due to her care and due to the abuse that they had sustained[.]" Furthermore, the court noted that "[o]thers have abused the children; there's been allegations of sexual abuse."

The fourth and final factor that courts are statutorily required to take into consideration when evaluating a petition for the termination of parental rights is "the child's emotional ties with and feelings toward the child's parents, the child's siblings, and others

who may affect the child's best interests significantly[.]" Md. Code (1984, 2012 Repl.Vol.), § 5-323(d)(4)(I) of the Family Law Article. In addressing this factor, the court admitted that while the Children clearly feel love and attachment toward Mother, multiple witnesses "testified that the attachment is unhealthy." Quinlan, who provided therapy services to the Children, testified at the TPR hearing "that the [C]hildren love their mother, but they know that the foster parent is actually good for them." Furthermore, the court found that the Children "have significant ties to one another" and that they have been "extremely well-settled and stable" since being placed with the same foster parent. Indeed, the court described how the Children "enjoy the civility, the consistency, the friends, the activities that they have," including soccer and gymnastics, and that they are "adjusted well in their home and the community to the foster parent."

In three written orders entered into the record on January 6, 2015, the court appointed the Department as guardian of the person of the Children "with the right to consent to adoption, or long-term care short of adoption thereof[.]"

This timely appeal followed.

DISCUSSION

I. Standard of Review

In child custody and termination of parental rights cases, this court utilizes three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). The Court of Appeals described the three interrelated standards as follows:

> We point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131 (c)] applies. [Second,] if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

Id. at 586. 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. Analysis

A. Scope of Cross-Examination of Mother

Mother contends that circuit court erred in permitting the Department to ask Mother a series of questions during cross-examination regarding the removal of Mother's other seven children from her custody. As provided by Maryland Rule 5-611, the permissible scope of

questioning on cross examination is "limited to the subject matter of the direct examination and matters affecting the credibility of the witness." Md. Rule 5-611(b)(1). Mother claims that the Department's cross-examination exceeded the scope of her direct examination when the Department asked Mother the following question: "And your other children were all removed from your care at one point or another . . . by Baltimore City, were they not?" Counsel for Mother timely objected to this question when posed by the Department during Mother's cross-examination. Nevertheless, the juvenile court ruled that the Department's question was permissible.

The juvenile court stated that "the only way [Mother's testimony on direct examination is] going to open the door is if [Mother] did in fact give some kind of testimony about the relationship that her other children have with -- with these three [Children]." It further noted that §5-323(d)(3)(v) of the Family Law Article of the Maryland Code requires juvenile courts, in termination of parental rights hearings, to consider whether "the parent has involuntarily lost parental rights to a sibling of the child[.]" Md. Code (1984, 2012 Repl.Vol.), § 5-323(d)(3)(v) of the Family Law Article. Ultimately, the juvenile court concluded that Mother "decided to take the witness stand, and she did, in fact mention that Galisha is the youngest of six girls [and] . . . the Court has to consider whether or not any rights have been terminated for other siblings, pursuant to the Family Law article" of the Maryland Code. Moreover, we note that counsel for Mother, in her opening statement at the commencement of the TPR Hearing, stated the following:

> Your Honor, this case starts with the fact that [Mother] has ten children. That's a fact. It starts with the fact that the oldest seven children at some point were removed from her care. We start with that fact, Your Honor. That she began having children when she was very young, and she had ten children, Your Honor, and that she -- she's made some mistakes along the way. But this case comes into court, Your Honor, with those facts already established.

We hold that the juvenile court properly permitted the Department to question Mother regarding the removal of her other seven children from her care. As the Court of Appeals has previously held, "[w]here a general subject has been entered upon in the examination in chief, the cross-examining counsel may ask any relevant question on the general subject." *Williams v. Graff*, 194 Md. 516, 522 (1950). Furthermore, "the rule limiting cross-examination to the general facts stated on direct examination should not be so applied as to defeat the real object of cross-examination, i. e., to elicit all the facts of any observation or transaction which has not been fully explained." *Id.* at 522-23. In light of this precedent from the Court of Appeals, and the fact that Mother mentioned on direct that Galisha is the youngest of six girls, the juvenile court did not abuse its discretion in allowing the Department to question Mother concerning the circumstances under which Galisha's older siblings were removed from Mother's care.

Indeed, whether Mother had involuntarily lost parental rights to the Children's siblings is a matter that a juvenile court is statutorily required to consider in a termination of parental rights case. *See* Md. Code (1984, 2012 Repl.Vol.), § 5-323(d)(3)(v) of the Family Law Article. In another termination of parental rights case, *In re Adoption of K'Amora K.*,

we held that it was appropriate for a circuit court to consider "[m]other's history of failing to parent or provide safe environments for K'Amora's older siblings" as an exceptional circumstance that warranted terminating the parental rights of K'Amora's mother. 218 Md. App. 287, 309 (2014). The juvenile court expressly referenced the *In re Adoption of K'Amora K.* case in overruling Mother's objection to the Department's line of questioning on cross-examination.

B. Rules of Evidence Applicable to a Termination of Parental Rights Hearing

On appeal, Mother argues that the juvenile court erred when it admitted testimony from four of the Department's witnesses, Lough, Wybenga, Long, and Quinlan, that arguably constituted hearsay. At the TPR Hearing, the juvenile court decided to admit the statements because "in CINA cases . . . depending on the situation, hearsay . . . is acceptable, or admissible to the Court." We acknowledge that this isolated statement by the juvenile court was in error. As the Court of Appeals has previously held, "CINA proceedings are governed by the Courts and Judicial Proceedings Article, and TPR proceedings are governed by the Family Law Article." *In re Adoption of Jayden G.*, 433 Md. 50, 75 (2013). Furthermore, "in a permanency plan review hearing, strict application of the Maryland Rules of Evidence is not required . . . [but] [i]t is, however, required in a TPR proceeding." *Id.* at 77. The juvenile court was, therefore, bound to employ a strict application of the Maryland Rules of Evidence at the TPR Hearing, including those rules pertaining to the admission of hearsay statements.

Despite the juvenile court's erroneous statement, Mother continued to object to testimony presented by the Department's witnesses that she believed constituted inadmissible hearsay. Accordingly, these objections are preserved for our review in this appeal. Maryland Rule 5-801 defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801. Pursuant to Maryland Rule 5-802, "[e]xcept as otherwise provided . . . hearsay is not admissible." Md. Rule 5-802.

Examining the contentions advanced by Mother in the instant case, we hold that the testimony cited as constituting hearsay was actually not hearsay at all, qualified under one of the exceptions to the hearsay rule, or constituted harmless error. An appellate court will not reverse the decision of a lower court based on an erroneous admission of evidence unless the error was "'both manifestly wrong and substantially injurious.'" *In re Yve S.*, *supra*, 373 Md. at 617 (quoting *I. W. Berman Properties v. Porter Bros.*, 276 Md. 1, 11-12 (1975)). Furthermore, "'[a]n error which does not affect the outcome of the case is 'harmless error'.'" *Id.* (quoting *I. W. Berman Properties*, *supra*, 276 Md. at 12). Accordingly, any hearsay testimony admitted in error by the juvenile court in the instant case would merely constitute harmless error if it was duplicative of other, properly admitted evidence or testimony. Such error would be harmless because even if the juvenile court excluded the hearsay testimony, the outcome of the case would remain the same in light of the other, properly admitted evidence. Indeed, as Maryland Rule 5-403 provides, "evidence may be excluded if its

probative value is substantially outweighed by . . . considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403. We, therefore, hold that the cumulative evidence proffered at the TPR Hearing renders any admission of hearsay to be mere harmless error.

The examples of alleged hearsay admitted by the juvenile court fall into several broad categories: statements regarding physical injuries sustained by Galisha and Jamal due to corporal punishment; statements concerning the poor conditions of the Children's home; statements made by the Children regarding their state of mind; references to information obtained from the Maryland Case Search website describing Mother's history of criminal charges and evictions; and statements relating to the Children's school attendance and educational difficulties. We shall examine each category of alleged hearsay statements in turn.

1. Statements Regarding Injuries Suffered by Galisha and Jamal as a Result of Corporal Punishment

In the course of Lough's testimony at the TPR Hearing, the juvenile court admitted thirteen out-of-court statements that Mother contends constituted inadmissible hearsay regarding injuries sustained by Galisha and Jamal as the result of corporal punishment. The juvenile court, however, was bound by § 5-323(d)(3)(I) of the Family Law Article of the Maryland Code to consider whether "the parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect" during the TPR Hearing. Md. Code (1984, 2012 Repl.Vol.), § 5-323(d) of the Family Law Article.

Lough testified that she observed significant facial injuries that Galisha sustained in September 2011. Lough relayed several conflicting statements she received regarding the cause of Galisha's injuries. Apparently, Galisha told Lough that she was beaten by Sade, and that Mother was aware of Sade's use of corporal punishment. Sade, however, told Lough that a neighborhood boy injured Galisha. Although the juvenile court admitted Lough's testimony regarding statements made by Galisha and Sade regarding the incident, it carefully explained its purpose in doing so, stating "we're here as a result of [Mother] and what she has done or not been able to do which makes it no longer in the children's best interest" to remain in her care.

In its detailed factual findings, the juvenile court expressly refrained from making a finding regarding the party responsible for Galisha's facial injuries in September 2011.[2] Regardless, the juvenile court made the relevant finding that Galisha had sustained serious injuries while ostensibly in Mother's custody. Indeed, Lough personally observed Galisha's facial injuries in September 2011 and, therefore, the court's finding that Galisha suffered abuse while in Mother's care was supported by non-hearsay testimony. To the extent that

[2] We note that the juvenile court, in its extensive oral opinion, stated that "Sade is found to have physically abused Galisha." This statement, however, does not indicate that the court, in the course of the TPR Hearing, made a factual finding that Sade abused Galisha. Rather, this statement is merely a reference to a finding made by Lough in the course of her investigation into Galisha's September 2011 facial injuries on behalf of the Department. Lough testified at the TPR Hearing that, at the conclusion of her investigation, she concluded "[t]hat physical abuse was indicated, and Sade . . . was identified as the maltreater in this incident."

any testimony admitted from Lough regarding Galisha's September 2011 injury constituted hearsay, it was merely duplicative of her personal observations and, accordingly, harmless error.

Lough further testified that she observed an injury on Galisha's arm, in December 2011, that was consistent with being hit by a belt. She testified that Galisha and Jamal had informed her that Mother caused the bruising on Galisha's arm when Mother beat Galisha and Jamal with a belt. Additionally, Lough testified that she was informed by staff at Jamal's school that Jamal had arrived at school one day wearing an ace bandage on his arm that he reported that Sade had hit him with a spatula. The juvenile court recited these items from Lough's testimony in the factual findings it made in its oral ruling.[3]

Moreover, the juvenile court accepted Lough's testimony over Mother's objections because the out-of-court statements to which Lough testified were "not really offered for the truth of the matter asserted." Because hearsay is defined as an out-of-court statement "offered in evidence to prove the truth of the matter asserted[,]" out-of-court statements not offered for the truth of the matter asserted do not qualify as hearsay. Md. Rule 5-801. Indeed, the juvenile court noted that the alleged hearsay statements introduced during the

[3] We note that while the juvenile court mentioned the fact that Jamal arrived at school one day with an ace bandage on his arm, it did not make a finding that Jamal sustained any injury. Rather, the juvenile court was careful to confine its finding to the fact that Jamal "said that his sister had hit him with a spatula." The juvenile court, therefore, found that Jamal *reported* being hit by Sade, but *did not find* that Jamal was actually hit or otherwise injured.

course of Lough's testimony were admitted to illustrate that "this is the information that was told to her which caused her to do whatever she did in her investigation." Essentially, the court admitted Lough's alleged hearsay statements to give context to the decisions she made in the course of her investigation of Mother and the Children. As demonstrated by the efforts the juvenile court took to avoid finding any party responsible for the injuries suffered by Galisha and Jamal, the court did not accept these statements to "prove the truth of the matter asserted."

2. Statements Regarding the Poor Conditions of the Children's home

During the TPR Hearing, Lough testified that she was told by Galisha and Jamal that "new household members . . . were living" with the Children and that "there was not a lot of food in the [Children's] home." The juvenile court elected to admit these statements over Mother's timely hearsay objections. To the extent that these statements may constitute hearsay, however, their admission at the TPR Hearing was harmless error because they are merely duplicative of observations that Lough personally made during visits to the Children's home. For example, Lough testified that when she visited the Children's home on February 29, 2012, Mother, "her boyfriend Angelo, . . . April Adams, her one-year-old daughter Destiny, and Marquise[,]" one of Mother's adult sons, were present. On that same February 29, 2012 visit, Lough testified that she observed that "the refrigerator . . . lacked food" and that "a large box of ramen noodles . . . was really some of the only food that [she] did observe on that day."

Mother further objected to Lough's testimony concerning statements made by staff members at Galisha's school regarding Galisha's poor hygiene. In particular, Lough testified that she was told by the staff at Galisha's school that Galisha had "issues wetting her pants on a few occasions" and other "hygiene issues." Lough also testified that she was told by staff at Galisha's school that Galisha would often wear "the same outfit as she had the day prior." We hold that, to the extent any of these statements constituted hearsay, their admission was harmless error, because they are duplicative of other, properly admitted evidence.

Evidence of Galisha's poor hygiene was already admitted by the juvenile court in the form of three orders entered in each of the Children's CINA cases. On December 10, 2014, during the TPR Hearing, the juvenile court granted the Department's request "to take judicial notice of all of the Orders that have been entered by the Court in" the three CINA cases involving the Children. Indeed, the judge presiding over the juvenile court in the instant case had actually issued the order in the CINA case involving Galisha. The order entered in Galisha's CINA case alone provides that the Children were found to be "often sleepy, hungry and dirty" and that Mother failed to "arrange for their [school] uniforms." In light of the fact that the juvenile court expressly took judicial notice of the orders in the Children's CINA cases, and all factual findings contained therein, we hold that any hearsay statements improperly admitted by the juvenile court in the course of Lough's testimony was harmless error.

3. Statements made by the Children Regarding Their State of Mind

During the course of her testimony, Lough relayed to the juvenile court several statements made to her by the Children to which Mother objected on hearsay grounds. Specifically, Lough testified that Galisha told her that "she would be afraid to tell if something had happened at home" and that Mother advised Galisha "not to talk to" Lough. Wybenga also testified that Galisha told her that the Children "were placed in foster care . . . because [Galisha] tells lies" and that "what goes on in the house should stay in the house." Lough further testified that Jamal told her that Mother's boyfriend "was going to 'curse [Jamal] out'" if Jamal "kept talking" to representatives of the Department. Mother timely objected to the admission of each of these statements on hearsay grounds.

We, however, hold that these statements are admissible under an express exception to the hearsay rule. Maryland Rule 5-803(b)(3) provides that "[a] statement of the declarant's then existing state of mind, emotion, sensation, or physical condition . . . offered to prove the declarant's then existing condition or the declarant's future action, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will" does not constitute hearsay and is, accordingly, admissible. Md. Rule 5-803(b)(3). All of the previously referenced statements made during Lough's and Wybenga's testimony at the TPR Hearing qualify as statements establishing the Children's "then existing state of mind" and were not offered to prove the truth of the matters asserted.

Indeed, the juvenile court was statutorily bound to consider certain aspects of the Children's state of mind in deciding whether to terminate Mother's parental rights to the Children. Specifically, the juvenile court was bound to consider the Children's "emotional ties with and feelings toward the child's parents, the child's siblings, and others who may affect the child's best interests significantly" as well as the Children's "feelings about severance of the parent-child relationship." Md. Code (1984, 2012 Repl.Vol.), § 5-323(d)(4)(i),(iii) of the Family Law Article. All of the Children's statements concerning their reluctance to talk about their home situation with Department staff, to which Lough and Wybenga testified, help establish the Children's "then existing state of mind" regarding their "emotional ties and feelings toward" their Mother as well as their "feelings about severance of the parent-child relationship." These previously referenced statements by the Children underscore the overall theme of the Department's case that the Children have an "unhealthy attachment" to Mother that is not in their best interests.

Assuming, *arguendo*, that the statements of the Children regarding their reluctance to talk to Department personnel did constitute inadmissible hearsay, we hold that the admission of these statements was harmless error because they were merely duplicative of other, properly admitted evidence. The order entered in Galisha's CINA case, of which the juvenile court took judicial notice, provides that Jamal, at age six (6), was found to have told a social worker that "'snitches get stitches.'" This finding also supports the Department's contention that Mother advised the Children against cooperating with the Department's

various investigations, despite the fact that doing so was not in the best interest of the Children.

Mother further objected to a number of statements made by Galisha to Quinlan, which Quinlan relayed to the juvenile court in the course of her testimony at the TPR Hearing. In the course of offering therapy services to the Children, Quinlan worked with Galisha to evaluate her feelings about the prospect of being adopted. Quinlan testified that Galisha told her that she "is happy that she won't have to move any more and that she'll be able to go to the same school." Quinlan further testified that Galisha expressed the fact that "she's happy because she does believe that she will have a level of contact [with Mother] no matter if she's living with [Mother] or not living with [Mother]." We hold that all of Galisha's statements regarding her feelings about being adopted, as relayed to the juvenile court through Quinlan's testimony, qualified under the exception to the hearsay rule encapsulated in Maryland Rule 5-803(b)(3). Galisha's statements paint a picture of her "then existing state of mind" concerning the prospect of adoption. Galisha's statements were not offered to prove the truth of the matters therein asserted, but rather to assist the juvenile court in evaluating the Children's "feelings about severance of the parent-child relationship[,]" which a court in a termination of parental rights hearing is statutorily required to consider. Md. Code (1984, 2012 Repl.Vol.), § 5-323(d)(4)(i),(iii) of the Family Law Article.

Assuming, *arguendo*, that Galisha's statements, as relayed to the juvenile court through Quinlan's testimony, do not qualify under the exception to the hearsay rule

encapsulated in Maryland Rule 5-803(b)(3), such statements are admissible based on the fact that the juvenile court accepted Quinlan as an expert witness "in the field of clinical social work." As we have previously held:

> An expert witness may testify to an opinion based on facts ordinarily inadmissible as hearsay, but which are facts of the type reasonably relied upon by experts in the field. *Nothstein*, 300 Md. at 679, 480 A.2d 807. The expert should relate the information on which the opinion is based so the court can decide if it is reliable and was obtained in a trustworthy manner. *Madden v. Mercantile–Safe Deposit and Trust Co.*, 27 Md.App. 17, 44, 339 A.2d 340 (1975). The information does not have to be admitted into evidence for the expert to use it in forming an opinion. If the facts on which the expert bases his or her opinion are inadmissible as substantive proof, they may still be used to provide the required factual basis for the opinion. *Ellsworth v. Sherne Lingerie, Inc.*, 303 Md. 581, 603, 495 A.2d 348 (1985).

Scott v. Prince George's Cnty. Dep't of Soc. Servs., 76 Md. App. 357, 386-87 (1988). In light of this previous holding, Quinlan's testimony as to Galisha's statements was, at the very least, admissible to the extent that it constituted "information on which [Quinlan's expert] opinion is based" and which the court needed to analyze to determine "if it is reliable and was obtained in a trustworthy manner." As Quinlan was asked, in the course of her testimony, to render her expert opinion as to the feelings of the Children regarding the prospect of adoption, her testimony as to Galisha's statements was relevant and admissible.

4. Information Obtained from Maryland Case Search Database

At the TPR Hearing, Mother objected to two references made by the Department's witnesses to the Maryland "Case Search" database, which listed various legal proceedings

in which Mother had been involved in the past. At the TPR Hearing, Lough testified that she had searched Mother's records in the Maryland "Case Search" database and had discovered that Mother had a history of criminal child neglect charges. Wybenga also testified that she searched Mother's records in the Maryland "Case Search" database and found that Mother "had a history of evictions."

We hold that the admission of Lough's and Wybenga's testimony concerning the criminal child neglect charges and eviction proceedings to which Mother was subjected constitute harmless error under the circumstances of the instant case. Ample evidence of Mother's history of criminal child neglect and evictions can be found in the orders entered in the Children's CINA cases, of which the juvenile court in the instant case took judicial notice. The order entered in Galisha's CINA case provides that Mother "had [Department] involvement on a constant and consistent basis since 2008, and there were 11 separate [Child Protective Services] investigations from 2011 to June 2012." The order in Galisha's CINA case further provided that "[f]or the period of June 6, 2012 to August 29, 2012 [Mother] had been evicted from her home in Howard County due to the deplorable conditions of her residence[.]"

Moreover, Lough testified that Mother, herself, told Lough that she had been "arrested in 2003 for Neglect, and during that event, some of the children that were in her care, or the children that were in her care at the time were removed." Pursuant to Maryland Rule 5-803(a), "a statement that is offered against a party and is . . . [t]he party's own

statement . . . of which the party has manifested an adoption or belief . . . [made] by a person authorized to make a statement concerning the subject" does not constitute inadmissible hearsay. Md. Rule 5-803(a). Accordingly, Lough's testimony regarding Mother's admission that she was arrested in 2003 on a child neglect charge, was not hearsay because it was Mother's own statement, on which she was authorized to comment, offered against her by an opposing party -- namely, the Department. Mother's own admission that she has a history of criminal child neglect charges further demonstrates that the juvenile court's admission of Lough's and Wybenga's testimony regarding the Maryland "Case Search" database was mere harmless error.

5. Statements Regarding the Children's School Attendance and Educational Difficulties

Finally, Mother objected on hearsay grounds to multiple statements made by the Department's witnesses concerning the Children's poor school attendance and accompanying educational difficulties. Lough testified that she was informed by staff at Galisha's school that Galisha had attendance problems and that it was "Galisha's second year in first grade." Lough further testified that she was told that Jamal "had previously been suspended for a number of days, and initially did not return back to school after the suspension was up." School staff also informed Lough that "Jamal had been absent thirty-one percent of the time, and Galisha had been absent twenty-five percent of the time." Wybenga testified that school staff told her that Galisha and Jamal "had a significant amount of absences and tardies." Wybenga further testified that school staff informed her that "Galisha -- she was below grade

level" and "Jamal was also below grade level." Wybenga also informed the juvenile court that personnel with the County's Infants and Toddlers Program had told her that Anthony's development "was delayed" as evidenced by the fact that "he wasn't using any language, and he was two years and seven months old." Long also testified that staff at Jamal's school informed her that "[t]here were behavior modifications that the guidance counselors had put in place because Jamal would threaten his own safety as well as other students' safety in the school."

To the extent that any of the statements concerning the Children's poor school attendance and delayed educational development constituted hearsay, we hold that their admission by the juvenile court was harmless error. The court order entered in Galisha's CINA case, of which the juvenile court took judicial notice, provided that Mother "failed to enroll the older children for school, arrange for their uniforms, or acquire school supplies for them[.]" The court order in Galisha's CINA case further provided that "one child has missed over 114 days [of school] during the last 2 years and the other child has missed 44 days last school year." The court order in Galisha's CINA case also notes that "[t]he children have behavioral problems" and that "the 2-year-old child has speech delays." The content of the order entered in Galisha's CINA case, therefore, renders the alleged hearsay testimony by the Department's witnesses concerning the Children's poor school attendance and educational difficulties to be mere harmless error.

Furthermore, the juvenile court admitted two outside reports that further established the excessive school absences and behavioral problems exhibited by Galisha and Jamal. One of the reports was a neuropsychological evaluation prepared by Dr. Roxanne Hughes-Wheatland of the Kennedy Krieger Institute. The other report was a therapy report prepared by Quinlan in the course of her provision of therapy services to the Children, and pediatric neuropsychologist Dr. Taruna Ahluvalia. Both of these reports were admitted by the juvenile court without any objection from Mother. Dr. Hughes-Wheatland's report described how Galisha "reportedly has difficulty understanding more complex ideas and globally functions as a much younger child." Dr. Hughes-Wheatland's report further mentions that Galisha "was retained in grade one" and "reportedly missed many days of school while in [Mother's] care." The report prepared by Quinlan and Dr. Ahluvalia notes that Jamal "reportedly met with the school counselor for behavioral issues, and had some behavior plans" and that Jamal "reportedly missed more than 50% of school days from preK to 2nd grade[.]" As the alleged hearsay statements made by the Department's witnesses, concerning the Children's problems with school attendance and educational development, were merely duplicative of other evidence found in the court order in Galisha's CINA case, and the two doctors reports admitted at the TPR Hearing, the admission of the statements relayed by the Department's witnesses constituted harmless error.

C. Grant of the Department's Motion *In Limine*

On appeal, Mother contends that the juvenile court erred by granting the Department's motion *in limine* and, accordingly, improperly precluded Mr. Ojouri and Markes F. from testifying for Mother at the TPR Hearing. In support of her argument, Mother refers us to Maryland Rule 2-504(b), which provides that a scheduling order *must* contain "one or more dates by which each party shall identify each person whom the party expects to call as an expert witness at trial," and yet is silent regarding the identification of non-expert witnesses. Md. Rule 2-504(b). From the text of Maryland Rule 2-504(b), Mother infers that the rule "does not require that lay witnesses be disclosed to opposing parties; only expert witnesses are required to be disclosed."

Mother, however, fails to acknowledge the content of Maryland Rule 2-504.2, which provides that, at a pretrial conference, the parties may create "[a] listing by each party of the name, address, and telephone number of each non-expert whom the party expects to call as a witness at trial (other than those expected to be used solely for impeachment) separately identifying those whom the party may call only if the need arises[.]" Md. Rule 2-504.2(b)(9). As the parties to the instant case elected to create lists of the non-expert witnesses they intended to call at the TPR Hearing during the pretrial conference, and such lists were encapsulated in the parties' joint pre-trial statement, they are bound to those lists. Furthermore, the juvenile court's scheduling order required the parties to "file one (1) joint pre-trial [statement] with the Court no later than September 29, 2014 . . . [that] shall

include . . . [a] list of all witnesses to be called, with a brief statement of each witness's expected testimony[.]" (emphasis omitted). The parties were, therefore, required by an order of the court to list all witnesses -- expert and lay -- that they intended to call at the TPR Hearing in the joint pre-trial statement filed on September 29, 2014.

Mother further argues that the testimony of Mr. Ojouri and Markes F. comprised essential elements of her case, and that she was prejudiced by the court's grant of the Department's motion *in limine* that prevented them from taking the witness stand at the TPR Hearing. Mother asserts that the testimony of Mr. Ojouri would have directly refuted the Department's claims that Mother "did not provide proof that she was attending mental health treatment regularly" and "did not comply with the requirement that she attend substance abuse treatment regularly." Mother claims that she was prejudiced by the exclusion of Mr. Ojouri's testimony from the TPR Hearing because she was unable to refute these arguments advanced by the Department on which "[t]he [juvenile] court relied . . . in its oral ruling and in reaching its ultimate conclusion." Additionally, she claims that the testimony of Markes F. regarding Mother's parenting of the Children "would have addressed the picture the Department painted of . . . [M]other as an unfit parent."

We hold that the juvenile court properly granted the Department's motion *in limine* and was correct in preventing Mr. Ojouri and Markes F. from testifying at the TPR Hearing. Mother was not prejudiced by the exclusion of Mr. Ojouri's testimony regarding Mother's attendance at mental health and substance abuse treatment programs. Indeed, Mother

introduced her own medical records from Optimum Health Care, Mr. Ojouri's employer, at the TPR hearing and did not contest their accuracy.

These records indicate that Mother missed 55% of the monthly, scheduled therapy sessions for which she provided documentation to the juvenile court. In its extensive oral ruling in the instant case, as discussed *supra*, the juvenile court found that Mother "missed more [therapy] appointments than she actually attended" and that Mother claimed to be undergoing "substance abuse testing and random urinalysis . . . but she presented no proof." These factual conclusions reached by the juvenile court are entirely supported by the uncontested medical records that Mother introduced at the TPR Hearing. We, therefore, fail to see how any testimony from Mr. Ojouri could have refuted these conclusions. We further hold that Mother has failed to advance any justification for why she failed to name Markes F., her own son, as a potential witness in the parties' joint pre-trial statement.

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