Circuit Court for Baltimore City
Petition No. 817090003

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 84

September Term, 2018

IN RE C.W.

Fader, C.J.,
Graeff,
Shaw Geter,
JJ.

Opinion by Graeff, J.

Filed: January 3, 2019

This appeal arises from a child in need of assistance ("CINA") case.[1] The Circuit Court for Baltimore City found that C.W., appellee and daughter of Mr. M. and Ms. W., was not a CINA. Mr. M. ("Father"), appellant, appeals from this order, which granted exclusive custody of C.W. to Ms. W ("Mother"), also an appellee.

On appeal, Father presents three questions for this Court's review, which we have reordered and rephrased slightly, as follows:

> 1. Did the circuit court err when it awarded custody to Mother without making specific findings that there was no further likelihood of abuse or neglect?
>
> 2. Did the circuit court err in finding that: (1) Father was unable or unwilling to care for C.W.; and (2) Mother was in the better position to facilitate cooperation between her and Father in raising C.W.?
>
> 3. Did the circuit court abuse its discretion by returning custody of C.W. to Mother?

For the reasons set forth below, we shall vacate the judgment of the circuit court and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

C.W., the minor child, was born in August 2010. She remained in the exclusive physical and legal custody of Mother until March 30, 2017.[2] On that date, following an

[1] A child in need of assistance is a child who "requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Md. Code (2013 Repl. Vol.) § 3-801(f) of the Courts and Judicial Proceedings Article ("CJP").

[2] Father was incarcerated until C.W. was approximately one and a half years old. Mother maintained exclusive custody of C.W. until the commencement of the CINA proceeding.

investigation into allegations of child abuse at Mother's home, the Department of Social Services of Baltimore City ("the Department") filed a Petition with Request for Shelter Care. The petition stated that C.W. and her brother, R.S., were CINA, and it requested an order removing them from the custody of their parents. [3]

The petition alleged, *inter alia*, that C.W.'s parents "failed to provide a safe and stable living environment," that Mother used excessive corporal punishment as a way of disciplining C.W., including beating her with a belt and leaving C.W.'s body with cuts, bleeding, and bruising, that Mother had a history of mental illness and failure to ensure C.W.'s mental health needs were met, and that Father was "uninvolved in [C.W.'s] daily care and has failed to protect her from this abusive and neglectful situation."

A magistrate initially ordered that the Department provide custody for C.W. in shelter care to Father pending a hearing. On May 25, 2017, after a hearing, a magistrate found that the allegations in the CINA petition were sustained, but it found that C.W. was not CINA because she had a father "against whom no allegations have been found," who was "ready, willing and able to care" for C.W. The magistrate's recommendation was that custody be granted to Father, and Mother have visitation "every other Saturday at a minimum of six hours," to be supervised by Father's mother ("Grandmother").

On May 31, 2017, Mother filed exceptions to the proposed order of the magistrate and requested a *de novo* hearing. The circuit court subsequently held a hearing on the merits, which it bifurcated into an adjudication and disposition phase.

[3] The resolution of the case involving R.S. is not before us.

I.

Adjudication Phase

The adjudication phase of the hearing took place on August 9, 2017. Paula Pierce, a case worker for the Department, testified that, on March 30, 2017, she received a report of allegations of suspected child abuse at Mother's address. Upon arriving at the address, she observed a woman matching the description of Mother walking outside an apartment building with a little girl. She approached the woman, and after a brief exchange, confirmed that she was Mother. Two officers subsequently arrived on the scene, and Mother, the officers, and Ms. Pierce proceeded into the building. Once inside, Ms. Pierce observed that the little girl, C.W, had a red mark on the left side of her face.

After Ms. Pierce informed Mother about the abuse allegations, Mother agreed to allow Ms. Pierce and the police officers to come into her apartment. Ms. Pierce interviewed Mother, who stated that she had beaten C.W. with a belt the night before because C.W. had been "disrespectful to an adult." C.W. confirmed this account. Ms. Pierce testified that Mother appeared agitated during the interview, and at one point, called Ms. Pierce a "bitch."

After determining that C.W. needed medical treatment, the police transported Mother and C.W. to Johns Hopkins Hospital. Ms. Pierce was present for the medical examination and observed that C.W. had a bruise on her right arm, which was approximately the size of a "half dollar," and two other bruises. After consulting with the examining physicians, the police arrested Mother, who subsequently was charged with second degree assault and child abuse in the second degree.

Mother testified that, during the six and a half years she raised C.W., C.W. had no contact with Father. Although she filed for child support approximately a month after C.W.'s birth, Father failed to pay any of the child support she was awarded. [4]

Mother stated that she fulfilled several parental obligations with respect to C.W., including: (1) enrolling C.W. in school; (2) taking C.W. to doctor and dental appointments; and (3) attending C.W.'s school conferences. She took C.W. to appointments with C.W.'s psychiatrist until March 2017. She did not, however, give C.W. her prescribed medication.

Following her testimony, Mother moved to dismiss the Petition "because the Department [had] not proven a prima facie case of abuse or neglect against her." The court denied the motion. It found that the Department had proved, by a preponderance of the evidence, the following accusations set forth in the Petition:

> 1. Respondents are [C.W], and [R.S.].
>
> 2. [Mother] failed to provide a safe and stable living environment for [C.W].
>
> 3. [Mother] uses excessive corporal punishment as a means of disciplining [C.W.].
>
> 4. [The Department] was contacted and observed visible marks on [C.W.'s] face, arms and back. Mother became combative and uncooperative and threatened [the Department] staff.
>
> 5. At [Johns Hopkins Hospital], [C.W] was found to have multiple skin injuries that were found to be evidence of a clearly inflicted pattern of injury that [is] diagnostic of abuse.
>
> 6. Mother admitted beating [C.W.] with a belt.

[4] Mother stated that the only payments Father made to C.W. were a $46 payment in December 2016 and a $16 payment in June 2017. Father was ordered to pay $210 per month in child support.

7. Mother has a history of mental illness and has been diagnosed with Bipolar and Anxiety.

8. Mother has refused to allow [C.W.] to take the psychotropic medications that have been prescribed to her.

9. The father of [C.W.] is [Father].

II.

Disposition Phase

The disposition phase of the hearing began immediately after the adjudication phase. It spanned five days, between August 9, 2017, and March 6, 2018.

A.

August 9, 2017 Hearing

James Buchanan, an employee with the Department's Family Preservation Unit, testified that he had been assigned to monitor C.W.'s placement with Father on April 21, 2017. Between then and August 9, 2017, the date of the hearing, Mr. Buchanan visited Father's home every other week, or approximately six times. He described the home as "adequately furnished," noting that C.W. had her own bedroom, and there was adequate food in the house. Mr. Buchanan had "[n]o concerns" about Father's care of C.W., and he stated that C.W. was always well-dressed and "in a good mood" during his visits.[5]

At the request of C.W.'s attorney, and with the consent of the other parties, the circuit court conducted an in-camera interview of C.W. C.W. told the judge that Father

[5] Mr. Buchanan never met Mother in person. Prior to his first visit, however, he called Mother, who informed him that C.W. had been placed at Father's residence.

had treated her well since she moved into his home, but she wanted to "stay with [Mother] and [her] real brother and [her] sister."[6] She missed her sister and brother "a lot," and she referred to Father as her stepparent. C.W. stated that, at Father's home, she just stayed in her room, doing work, and Father did not allow her to watch TV and play. Although C.W. acknowledged that Mother beat her leg so forcefully that she could not go to school for days, she did not think Mother would hurt her anymore.

Mother testified following the in-camera interview with C.W. She explained that, as part of a diversion plan in her criminal case, she had enrolled herself in a parenting course. She had not missed any classes and was scheduled to complete the course by the end of August 2017.[7] Mother had begun seeing a psychiatrist in 2016, had complied with prescribed medication, and had attended group therapy sessions that met five times a week.[8]

Mother testified that the court ordered visitation was initially for "six hours every other Saturday." All of these visits occurred. Because Grandmother was the supervisor of the visits, the visits occurred at a place of Grandmother's choosing.[9]

[6] C.W. stated that she has a sister, A.B., who is not a party to this proceeding.

[7] Mother had a class on the day of the hearing, but she had scheduled a "makeup class" on the following day, August 10, 2017.

[8] Mother stopped seeing the psychiatrist for some time when she lost insurance coverage. She resumed seeing the psychiatrist in May 2017, the same month she began attending group therapy sessions.

[9] The first visit that Grandmother supervised was at Mother's home. After the first visit, Mother did not see Grandmother.

Mother testified that she made two police complaints regarding Father's failure to drop off C.W. on a scheduled visitation date. She made the complaints after Father was an hour and a half late for one visit and an hour late for the second visit. Prior to calling the police, she attempted to reach Father and Grandmother.

Since C.W. had been in Father's custody, C.W. had not had any contact with her siblings. Mother was concerned about C.W.'s health because Father had not taken C.W. to her primary care doctor or dentist.[10]

After the court sustained an objection to Mother's testimony regarding her observations of C.W., the following exchange occurred:

> [MOTHER]: Oh, fuck me, [Father], you really going to stick your middle finger up at me.
>
> [THE COURT]: I'm sorry, I'm sorry
>
> [MOTHER]: Excuse my language, he just stuck his whole middle finger up at me.
>
> [THE COURT]: I'm sorry, I'm really –
>
> [MOTHER]: Why would you do that.
>
> [THE COURT]: You getting ready to go to jail. You getting ready to go to jail. You are not going to use that kind of language in here.
>
> [MOTHER]: I apologize.
>
> [THE COURT]: And you're not going to talk to anyone in here. And, if you did something, sir, it's over. Do you understand?

[10] Mr. Buchanan testified that Father took C.W. to see her primary care doctor on August 9, 2017.

[FATHER]: Yes, sir.[11]

Grandmother testified that she became the designated supervisor of the visits between Mother and Father at the end of May or June 2017. At the time, the visits were scheduled to occur every other Saturday, six hours each day.

One Saturday in July, she was scheduled to pick up C.W. at Father's home and drop her off with Mother at Security Square Mall. She was unable to do so, however, because shortly before the scheduled drop off, she received news that one of her other sons had been shot in a drive-by shooting. She contacted Mother's mother to advise her that she could not complete the visit.

Grandmother stated that she tried to reschedule the visit with Mother. To accommodate her work schedule, she requested that Mother agree to "split" the visits into two, three-hour segments—one on Saturdays and another on Mondays. Mother refused.

B.

August 10, 2017 Hearing

Father was the sole witness at the August 10, 2017 hearing. He testified that, prior to the CINA proceeding, he had spent time with C.W. at Christmas and that C.W used to "come over for weekends with the family." He claimed that Mother stopped the visits after she called the police on him "multiple times." He called Mother to resume the visits but was not able to schedule one.

[11] Although Father apologized to the court after Mother accused him of raising his middle finger at her, he later testified that he did not do anything to provoke Mother's reaction at the hearing.

Father explained that, under the current arrangement, Mother had visitation rights six hours every other Saturday, and Grandmother supervised the visits. Grandmother would first arrive at his home, pick up C.W., and drop off C.W. with Mother at a "set location."

Father worked for a family owned roofing company. When asked about his income, he stated that he could not "predict that." He stated that he had zero income in February 2017 due to an injury and zero income in July 2017 because he "had [C.W.]."

Following Father's testimony, the court heard closing argument. The Department asked the court to uphold the recommendation of the magistrate to declare that C.W. was not a CINA and grant custody of C.W. to Father. It argued that

> because we have a parent against whom no facts have been sustained, on the one hand, and a parent against whom facts of physical abuse have been sustained, the Department would be asking for this Court to find [C.W.] not a child in need of assistance, and place her in the custody of her Father.

Counsel for C.W. argued that it was in C.W.'s best interest to be in Mother's custody because C.W.'s brother, R.S, had been returned to Mother's custody, and C.W. would benefit from "daily sibling contact." Counsel further argued that C.W. was "not fearful of either parent, and C.W. has stated her preference to live with Mother.

Counsel for Mother asked the court to find that C.W. was a CINA and place her "under an Order of Protective Supervision to [Mother]." Counsel argued that this was warranted given that the court sustained a finding that Mother abused C.W. and Father neglected C.W. Counsel argued that C.W. should be placed with Mother because it would allow C.W. to have a relationship with her brother and sister.

Counsel for Father asked the court to declare that C.W. was not a CINA and grant custody of her to Father because the court had sustained findings that Mother abused C.W. Although counsel acknowledged that C.W. expressed a preference to live with Mother, she asked the court to consider this preference in light of the broader "best interest standard." She argued that it clearly would not be in C.W.'s best interest to be placed in the custody of someone who had abused her.

After argument, the court reiterated its finding that Mother had abused C.W. The court acknowledged that it previously had found that Father was "uninvolved in [C.W.]'s daily care," but it "did not go as far as to say that [Father] . . . failed to protect [C.W.] from an abusive and neglectful situation." The court stated that it was not "comfortable simply closing [the] case," and it was going to issue an "Order of Protective Custody" to Father. It proceeded to authorize visitation for Mother of three hours at least "two days a week," leaving it to Father and Mother to elect a supervisor for the visits.[12]

C.

December 14, 2017 Hearing

Mr. Buchanan testified again. He had continued to visit Father every two weeks. Since October 2017, he had visited Father approximately six times. During those visits, he observed C.W. completing her homework, and on some occasions, interacting with her

[12] On October 5, 2017, the court held a hearing on the issue of visitation. It decided to grant "unsupervised visits with [C.W.], on Sundays, 2:30-4:30" p.m., to occur at the Western District station of the Baltimore City Police Department.

therapist, who met with C.W. once a week at Father's home. Mr. Buchanan was aware that C.W. had received some poor grades in her last report card, as well as an excellent grade in music and physical education. [13]

Mr. Buchanan observed Father and his wife (C.W.'s stepmother) helping C.W. with her homework. They created a list of tasks for C.W. to complete, which they would post on a wall in the home. C.W. loves school and had been improving her homework.

Mr. Buchanan testified that he had no concerns about C.W. living with Father. Father took C.W. to the doctor to receive treatment for eczema on August 9, 2017, but he did not know whether Father had taken C.W. to the doctor for treatment since that date. Father, to his knowledge, was not employed.

The Department called C.W.'s licensed therapist, J.T., to testify. C.W. first met with J.T. on July 10, 2017. C.W.'s primary diagnosis was ADHD, which impacted her ability to focus and sit still for long periods of time. In addition, C.W. had been diagnosed with Adjustment Disorder, which impacted her ability to cope with big changes in her life. J.T. was not sure whether C.W. was seeing a psychiatrist.

J.T. explained that C.W.'s prognosis was "good," and C.W. had improved during treatment. Father and his wife attended each session at home. J.T. also met with C.W. at school for one-on-one sessions in the school office. She had met with C.W.'s teacher about C.W.'s behavioral problems, and the teacher indicated that she had seen improvement.

[13] C.W. also received the "most improved" award in reading.

D.

January 2, 2018 Hearing

On January 2, 2018, the court conducted a second in-camera interview with C.W. C.W. stated that she had been doing her homework and visiting Mother on Sundays.[14] The visits lasted about two hours (2:30-4:30 p.m.) and had been "good." C.W. celebrated Christmas with Father and Mother, and Mother gave her a tablet as a Christmas present. C.W. could not remember what Father gave her for Christmas.

E.

March 6, 2018 Hearing

Mother testified that her current visitation schedule was 12:30-4:30 p.m. on Sundays. Father would drop off C.W. at the Western District police station on Mount Street.

Mother explained that, for the first couple of months, Father would drop off C.W. wearing a "thin Old Navy jacket," with "no hat, scarf, or gloves." C.W. would complain about being cold, and on one occasion, C.W. was dropped off with "white spots all over her hands."

Father had cancelled three visits due to rain, illness, and because he "was at work." When Father told Mother he was unable to drop off C.W. for the third visit on February 25, 2018, she called the police and was told to proceed to the station for the drop off. If

[14] The court noted that C.W. had received excellent grades in her report card for the last quarter.

Father did not show up, he would be found in violation of the visitation order. She arrived at the station at approximately 12:20 p.m. and stayed for 10 minutes because she had her "other two kids at home." When questioned about leaving her other children unsupervised at home, she stated that the "police told [her it was] not against the law."

Mother testified that, after each drop off, Father and stepmother followed and threatened her. She called the police each time this occurred, but Father had not suffered any legal consequences. C.W. told her that Father and stepmother talked about Mother while C.W. was in their custody, and C.W. did not want to return to Father.[15]

On February 27, 2018, Ariel Edwards, a child protective services employee, came to Mother's house in response to a report of child abuse. She stated that Ms. Edwards "cleared [her] of everything," and "no abuse" was found.

Mother expressed concern that, if Father were awarded custody of C.W., she would be unable to visit C.W. in the future. She stated that her fears were based on Father's comments regarding his plans to exclude Mother from C.W.'s life. Although Mother acknowledged that C.W. was doing well in school, she believed that C.W.'s behavior had worsened since C.W. had gone to live with Father. Mother testified that she called child protective services twice in January to report that C.W. did not have "a coat, hat or gloves on."[16]

[15] Mother testified that C.W. had informed her that Father and stepmother frequently called Mother the "B word." She stated that she does not talk to C.W. about what goes on at Father's house.

[16] Ms. Edwards, after investigating these reports, informed Mother that she had observed C.W. wearing a coat at school.

Mother stated that she sees a psychiatrist once a month, and a therapist once a week, to receive treatment for Bipolar type 2 disorder. She asserted that she had been in compliance with prescribed medications.

W.K, Mother's sister, testified that she had been responsible for facilitating visits, but she stopped due to conflicts with Father. She accompanied Mother on two visits, one in December 2017 and another in January or February 2018. Nothing unexpected occurred at the first drop-off, but she heard Father "shouting some things" during the second drop off. She never witnessed either parent scream at or hit C.W. during the time she facilitated the visits. W.K. stated that C.W. loves Mother.

Tyaunna Armstead, a social worker, testified. She had known C.W. for "a little over a year," and she usually met with C.W. "10 hours a week" at Father's home. C.W. had not missed any sessions while she lived with Father.

Father testified that C.W. had been living with him almost a year and was an "honor roll" student in the 2nd grade. He testified that he participated in "every other" therapy session with C.W.

With respect to visitation, he had cancelled two visits, and Mother had cancelled one. He cancelled a visit on Sunday, March 4, 2018, because he was "on-call" at his job at Home Depot.[17] He did not know he had to work on Sunday and found out about an hour before the scheduled visitation. He also cancelled the prior visit because C.W. was sick,

[17] Father explained that he has Tuesdays or Fridays off at work—days when he is not required to be on call—but that he likes to work overtime. He stated that he earns $10.50 per hour at his job.

and he had to take her to the doctor on Sunday. He did not recall when he had informed Mother about the cancellation of the second visit. Father did not remember the date of the visit that Mother cancelled, but only that she cancelled because she had the flu.

Father stated that C.W. always wore a jacket, coat, scarf, and gloves when she was dropped off with Mother. He explained that, during the drop off, Mother would complain that C.W. did not have a coat, even though C.W. was wearing one. Mother would cuss and confront him during the drop off, and she always appeared angry or very hostile.

Father explained that he and Mother lived at his house before he was aware that he was C.W.'s father. He admitted to being incarcerated several years ago. He testified that he does not spend too much time at home because he is "mostly working."

When asked how he disciplines C.W., Father stated that he used to make C.W. hold a tote-bag filled with notebooks for 30 minutes in a corner, but he stopped doing this after he took parenting classes. His practice at the time of the hearing was to discipline C.W. by telling her to stand in the corner without a bag.

During closing arguments, the Department argued, as it had on August 10, 2017, that C.W. should be declared not a CINA and Father, the "non-offending parent available," should be awarded custody of C.W. under Maryland Code (2018 Supp.) § 3-819(e) of the Courts and Judicial Proceedings Article ("CJP").[18]

[18] CJP section 3-819(e) states:

> If the allegations in the [CINA] petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child, the court may not find that the child is a child in need of

Counsel for C.W. agreed with the Department that Father should receive custody of C.W. based on Mother's prior abuse and that there were "no facts adjudicated against Father" to show that he was abusive or neglectful. Counsel requested that Mother receive "unsupervised weekend visits."

Father asked the court to dismiss the CINA petition and grant custody to him under CJP § 3-819(e). He argued that Mother should not be granted custody of C.W. because she had not "fully demonstrated to the Court her compliance with anything that would prevent [the abuse] from happening in the future, that is, a risk of immediate harm or danger to" C.W.

Mother asked the court to find that C.W. was not a CINA and that custody of C.W. be granted to her. She argued that CJP § 3-819(e) did not mandate an award of custody to Father, and that an award of custody to her would be in C.W.'s best interests.

III.

Court Findings

On March 7, 2018, the court found that C.W. was not a CINA, and it issued an order awarding custody of C.W. to Mother. In making its decision, the court found it to be "abundantly clear" that Mother had abused C.W.

assistance, but, before dismissing the case, the court may award custody to the other parent.

The court then addressed whether CJP § 3-819(e) applied. In finding that it did not, the court stated that it found that Father was "uninvolved and largely absent" with respect to C.W. prior to commencement of the CINA proceedings, and he failed to protect C.W. by his absence.[19]

In addressing whether C.W. was a CINA, the court stated:

> Except for the conflictual war-like relationship between the parents, [C.W.] could realize an exceptionally happy ending to an appalling beginning. Before these proceedings, [C.W.] was the product of an absent father and an abusive mother. Today she has a father who, despite some missteps, has provided [C.W.] with a relatively safe home, attended to her educational needs, and brought consistency to her mental health treatment.
>
> On the other hand, [Mother] has complied with service requirements, addressed her mental health needs, and she has worked extremely hard to minimize much of the out-of-control behavior that brought her to these courts. As a result of [Mother's] accomplishments, the Department and the Courts have returned to [Mother's] care and custody her two-year-old toddler, [R.S.], who the [Department] removed due to the abuse of [C.W.]
>
> Now, [C.W.] can lay claim to two caring parents. She has two parents who have embraced services to make them better parents. She has two parents who are willing to work, at least individually, to properly raise [C.W.] and attend to her needs.

Accordingly, the court found that C.W. was not a CINA.

In assessing what to do with C.W., the court stated, in pertinent part, as follows:

> The court's three significant concerns are: First, as demonstrated by the return of [R.S.], [Mother] has proven that she is now prepared to raise [C.W.]. Second, as proven by [Father's] care and custody of [C.W.] over the last ten (10) or eleven (11) months, he is no longer absent and is prepared to raise [C.W.]. The final significant concern pertains to the vitriolic nature of the parents' relationship. Despite the commendable efforts of these parents to

[19] The court stated that it reviewed its August 10, 2017 order, as well as the court's notes.

prepare themselves individually to raise [C.W.], neither parent has made room for or any allowance for the other parent in [C.W.]'s life.

These adults are oblivious to the reality that each time they attack each other [C.W.] is wounded and diminished. This Court has had two in-camera interviews with [C.W.], and she has matured considerably between those two interviews. [C.W.] has exchanged two overwhelming problems—an absent father and abusive mother—for two parents who are prepared to destroy each other to singularly parent [C.W.]

* * *

In making this decision, this Court has considered [Mother's] six (6) years of parenting [C.W.] versus [Father's] months of parenting [C.W.]. This Court considered [Mother's] reactive but improving disposition versus [Father's] provoking nature as both dispositions were exhibited in this court. Also, this Court has considered all of the evidence presented. Inasmuch, this Court finds that [Mother] is in the best posture to create an environment that would facilitate the possibility of both parents being in [C.W.'s] life. Certainly, while [Mother] is still a work in progress and requires more counseling, she is better suited, at this point to try to work with [Father] while having custody of [C.W.].

For these and other reasons outlined in this record, it is . . . hereby:

ORDERED that [the Department] shall return the care and custody of [C.W.] to [Mother].

This appeal followed.

STANDARD OF REVIEW

In reviewing child custody determinations, our standard of review is as follows:

"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."

Gillespie v. Gillespie, 206 Md. App. 146, 170 (2012) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

The determination whether to award custody is "'within the sound discretion of the [trial court],'" and "'a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion.'" *Id.* at 171 (quoting *In re Yve S.*, 373 Md. at 585–86). Accordingly, our standard of review of custody determinations "is quite deferential," and "we may not set aside the trial court's judgment merely because we would have decided the case differently." *Gordon v. Gordon*, 174 Md. App. 583, 638 (2007).

DISCUSSION

I.

Father contends that the circuit court erred in granting Mother custody of C.W. when, after finding that Mother had abused C.W., it failed to make specific findings that there was no likelihood of further abuse or neglect. C.W. and Mother disagree, although their arguments differ slightly.

C.W. asserts that the "failure to specifically state that there was no likelihood of future abuse or neglect if custody [was] returned to [Mother] . . . [was] not an abuse of discretion warranting reversal." She asserts that the record supports the conclusion that the court considered this factor.

Mother, by contrast, agrees that the circuit court was obligated to make a specific finding that there was no likelihood of abuse or neglect before awarding her custody of C.W. She asserts, however, that the court was not "required to recite a specific litany or

'magic words,'" and the "court's findings were more than adequate to demonstrate that the court found that C.W. was not at risk of further abuse or neglect."

Maryland Code (2012 Repl. Vol.) § 9-101 of the Family Law Article ("FL") states:

> (a) *Determination by court.* – 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) *Specific finding required.* – 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 court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

Pursuant to this statute, the court, after finding that Mother had abused C.W., was required to make a specific finding that there was "no likelihood of further abuse or neglect" by Mother before awarding custody of C.W. to Mother. *In re Adoption No. 12612 in Circuit Court for Montgomery Cty.*, 353 Md. 209, 239 (1999). The court did not make the requisite specific finding.

To be sure, in finding that C.W. was not a CINA, the circuit court stated:

> [Mother] has complied with the service requirements, addressed her mental health needs, and she has worked extremely hard to minimize much of the out-of-control behavior that brought her to these courts. As a result of [Mother's] accomplishments, the Department and the Courts have returned to [Mother's] care and custody her two-year-old toddler, [R.S], who DSS emergently removed due to the abuse of [C.W.]
>
> Now, [C.W.] can lay claim to two caring parents. She has two parents who have embraced services to make them better parents. She has two parents who are willing to work, at least individually, to properly raise [C.W.] and attend to her needs. For these reasons, this Court finds that [C.W.] IS NOT [CINA].

We agree with Father that these statements did not amount to a specific finding of "no likelihood of further abuse or neglect," as required by statute. *See In re Adoption No. 12612*, 353 Md. at 239 (appellate court may not infer required finding "from other disparate statements by the trial judge").[20] Accordingly, we must vacate the order granting custody of C.W. to Mother and remand for further proceedings. On remand, the court may take further evidence regarding the likelihood that Mother will further abuse or neglect C.W. The court should explicitly state its finding in this regard before it issues its new custody ruling.

II.

Although we are vacating the court's order and remanding for further proceedings, we will briefly discuss Father's claim that the circuit court erroneously found that (1) he was "unable or unwilling to care for C.W." and (2) Mother was in "a better position to create an environment that would facilitate both parents in C.W.'s life."[21]

[20] Mother argues that FL § 9-101(b) should not interpreted in such a way as to require the recitation of "magic words." Although the Court of Appeals in *In re Adoption No. 12612 in Cir. Ct. for Montgomery Cty.*, 353 Md. 209, 239 (1999), indicated that a trial court might be able to meet the statutorily required finding using language that was an "acceptable equivalent to the required statutory finding," the court's findings here were not a sufficient equivalent to the specific finding required.

[21] In his questions presented, Father contends that the court erred in finding that he "failed to protect C.W.," but he does not discuss that claim in his argument presented. Accordingly, we could decline to address that claim. *See Anne Arundel Cty. v. Harwood Civic Ass'n, Inc.*, 442 Md. 595, 614 (2015) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal." (quoting *Klauenberg v. State*, 355 Md. 528, 552 (1999))). The record, however, which shows that Father was not involved with his daughter from August 2010 until April 2017, when the abuse occurred, supports the circuit court's finding.

A.

Inability or Unwillingness to Care for C.W.

With respect to Father's claim that the court clearly erred in finding that he was "unable or unwilling to care for C.W.," we note that Father does not provide any record reference to any such finding, and we did not see one in the court's March 2017 order. Instead, the court found that, although Father initially had not been involved in C.W.'s life, at the time of the CINA proceedings, Father had "provided [C.W.] with a relatively safe home, attended to her educational needs, and brought consistency to her mental health treatment." Father's claim of error in this regard has no merit.

B.

Environment Best Facilitating Both Parents in C.W.'s Life

Father next contends that the court clearly erred in its finding that awarding custody to Mother would "create an environment that would facilitate the possibility of both parents being in [C.W.'s] life." We disagree.[22]

There was substantial testimony at trial regarding Father's provocative behavior towards Mother, including: (1) Mother's testimony that Father threatened her each time she dropped C.W. off with Father for visits; (2) Mother's in-court statement that Father raised his middle-finger at her during the hearing; (3) Mother's testimony that Father cancelled several visits with little notice; and (4) Mother's testimony that Father had made

[22] Father asserts that he testified that Mother prevented him from being a part of C.W.'s life prior to the CINA proceedings. The court, however, was free not to believe this testimony or to conclude that, at the time of the hearing, Mother was more likely to include Father in C.W.'s life.

comments about excluding her from C.W.'s life. Based on this evidence, and the court's observations of the parties' demeanor at the trial, we agree with Mother that the court was not clearly erroneous in determining "that Ms. W. was more likely to behave in a conciliatory manner if awarded custody."

Accordingly, we find no merit to Father's contention that the court made clearly erroneous factual findings. As indicated, however, because the court erred in awarding custody to Mother without making the specific finding required by FL § 9-101(b), we must vacate the judgment. On remand, the circuit court shall address whether "there is no likelihood of further child abuse or neglect by" Mother and, after making that finding, decide the issue of custody of C.W.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED. CASE REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE DIVIDED EQUALLY BETWEEN THE PARTIES.