Circuit Court for Prince George's County
Case No. CINA180158

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0429

September Term, 2021

IN RE: S.M.

Fader, C.J.,
Zic,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: December 21, 2021

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

In February 2019, the Circuit Court for Prince George's County, sitting as a juvenile court, declared S.M. a child in need of assistance ("CINA")[1] due to medical neglect by his parents, appellees T.M. ("Father") and A.K. ("Mother") (collectively "Parents").[2] S.M. was then placed in the care of Parents under an order of protective supervision. During a subsequent review hearing in February 2020, the juvenile magistrate recommended closing S.M.'s CINA matter. Counsel for S.M. ("Counsel") filed exceptions and requested a de novo hearing. The juvenile court ultimately sustained the magistrate's recommendations and ordered the termination of its jurisdiction over S.M. This timely appeal followed.

Counsel raises one question for our review,[3] which we rephrased and recast as two separate questions:

1. Did the juvenile court err in restricting reference during the exceptions hearing to events involving the care of S.M. that occurred prior to the last review hearing order in November 2019?

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[1] Section 3-801(f) of the Courts and Judicial Proceedings Article defines CINA as a child requiring court intervention because "[t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder" and "[t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs."

[2] Father filed an appellate brief. Afterwards, Mother filed a line, adopting the arguments made in Father's brief.

[3] Counsel phrases the issue as follows:

> Did the Circuit Court err when it did not consider the entire case file, and prohibited reference to past events involving the care of the child, and did not consider the extent of progress that has been made toward alleviating or mitigating the causes necessitating the court's jurisdiction, when it closed the child's CINA case?

2. Did the juvenile court err in closing S.M.'s CINA matter?

For the reasons that follow, we affirm the judgment of the juvenile court.

BACKGROUND

S.M. came to the attention of the Prince George's County Department of Social Services ("Department") after being admitted to Children's National Hospital ("CNH") on August 3, 2018. While at the hospital, Parents initially refused medical treatment for S.M. who was experiencing rapid breathing and dangerously low oxygen levels. S.M. remained hospitalized until October 25, 2018 due to the severity of his conditions. Previously, in 2015, S.M. was diagnosed with chronic granulomatous disease ("CGD"), a rare immune deficiency disease that if left untreated can be fatal in the case of bacterial or fungal infections. Individuals with CGD are treated with preventative, lifelong antifungal and antibacterial medications.

On August 14, 2018, the Department took custody of S.M. It then filed a CINA petition, alleging medical neglect by Parents. In the petition, the Department referenced S.M.'s August 2018 hospitalization, stating that "Parents w[ould] not accept that [S.M.] has medical issues and continue[d] to threaten to leave the hospital" and that they "refused medical treatment . . . includ[ing] the administering of antibiotics." And it noted that, since S.M.'s CGD diagnosis, Parents missed multiple medical appointments for S.M. and refused to provide him with medication at home.

A shelter care hearing was held on August 15, 2018. At the hearing, the Department withdrew its request for shelter care and S.M. was returned to the custody of

Parents under an order controlling conduct. The juvenile court also ordered that Parents were not to remove S.M. from CNH until he was medically discharged and they were required to provide S.M. with appropriate medical care pending the adjudicatory hearing.

The adjudicatory and disposition hearings were held on October 10, 2018, November 8, 2018, December 6, 2018, and January 28, 2019. At the outset of the October hearing, the Department sought dismissal of the CINA petition and Counsel objected, thereby assuming the burden of proof. The adjudicatory hearing then commenced during which Dr. Maria Arroya-Morr testified to the events that occurred when S.M. was hospitalized in August 2018. She explained that when Parents arrived at CNH for a follow-up appointment and were notified that S.M. was in respiratory distress, they originally resisted taking S.M. to the emergency room but eventually agreed after hospital security was called. Dr. Michael Keller also testified at the hearing, stating that while Parents initially ensured S.M. received medical care for his CGD, there was a gap in S.M.'s treatment from Fall 2016 until July 2018. He explained that S.M. was not seen by anyone at CNH for care of his medical condition during that timeframe and that S.M. was not taking any of the prescribed medications. And he stated that the lack of treatment caused S.M.'s recent hospitalizations. Dr. Keller further testified that S.M.'s CGD resulted in chronic lung disease and irreversible lung damage, which then caused damage to his heart, and that Parents expressed disbelief about S.M.'s medical conditions. Additional testimony and evidence were presented by the parties.

On February 13, 2019, the juvenile court issued its adjudication and disposition order. The court determined that the following allegations in the CINA petition were proven by a preponderance of the evidence:

> [S.M.] has Chronic Granulomatous Disease (CGD), an immune deficiency disease that if left untreated can be fatal in case of infection of bacteria or fungus. It has led to serious health problems and three hospitalizations for [S.M.] There was a serious and extended gap in the parents[] obtaining appropriate medical care for [S.M.]'s medical condition.

The court declared S.M. to be a CINA based on medical neglect and ordered that he remain with Parents under an order of protective supervision. It further ordered that Parents take S.M. to medical appointments with his various physicians, including specialists in immunology, infectious disease, neurology, nephrology, cardiology, and pulmonology, provide S.M. with the prescribed medications, such as antibiotic and antifungal medications, and cooperate with CNH as well as S.M.'s physicians' medical requests.

The parties convened for an initial permanency planning hearing on January 28, 2019. The juvenile court found that reunification with Parents was S.M.'s permanency plan as he was already in their care. Later, at the June 2019 review hearing, the court ordered, based on the juvenile magistrate's findings and recommendations, that S.M. remain a CINA. The court, in its written order, made the following findings:

> [S.M.] has attended all medical appointments, including pulmonology, pediatric physical, and cardiology. He has also seen the dentist and has a Child Find evaluation set 7/24/19. [S.M] was hospitalized for breathing issues and accompanying infections/viruses such as pneumonia in

> March, April, and May 2019. He had a sleep study in May 2019 where he was diagnosed with severe sleep apnea and was prescribed a BiPap machine. He is also on oxygen (and had the tube in his nose and the tank was present with him in court today.) [S.M.] is prescribed medication, including Albuterol sulfate, Noxafil Posaconazole, Cyproheptadine, Enfamil multi-vitamin supplement, and vitamins with iron. [S.M] is seeing a nutritionist and is taking Ensure. He has gained 3 pounds but is still in the first percentile. [S.M.] has had in-home nursing and parents were very cooperative with the program. There is concern about the parents not noting when [S.M.] has breathing issues and not immediately getting [S.M.] hospitalized when instructed to do so. Mother and Father still have distrust of [CNH] and do[] not want to answer all of the questions posed by the medical providers. . . . [S.M.] needs to see an ENT to address his tonsils and adenoids as this contributes to his sleep apnea and breathing issues.

Another periodic review hearing was held in November 2019 during which the Department and Parents asked for closure of the CINA matter while Counsel requested continued jurisdiction. The Department and Parents argued that the order of protective supervision was no longer necessary based on the progress made by and cooperation of Parents. Counsel disagreed, arguing that additional time under the order was needed to ensure that Parents would remain compliant with S.M.'s medical treatment without court supervision. The juvenile court ultimately sided with Counsel. In its written order adopting the magistrate's findings and recommendations, the court stated that Parents have taken S.M. to all medical appointments but that:

> There is concern because [S.M.]'s BMI went down and the nutritionist wants him to come in as soon as possible. The family is upset with the nutritionist and Father sent a very hostile email to her about her recent report and update because she did not see [S.M.] when she wrote the report . . . .

It also noted that S.M. “needs a swallow/chew study and there is concern he may have inflammatory bowel disease so he needs testing to further assess.” The court declined to the close the matter “given the parent’s history of medial neglect prior to 2018 (and resulting damage to [S.M.]’s health prognosis/lifespan) and the precarious nature of [S.M.]’s medical condition.”

At the February 2020 review hearing, Parents and the Department again requested case closure and Counsel objected. The magistrate recommended rescinding the order of protective supervision and closing S.M.’s CINA case, reasoning that “there are no child welfare concerns that currently exist that require [the Department] to continue to provide court-ordered protective supervision” and that Parents “have been meeting [S.M.]’s complex and myriad medical needs.” Counsel filed exceptions and requested a de novo hearing.

The parties reconvened for status hearings on October 19, 2020 and October 27, 2020. At the October 19 hearing, Father argued that the scope of the exceptions hearing is limited to the timeframe considered by the magistrate at the February 2020 hearing, which was the period of time from the last review hearing order in November 2019 to the present. Therefore, according to Father, the court should prohibit references during the exceptions hearing to events occurring prior to the November 2019 order. Counsel responded that presenting evidence about the history of this case, including the reasons for S.M.’s CINA declaration, is necessary to determine whether Parents have made sufficient progress such that the CINA matter should be closed. The court did not rule on

this issue but did invite Counsel to submit supportive caselaw for it to consider. Notably, the court indicated that it would review the entire case file, stating that Counsel "do[es not] need to worry about me not knowing or not reading what's already in the file, because I will have done that when we go to trial."

During the October 27 hearing, the parties continued discussing the scope of the exceptions hearing. The juvenile court appeared to rule on this issue, limiting the exceptions hearing to events that occurred since the November 2019 review hearing order. Specifically, it stated: "I have ruled and my ruling is that it is limited to that time period that was discussed at the prior hearing with the magistrate at that review hearing, which was the November 19th. So whatever time period is being reviewed there is what the Court is reviewing, period." Relying on unspecified Maryland caselaw and Courts and Judicial Proceedings § 3-816.2(a), which governs review hearings in CINA cases, the court explained that the exceptions hearing centers on "[t]he review period that the magistrate [during the February 2020 hearing] used to render her decision." It further stated:

> [W]hat is the purpose of having these review hearings with the magistrate if you are going to continue to go back to the beginning? You build on what you did at the last hearing. Each time moving forward, you build on the last one. And that is why the exceptions are limited.
>
> . . . That statute says you are reviewing what has occurred and how much progress they have made since the last review date, not since the beginning. Because they have already reviewed what happened in the beginning at the first hearing or the second hearing.

> And then they are reviewing at the third hearing what happened between now and the second hearing. The fourth hearing, they are reviewing what happened between the third and fourth hearing. They are not going back to the beginning and I am not going back to the beginning because this is an exceptions hearing. I am not having a CINA case. I am having an exceptions hearing.

The court then directed Counsel to file a memorandum outlining the caselaw supporting his position, stating that "I have made my decision but . . . I am willing to look at these cases and I will reconsider my decision if it is necessary to do so based on these cases." The court also seemingly revised its statement from the prior status hearing that it would consider the entire case file when making its decision:

> [COUNSEL FOR S.M.]: I thought Your Honor had said . . . at that last status [hearing] that you were going to read basically the entire file. Is that --
>
> [THE COURT]: I am going to read whatever is relevant and whatever is stipulated to. That is what I have said the whole time. I am going to read whatever is stipulated to that everyone agrees to it.

A final status hearing took place on November 23, 2020. The juvenile court explained that it reviewed Counsel's previously filed memorandum addressing the confines of the exceptions hearing, which it referred to as a "motion for reconsideration." The court issued its ruling:

> I did not find . . . the memorandum . . . persuasive in order for me to reconsider your motion to bring in all of the past abuse when the child entered as CINA, or the reasons that the child entered as CINA in the first place. I don't believe there is any case law that points to that, that says that that is a requirement at this stage, and therefore the Court is going to deny your motion for reconsideration based on that.

The juvenile court held the exceptions hearing on March 17 and 18, 2021. At the outset, Counsel asked for clarity on the court's ruling at the status hearing and noted that he was not seeking to relitigate issues or findings addressed at prior hearings but rather ensure the court had adequate evidence about the case history. Counsel stated that he "thought Your Honor was ruling as a matter of law that no one can refer to an event that occurred in the world prior to November[] 2019" to which the court responded, "I don't recall ever saying that." After extended discussion, the court declared that it would allow Counsel to put on his case and would rule on objections to evidence as they were made. It then explained:

> My ruling[] is we're treating this as we do any other exceptions hearing where it's with regard to the review period in question.
>
> And you're excepting what the magistrate did for the review period. And the magistrate in this case closed the case on February 12th, 2020 based on a review period from [November] to February. . . .
>
> And so, it's as if we're in a posture of [November] 19th, 2019, we're pretending it's that day, and we're starting forward.

The exceptions hearing proceeded with opening statements by the parties. The court then heard testimony from Mother and Father. And later Counsel cross examined both Parents. The court also admitted a number of exhibits presented by Counsel and Father. After considering the testimony and exhibits, which are discussed in further detail below, the court denied the exceptions and sustained the recommendations of the

magistrate. Consequently, it rescinded the order of protective supervision, terminated the interest of the court in S.M.'s CINA matter, and closed the case.

In its written order dated April 7, 2021, the court noted that it "has . . . [d]etermined the extent of progress made toward alleviating or mitigating the causes necessitating the Court's jurisdiction." It then made a number of findings:

> [S.M.] has attended all medical appointments . . . . He has also seen the dentist. [S.M.] had a sleep study in May 2019 where he was diagnosed with severe sleep apnea and was prescribed a BiPap machine. He is also on oxygen (and had the tube in his nose and the tank was present with him in court today). [S.M.] is prescribed medication. [S.M] is seeing a nutritionist and is taking Ensure. [S.M.] has grown and gained weight. He has not been hospitalized since the last hearing. [S.M.] is enrolled in . . . Pre-K and began classes 9/3/19. He has an IEP[4] and had a speech and hearing assessment 1/20 that was shared with the school by the parents. [S.M.] gets OT[5] at school and there have been several school meetings with the next one set 2/2/20. [The Department] has gone and observed him and he is doing very well. [S.M.] had a swallow/chew study that was shared with the school. There is concern he may have inflammatory bowel disease, so he needs testing to further assess; however, he is in need of a cardiology catheterization procedure first. He had the pre-op appointment 2/11/20 and has the cardiology catheterization next week. He has an Immunology and Pulmonology appointment at [CNH] 3/10/20. Mother says he also has an appointment with the ENT 3/10/20.

Based on those findings, the court concluded that S.M. was no longer a CINA, explaining:

[4] An "IEP" is an "individualized education program."

[5] We believe "OT" stands for "occupational therapy" but were unable to confirm this in the record.

> [T]here are no child welfare concerns that currently exist that require [the Department] to continue to provide court-ordered protective supervision. The parents have been caring for [S.M.] and have been meeting [S.M.]'s complex and myriad medical needs and have been getting him educational services in coordination with medical and educational providers. The reports are that the parents are very cooperative with the school in addressing [S.M.]'s needs that include where they intersect with medical/nutrition/OT services and care and that they have been taking [S.M.] to his appointments and getting him medical care. He has been home with them for almost 18 months and [the Department] is indicating that no further court-ordered oversight is necessary.

Thereafter, Counsel filed a notice of appeal.

DISCUSSION

Counsel argues that the juvenile court erroneously ruled "that events prior to the current review period [of November 2019 to the present] could not be considered, referenced, or questioned" during the exceptions hearing. More specifically, he claims that the court erred in denying his "request to read and consider the Adjudication and Disposition Order[] and medical documents admitted . . . at Adjudication" and in sustaining objections to questions directed to Parents on cross examination about their understanding and acceptance of their past medical neglect of S.M. In doing so, Counsel contends that the court excluded from its own consideration any information about the reasons for S.M.'s CINA declaration. And without this information, he argues that the court was unable to and in fact failed to "[d]etermine the extent of progress that has been made toward alleviating or mitigating the causes necessitating the court's jurisdiction" as required by Courts and Judicial Proceedings § 3-816.2(a)(2)(iv). Relatedly, Counsel

claims that closing S.M.'s CINA case "without even considering the causes of the child's CINA case[] and whether those causes had been remedied" was an abuse of discretion. According to Counsel, the court's erroneous rulings were prejudicial and resulted in a structural error that compromised the entire hearing, thereby warranting remand.

Parents argue that the juvenile court had sufficient information about the case history to properly determine that, under § 3-816.2(a)(2)(iv), the issues that led to the court's assumption of jurisdiction over S.M. have been remedied and that the CINA case should be closed. They point to documents that were admitted as exhibits during the exceptions hearing, such as the November 2019 review hearing order, Counsel's notice of exceptions, the Court Appointed Special Advocate's ("CASA") February 2020 report, and Dr. Keller's January 2020 letter. In addition, Parents claim that Counsel's opening statement, the February 2019 adjudication and disposition order, which they allege was in fact considered by the court, and Counsel's legal memorandum filed in November 2020 provided the relevant background information. Moreover, Parents contend that any error by the court in limiting Counsel's presentation of the case history was harmless and does not require remand.

I. STANDARD OF REVIEW

When reviewing cases involving child custody matters, appellate courts generally apply three different standards of review. *In re Shirley B.*, 419 Md. 1, 18 (2011). First, the appellate court scrutinizes factual findings under the clearly erroneous standard. *In re A.N.*, 226 Md. App. 283, 306 (2015). "Second, 'if it appears that the [juvenile court]

erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless.'" *Id.* (alteration in original) (quoting *In re Shirley B.*, 419 Md. at 18). Third, "when the appellate court views the ultimate conclusion of the [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [juvenile court's] decision should be disturbed only if there has been a clear abuse of discretion." *In re Shirley B.*, 419 Md. at 18 (alterations in original) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

We apply the harmless error standard to the juvenile court's evidentiary rulings challenged by Counsel. *See, e.g.*, *In re Yve S.*, 373 Md. at 608-18 (analyzing whether social worker's testimony during permanency planning hearing amounted to an improper lay diagnosis of mother's medical condition under the harmless error standard). In doing so, we recognize that "the complaining party has the burden of showing prejudice as well as error." *Id.* at 616 (quoting *Beahm v. Shortall*, 279 Md. 321, 330 (1977)). "[A]lthough there is no precise standard [for the degree of prejudice required for reversal], a reversible error must be one that affects the outcome of the case, the error must be 'substantially injurious,' and '[i]t is not the possibility, but the probability, of prejudice' that is the focus." *In re T.A., Jr.*, 234 Md. App. 1, 13 (2017) (third alteration in original) (quoting *In re Yve S.*, 373 Md. at 617-18); *see also In re Ashley E.*, 158 Md. App. 144, 164 (2004) ("[P]rejudice means that it is likely that the outcome of the case was negatively affected by the court's error."), *aff'd*, 387 Md. 260 (2005).

With regard to the juvenile court's ultimate decision to close the case, we determine whether this was an abuse of discretion. *See In re J.R.*, 246 Md. App. 707, 731 (2020). An abuse of discretion may be found "where no reasonable person would take the view adopted by the [juvenile] court" or where the ruling is "clearly against the logic and effect of facts and inferences before the court." *In re Yve S.*, 373 Md. at 583 (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)). In other words, reversal is warranted when the decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *In re Yve S.*, 373 Md. at 583-84 (quoting *In re 3598*, 347 Md. at 313).

II. ANALYSIS

Before turning to the substantive issues, we briefly lay out the legal framework that will guide our review. We first note that "the juvenile court possesses exclusive original jurisdiction over CINA petitions." *In re Ryan W.*, 434 Md. 577, 602 (2013) (citing Md. Code Ann., Cts. & Jud. Proc. § 3-803(a)(2)). The juvenile court's direct and continuing supervision is appropriate when the court has determined, "as part of the CINA finding," that "intervention is required to protect the child's health, safety, and well-being." *Frase v. Barnhart*, 379 Md. 100, 120 (2003). "The broad policy of the CINA Subtitle is to ensure that juvenile courts (and local departments of social services) exercise authority to protect and advance a child's best interests when court intervention is required." *In re Najasha B.*, 409 Md. 20, 33 (2009); *see also* Cts. & Jud. Proc. § 3-802(a) (outlining the goals of the CINA statute).

Once a child is under the jurisdiction of the juvenile court, the court is required to "conduct a hearing to review the status of [the] child . . . within 6 months after the filing of the first [CINA] petition . . . and at least every 6 months thereafter." Cts. & Jud. Proc. § 3-816.2(a)(1). Pursuant to Courts and Judicial Proceedings § 3-816.2(a)(2),[6] at each periodic review hearing, the court must determine, among other matters, "the extent of progress that has been made toward alleviating or mitigating the causes necessitating the court's jurisdiction." § 3-816.2(a)(2)(iv).

The juvenile court's jurisdiction over a child declared a CINA continues "until the child reaches the age of 21 years, unless the court terminates the case." Cts. & Jud. Proc. § 3-804(b). When the court no longer has concerns about the child's health, safety, and well-being and determines that the child may be safely returned to the care of one or both of his or her parents, there is no justification for the court's continued intervention—the purposes of the CINA statute have been fulfilled. *Cf. Frase*, 379 Md. at 120 (explaining that court intervention is justified when it "is required to protect the child's health, safety, and well-being"). Closure of the CINA matter is proper in such circumstances. *See In re Joseph N.*, 407 Md. 278, 292-93 (2009) (stating that closure of a CINA case is appropriate when a parent is fit and able to care for the child).

Lastly, we note that Courts and Judicial Proceedings § 3-807 and Rule 11-111 authorize a magistrate to hear juvenile matters. Any party is entitled to "file [written]

[6] The parties agree that the review hearings in this case are governed by this statutory provision.

exceptions to the magistrate's proposed findings, conclusions, recommendations or proposed orders." Md. Rule 11-111(c); § 3-807(c)(1). A party's exceptions must specify the items to which the party objects and indicate whether the hearing on the exceptions will be de novo or on the record. Md. Rule 11-111(c); § 3-807(c). The hearing, in either case, is "limited to those matters to which exceptions have been taken." Md. Rule 11-111(c); § 3-807(c)(4). While "the scope of a hearing de novo is [not] []defined" in the statute or Rule, the Court of Appeals has explained that such a hearing "must enable the [c]ircuit [c]ourt [j]udge to receive evidence and make determinations of facts as though no prior proceeding had occurred." *In re Marcus J.*, 405 Md. 221, 234-35 (2008). This Court also offered its interpretation of a de novo exceptions hearing, stating that it "contemplates a [proceeding] wherein additional facts may be adduced which are pertinent to the issues raised by the exception." *In re Michael W.*, 89 Md. App. 612, 623 (1991).

A. The Evidentiary Rulings

Counsel argues that the juvenile court erroneously limited his presentation of the case history during the exceptions hearing when it restricted his questioning of Parents and denied his request to consider the adjudication and disposition order and two exhibits admitted at the adjudicatory hearing.[7] Regarding the former contention, Counsel asserts

[7] In addition to these challenges, Counsel takes issue with the juvenile court's ruling during the status hearings, arguing that this too was erroneous. Because we view the court's evidentiary rulings at the exceptions hearing as an extension of its earlier ruling during the status hearings, a separate analysis of that prior ruling is not necessary.

that during his cross examination of Mother and Father, the court erred in repeatedly sustaining objections to questions that invoked events prior to November 2019 and to questions with an open-ended timeframe. Specifically, Counsel references the following instances during his examination of Mother:

> [COUNSEL FOR S.M.]: What did Dr. [K]eller tell you was causing [S.M.'s] shortness of breath?
>
> [MOTHER]: I can't remember. It's too much.
>
> [COUNSEL FOR S.M.]: . . . [H]e told you that because of the chronic lung infections that his lungs were so -- now damaged that he's susceptible to viral infections. Did he not?
>
> [THE COURT]: When are you speaking of, [Counsel for S.M.]?
>
> [COUNSEL FOR FATHER]: Your Honor, I'm going to object. I apologize. This is way beyond --
>
> [THE COURT]: I'm just asking what time period. [Counsel for Father], just a moment.
>
> I was asking him what time period he is speaking of.
>
> [COUNSEL FOR S.M.]: . . . I'm still talking about the . . . two appointments on March 6th and April 3rd, 2019.
>
> [THE COURT]: So, I still -- I agree with [Counsel for Father]'s objection that it's outside of the scope.
>
> If you're impeaching her as to when there were some other incidents -- now you're asking her specifically did a doctor tell you this, do you believe this. That's outside of the scope so ask another question.
>
> [COUNSEL FOR S.M.]: Your Honor, I -- I guess if I would be -- I guess, the whole crux of the case, I think, comes down

to whether we have overcome the reasons why the case came into care.

[THE COURT]: Well, May would not be overcoming. Overcoming would be what's happening now.

She has testified as to what's happening now with the doctors. The doctors don't have concerns. So, if you want to ask her about that to challenge what she said about the doctors not having concerns you can.

Something that happened in May is not what's happening now. May of 2019 or April of 2019 --

* * *

[COUNSEL FOR S.M.]: So, you got a second opinion about [S.M.]'s C. G. D. Right?

[MOTHER]: Yeah.

[COUNSEL FOR S.M.]: And that was with Dr. Leatherman in Johns Hopkins University. Right?

[MOTHER]: Yes.

[COUNSEL FOR FATHER]: Your Honor, that's back before she even started.

[THE COURT]: Okay, it's out[side] the scope, [Counsel for S.M.]

[COUNSEL FOR MOTHER]: You don't need to answer, [Mother].

[THE COURT]: What's your next question?

[COUNSEL FOR S.M.]: So, . . . can I ask for clarification, Your Honor? . . .

[THE COURT]: You're now talking about something that's already been litigated. You're saying, and you sought a second opinion.

That's already been litigated. That's already been part of the hearing.

[COUNSEL FOR S.M.]: Right. And so, . . . I'm not re-litigating. I'm trying to make -- ask about to, I guess, bring it to your Honor's attention what this -- what the witness' understanding is.

[THE COURT]: I don't need that, so you can move on. It's not relevant to what we're doing here today.

* * *

[COUNSEL FOR S.M.]: . . . When did [S.M.] start taking Posaconazole?

[MOTHER]: 2019.

[COUNSEL FOR S.M.]: 2019, okay. So, not before then?

[MOTHER]: No.

[COUNSEL FOR S.M.]: . . . Dr. Keller had sought to prescribe Posaconazole in January of 2016. Correct?

[MOTHER]: No.

[COUNSEL FOR S.M.]: No?

[COUNSEL FOR FATHER]: Your Honor, again, this is 2016.

[COUNSEL FOR S.M.]: So, Your Honor, I did have to recreate a record, you know --

[THE COURT]: The record has already been created in the other cases, [Counsel for S.M] So, what record are you creating here?

[COUNSEL FOR S.M.]: Well, . . . if Your Honor's going to not allow me to ask questions, and I guess, pursuant to Rule 5-103 I have to . . . make an offer of proof regarding that. And I need to at least --

[THE COURT]: So, we've already argued all of this extensively in October and again in your motion for the Court to change its ruling, and then again today.

And what the Court said is you are not to go back through all in general. The general facts of the case can be told to the Court, but getting into specifics that were already discussed in other cases in other hearings, that's not appropriate for today. It's not appropriate for this hearing.

And that's what you're doing by asking about what the doctor prescribed in 2016. What a doctor prescribed in 2016 would have already been heard by a magistrate . . . .

So, it's not necessary to hear that now because that's already been adjudicated already. We've already had a hearing on that.

[COUNSEL FOR S.M.]: Right, and so . . . I am taking the information that has already been heard and has already been found. . . .

[THE COURT]: . . . I'm not going to allow you to continue to -- and I take it as re-litigating those actions for those facts that occurred in 2016, 2017, 2018, whenever it was when the child was first found to be CINA. That's not relevant to today's Court proceedings.

* * *

[COUNSEL FOR S.M.]: Have there been times when [S.M.] was having respiratory distress when you did not recognize that he was having respiratory distress?

[MOTHER]: No.

[COUNSEL FOR S.M.]: No?

[COUNSEL FOR FATHER]: Your Honor, I am going to object to -- I believe this should only be just since November 15, 2019.

[THE COURT]: Yes. Court agrees. Sustained.

* * *

[COUNSEL FOR S.M.]: Do you feel that you have made any mistakes with respect to [S.M.]'s medical care?

[THE COURT]: When, [Counsel for S.M.]? You need to -- are you saying since November?

[COUNSEL FOR S.M.]: I guess I was asking it in an open ended sense.

[THE COURT]: No. I'm not going to do that. The attorneys are already raising their hands.

I saw your objections.

[COUNSEL FOR S.M.]: Okay. . . . And again just . . . for my own clarification and for the record Your Honor is not going to allow me to ask questions that are either open-ended in sense of time or that refer to an event before November, 2019?

[THE COURT]: I guess it depends on what it is, [Counsel for S.M.] When you say open-ended, sometimes an open-ended question is appropriate. Sometimes it's not. I'm not going to give you a blanket say no-no questions.

But if you're asking an open-ended question, have you ever thought this or did you ever think that, that's not relevant to what we're doing. . . .

* * *

[COUNSEL FOR S.M.]: . . . [D]o you believe that not providing [S.M.] with Posaconazole when it was first prescribed had an adverse effect on [S.M.]'s health.

[COUNSEL FOR FATHER]: I'm going to object, Your Honor.

[COUNSEL FOR MOTHER]: Objection.

[MOTHER]: I answered that question.

[THE COURT]: . . . So, it's sustained.

You have asked that question, and how she felt before doesn't have any difference as she feels now.

The question is how do you feel now, not before. Before doesn't matter to the Court because that's not what the review period is.

How she feels now is what's important to the Court.

* * *

[COUNSEL FOR S.M.]: . . . There was a period of time when you did not provide [S.M.] with Bactrim. Is that correct?

[THE COURT]: What's the time period, [Counsel for S.M.]?

[COUNSEL FOR MOTHER]: Objection.

[THE COURT]: What's the time period, [Counsel for S.M.]?

[COUNSEL FOR S.M.]: That was from 2016 to July of 2018.

[THE COURT]: Not relevant. I have already addressed this multiple times.

So, if you want clarification on that, if you want to ask questions about what happened in the past, then the answer

would be no because these are things that have been []litigated. . . .

If it's already been litigated and a magistrate has already ruled on it, no exceptions were filed to it, then we're not talking about it. We're only talking about those things that were happening now within the review period.

So, if you want to ask your question regarding the review period, how she feels about something now, you can do that. But if you're asking has she ever done something it's not relevant to the Court . . . . because in all CINA cases someone did something to cause the CINA to occur and then you try to change the behavior so it doesn't happen.

* * *

[COUNSEL FOR S.M.]: And Your Honor's ruling that, like, that's outside the scope as a matter of law.

[THE COURT]: As I have already said, in October when you sen[t] in your motion, in November and then already today I am not re-litigating anything else that has already been heard by a magistrate and has not been excepted by you or anyone else.

[COUNSEL FOR S.M.]: And Your Honor, I can -- I can understand --

[THE COURT]: [Counsel for S.M.], I don't know what else you want me to say. . . .

* * *

. . . I don't know what else to say other than to say that if it's already been litigated, if it's been already been discussed, if it's already a factual scenario that has been discussed in another hearing, I cannot hear it. I will not hear it.

* * *

[COUNSEL FOR S.M.]: And Your Honor, forgive me, but I -- I guess it . . . has not necessarily been clear to me. And that's why I asked the question are you ruling this as matter of law that these are outside the scope of what we can ask.

. . . I'm trying to get clarification on what exactly the ruling is --

[THE COURT]: [Counsel for S.M.], I am not -- I mean, you're asking me a trick question. I say that is everything going to be out? I don't know what everything is, and then you'll say, well, she told me it was everything, so I didn't ask this.

So I'm not going to give a blanket response. . . .

You know what's already been litigated. So, as an officer of the Court I will hold you to that not to ask anything that's already been litigated. That's all I can say about it.

And I'm not going to say a blanke[t] response because nothing is a blanket response. You take things on a fact by fact basis . . . .

* * *

[COUNSEL FOR S.M.]: Do you believe that the doctors at [CNH] have been experimenting on [S.M.]?

[THE COURT]: What time period, [Counsel for S.M.]?

[COUNSEL FOR S.M.]: Hum, I guess I'm asking is that something she believes now that they have done.

[THE COURT]: When? That they have done when? That's what I'm asking.

What's the time period? What time period do you believe that they are experimenting? What are you asking?

[COUNSEL FOR MOTHER]: Your Honor, I think this question is way too broad. If he wants to ask about a specific doctor let him ask that.

[THE COURT]: I think that's probably more appropriate. Then, it limits you into the time period that you're asking.

[COUNSEL FOR S.M.]: Well, I -- I guess I'm asking is that something she has ever felt about.

[THE COURT]: No.

[COUNSEL FOR S.M.]: I mean, does --

[THE COURT]: So, that would be sustained after what I just told you, [Counsel for S.M.]

[COUNSEL FOR S.M.]: Okay.

[THE COURT]: Well, has she ever thought something is not relevant today.

It's what's she is thinking at this moment about this particular doctor you can ask her that question.

* * *

[COUNSEL FOR S.M.]: Do believe that Dr. Keller has conducted experiments on [S.M.]?

[THE COURT]: When, [Counsel for S.M.]?

[COUNSEL FOR S.M.]: Hum, well, I'm asking her about her belief now.

[THE COURT]: Do you now believe he conducted an experiment yesterday, last month, last year, five years ago? What are you asking?

Specifically, it needs to be clearer. That's a very open ended question, I agree.

[COUNSEL FOR FATHER]: I would just request if he is giving a review period.

[COUNSEL FOR S.M.]: Well, I'm asking if you -- well, I guess my first question would be do you think . . . now that he has ever done that.

[THE COURT]: Well, [Counsel for Mother] has said that it's open ended, and I have already said I agree with that. So, ask do you think that he has ever done this during what time period?

That's all we're asking is for a time period. That's what's appropriate to ask, a time period.

[COUNSEL FOR S.M.]: Do you think he has conducted experiments on [S.M.] since November of 2019?

[MOTHER]: No.

[COUNSEL FOR S.M.]: Okay. Do you think he conducted experiments on [S.M.] before November, 2019?

[MOTHER]: Yes.

[COUNSEL FOR FATHER]: Your Honor, I'm going to object (inaudible).

[THE COURT]: I'm sorry. You're going to object to what, [Counsel for Father]?

[COUNSEL FOR MOTHER]: That's beyond the scope.

[COUNSEL FOR FATHER]: Your Honor, that's beyond the scope. We're going to go into before the review period (inaudible).

[THE COURT]: So, whether or not he is has conducted -- she just said that she does not believe that presently or since November, 2019 any type of experiments have been done.

> Her testimony was also -- you have already asked a question about that as well. So, I'm not going to allow you to go outside of that. . . .
>
> * * *
>
> [COUNSEL FOR S.M.]: . . . [D]o you think it was appropriate for [S.M.] to be hospitalized in July and August of 2018?
>
> [COUNSEL FOR FATHER]: Objection. We have (inaudible).
>
> [THE COURT]: Sustained. Sustained. It's sustained.
>
> Again just to be clear for record the Court believes these are all things that were litigated previously in other Court proceedings.

Regarding the cross examination of Father, Counsel lists the following occasions where the juvenile court sustained objections to questions concerning past events:

> [COUNSEL FOR S.M.]: Do you remember taking [S.M.] to a nephrology appointment?
>
> [THE COURT]: When, [Counsel for S.M.]?
>
> [COUNSEL FOR S.M.]: My question is, ever. Did he -- do you remember ever taking [S.M.] to a nephrology appointment?
>
> (Simultaneous discussion.)
>
> [COUNSEL FOR FATHER]: -- (inaudible). This is outside the review period.
>
> [THE COURT]: [Counsel for S.M.]?
>
> [COUNSEL FOR S.M.]: Oh. So, [S.M.] has been ordered to have a nephrology appointment during this entire review period, or to follow-up with nephrology during this entire

review period. And when he last had a nephrology appointment, which was in April of 2019, they asked to follow-up in six to 12 months. And the not following-up with that extends into this review period.

[THE COURT]: No, is that in the last report before that, before the November 19th hearing?

[COUNSEL FOR S.M.]: I am sorry, are you asking if it is in the last court order?

[THE COURT]: Yes. Does it say it in the last court order --

[COUNSEL FOR S.M.]: Yes. It is in the November 2019 order. It says, follow-up with nephrology, as it did in the June order -- June 2019, as well.

[THE COURT]: Okay. Does everyone believe it is in the report or not in the report? I will look it up.

[THE DEPARTMENT]: . . . My objection is, [Counsel for S.M.]'s question was not limited to the time frame. He says, as if -- if [S.M.] had nephrology appointments at any time. I --

[THE COURT]: Right, and I think I asked him, "What time period?" And then, I think there was -- said something about, there was an objection.

[THE DEPARTMENT]: Yes. And I am just thinking, this question should provide a time frame, but not just open ended.

[THE COURT]: Okay. So, your time period is from the last review period. Then, you are saying that it is in the last -- it is in that November '19? Is that correct, (inaudible)?

[COUNSEL FOR S.M.]: Well, the November 2019 court order directs follow-up with nephrology. And --

[THE COURT]: So, you are asking him, has he followed-up since November '19?

[COUNSEL FOR S.M.]: That was not my question. You know, if -- and I guess, if Your Honor wants to sustain an objection. My question is -- my question was, you know, "Have you taken [S.M.] to a nephrology appointment?" Because I think it is relevant, because the consequences of that last appointment continue to today.

[THE COURT]: So, I will sustain . . . .

* * *

[COUNSEL FOR S.M.]: . . . When did Dr. Keller first prescribe the Bactrim?

[COUNSEL FOR FATHER]: Your Honor, I object. . . . We are only this review period.

[THE COURT]: Okay. [Counsel for S.M.]?

[COUNSEL FOR S.M.]: You know, I do need to -- I am thinking that certain questions, I do need to create a record and I understand that there may be objections.

[THE COURT]: You need to create a record of what? From the review period, or outside of the review period?

[COUNSEL FOR S.M.]: There are questions that I think are relevant, and I --

[THE COURT]: Make a proffer as to what is relevant about asking about when did this prescribe? Because that is not what we are here -- now, he is taking the Bactrim. He is (inaudible) the doctors. He [is] going for a check-up. So, what is the relevance of when it was first prescribed?

[COUNSEL FOR S.M.]: So, the history of this case is that the Bactrim and Pos[a]conazole had been prescribed in 2015 and 2016. The parents stopped providing those medications, and he went through years without treatment, of either the Bactrim or the Pos[a]conazole. And this, you know, had severe and permanent effects on [S.M.]

And I think I was seeking to ask questions to get this parent's understanding of that, because I think that casts light on the credibility of statements about what will happen, going forward. And I think whether or not this parent acknowledges or accepts reality of what has happened before is very relevant to predicting what would happen, going forward.

[THE COURT]: Okay. The Court is going to sustain the objection. It is not relevant to this review period. And therefore, the Court is not going to allow the question, based on that. . . .

* * *

[COUNSEL FOR S.M.]: . . . Do you agree that the previous period of time where medication was not provided to [S.M.] was --

[THE COURT]: What is the previous period of time, [Counsel for S.M.]? You need to give a time.

[COUNSEL FOR S.M.]: Okay. In 2016 through 2018, do you agree that that --

[THE DEPARTMENT]: Objection. . . .

[THE COURT]: Sustained. Sustained.

[COUNSEL FOR S.M.]: . . . [D]uring this period of 2016 to 2018, do you feel that you made any mistakes in provision of medical care --

[THE DEPARTMENT]: Objection.

[THE COURT]: Sustained. And they are sustained for the previous reasons I have just stated today, yesterday, and in November.

[COUNSEL FOR S.M.]: Were there times in March and April of 2000 of -- in '19, where [S.M.] was in respiratory distress, when you did not recognize that respiratory distress?

[THE DEPARTMENT]: Objection. Your Honor, we are going --

[THE COURT]: Sustained. . . . I am sorry?

[THE DEPARTMENT]: The time frame is beyond this period.

[THE COURT]: And sustained, again, for the same reasons.

* * *

[COUNSEL FOR S.M.]: Do you feel that [CNH] has used [S.M.] for experiments?

[THE COURT]: When, [Counsel for S.M.]?

[COUNSEL FOR S.M.]: I guess, my first question is, "Ever?"

[THE DEPARTMENT]: . . . Objection.

[THE COURT]: Sustained.

* * *

[COUNSEL FOR S.M.]: If a doctor at [CNH] tells you that [S.M.] needs to do something to preserve his health or even his life, are you going follow the directions even if you don't necessarily agree with that at the time?

[FATHER]: . . . [I]f a doctor says something to me, my caution is always be, "Tell me the risk and tell me the benefits, and give me time to think about." So, it is going to be the same game plan. I will have to do my homework and decide what to do.

> I don't say, "Yes, yes, Dr. Keller, yes." I will take my time and ask questions. So, whether (inaudible) at [CNH], or George Washington, or PG Hospital, I will have the same caution. I want to know the benefit, I want to know the risk, I know if this is the same -- I mean, the only option we have. So, I'm [going to] ask questions. That does not mean I don't believe them . . . .
>
> [COUNSEL FOR S.M.]: But sometimes, there won't be time to ask questions, will there? Like, if [S.M.] needs oxygen, because he is going into respiratory failure. You wouldn't have time to necessarily debate it, though, would you?
>
> [FATHER]: [Counsel for S.M.], let's come to real life. If you call the ambulance, you won't say, (inaudible) they will [sic] oxygen right from your home. So, that's real life. . . . So, don't think I'm going to say, no, no, no, to everything. No. Yeah, when you face emergency, you face emergency. So, you have to deal with it.
>
> [COUNSEL FOR S.M.]: Right. [S.M.] came into care, though, in a situation where --
>
> [THE DEPARTMENT]: Objection. (Inaudible) --
>
> [THE COURT]: Sustained.
>
> [COUNSEL FOR S.M.]: If I may just, Your Honor? This is, sort of, a direct counterpoint to this -- to, I guess, what the --
>
> [THE COURT]: You are asking him a hypothetical, first off, [Counsel for S.M.], which he answered. No one objected to when he answered. It was a hypothetical. Now, you are asking him when he first came into, which is not relevant. So, the Court is not going to entertain that. Sustained.

Counsel also challenges the juvenile court's denial of his "request to read and consider" the February 2019 adjudication and disposition order and two medical

documents admitted at the adjudicatory hearing.[8] He made this request during the March 18, 2021 hearing:

> [COUNSEL FOR S.M.]: I had started to pose the question before the break that there are parts of the record prior to November 2019 that I wanted to ask Your Honor to consider. And I wasn't sure if Your Honor said -- was saying no, or Your Honor was generally --
>
> [THE COURT]: I don't understand what you are asking me, [Counsel for S.M.] --
>
> [COUNSEL FOR S.M.]: Okay --
>
> [THE COURT]: You are asking to put in another piece of evidence that you haven't shown (inaudible).
>
> [COUNSEL FOR S.M.]: No, Your Honor. I am asking Your Honor to consider parts of the record -- the parts --
>
> [THE COURT]: Parts of what record?
>
> [COUNSEL FOR S.M.]: The Court file for [S.M.], that are in the Court file, that pre-date November 2000 --
>
> [THE COURT]: Such as?
>
> * * *
>
> [COUNSEL FOR S.M.]: . . . I am asking for Your Honor to consider Child's [Exhibit] 1 and Child's [Exhibit] 2 . . . from the November 8, 2018[] adjudication hearing, and the adjudication order . . . .
>
> [THE COURT]: Oh, wait. I am sorry, say that again? You are asking me to do what?

[8] In his brief, Counsel does not articulate any argument as to why the juvenile court's failure to consider the two medical documents was erroneous or prejudicial. For that reason, we will not address it on appeal. *See* Md. Rule 8-504(a)(6) (requiring a brief to supply an "[a]rgument in support of the party's position on each issue").

[COUNSEL FOR S.M.]: To consider the material contained in Child's [Exhibit] 1 and Child's [Exhibit] 2, and I would, I guess, ask if I can point to the specific things I would be asking Your Honor to consider therein. From the adjudication -- they were admitted at the adjudication, on November 8, 2018, and the adjudication disposition order --

[THE COURT]: But you are asking me to do the exhibits that were admitted, or what exactly are . . . you asking me to admit?

[COUNSEL FOR S.M.]: I am not asking you to admit anything. These are things that have been admitted already. I am asking Your Honor to consider -- and as part of your consideration of today, I am asking you to consider specific material contained in the record that pre-date November 2019. And I --

[THE COURT]: I don't -- so, if this is already in evidence, right here, what you are giving to me, and you are saying there is something else that is regarding a previous hearing that has already been litigated, then the answer would be no. I am not quite sure what you are asking me to do. There is a [sic] consider it, but it is not evident. I don't really understand what you are asking me to do, [Counsel for S.M.]

[COUNSEL FOR S.M.]: I am asking you specifically to read and consider the case -- specific parts of the case file that pre-date this review period, in terms of leading to Your Honor's hearing for today's hearing.

[THE COURT]: And I am asking you, is there something different about this th[a]n what I said earlier?

[COUNSEL FOR S.M.]: No, I am asking -- I mean, I understand that this is -- I mean, it is different . . . I am not asking a question of a witness, I am just -- you know, if Your Honor is making a similar ruling for this, then I understand that. I am making the record as to the request.

> [THE COURT]: So, I am still not quite sure. As I said, the question I asked was is what you are trying to ask me to do different th[a]n what I have already ruled on? You said, "No." So then, my answer would be the same --
>
> [COUNSEL FOR S.M.]: Well --
>
> [THE COURT]: But you want me to consider it with regard to Child['s Exhibits] 1 and 2, but my ruling still being the same.
>
> [COUNSEL FOR S.M.]: Okay. . . . [I]t is different, in the sense that it was asking you to read as opposed to a witness question, but that -- so, (inaudible). All right. So, I think you ruled on my request.

We hold that to the extent the juvenile court erred in making the above evidentiary rulings, such error was harmless. Based on our review of the hearing transcripts, the court's rulings were all premised on the notion that, when considering a party's exceptions to a magistrate's closure recommendation during a periodic review hearing, the relevant period of time considered by the court is the date of the prior review hearing order moving forward. According to the court, events occurring before the last review hearing order have already been litigated and such information is not relevant to the subject of the exceptions hearing. The court seemingly reached this conclusion based on unspecified Maryland caselaw and its interpretation of § 3-816.2(a).[9]

The parties appear to agree with the general proposition that the case history is relevant to the determination of whether, pursuant to § 3-816.2(a)(2)(iv), Parents have

[9] During the October 27, 2020 status hearing, the court interpreted § 3-816.2(a)(2)(iv) as requiring it to determine the extent of progress that has been made "since the last review date, not since the beginning" of the case.

made sufficient progress in alleviating the child welfare issues that led to S.M.'s CINA declaration and thus whether continued court supervision is needed. Indeed, in his brief, Father states that "a juvenile court should know some background information about why a child was declared a CINA in the first place so it can logically evaluate whether those child safety issues have been sufficiently resolved before terminating jurisdiction over the family." (citing Cts. & Jud. Proc. § 3-816.2(a)(2)(iv)). A common sense reading of the language in § 3-816.2(a)(2)(iv) supports the parties' position. *See United Bank v. Buckingham*, 472 Md. 407, 423-24 (2021) ("[S]tatutory construction is approached from a 'commonsensical' perspective." (quoting *Della Ratta v. Dyas*, 414 Md. 556, 567 (2010))). To "[d]etermine the extent of progress that has been made toward alleviating or mitigating the causes necessitating the court's jurisdiction" as mandated by § 3-816.2(a)(2)(iv), the court must first understand the "causes" or underlying reasons for its assumption of jurisdiction over the child. Without this information, the court cannot meaningfully judge an individual's progress.

Moreover, there is no language in § 3-816.2(a) or in Rule 11-111(c) or § 3-807(c), which govern the exceptions process, suggesting that the court's evaluation of a magistrate's closure recommendation made at a review hearing is limited to considering only those events that took place since the prior review hearing. The only restriction on the scope of the exceptions hearing provided in Rule 11-111(c) and § 3-807(c) is that the proceeding is confined to those matters to which the party excepted. *See also In re Marcus J.*, 405 Md. 221, 234 (2008) (recognizing that "the scope of a hearing de novo is

undefined" in Rule 11-111 and § 3-807). Additionally, we have found no reported opinions in Maryland supporting the juvenile court's position about the scope of the exceptions hearing.

While the language in § 3-816.2(a)(2)(iv) clearly requires the court to understand the basis for its assertion of jurisdiction, it does not follow that the court must consider any and all background evidence presented by the parties. We need not resolve this issue or address whether the court's evidentiary rulings were erroneous because Counsel has not established that S.M. was prejudiced by those rulings. *See In re J.J.*, 231 Md. App. 304, 337 (2016) (stating that, to warrant reversal, the "appellant must show both error and prejudice"), *aff'd*, 456 Md. 428 (2017). We conclude that the court's error, if any, in limiting Counsel's cross examination of Parents and in declining to consider the adjudication and disposition order was harmless.[10]

By failing to consider the adjudication and disposition order,[11] Counsel claims that the court rendered its decision without information about the reasons S.M. was declared a

[10] Relatedly, Counsel also contends that the court, by excluding from its own consideration information about the basis for S.M.'s CINA declaration, erroneously failed to make the required determination under § 3-816.2(a)(2)(iv). We disagree. When announcing its decision at the end of the exceptions hearing, the court stated that "the original provisions of what the CINA was in place for have been met and satisfied, and the case will be closed." And, in its written order, the court expressly indicated that it "[d]etermined the extent of progress made toward alleviating or mitigating the causes necessitating the Court's jurisdiction."

[11] Parents argue that a "fair reading of the record" indicates that the court did consider the order. We believe a fair reading of the transcript yields the opposition conclusion. It is also noteworthy that this order is not listed as one of the admitted exhibits in the court's order following the exceptions hearing.

CINA and in doing so committed prejudicial, harmful error. But in the notice of exceptions, which was admitted as one of Father's exhibits during the exceptions hearing, Counsel provided a four-page summary of the relevant background information, including Parents' medical neglect that resulted in S.M.'s CINA declaration. And the court, in its written order, confirmed that it considered the admitted exhibits when making its decision. We thus disagree that the court was without information about the causes that brought S.M. before the court. In the absence of a showing of prejudice—that it is likely that the court's failure to consider the adjudication and disposition order negatively affected the outcome of the case—we cannot conclude that this was harmful error. *See In re Ashley E.*, 158 Md. App. 144, 163-65 (2004) (holding that there was no evidence that the court's alleged error in failing to exclude nonparties from the courtroom affected its ruling changing the permanency plan), *aff'd*, 387 Md. 260 (2005).

Counsel, in his reply brief, argues that Father "objected to the Notice of Exceptions during the status hearings" and that "[t]he court then agreed with that objection[] and ruled that it would not consider information pertaining to past events." Counsel also asserts that "[t]here is nothing in the record to indicate that the court considered . . . Counsel's statements in the Notice of Exceptions as evidence." In the portion of the status hearing transcript cited by Counsel, we find no ruling by the court concerning the notice of exceptions specifically. Moreover, as indicated above, that filing was admitted as evidence during the exceptions hearing and the court, in its written order, expressly noted that it considered all admitted exhibits.

In addition to the notice of exceptions, Parents argue that the court had sufficient background information based on Counsel's opening statement at the start of the exceptions hearing where he recounted the case history and his legal memorandum filed in November 2020 concerning the proper scope of the hearing. But when Father objected to Counsel's reference during opening statement to pre-November 2019 events, the court explained that Counsel's statement was "[n]ot evidence." And Counsel's memorandum was not received as an exhibit at the exceptions hearing. Parents also refer to the November 2019 review hearing order, where the court declined to close the case partly because of "[P]arents' history of medical neglect prior to 2018," the CASA's February 2020 report, which noted that Father expressed frustration towards CNH during the previous review period, and Dr. Keller's January 2020 letter referring to Parents' belief that genetic testing is "unnecessary" "research" on S.M. Parents' reliance on these three documents is unavailing—whether considered individually or jointly, they do not provide sufficient detail about the basis for S.M.'s CINA declaration.

Turning to the court's rulings during the cross examination of Parents, we recognize that Counsel, in asking the objected-to questions, sought to establish Parents' present perception about their past medical neglect in order to determine whether they would provide S.M. with proper medical care in the event this matter was closed. According to Counsel, "[a]sking questions about their understanding of the past, and comparing and testing their testimony with the actual evidence about the past, is essential to" determining whether Parents "have learned from the past and changed." By

prohibiting this line of questioning, Counsel claims that the court "was left without essential information as to whether the parents had the awareness and insight sufficient to demonstrate that they would meet S.M.'s medical needs in the absence of court oversight" and that this was prejudicial in that S.M. was "deprived . . . of the full consideration of his welfare that he was entitled to."

We agree with Counsel that evaluating Parents' understanding and acceptance of their past conduct is relevant to deciding whether the child welfare issues have been resolved and whether continued court supervision is necessary. But we do not believe that the court was "left without [this] essential information." Rather, in our view, Parents' responses to other cross examination questions and their testimony on direct examination, in addition to their general compliance with medical directives since the inception of this CINA matter, evidenced their perception of their past actions. Parents' testimony, which is summarized in the section below, indicated their recognition of S.M.'s medical conditions and the importance of continuous medical treatment as well as a willingness to cooperate with the doctors' recommendations. This is in stark contrast to Parents' conduct that resulted in the court's involvement. This evidence, when considered in light of the history of medical neglect detailed in Counsel's notice of exceptions, provided a sufficient evidentiary basis for the court to meaningfully judge Parents' progress and the necessity of court oversight. Consequently, we cannot conclude that S.M. was prejudiced by the court's rulings.

As an additional argument that remand is warranted, Counsel asserts that the court's "prohibition of consideration of the past was a fundamental, structural error that compromised the entire hearing."[12] As support, Counsel cites to several cases. For instance, he first cites to *In re M.H.*, 252 Md. App. 29 (2021), where this Court held that the juvenile court's findings that the allegations in a CINA petition were proven by a preponderance of the evidence were clearly erroneous when no evidence or testimony was offered during the contested adjudicatory hearing. *Id.* at 53-55. We then vacated the court's adjudication and disposition order and remanded for further proceedings. *Id.* at 41. Next, Counsel references *In re J.R.*, 246 Md. App. 707 (2020), where this Court held that the juvenile court's failure to conduct separate adjudicatory and disposition hearings as required by statute was harmful error and required remand, *id.* at 756-57, and *In re M.C.*, 245 Md. App. 215 (2020), where we reversed the juvenile court's judgment because it abused its discretion in modifying a mother's visitation without a hearing after receiving conflicting proffers. *Id.* at 229-32. Finally, Counsel relies on the Court's holding in *In re Maria P.*, 393 Md. 661 (2006), that the juvenile court abused its discretion in excluding a parent from an adjudicatory hearing without conducting an inquiry as to the reasons for the exclusion. *Id.* at 676-77. The Court remanded the matter

[12] Notably, during Counsel's cross examination of Mother, the court did allow Counsel to ask a few questions about S.M.'s hospitalization in spring of 2019.

to the juvenile court. *Id.* at 679. After reviewing these cases, we conclude that they are distinguishable from the matter before us.[13]

B. The Closure Decision

The final step in our analysis is to review the juvenile court's decision to close the CINA matter. The court determined that "there are no child welfare concerns that currently exist that require [the Department] to continue to provide court-ordered protective supervision." On that basis, the court terminated its jurisdiction over S.M. and closed the case. We hold that the court did not abuse its discretion in closing S.M.'s CINA case.

The evidence presented at the exceptions hearing revealed that Parents have continued to meet S.M.'s medical needs, attending medical appointments and providing prescribed medications and other medical treatment. For example, the CASA's March 2021 report stated that since the case opened in August 2018, "[P]arents have continued to make reasonable efforts to prioritize medical treatment for [S.M.]" The report then

[13] Towards the end of his brief, Counsel flags other purported legal errors committed by the court in explaining the basis for its ruling on the scope of the exceptions hearing: (1) it conflated the standard for evaluating reasonable efforts by the Department with the standard for determining the best interests of a child, and (2) it stated that CINA hearings are not exceptions hearings. In light of our above analysis of the court's exclusion of case history information, we do not believe it is necessary to individually address these underlying errors.

detailed the various medical appointments S.M. attended and procedures he underwent since February 2020.[14] At the end of the report, the CASA concluded:

> [A]fter observing and communication with [S.M.]'s parents . . . for almost two-years, this CASA has a high-level of confidence that [S.M.] will remain safe and that his parents will continue to care for him and optimize his wellness, without further supervision or assistance from [the Department] and this Court.

Additionally, the Department's March 2021 report provided that no reports of neglect or abuse concerning S.M. were received during the past year and that the Department recommends closing this matter. Other documentary evidence established that S.M. was not hospitalized during the current review period and that he remained in Parents' care for the entirety of this case.

Moreover, Parents' testimony on direct and cross examination indicated that they understood the severity of S.M.'s medical conditions and the need for continuous medical treatment. Briefly, Mother testified about S.M.'s extensive medical appointments and identified his various doctors. She acknowledged that if S.M. stops taking his CGD medications, he could suffer from a fatal infection. She further testified that she would keep S.M. on his current medications if the case closed and was willing to do that "for much of his life" if recommended by his doctors. Mother stated that to monitor whether S.M. is in respiratory distress, she checks his oxygen levels "every couple of days."

[14] The CASA's prior report is dated February 2020. That report, which was also admitted as evidence during the exceptions hearing, documented S.M.'s medical appointments and procedures since November 2019.

Father also testified with significant knowledge about S.M.'s doctors and medications and his history of medical appointments and procedures. Father acknowledged that S.M. has CGD as well as sleep apnea and pulmonary hypertension. He recognized that S.M. must take antifungal and antibiotic medications to treat his CGD and that stopping his CGD treatment could result in death. He also testified that it is "suspected," though it has not been proven, that S.M. has chronic lung disease and agreed that S.M. has lung scarring and irreversible lung damage. Father explained that he is now able to recognize when S.M. is in respiratory distress and that the family has a machine at home to check S.M.'s oxygen levels. Additionally, Father stated he would continue taking S.M. to CNH and testified, when asked if he would follow the doctors' recommendations, that he would ask questions about and independently research the risks and benefits of any recommended treatment, though he confirmed that this "does not mean I don't believe them."

Based on the evidence adduced at the exceptions hearing, we believe that closing S.M.'s CINA case was a choice well within the bounds of the juvenile court's discretion. *See In re M.*, 251 Md. App. 86, 111 (2021) (explaining that "an abuse of discretion exists 'where no reasonable person would take the view adopted by the [juvenile] court'" (alteration in original) (quoting *In re Andre J.*, 223 Md. App. 305, 323 (2015))). The evidence demonstrated that Parents understood the seriousness of S.M.'s medical conditions and that court oversight was no longer necessary to ensure Parents would continue treating S.M.'s medical issues. We will thus not disturb the court's decision.

In his brief, Counsel mentions certain testimonial and documentary evidence that potentially casts doubt on Parents' ability to care for S.M. For instance, he refers to Mother's testimony on cross examination that she does not believe that S.M. has CGD. As indicated above, however, Mother testified that she recognizes that stopping S.M.'s CGD medications could lead to a fatal infection and that she will continue administering his medications. Counsel next notes that Mother denied that S.M. has chronic lung disease, though Mother later testified that she monitors S.M.'s oxygen levels every few days to make sure he is not in respiratory distress. Counsel also claims that Father, during his testimony, denied that S.M. has chronic lung disease and cardiomyopathy. But Father merely testified that it was suspected, though it had not yet been proven, that S.M. has chronic lung disease, and he stated that he believes the cardiologist's conclusions about the condition of S.M.'s heart. Additionally, Counsel asserts that documentary evidence showed that S.M. did not return as recommended to the CNH Cardiology Clinic during the review period, S.M. did not follow up with the CNH Nephrology Clinic as directed, and there was 20-month delay in following up with the CNH ENT Department. Nonetheless, when considering this in light of all the other evidence before the juvenile court, we cannot say that the court's closure decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems

minimally acceptable." *In re Andre J.*, 223 Md. App. at 323 (quoting *In re Cadence B.*, 417 Md. 146, 155-56 (2010)). We therefore affirm.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.