

Circuit Court for Baltimore County
Case No. C-03-JV-21-000724
Case No. C-03-JV-21-000725
Case No. C-03-JV-21-000726

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 322, 464, 466, 468

September Term, 2022

In Re: L.M, L.M., and L.E.

Graeff,
Arthur,
Reed,

JJ.

Opinion by Reed, J.

Filed: December 8, 2022

*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.

Ms. S. (“Mother”) had primary legal and physical custody of her three children, who all have different fathers. At the time of the appeal, the youngest child (“L.M.1”) was eleven months old, the middle child (“L.M.2”) was eight years old, and the oldest child (“L.E.”) was eleven years old (all three kids collectively, “children”).

On December 2, 2021, the Baltimore County Department of Social Services, Appellee, (hereinafter “Department”) received a report about Mother’s suspected neglect of the children due to the conditions of Mother’s home, domestic violence concerns between Mother and Mr. M. (“L.M.1’s Father”), Mother’s mental health issues, and drug use.¹

Five days later, a Child Protective Services (“CPS”) worker conducted a safety assessment at home and discovered the children were living in an unsafe and unsanitary environment and placed the children in shelter care.² On December 10, 2021, the Circuit Court for Baltimore County, sitting as the juvenile court, extended L.M.1 and L.M.2’s shelter care, but denied L.E.’s extension, and instead placed her in her father’s (“L.E.’s Father”) custody.

Following a slight postponement citing the parties’ request for a trial with the opportunity to testify before a judge, the circuit court held Child-in-Need-of-Assistance (“CINA”) adjudication and disposition hearings for the three children on March 31, 2022

¹ The circuit court clarifies that the suspected parental drug use relates only to Mother and not L.M.1’s Father.

² “‘Shelter care’ means a temporary placement of a child outside of the home at any time before disposition” as a CINA. Md. Code Ann., Cts. & Jud. Proc. § 3-801(bb).

and April 19, 2022. The court sustained most of the allegations in the Department’s CINA petitions alleging Mother and L.M.1’s Father’s neglect. Subsequently, the circuit court held L.M.1 and L.M.2 to be CINA and they were committed to the Department. The circuit court dismissed L.E.’s CINA case and awarded custody to her father (“L.E.’s Father”).

Mother appeals all three children’s cases. L.M.1’s Father appeals L.M.1’s case, which has been consolidated with the Mother’s three appeals.

QUESTIONS PRESENTED

In this consolidated case, L.M.1’s Father solely appeals the circuit court’s order holding L.M.1 to be a CINA and presents two questions, rephrased for clarity:³

- I. Did the circuit court err in finding L.M.1 to be a CINA?
- II. Did the circuit court err in admitting testimony by a social worker of Mother’s statements regarding a mug-throwing incident?

³ In his brief, L.M.1’s Father presents the following three questions for appellate review:

1. Whether the Juvenile Court erred in admitting hearsay statements in the adjudication phase of the trial, which statements were the sole basis for the sustaining of certain allegations against Father.
2. Whether it was clearly erroneous to find that Father has engaged in domestic violence and other concerning behaviors and has failed to protect the child from the situation based upon the evidence properly before the Court.
3. Whether the Juvenile court erred in finding [L.M.1] to be a Child in Need of Assistance when the evidence showed that Father was able and willing to provide her with proper care and attention.

In bringing her appeal, Mother presents two questions for appellate review, rephrased for clarity:⁴

- I. Did the circuit court err when it denied Mother custody and found L.M.1 and L.M.2 to be CINA?
- II. Did the circuit court err when it awarded L.E.’s Father custody of L.E.?

For the following reasons, we answer all CINA and custody related questions posed by Appellants in the negative. Although this Court holds that the circuit court erred in admitting testimony by a social worker of Mother’s statements regarding the mug-throwing incident, we find such error to be harmless. Thus, we affirm the circuit court’s holdings.

FACTUAL & PROCEDURAL BACKGROUND

Mother and L.M.1’s Father met when they were young but did not begin a relationship until he was released from federal prison for drug-related charges in July of 2019. They were never engaged or married, nor did they live together. Over time, Mother and L.M.1’s Father’s relationship deteriorated. They characterized their relationship as

⁴ In her brief, Mother presents the following three questions for appellate review:

1. Did the juvenile court err when it declared [L.M.1] and [L.M.2] to be children in need of assistance?
2. Did the juvenile court err when it denied mother custody of [L.M.1] and [L.M.2] at disposition and instead committed those children to the custody of the Department?
3. Did the juvenile court err when it awarded L.E.’s noncustodial father, J.E., custody of the child under CJP § 3-819(e) instead of returning the child to mother’s care before terminating jurisdiction?

“toxic” and fought frequently at home.

A. Police Respond to Domestic Issues at Mother’s Home

Between September and December 2021, the police were called to the home on four different occasions. In September 2021, L.M.1’s Father threw a mug during an argument with Mother. The mug almost hit L.M.2. One of the children called the police, who responded to the incident.

In October 2021, the police responded to the home when Mother tried to prevent L.M.1’s Father from entering the home, and in response, L.M.1’s Father became angry and broke a window.

In November 2021, the police responded to the home when Mother refused to let L.M.1’s Father visit L.M.1. When the police arrived, Mother “could not provide [the officer] with any relevant information” and “stated [that] her last name [was] ‘Christ.’” The responding officer advised L.M.1’s Father about custody order procedures for custody of L.M.1.

Finally, in December 2021, while L.M.1’s Father was playing a boxing video game that involved wearing virtual-reality Oculus goggles, he “made a swing at” Mother. The two argued and L.E. called the police because she was scared. L.M.1’s Father threatened L.E., stating that he or someone else “could be sent” to “cut her face” or “do harm to her.”

B. Report About Suspected Neglect of the Children

On December 2, 2021, the Department received a report about suspected neglect of the children. The report expressed concerns for the children’s safety due to the conditions of Mother’s home, Mother’s mental health issues and drug use, the lack of appropriate

education for the children, and domestic violence between Mother and L.M.1's Father.

On December 7, 2021, Noa Davis ("N. Davis"), a CPS social worker, conducted a home safety assessment at Mother's home. N. Davis testified that when she arrived at the residence, N. Davis observed that the front door was blocked by furniture. Some of the windows were covered by paper or tin foil and wooden bars. Once inside, N. Davis observed untidy conditions, stating that parts of the floor were missing, the home was "extremely cluttered," there was writing on the walls, and the home was infested with mice, ants, and cockroaches. Mother stated that she tried to contain the cockroaches to a drawer in the kitchen because she lives under a covenant that "thou shall not kill." When Mother opened the drawer, "hundreds of cockroaches were in it." N. Davis recalled that the cockroaches were near open boxes of food that was left out in the kitchen, which was of concern because it posed a "health risk to the children."

N. Davis stated that Mother presented as "extremely mentally ill" and "disconnected from reality," citing how Mother claimed to "be a lawyer, a pediatrician, a licensed foster parent, and other things that she is not." Mother also reported that she was home schooling the children "through experience," but the children "weren't sure of what they were learning." Mother indicated that she had not been reporting to the county school system as required and Baltimore County Public Schools ("BCPS") confirmed that though she was enrolled in BCPS home-schooling, BCPS was having trouble contacting Mother to conduct a mid-year review.

N. Davis spoke with Mother about the Department's concerns for the children's well-being and attempted to create a safety plan with Mother, but Mother refused to

participate, so N. Davis decided to shelter the children.

C. Children Are Placed in Shelter Care

On December 8, 2021, Mother and L.M.1's Father brought the children to the Department for placement. L.M.1's Father told the children that they were "going to jail and that they were going to be raped in care" and warned them not to bathe or shower while in foster care. Department employees informed L.M.1's Father that these comments were inappropriate, but he continued making them.

The Department filed CINA petitions with requests for shelter care. In identical CINA petitions for each child, the Department alleged:

1. Each child is a CINA because they have been abused, neglected, and their parents are unwilling or unable to give proper care and attention to the child and the child's needs.
2. On December 2, 2021, the Department received a report regarding safety concerns about the children, including the conditions of Mother's home. Mental health, concerns for lack of appropriate education, Mother's drug use, and domestic violence between Mother and L.M.1.'s Father.
3. On December 7, 2021, during a home safety check, CPS employees observed that: (1) the home was "extremely cluttered" and difficult to walk through; (2) pieces of the floor were missing; (3) there was writing on the walls; (4) the home was infested with mice, cockroaches, and ants, in which one drawer in the kitchen contained hundreds of live cockroaches because Mother lives under a covenant that "thou shall not kill;" (5) there are no doors to any of the rooms in

- the house including the bathroom; and (6) all of the windows are covered by paper or tin foil and wooden bars.
4. Mother presents as “extremely mentally ill. She claims to be a lawyer, a pediatrician, a licensed foster parent, and other things that she is not. The workers observed her to be disconnected from reality.”
 5. There are concerns about Mother’s drug use because Mother was breastfeeding L.M.1 and advised though she does not have a Maryland Medical Marijuana card, that she smoked marijuana “on a daily basis.”
 6. The children have not seen a pediatrician or dentist in years because Mother states she is their pediatrician. L.M.1’s Father confirmed that he knew that Mother was not taking the children in for pediatric care.
 7. Mother is home-schooling the children “through experience” and is working off a home-made program called “Shenations.” She has not been reporting to Baltimore County Public Schools as required.
 8. Mother reported that L.M.1’s Father was recently released from incarceration for “distributing crack cocaine.” According to L.E. and L.M.2, there is domestic violence that exists between the parents. L.M.1’s Father threw a mug at L.M.2, but missed. CPS worker confirmed that it happened. L.E. stated that L.M.’s Father threatened that if it were not for Mother, “he would have girls cut up her face.” On December 1, 2021, L.E. called the police reporting that L.M.1’s Father hit L.M.2 and gave Mother a black eye. Mother reported that L.M.1’s Father “hit [L.M.2] on several occasions and pinched [L.M.2] once to the point of bleeding.”

L.E. stated that L.M.1’s Father is not nice to the children and that he should go back to jail. She added that L.M.2 was sobbing after being pinched by L.M.1’s Father that he threw up.

9. While attempting to shelter the children, Mother alleged that the Department was “attempting to kidnap” the children to the police.

10. L.M.2’s Father had been deported and Mother had no information on his whereabouts or how to contact him.

On December 10, 2021, the court denied shelter care for L.E. and instead placed her in L.E.’s Father’s custody. However, the circuit court approved shelter care for L.M.1 and L.M.2, finding that it was contrary to their welfare to return to the home because the “family home is not suitable,” the children had not seen a doctor recently, and there were “concerns of domestic violence and drug use in the home.” L.M.1 and L.M.2 were placed in foster care.

After an initial foster care placement, L.M.2 was moved to a kinship home with his cousins in February 2022. L.M.1 was similarly moved from foster care to a separate kinship care home with Mother’s cousins in February 2022.

F. CINA Adjudication Hearing

The CINA adjudication hearing took place over two days. On March 31, 2022, the Department presented its case through three witnesses: (1) CPS worker, N. Davis; foster care worker, Juliana Davis (“J. Davis”); and N. Davis’ CPS supervisor, Taylor Mast (“Mast”).

Mast was admitted as an expert in general social work and elaborated on the

Department’s concerns regarding Mother and L.M.1’s Father. Mast supervised N. Davis’s work on this case from its inception. Mast stated that she found L.M.1’s Father’s paranoid and aggressive behaviors concerning and concluded L.M.1 would not be safe with him.

Mast cited an incident where L.M.1’s Father took nude pictures as an example of his paranoia. L.M.1’s Father, while visiting her in foster care, “opened her vagina”, took pictures, and texted them to N. Davis. J. Davis witnessed L.M.1’s Father taking these explicit photographs and instructed him to stop. L.M.1’s Father had stated concerns to J. Davis about L.M.1’s hygiene,⁵ but J. Davis stated to L.M.1’s Father that taking nude photographs of L.M.1 was unacceptable.

Despite the warning, L.M.1’s Father again took nude photographs of L.M.1 in January 2022. L.M.1’s Father told J. Davis that he was “looking for any sexual abuse.” After telling him to stop multiple times, J. Davis ended L.M.1’s Father’s visit.

In citing these incidents, Mast stated:

[i]t’s almost like he was using his fingers to open [her vagina] . . . He was insistent that something was happening to [L.M.1] sexually. He seemed paranoid. And I didn’t think it was appropriate to take that type of picture and to send it out. It seemed like . . . an intrusive [medical] exam.

She acknowledged that L.M.1’s Father had expressed concerns about his daughter’s hygiene, but she explained there were “more appropriate ways to express those concerns” than taking nude photographs.

⁵ L.M.1’s Father said he had concerns about L.M.1’s hygiene while she was in foster care and had at one point noticed “black stuff” in her vagina. He stated, “I have been incarcerated. So I have been around real monsters and I have seen things that people can’t imagine. [] I was worried about my child’s health. I was worried about her being hurt . . . any type of abuse. So I began to take pictures.”

Mast also testified that Mother “suffers greatly from a [] significant mental health issue” and “presents with some very bizarre, extreme ideations.” Mast concluded that the children would not be safe in Mother’s care, explaining that they “have witnessed a lot of concerns regarding her mental health and how [it] impacts her ability to provide appropriate care for her children.”

Mother and L.M.1’s Father moved to dismiss the CINA petitions. The circuit court denied both motions. In response to a request from L.E.’s Father’s counsel, which the Department and the children’s attorney supported, the court found that it “ha[d]n’t heard anything to support a CINA finding as it relates to [L.E.]”

Mother then presented her case by proffer. Mother denied the allegations in the children’s CINA petitions and accused the Department of conflating her religious beliefs with mental health issues. She stated that there is ample evidence demonstrating her ability to care for the children such as, that she is employed and has registered with the county’s home-school system, tested negative for drugs, addressed the infestation issue, and engaged a therapist.

However, Mother admitted that her house had been rodent-infested and cluttered. She explained that she had resided in monasteries in Thailand, Japan, and other countries and was therefore accustomed to infestations. Additionally, she confirmed that it is against her religion to kill creatures. When asked what she would do if the infestation were to recur, she stated that she would “talk to the [home] owners” (her parents) about what to do. She finally explained that if she saw a mouse or a cockroach, she would handle the situation because she has “been advised to do so during this entire crisis.”

L.M.1's Father testified on his own behalf and called L.M.1's kinship caregiver. L.M.1's Father first addressed his relationship with Mother. He stated that he realized gradually that he no longer wanted to be in a relationship with Mother, which upset her. Consequently, she tried controlling him by using L.M.1 against L.M.1's Father, who in turn, asserted that he was "not going to [be] control[led]" or be told "what to do," which caused friction. L.M.1's Father stated that he wanted to remove L.M.1 from Mother's home since she was born but has not done so because he feared her response.

L.M.1's Father denied several of the allegations against him. He said he never threatened L.E. and never physically harmed Mother or her children. However, he admitted that he threw a mug at the wall and broke a window at Mother's home. He also acknowledged that eight-year-old L.M.2 felt the need to protect his mother from L.M.1's Father, and on one occasion, L.M.2 "latched" onto him and he physically "detached" L.M.2 from his body.

Although L.M.1's Father had personally observed the conditions of Mother's home and had concerns about L.M.1 living there, he acknowledged that he did not report his concerns or Mother's mental health issues to anyone and he never attempted to remove L.M.1 from that situation. He further admitted that he never took L.M.1 to the pediatrician, but he emphasized that Mother never let him take L.M.1 anywhere.

L.M.1's caregiver testified about L.M.1's Father's involvement with L.M.1., stating he initially "misjudged" L.M.1's Father, but his impression changed because he "saw the great concern that [L.M.1's Father] has [for] L.M.1" L.M.1's Father has purchased new clothes and formula for L.M.1, and L.M.1 is sad when he leaves their visits.

IV. Adjudication and Disposition

After the close of the evidence on April 19, 2022, the circuit court heard arguments. The Department requested that the allegations in the CINA petitions against Mother and L.M.1's Father be sustained, and the children's attorney agreed. The court sustained all of the allegations against Mother and L.M.1's Father from the Department's December 8, 2021 CINA Petitions, with the exception of:

1. Instead of "all" of the windows in the home being covered by paper or tin foil and wooden bars, as alleged by the Department, only "some" of the windows were in such condition.
2. Though Mother is home-schooling the children "through experience" via a self-made program, the program was not called "Shenations," as stated by the Department. It is unknown to this Court what Mother calls the program.
3. Reports that L.M.1's Father hit L.M.2. and gave Mother a black eye were not sustained.
4. Reports that Mother advised that she smoked marijuana "on a daily basis" were not sustained. However, the court sustained that Mother smoked marijuana without a Maryland Medical Marijuana card and was breastfeeding L.M.1.
5. The court also noted that it was not sure the Department met its burden on L.M.2 presenting as developmentally delayed, so the court did not sustain that fact.

After the disposition hearing, the circuit court held L.E. was not a CINA because L.E.'s Father was "ready, willing, and able to care for her." Subsequently, the court awarded L.E.'s Father custody of L.E.

Even though the court awarded custody of L.E. to L.E.’s Father, the court found L.M.1 and L.M.2 to be CINA and committed them to the Department. Responding to L.M.1’s Father, the court declined to award him custody citing domestic violence and that he failed to protect L.M.1 from Mother’s neglect. Responding to Mother, the court declined to award her custody citing concerns about Mother’s mental health and stability.

Mother and L.M.1’s Father timely appealed.

A. CINA ADJUDICATION APPEALS

Mother and L.M.1’s Father appeal the circuit court’s decisions regarding the children’s custody and CINA determinations. Notably, “[p]arents have a fundamental right to rear their children without unwarranted interference by the State.” *In re T.K.*, 480 Md. 122, 131 (2022). That right “occupies a unique place in our legal culture, given the centrality of family life as the focus for personal meaning and responsibility.” *In re Adoption/Guardianship No. 10941*, 335 Md. 99, 113 (1994) (quoting *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 38 (1981) (Blackmun, J., dissenting)). “That interest, however, is not absolute, and must be balanced against society’s obligation to protect the welfare of children.” *In re T.K.*, 480 Md. 122, 131 (2022); *see also In re Yve S.*, 373 Md. 551, 568-69 (2003). In balancing parents’ interests and society’s obligation to protect the welfare of children, the Court of Appeals, in *In Re: Yve S.*, 373 Md. 551, 586, (2003), discussed the three interrelated standards that govern appeals in CINA cases:

When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Secondly,] if it appears that the [circuit court] erred as to matters of law, further proceedings in the [circuit] court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [circuit

court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [circuit court’s] decision should be disturbed only if there has been a clear abuse of discretion.

See also In re Caya B., 153 Md. App. 63, 73-74 (2003) (citations omitted). Appellate courts “simultaneously” apply these three standards of review. *In re Shirley B.*, 419 Md. 1, 18 (2011). Where the circuit court’s decision was founded upon “sound legal principles and based upon factual findings that are not clearly erroneous, the [circuit court’s] decision should be disturbed only if there has been a clear abuse of discretion.” *In Re: Yve S.*, 373 Md. at 586. An abuse of discretion exists, “where no reasonable person would take the view adopted by the [circuit] court” or is “clearly against the logic and effect of facts and inferences before the court.” *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 318 (1997) (citations omitted). An abuse of discretion “should only be found in the extraordinary, exceptional, or most egregious case.” *Alexander v. Alexander*, 252 Md. App. 1, 17 (2021) (citing *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005)).

I. Analysis

L.M.1 and L.M.2 have been deemed CINA by the circuit court, so this Court begins with a review of the relevant statutory framework. A CINA is defined as:

(f) 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 Ann., Cts. & Jud. Proc. (“CJP”) § 3-801(f). Ultimately, Appellants argue that the circuit court erroneously deemed their respective children as CINA. We disagree.

a. L.M.1’s CINA Determination

We find no abuse of discretion by the circuit court in their custody decisions regarding L.M.1. because of the large breadth of evidence of neglect by both parents by which the circuit court made their decision. “Neglect” is defined as:

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

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

CJP § 3-801(s). In evaluating whether a “substantial risk of harm” exists, “the court has ‘a right – and indeed a duty – to look at the track record, the past, of a parent in order to predict what her future treatment of the child may be.’” *In Re J.J.*, 231 Md. App. 304, 346 (2016) (citations omitted). This Court has explained that:

It makes sense to think of “neglect” as part of an overarching pattern of conduct. Although neglect might not involve *affirmative* conduct (as physical abuse does, for example), the court assesses neglect by assessing the inaction of a parent over time. To the extent that inaction repeats itself, courts can appropriately view that pattern of omission as a predictor of future behavior, active or passive: it has long been established that a parent’s past conduct is relevant to a consideration of the parent’s future conduct. Reliance upon past behavior as a basis for ascertaining the parent’s present and future actions directly serves the purpose of the CINA statute. Differently put, courts should be most reluctant to “gamble” with an infant’s future; there is no way to judge the future conduct of an adult excepting by his or her conduct in the past. And of course, we need not and will not wait for abuse to occur and a child to suffer concomitant injury before we can find neglect: “The purpose of [the CINA statute] is to protect children – not wait for their injury.”

In re Priscilla B., 214 Md. App. 600, 625-626 (2013) (emphasis in original) (internal

citations and quotations omitted).

Regarding the declination of L.M.1's custody to L.M.1's Father, the circuit court explained that their decision was based on the domestic violence in the home. While L.M.1's Father did not physically abuse L.M.1, he did engage in violent behaviors towards others in the home, such as: 1) threatening to harm L.E. by cutting her face or sending someone to do harm to her; 2) throwing a mug which narrowly missed L.M.2; 3) breaking a window in the home out of anger; 4) pinching L.M.2 to the point of bleeding; and 5) physically detaching L.M.2 from himself when L.M.2 felt the need to protect Mother from L.M.1's Father. Consistent with the statute and *In re Priscilla B.*, this Court finds that L.M.1's Father's past behaviors towards others in the home put L.M.1 at substantial risk of possible harm. *See id.*

The court also cited L.M.1's Father's lack of action in seeing L.M.1 live in a home that was in such "terrible condition." L.M.1's Father visited Mother's home and saw the rampant infestation of rodents in the home and took no action to remove L.M.1 from the unsanitary environment. L.M.1's Father even contributed to the abysmal condition of the home by breaking one of the windows in anger during a fight with Mother and throwing a mug at a wall, which left significant damage to the wall. Allowing L.M.1 to continue to live in the home, while not an affirmative action, was a conscious and repetitive inaction of neglect which put L.M.1 in substantial risk of harm. *See id.*

Finally, the circuit court cited that L.M.1 had not received medical attention since her birth and declined to allocate all of the blame to Mother. We agree with the circuit court because his failure to seek adequate medical care for L.M.1 puts the child's health in

substantial risk of harm. Thus, we see no abuse of discretion in the circuit court’s decision regarding L.M.1’s Father.

Nor does this Court find any abuse of discretion in the circuit court’s decision regarding Mother. The ample testimony, reports, and evidence of the condition of the home, the children’s lack of health care, and Mother’s mental health issues signal that the circuit court’s decision was rooted in the logic and effect of facts and inferences before the court.

Mother’s home was in an unsafe environment for the children to live. Mother admitted that her home was rodent-infested and cluttered. The infestation of ants, mice, and cockroaches all over the house – most alarmingly in very close proximity in the kitchen to open boxes of breakfast food, cereal, snacks, and food – posed a significant health and safety risk to the children. N. Davis also reported during her home safety check that the home was “extremely cluttered,” parts of the floor were missing, and there was writing on the walls. Although Mother has taken steps to improve the conditions in the home, this Court holds that Mother’s inaction in allowing the children’s home to become such an unsanitary and unsafe environment for the children created a substantial risk of harm to the children’s health and safety, which warranted neglect under CJP § 3-801(s).

The circuit court also cited its concern for the children’s health and well-being because of the lack of health care. Mother admitted L.E. and L.M.2 had last seen a doctor

in September 2019; L.M.1 had not received medical care since her birth in April 2021.⁶ Mother told N. Davis that the children were not receiving medical or dental care because she was their doctor and dentist and had a binder that guides “her own medical practice of the children,” “go[ing] off of the findings of ‘Jehova-Rapha,’” because “she didn’t believe in taking them to the doctor.” When Mother was asked what she would do if the children became sick, Mother stated that she would “turn to Jehova-Rapha and pray on it.”

The circuit court also cited concerns regarding Mother’s mental health. As stated by Mast, Mother displays “very tangent[i]al in her speech. Oftentimes, [she] identifies herself as different people . . . [and] will exhibit erratic behavior . . . It’s very hard to gauge if [Mother is] even in touch with reality.” Regarding Mother identifying herself as other people, the Department stated that Mother sometimes “signed” her emails using different names, including the El Salvadorian Army, her deceased brother, and “Jesus Christ.” During N. Davis’s safety home visit, Mother claimed to “be a lawyer, a pediatrician, a licensed foster parent, and other things that she is not.” She has also stated that her last name was “Christ” to law enforcement.

Regarding Mother’s erratic behavior, this Court found the testimony and reports about the drawer full of “hundreds” of live cockroaches in the kitchen most disturbing. Further, the Department stated that several emails Mother sent after the children were removed from her custody contained “[Y]outube videos of songs” or “pictures of famous

⁶ Mother testified that it was difficult to find a doctor for L.M.1 because L.M.1 was unvaccinated for COVID-19 and many pediatricians were not accepting unvaccinated patients.

people,” such as Michael Jackson or former Presidents. On cross examination, she made several claims about her background, such as that she was “born with a disability that requires [her] to write,” which explained the writings on her walls and her emails to the Department. She also stated she was “part Cherokee,” “part Thai,” “also lived[d] as a monk,” and “wrote a thesis” on religious theory while living in Turkey. Regarding employment, Mother said she worked on the board of trustees as the secretary for a nonprofit organization run by her family’s business, Sewell Learning Systems, but could not identify where Sewell Learning Systems was located.⁷ L.M.1’s caregivers also reported that Mother “behaves in an odd and erratic manner.”

Mother’s mental health, in conjunction with the unsanitary and unsafe conditions of Mother’s home and refusal of health care for the children, pose a substantial risk of harm to the children’s health and safety and, thus this Court finds no abuse of discretion in the circuit court’s decision.

⁷ In cross examination. where L.M.1’s Father’s Attorney questioned Mother:

Q. Okay. So where is the Sewell Family Learning? Where does that take place?

A. Well, it could take place here. I am not sure. I have to ask the person who is in charge. I am not in charge of it.

Q. Who is in charge of it?

A. The board of trustees. My mother. But, like I told you, she's very I will right now. So I don't know.

Q. Okay. How much do you earn from working for the nonprofit?

A. It's a Good Samaritan Act. We don't have money. We just do our work as if we are doing it for the Lord. Not for mankind. That's part of the nonprofit 501(c)3.

b. L.M.2’s CINA Determination

L.M.2’s father’s whereabouts are unknown. He was reportedly deported. Thus, the circuit court had to make the CINA determination based on Mother’s standing. For the same reasons L.M.1’s CINA determination was affirmed regarding Mother’s appeal, this Court also affirms L.M.2’s CINA determination.

c. L.E.’s Custody Decision

In L.E.’s case, the circuit court was well within its discretion to award L.E.’s Father custody where L.E.’s Father was ready, willing, and able to care for L.E. As recently explained by the Court of Appeals,

[t]he General Assembly, however, has authorized a limited but important exception to that general rule when (1) the allegations of a CINA petition are proven against only one of the child’s parents, and (2) another parent is able and willing to provide care for the child’s needs. CJP § 3-819(e). In that circumstance, ongoing court intervention is still unavailable, but the [circuit] court, before dismissing the case, is authorized to “award custody to the other parent.” *Id.* Section 3-819(e) thus permits a [circuit] court that is not otherwise able to intervene in a family’s affairs to determine the most appropriate custody arrangement for the child as between the child’s parents.

In re T.K., 480 Md. at 131–32. The award of custody is permissible if it is in the best interests of the child. *Id.* at 134. Determining what award of custody is in the best interest of the child is based on many factors and can include,

among other things, the fitness of the persons seeking custody, the adaptability of the prospective custodian to the task, the age, sex and health of the child, the physical, spiritual and moral well-being of the child, the environment and surroundings in which the child will be reared, the influences likely to be exerted on the child, and, if he or she is old enough to make a rational choice, the preference of the child.

Wagner v. Wagner, 109 Md. App. 1, 19 (1996). Each custody case is looked at on an

individual basis to determine what will serve the welfare of the child and the best interest of the child is “not considered as one of many factors, but as the objective to which virtually all other factors speak.” *Id.*

In this case, the allegations of the CINA petition were proven against Mother. For the previously stated issues, such as the lack of health care for the children, the unsafe nature and unsanitary environment of Mother’s home, and Mother’s mental health issues, we find no abuse of discretion by the circuit court because Mother’s neglect put L.E. at substantial risk of harm. For those very same reasons, we also hold that it is against L.E.’s best interest to award Mother custody.

In contrast, L.E.’s Father has been proven to be able and willing to provide care for L.E. On December 10, 2021, L.E. disclosed that she was suicidal and the Department took her to the hospital. L.E. stated that she had no friends and did not want to return to Mother’s home. L.E.’s Father was “very concerned” and “immediately went to the hospital” to be with L.E. L.E. was discharged to L.E.’s Father, and she has been with him since she was discharged.

Concerning the best interest of the child factors, the reasonable preference of a child of suitable age and discretion should be considered. *Taylor v. Taylor*, 306 Md. 290, 308 (1986). The preference of the child was made clear: L.E., who was eleven years old at the time of the appeal, stated that she did not want to return to Mother’s home, which is, for reasons previously mentioned, not deemed a safe environment to raise her children. This Court finds L.E. to be of suitable discretion, as she commendably called for law enforcement’s help when she perceived Mother, her siblings, and herself to be in danger of

domestic violence. Thus, L.E.’s preferences are considered by this Court in deciding what is in L.E.’s best interest.

Moreover, L.E. is reportedly doing well with L.E.’s Father. L.E. “is making friends, finding support systems, and creating relationships with [school] staff members,” which speaks to the more positive social, spiritual, and moral well-being of the child in L.E.’s Father’s care. For these reasons, this Court holds that the circuit court did not abuse its discretion in deeming L.E. as not CINA and awarding L.E.’s Father physical and legal custody of L.E.

B. ALLEGED HEARSAY ISSUES

L.M.1’s Father alleges that the circuit court erred in admitting hearsay testimony regarding the incident where he angrily threw the mug in Mother’s home. We agree. Hearsay is an out of court statement offered to support the truth of the matter for which they are asserted. Md. Rule 5-801(c). Hearsay is not admissible as evidence unless it falls within an exception. Md. Rule 5-802. Generally, “the rules of evidence, including the rules regarding hearsay, apply in juvenile adjudicatory hearings.” *In re Michael G.*, 107 Md. App. 257, 266 (1995) (citations omitted). N. Davis, the CPS social worker, testified that Mother told her that L.M.1’s Father intentionally threw the mug at L.M.2. The exchange was as follows:

[N. DAVIS]: There were concerns about domestic violence. The children had said that there was one time or —

[L.M.1’s FATHER]: Objection.

THE COURT: All right. Sustained as to what the children said.

[N. DAVIS]: Okay.

[DEPARTMENT]: You can't tell me what the children said, but go on.

[N. DAVIS]: Can I tell you what Ms. Sewell said?

[L.M.1's FATHER]: Objection.

THE COURT: I am going to overrule that objection as to Ms. Sewell. All right.

[N. DAVIS]: So Ms. Sewell said that Mr. Murray had thrown a mug, and it went into the wall. He was throwing it at one of the children. It had went into the children. It had went into the wall. She showed us where the hole was in the home.

This Court holds that N. Davis's statement was indeed hearsay because N. Davis's statement was that of a different declarant, Mother, and was not admissible under any of the hearsay exceptions. However, it is this Court's policy "not to reverse for harmless error." *In re: Yve S.*, 373 Md. at 616. Therefore, we must determine whether the error in admitting the evidence was harmless. As stated by the Court of Appeals, "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 Adoption/Guardianship of T.A., Jr.*, 234 Md. App. 1, 13 (2017) (quoting *In re: Yve S.*, 373 Md. at 618).

Here, L.M.1's Father admitted to throwing the mug at the wall, testifying that he did it because he was "frustrated" and "very unhappy." Mother also referenced the incident, without objection from L.M.1's Father, stating:

[MOTHER]: Whenever the police reports — I think it was September, October, November, December. Like people were — [i]t was just really rough. I think he was just really emotional over some

things. I don't know.

[MOTHER'S ATTORNEY]: And what does that mean when there were police reports September, October, November, December? Police reports for what?

[MOTHER]: Domestic disputes mainly. And, yeah, that being it. Just yelling and trying to resolve things. And there was one where there was — he broke a window. And there was one where he threw a mug.

* * *

[MOTHER]: He threw a mug in the direction. I don't think he intended to hit [L.M.2]. But [L.M.2] was standing there. So it might have been — it was — it all — it happened really quickly. So I just — I don't — it was in the direction of [L.M.2].

[MOTHER'S ATTORNEY]: Did it cause a hole — create a hole or damage to the wall?

[MOTHER]: There was slight damage, yes.

This Court finds the circuit court's error harmless when admitting N. Davis's statement where L.M.1's Father admitted to throwing the mug in anger and frustration and failed to object to the Mother's statements about the incident. Arguably, even if the circuit court properly excluded the hearsay statement, the mug-throwing incident and the circumstances surrounding the incident would have been admitted through L.M.1's Father's own admission and Mother's testimony about the incident. Thus, this Court declines to find reversible error.

CONCLUSION

Accordingly, we affirm the Circuit Court for Baltimore County's judgment.

**JUDGMENT FOR THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED;
APPELLANTS TO SPLIT COSTS.**