Circuit Court for Prince George's County
Case Nos. CINA-18-0221 & CINA-18-0222

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 542 & 764

September Term, 2020

IN RE: A.S. AND E.B.

Fader, C.J.,
Kehoe,
Friedman,

JJ.

Opinion by Fader, C.J.

Filed: March 10, 2021

The Circuit Court for Prince George's County, sitting as a juvenile court, determined that half-siblings A. and E. each was a Child in Need of Assistance ("CINA"),[1] and committed both to the custody of the Prince George's County Department of Social Services (the "Department"). I.S., the appellant and mother of the children ("Mother"), asks us to overturn that decision on the grounds that: (1) the circuit court erred in admitting hearsay statements during the children's adjudicatory hearing; (2) there was insufficient evidence to sustain the court's finding of neglect; and (3) the court erred in failing to make a specific finding that the Department had engaged in reasonable efforts to prevent the placement of A. and E. into the Department's custody. To the extent preserved, we find no error or abuse of discretion in the court's admission of evidence, and we conclude that the evidence was sufficient to support the court's finding of neglect. And although the court erred in failing to make express findings regarding reasonable efforts, we conclude that that error was harmless under the circumstances.

BACKGROUND

Factual Background

Mother has two children: A., born in December 2017, and E., born in July 2015. A. and E. have different fathers, neither of whom is a party to this appeal.[2] Mother and the

[1] A "child in need of assistance" is one who requires court intervention because: (1) the child has been abused or neglected, or has a developmental disability or 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. § 3-801(f) (2020 Repl.).

[2] E.'s father appeared in court only on the first day of the adjudication hearing; his counsel was present and participated in all of the CINA proceedings. A.'s father has not

children lived with their maternal grandmother ("Maternal Grandmother") until spring 2018, when Mother left that residence and took the children to stay at a friend's house. Because Mother believed that the friend's house was "a dirty environment" for the children, she asked E.'s paternal grandmother ("Paternal Grandmother") for help with childcare. Paternal Grandmother obliged and initially took both children into her care, but then arranged for a cousin, Ladonna N., to take care of A. Aside from a two-week period during which he stayed with Mother, A. has lived with Ms. N. continuously since April 30, 2018.

On May 30, 2018, Mother signed two temporary custody agreements: one giving Paternal Grandmother custody of E. and the other giving Ms. N. custody of A.[3] Less than a month later, in June 2018, Mother took E. from Paternal Grandmother's home. Although Paternal Grandmother thought that E. would be returning a few days later, Mother did not return E. to Paternal Grandmother until late October or sometime in November 2018.

From June 2018 through October 2018, Mother and E. resided with Maternal Grandmother. Maternal Grandmother testified that in October 2018, she had a boyfriend named Dean, who had been at her house "once or twice[.]" The only other man who had been in the house during that span was Maternal Grandmother's adult son, who stopped by occasionally for short periods.

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appeared personally or through counsel in the CINA proceedings. Neither father noted an appeal.

[3] These documents were never authorized by a court, and no custody actions were initiated in a court at that time.

The Department's Investigation

On October 22, 2018, the Department received a report alleging that then-three-year-old E. had been sexually abused. According to the report, during her bath time, E. told her great-grandmother that someone named "Pop-pop" had touched her "down there," while pointing to her vaginal area, and said that "it hurt." E. said that Pop-pop was someone "at grandma's house."

Upon receiving the report, Fattimata Mohamed Ali, the Department's assigned investigator, contacted Mother by phone to "schedule a meeting with [Mother] to see [E.]." Although Mother had sent E. to live with a friend in Alexandria, Virginia, Mother did not tell Ms. Ali that E. was not with her. Instead, Mother arranged to meet Ms. Ali the following day, October 23, but provided Ms. Ali with an address for an apartment unit that did not exist. When Ms. Ali called Mother to verify, Mother provided the same incorrect address. Mother then agreed to meet at the Department instead but declined Ms. Ali's offer of transportation. Mother failed to attend the meeting.

The following day, Ms. Ali visited Maternal Grandmother's residence to attempt to locate Mother, but neither Mother nor E. were at the house. Maternal Grandmother and other family informed Ms. Ali that Mother "no longer liv[es] at th[e] address," "that she stays with different friends," and that "they d[id not] know her whereabouts[.]" Ms. Ali asked the family for help bringing Mother into the Department, and subsequently tried contacting Mother by calling a different phone number provided by Maternal Grandmother. Ms. Ali was unable to reach Mother at that number, and the line disconnected before Ms. Ali could leave a voicemail message.

Ms. Ali subsequently "received phone calls from [Mother]'s family members stating that . . . [E.] was in Virginia" and "not with [Maternal Grandmother] as [Mother] told us." Ms. Ali confirmed that E. had been living in Alexandria, Virginia with Iesha M., a family friend.[4] On October 30, Ms. N. and Ms. M. brought E. to the Department for a forensic interview, which Mother did not attend. During the interview, E. "did not make a disclosure" as to the identity of Pop-pop but also "did not deny anything." She further "could not . . . identify the body parts that no one is supposed to touch." E. stated during the interview that she did not want to return to Mother because "[s]he was left home alone by her mother and she saw monsters." Based on the interview, the Department concluded that it could neither rule out nor substantiate the allegations of sexual abuse. After the interview, E. returned to Virginia with Ms. M. under a safety plan.

On November 2, 2018, Ms. Ali met Mother in person for the first time. Mother denied the allegations of sexual abuse and claimed that she did not know the identity of Pop-pop. She believed the allegations were fabricated because "people want[ed] to take the children from her." Although Mother told Ms. Ali that she was homeless, she also claimed that she lived at Maternal Grandmother's residence. Mother provided no explanation for why she did not tell Ms. Ali that E. was living in Virginia at the start of the investigation. Ms. Ali and Mother developed a safety plan pursuant to which A. and E. would continue to stay in the care of Ms. N. and Paternal Grandmother, respectively.

[4] The transcripts of the hearing also identify Ms. M.'s first name as "Aisha."

Initiation of CINA Proceedings

In mid-November 2018, less than two weeks after Mother met with Ms. Ali and after learning of concerns that Mother was going to take the children away from their caregivers, the Department filed CINA petitions on behalf of each child based on safety concerns that Mother lacked housing and would take the children "to the home where [E.] was allegedly abused." The Department assumed temporary custody of the children pursuant to orders for shelter care. In January 2019, the court authorized the children's continued placement in shelter care and ordered that A. continue to reside with Ms. N. and that E. continue to reside with Paternal Grandmother. In initial and revised shelter care orders for each child, the juvenile court expressly found that the Department had made "reasonable efforts to prevent or eliminate the need for removal" of the children.

On August 13, 2019, the Department filed amended CINA petitions as to each child. In addition to noting the allegation of sexual abuse—including that the allegation had not been substantiated—the Department claimed that, among other things, Mother "made [E.] unavailable to . . . conduct a timely forensic interview," "did not take her to the hospital," and "was not candid . . . about where she lived or what she knew about . . . the allegations." The Department sought "court oversight to ensure [A. and E. are] cared for in a safe and appropriate environment."

The Adjudicatory Hearing

A two-day adjudicatory hearing on the amended CINA petitions was held on August 13 and October 22, 2019. During the hearing, the juvenile court received evidence and heard testimony from Ms. Ali, Ms. N., Paternal Grandmother, the children's maternal

great-grandmother, E.'s paternal great-grandmother, Maternal Grandmother, and Mother. In addition to the facts presented above, Ms. N. testified that Mother knew the identity of Pop-pop and had said that Pop-pop had previously "touched [Mother's] little sister[.]" The court also received into evidence a text message that Mother had sent to Ms. N., in which Mother wrote, "I know who he is and it will get handled not only did he do it to [E.] he do it to my little sister too[.]"

During her testimony, Mother denied that she knew anyone named Pop-pop or that any man had lived with E., and she stated that she initially did not believe the allegations. Although family members implored Mother to take E. for a medical examination after the alleged abuse, Mother testified that she did not do so. Mother gave different explanations for not taking E. to the doctor. She initially averred that she tried to "get [E.] checked out" at a medical clinic where a family friend worked but was unsuccessful. Mother did not take E. for an examination after that, she said, because she "came to realize that nothing [had] happened to [her] daughter," and she thought that E.'s great-grandmother had fabricated the allegations. Mother later testified that she did not want to take E. to a doctor out of fear that the Department would take E. from her. Mother claimed that she had completed a parenting course and was about to start a new job. She also testified that she did not know where—or whether—E. went to school and lacked knowledge of E.'s medical history.

Paternal Grandmother testified that Mother had had little contact with E. since she came into Paternal Grandmother's care in 2018. Ms. N. similarly testified that Mother had seen A. in person only a few times since November 2018 and that two of those times were

at court hearings. Additional testimony revealed that A. did not want to be held by Mother during these visits and Mother now sees A. through FaceTime calls once a month.

In an oral ruling at the conclusion of the hearing and then subsequently in written orders, the juvenile court sustained the allegations in both CINA petitions by a preponderance of the evidence. The sustained allegations included that:

> Knowing of the allegations [of sexual abuse], [Mother] sent [E.] out of state, did not take her to the hospital, and made [E.] unavailable to the Department to conduct a timely forensic interview with [E.] Mother was not responsive to the Department and was not candid with the Department about where she lived or what she knew about the subject of the allegations.
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> . . . .
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> While [A.] was not mentioned in the referral and he was not in his mother's care at the time of the referral, the caretaker who has temporary custody of [A.] through a revocable agreement contacted the Department several times, stating that she fears [Mother] would take [A.] from her despite the agreement signed in May 2018.

The Disposition Hearing

The juvenile court held a disposition hearing on November 13, 2019. During the hearing, Mother acknowledged for the first time that she had known Pop-pop's identity all along—since "the day after [E.] said" the allegation—and disclosed that Pop-pop was Maternal Grandmother's boyfriend, Dean. Mother gave his full name to the court and confirmed that she "was referring to Dean" in the text message she had sent to Ms. N.

At its conclusion, the court found that A. and E. were both children in need of assistance. Stating that it was considering "all of the evidence" from the hearings, the court found: the allegations "were serious abuse or neglect allegations"; Mother "was unwilling at the time, and still not clear, to give the proper care and attention to [E.]'s needs"; and

the case was "[i]n essence . . . a failure to protect case and a failure to follow through on the reported injury of [E]." The court expressed that its ultimate goal was the reunification of the children with Mother.

In written orders issued on July 1, 2020, the court ordered that the children be committed to the Department and placed with their then-current caregivers: A. with Ms. N., and E. with Paternal Grandmother. The court also awarded Mother unsupervised visitation with both children and ordered, among other conditions, that the children have no "unsupervised contact with male adults," and no contact at all with Maternal Grandmother's boyfriend. The court did not expressly address in either disposition order whether the Department had made reasonable efforts to prevent the out-of-home placement of the children.

Mother timely appealed.

DISCUSSION

We apply three standards of review in CINA cases: (1) we review factual findings of the juvenile court for clear error; (2) we determine "without deference" whether the juvenile court erred as a matter of law, and, if so, whether the error requires further proceedings or, instead, is harmless; and (3) we evaluate the juvenile court's final decision for abuse of discretion. *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018). An abuse of discretion occurs only when a court's 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 Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. 30, 45 (2017) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 313 (1977)).

Whether a parent is unable or unwilling to care for the parent's child "is a factual determination that an appellate court reviews for clear error." *In re E.R.*, 239 Md. App. 334, 338 (2018). In evaluating the juvenile court's findings of fact, we must give "the greatest respect" to the court's opportunity to view and assess the witnesses' testimony and evidence. *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 719 (2011). Whether a child has been neglected is a legal conclusion that we review for correctness. *See In re Priscilla B.*, 214 Md. App. 600, 625 (2013).

We review without deference a court's legal determination of whether evidence is hearsay and whether it is admissible under a hearsay exception. *Gordon v. State*, 431 Md. 527, 538 (2013).

I. TO THE EXTENT MOTHER'S HEARSAY OBJECTIONS TO THE ADMISSIBILITY OF STATEMENTS CONTAINED WITHIN THE DEPARTMENT'S CONTACT REPORTS WERE PRESERVED, THE CIRCUIT COURT DID NOT ERR.

Mother first contends that the juvenile court erred in admitting certain Department investigative notes (the "Contact Reports") without excluding or redacting hearsay statements within them. The Department and the children argue that this challenge is not preserved because Mother failed to identify or object to any specific statements in the reports before the juvenile court. To the extent Mother challenges the court's overruling of her general objection to hearsay in the Contact Reports and her objection to one particular statement, we hold that the court did not err. To the extent that her challenge is to the inclusion of specific statements in the reports other than the one she raised during the hearing, she failed to preserve that objection.

"Ordinarily, an appellate court will not decide an issue unless it plainly appears by the record to have been raised in or decided by the trial court." *In re J.J.*, 231 Md. App. 304, 339-40, *aff'd*, 456 Md. 428 (2017) (internal quotations and quotation marks omitted); *see also In re Katherine C.*, 390 Md. 554, 560 n.10 (2006). To preserve an issue as to the admissibility of evidence, "[the] party must make it clear that [the party] has an objection to the particular evidence." *Fireman's Fund Ins. v. Bragg*, 76 Md. App. 709, 719 (1988); *cf. Kang v. State*, 393 Md. 97, 119 (2006) (to preserve a challenge to the admission of evidence, a "specific objection should be made to each question propounded" (quoting *State Roads Comm'n v. Bare*, 220 Md. 91, 94 (1959))). If the party "provides the trial judge with specific grounds for an objection, the [party] may raise on appeal only those grounds actually presented to the trial judge." *Anderson v. Litzenberg*, 115 Md. App. 549, 569 (1997). "All other grounds for the objection, including those appearing for the first time in a party's appellate brief, are deemed waived." *Id.*

Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). A court has no discretion to admit hearsay, "[e]xcept as otherwise provided by [the Maryland Rules] or permitted by applicable constitutional provisions or statutes[.]" *Paydar v. State*, 243 Md. App. 441, 452 (2019) (quoting Md. Rule 5-801(c)). One such exception is the public records exception, which excludes from the rule against hearsay "a memorandum, report, record, statement, or data compilation made by a public agency setting forth . . . matters observed pursuant to a duty imposed by law, as to which matters there was a duty to report." Md. Rule 5-803(b)(8)(A). However, a court may exclude such

a record "if the source of information or the method or circumstance of the preparation of the record indicate that the record or the information in the record lacks trustworthiness." Md. Rule 5-803(b)(8)(B).

This Court has previously addressed the admissibility of CINA reports like those at issue here. In *In re H.R., E.R. & J.R.*, a father challenged the juvenile court's decision to admit CINA reports in his termination of parental rights hearing on the ground that the reports contained inadmissible hearsay. 238 Md. App. 374, 400 (2018). We concluded that the reports were admissible under the public records exception to the prohibition against hearsay because they were "made by a public agency setting forth . . . matters observed pursuant to a duty imposed by law, as to which matters there was a duty to report[.]" *Id.* at 404 (quoting Md. Rule 5-803(b)(8)(A)). We recognized that public records, such as CINA reports, carry a "presumption of reliability" and, accordingly, the exception "allows the reception of reliable facts" when a public official prepares the records while acting under a duty "to investigate . . . facts ascertained by other than personal observation." *H.R.*, 238 Md. App. at 404-05 (quoting *Ellsworth v. Sherne Lingerie, Inc.*, 303 Md. 581, 604, 612 (1985)).

We further reasoned that although the CINA reports contained hearsay, that did not "by . . . itself, render the report untrustworthy." *H.R.*, 238 Md. App. at 405 (quoting *Ellsworth*, 303 Md. at 607-08); *see also Ellsworth*, 303 Md. at 604 (observing that statements in a public record may "contain not only primary hearsay, but secondary and tertiary hearsay as well" (citing *McCormick on Evidence* § 315, at 888 (E. Cleary 3d. ed. 1984))). Because the department had prepared and kept the records in accordance with its

legal duty, we held that the CINA reports were "presumptively admissible," and that it was the burden of the party opposing admissibility to demonstrate that they were unreliable. *H.R.*, 238 Md. App. at 406. In that case, the father failed to satisfy that burden. *Id.* Although we recognized that "the social workers' conclusions and opinions [included in the reports] may not have been admissible under the public records exception," we found that "any error in admitting them was harmless" because those conclusions and opinions were cumulative of other admitted evidence. *Id.* at 407.

Here, during Ms. Ali's testimony, counsel for the children sought to admit under the public records exception several pages of the Contact Reports that Ms. Ali had created in the course of her investigation. Mother interposed that she "might not object to that if we were to redact all of the hearsay statements out of this." The children's counsel responded that Mother had not made any showing that any "hearsay statements within the record are unreliable somehow." Mother acknowledged that the Contact Reports "would be admissible for the sake of, I guess, documented information, but not for the sake of reporting hearsay statements, which in and of themselves are unreliable." Mother thus asked the court to "exclude from this statements of other people that were made during the course of the investigation," which she asserted were all "patently unreliable." The court, referencing this Court's decision in *H.R.*, observed that the Contact Reports "would be admissible as public records; however, any opinions or conclusions would not be admissible."

Mother, continuing to argue the point, asserted that the reports contained "opinions of the people who are being interviewed" and that it was unknown whether "their

statements are reliable and based on further hearsay outside." As an example, Mother stated that there was "an apartment manager sitting outside [the courtroom] that [children's counsel]'s willing to call as a witness to support a statement that's made in here[.]" Mother feared that if the statement were permitted to be introduced through the Contact Reports, she would lose the opportunity to cross-examine the witness about the statement. The court ultimately overruled the objection except as to any opinions and conclusions in the reports, which the court stated it would not consider. The court then admitted the Contact Reports into evidence but withheld judgment regarding "[h]ow much weight the Court chooses to give them[.]"

To the extent Mother's appellate argument can be construed as repeating her general objection to the admission of the Contact Reports without redacting all hearsay statements included in them, we discern no error in the circuit court's overruling of that objection. Mother's argument that all hearsay statements were required to be redacted is foreclosed by our decision in *H.R.*

Other than her blanket objection to the introduction of all hearsay statements, Mother did not proffer any reason to question the reliability of any specific statement in the reports. Indeed, while making her objections, the only statement Mother identified at all—and even then only obliquely—was a statement by an apartment manager who was apparently waiting to testify.[5] And even as to that statement, Mother did not identify any

[5] In her appellate brief, Mother asserts that at the hearing she "specifically point[ed] to statements memorialized in the notes from individuals other than Department employees." However, the pages from the transcript to which her brief cites do not identify

reason why the statement was unreliable. Instead, her objection was that if the statement were admitted through the Contact Reports, the children's counsel may decide not to call the witness, and she may lose the opportunity for cross-examination.[6]

On appeal, Mother complains that the Contact Reports contained statements regarding "whether [Mother] was attempting to evade the Department in response to the sexual abuse allegations by providing the Department incorrect information about her whereabouts and sending E.B. out of state." The only specific statement Mother identified in her appellate brief is a "statement made by Ms. [N.] that [M]other sent E.[] to Virginia 'to escape CPS[.]'"[7] However, Mother did not identify that statement or any similar statement in making her objection to the juvenile court, and therefore has not preserved that objection for appeal. *See Vigna v. State*, 470 Md. 418, 458 (2020) (declining to address an argument raised for the first time on appeal). Mother's general objection to the admission of the Contact Reports without redaction of all hearsay statements was

a single specific statement other than her oblique reference to a statement by the "apartment manager."

[6] In the Contact Reports, Ms. Ali states that Mother provided her with an apartment address for them to meet, but that she "looked the address up and the apartment number [Mother provided] did not exist." According to the notes, Ms. Ali then asked a colleague to call the building's leasing office "and she confirmed there was no such apartment." Although Mother did not identify that specific statement either in making her objection to the juvenile court or in her appellate briefs, it appears that this is the statement to which she referred. Assuming that her objection to this specific statement is preserved, we discern no error in the court overruling that objection. The statement was included in a factual recitation explaining Ms. Ali's investigation, it was on a matter as to which she had a duty to report, and Mother has not identified any basis to suggest that it was unreliable.

[7] The relevant sentence from the Contact Report is: "[Ms. N.] stated that E[.]'s mother sent her to stay with a friend in Virginia to escape CPS."

insufficient to preserve her objection to specific statements that she failed to identify at the time.[8]

In sum, we discern no error in the circuit court's decision to overrule the objection Mother raised at the hearing to the admission of the Contact Reports, and we decline to address Mother's unpreserved objection to specific statements to which she did not object at the hearing.

II. THE COURT DID NOT ERR IN ALLOWING TESTIMONY REGARDING E.'S STATEMENTS TO MS. ALI UNDER THE THEN-EXISTING STATE OF MIND EXCEPTION TO THE RULE AGAINST HEARSAY.

Mother contends that the court erred in admitting Ms. Ali's testimony that E. had said she did not want to return to Mother's home because "she was left home alone by her mother and she saw monsters." According to Mother, E.'s "generalized feeling about [her] parent's home [was] not relevant to the CINA determination[.]" The Department and the children argue that the statement was relevant to the proceedings, and we agree.

Evidence is relevant if it "ha[s] any tendency to make the existence of any fact that is of consequence . . . more probable or less probable than it would be without the evidence," Md. Rule 5-401, and, as a general matter, "all relevant evidence is admissible,"[9]

[8] Moreover, to the extent that the specific statement Mother now raises constituted Ms. N.'s opinion regarding why Mother sent E. to Virginia, the juvenile court expressly stated that it would not consider any opinions or conclusions contained in the Contact Reports. Thus, even if we were to find that Mother had preserved her objection to that statement, we would conclude that any error in not redacting it was harmless.

[9] Under the state of mind exception, "[a] statement of the declarant's then existing state of mind, emotion, sensation, or physical condition . . . offered to prove the declarant's then existing condition" is not excluded by the rule against hearsay. Md. Rule 5-803(b)(3). The circuit court determined that E.'s statement fell within the state of mind

Md. Rule 5-402. "CINA proceedings are designed [t]o provide for the care, protection, safety, and mental and physical development of children[,] . . . and achieve a timely, permanent placement for the child consistent with the child's best interests." *In re Adoption of Jayden G.*, 433 Md. 50, 75 (2013) (quotation marks omitted) (quoting *In re Rashawn H.*, 402 Md. 477, 496 (2007)); *see also In re Najasha B.*, 409 Md. 20, 33 (2009) (recognizing that a principal focus of the CINA statute is "to 'protect and advance a child's best interests when court intervention is required'" (quoting Md. Code Ann., Cts. & Jud. Proc. § 3-802(c)(2))). In making a CINA determination, the juvenile court "must look at the totality of the circumstances[.]" *In re Priscilla B.*, 214 Md. App. at 621. In this case, E.'s state of mind as it relates to her feelings about Mother and Mother's home was relevant both to the CINA determination generally and in explaining the Department's actions to protect the children specifically. We discern no error in the juvenile court's admission of the testimony.

III. THE JUVENILE COURT DID NOT ERR OR ABUSE ITS DISCRETION IN DETERMINING THAT A. AND E. ARE CHILDREN IN NEED OF ASSISTANCE AND REMOVING THEM FROM MOTHER'S CARE.

Mother contends that the evidence adduced was insufficient for the court to find either child to be in need of assistance. The Department and the children counter that the record sufficiently established neglect of both A. and E. We agree with the Department.

exception to the hearsay rule. Moreover, as the Department points out in its appellate brief, the "statement was not offered to prove as true that E.[] did not want to live with [Mother], that [Mother] left her home alone, or that E.[] saw monsters; therefore, it was not hearsay." Regardless, on appeal, Mother confines her argument to relevance and does not argue that E.'s statement was inadmissible hearsay.

A child is in need of assistance if the child has been (1) abused or neglected and (2) "[t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Cts. & Jud. Proc. § 3-801(f). Under the CINA statute, neglect occurs when a parent "leav[es]a child unattended" or fails "to give proper care and attention to a child . . . under circumstances that indicate . . . [t]hat the child's health or welfare is harmed or placed at substantial risk of harm[.]" *Id.* § 3-801(s). Neglect is "part of an overarching pattern of conduct." *In re Priscilla B.*, 214 Md. App. at 625. As such, "[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." *Id.* at 625-26 (quoting *In re Adriana T.*, 208 Md. App. 545, 570 (2012)) (alteration in *In re Priscilla B.*).

Because of the protective purpose of the CINA statute, a "court need not wait for an injury to occur before finding neglect[.]" *In re Adoption of K'Amora K.*, 218 Md. App. 287, 311 (2014) (quoting *In re Priscilla B.*, 214 Md. App. at 626). A "child may be considered 'neglected' before actual harm occurs, as long as there is 'fear of harm' in the future based on 'hard evidence' and not merely a 'gut reaction.'" *In re Nathaniel A.*, 160 Md. App. 581, 601 (2005) (quoting *In re William B.*, 73 Md. App. 68, 78 (1987)).

The juvenile court did not clearly err in its factual findings, err in its legal conclusions, or abuse its discretion in reaching its ultimate conclusion that the children were in need of assistance due to Mother's neglect. The Department presented evidence at the hearing that: (1) although she was advised to do so, Mother did not seek help for E.

following the sexual abuse allegation and then failed to make her available for a timely forensic interview with the Department; (2) although Mother informed the Department and the juvenile court that she believed the sexual abuse allegations were false and claimed that she did not know the identity of "Pop-pop," she had privately stated that she believed that the allegations were true, that she knew who Pop-pop was, and that the same perpetrator had previously abused her sister; (3) Mother repeatedly evaded and misled the Department, obstructing the Department's ability to investigate the sexual abuse allegations and protect the children; and (4) Mother had little involvement in the children's lives.

That evidence was sufficient to support the juvenile court's finding that Mother had neglected E. by failing to protect her when Mother became aware of credible allegations that E. had been sexually abused, thus subjecting E. to a substantial risk of harm. The evidence also supported the juvenile court's finding that Mother was unable or unwilling to give proper care and attention to E. and E.'s needs. The evidence thus supported the juvenile court's determination that the Department had proven both prongs required to find that E. was in need of assistance. *See* Cts. & Jud. Proc. § 3-801(f).

Although Mother does not agree that there was sufficient evidence to find either child to be in need of assistance, she contends in particular that there was no evidence that she had neglected A. or was unable or unwilling to care for him. We disagree. A "parent['s] ability to care for the needs of one child is probative of [the parent's] ability to care for other children in the family." *In re William B.*, 73 Md. App. at 77; *see also In re Nathaniel A.*, 160 Md. App. at 597 (stating that a parent's "inability to appropriately care for" one child "is predictive of [the parent's] ability to care for" another child). In light of

the evidence concerning Mother's unwillingness and inability to protect E., an older child with whom Mother had a more established relationship; Mother's prior admission that she had been at least temporarily unable to care for A., who had already spent more than 80% of his life out of her care; evidence that Mother had visited A. only infrequently; ongoing concerns regarding Mother's ability to provide a safe environment for the children; and her pattern of not cooperating with the Department, the juvenile court did not err in inferring that Mother's conduct "created a substantial risk of harm" to both children. *See In re Nathaniel A.*, 160 Md. App. at 596 (quoting *In re Andrew A.*, 149 Md. App. 412, 418 (2003)). The evidence did not show "any change in [Mother's] conditions that would lead us to believe that [A.] would not be subject to the same harm to which [E.] was exposed."[10] *In re Nathaniel A.*, 160 Md. App. at 596-97. As we have recognized, the juvenile court was not required to wait until "[A.] is actually harmed; rather, based on the conduct of [Mother] towards [E.], we may find [him] to be at risk and, therefore, a CINA." *Id.* at 597. Our review of the record does not indicate that the juvenile court's factual findings were clearly erroneous or that it abused its discretion in concluding that E. and A. were both children in need of assistance.

[10] We agree with the children's assertion in their brief that merely because they are a different sex, we should not surmise that A. would have been safe from the same risk of harm as E. To the contrary, the Court of Appeals has recognized the prevalence of "crossover" child abuse, where perpetrators abuse victims regardless of sex. *See Allen v. State*, 449 Md. 98, 110 & n.6 (2016). Indeed, "sex offenders with very young child victims are more likely to abuse both boys and girls," which "suggest[s] that sex offenders with very young child victims have less differentiated attraction to males or females." Jill S. Levenson, Jennifer Becker & John W. Morin, *The Relationship Between Victim Age and Gender Crossover Among Sex Offenders*, 20 Sexual Abuse: A Journal of Research and Treatment 1, 54 (2008).

For essentially the same reasons, Mother further argues that even if the juvenile court did not err or abuse its discretion in determining that the children were in need of assistance, it nonetheless abused its discretion in removing the children from her care because there was a lack of "hard evidence" that, as of November 2019, she could not care for the children under an order controlling conduct. She contends that evidence before the juvenile court demonstrated that she was willing to work with the Department and make herself available to social workers to ensure the safety of the children and that the juvenile court itself recognized that she had taken parenting classes and was fighting for custody. The Department and the children argue that the court properly removed the children and that Mother had engaged in a "campaign of dishonesty" that had endangered the children previously and put them at risk of future harm. We conclude that the court did not err or abuse its discretion in removing the children from Mother's care at disposition.

As discussed, "[t]he purpose of CINA proceedings is to protect children and promote their best interests," *In re Priscilla B.*, 214 Md. App. at 622 (citation and internal quotation marks omitted), and the court "need not . . . wait for their injury" before making a determination of neglect, *In re William B.*, 73 Md. App. at 77-78. And because neglect is part of "an overarching pattern of conduct," a parent's actions in the past are relevant in forecasting future conduct. *In re Priscilla B.*, 214 Md. App. at 625; *see also In re J.R.*, 246 Md. App. 707, 753-54, *cert. denied* 471 Md. 272 (2020) ("[The] court may examine the parents' 'track record' to determine if a child is 'merely *placed at risk* of significant harm.'" (quoting *In re Dustin T.*, 93 Md. App. 726, 735 (1992))).

Here, the court made factual findings that Mother's past conduct demonstrated "a failure to protect . . . [and] to follow through" regarding serious allegations that her daughter had been sexually abused. Contrary to Mother's assertions, the record does not reflect that Mother's situation had changed appreciably by the time of the November 2019 disposition hearing. At that time, Mother had moved back in with Maternal Grandmother, the same living situation in which the initial allegation of sexual abuse had been raised, and it was not until November 2019, at the disposition hearing, that she acknowledged that she had known the identity of Pop-pop since the start of the investigation. Mother had also demonstrated a pattern of evasiveness and avoidance of the Department, visited the children infrequently, and knew little about their lives. In spite of Mother's testimony that she had learned from her past mistakes and was willing to cooperate with efforts to protect the children, "[w]eighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder." *Fone v. State*, 233 Md. App. 88, 115 (2017) (quoting *Larocca v. State*, 164 Md. App. 460, 471-72 (2005) (in banc)). In light of the court's findings of fact, which were not clearly erroneous, the court acted within its discretion in removing the children from Mother's care.

IV. ALTHOUGH THE COURT ERRED IN FAILING TO PLACE FINDINGS ON THE RECORD REGARDING WHETHER THE DEPARTMENT MADE REASONABLE EFFORTS TO PREVENT THE CHILDREN'S PLACEMENT INTO ITS CUSTODY, THE ERROR WAS HARMLESS UNDER THE CIRCUMSTANCES.

Finally, Mother argues that the court erred when it "failed to make sufficient specific findings" regarding whether the Department fulfilled its statutory obligation to make reasonable efforts to prevent the removal of the children from her care. Mother contends

that this failure is especially problematic because the record contains no evidence that the Department made reasonable efforts after December 2018, nearly a year before the disposition. The Department and the children concede that the court was required to make specific findings and that it did not do so. However, both also point out that the reasonable efforts finding the court was required to make was whether the Department had "made reasonable efforts to prevent placement of the [children] into the [Department's] custody," *see* Cts. & Jud. Proc. § 3-816.1(b)(1), which occurred in November 2018, and that the court made the required finding at that time. The Department also contends that "services were provided from the start and have remained ongoing" and that "any omission updating documentation that the Department had made reasonable efforts in this case" was not an error in light of significant delays in the proceedings and Mother's "evasion of the Department's involvement[.]" The children suggest that Mother may not have preserved this contention and argue that, in any event, the court's error was a technical one that was not prejudicial and so does not require reversal.

We agree with Mother that the court was required to make reasonable efforts findings in its disposition order and that it erred in not doing so. However, we agree with the Department and the children that the court's error does not require reversal.

A. The Statutory Requirement

Section 5-525(e)(1) of the Family Law Article (2019 Repl.) requires a local department to make reasonable efforts . . . to preserve and reunify families:

> (i) prior to the placement of a child in an out-of-home placement, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home.

In making reasonable efforts, "the primary concern" is "the child's safety and health[.]" *Id.* § 5-525(e)(2). In the CINA context, "[r]easonable efforts" is defined as "efforts that are reasonably likely to achieve the objective[]" of preventing the child's placement in the department's custody. Cts. & Jud. Proc. § 3-801(w). This definition is "amorphous without any bright line rule to apply to the 'reasonable efforts' determination[, meaning that] each case must be decided based on its unique circumstances." *In re Shirley B.*, 419 Md. 1, 25 (2011) (internal quotation omitted).

The requirement that a juvenile court make express findings regarding a local department's reasonable efforts in the context of CINA proceedings is contained in § 3-816.1 of the Courts Article, which, as relevant here, "appl[ies] to a hearing conducted in accordance with § 3-815, § 3-817, § 3-819, or § 3-823 of this subtitle[.]" Cts. & Jud. Proc. § 3-816.1(a). Those sections concern, respectively, shelter care hearings, adjudication hearings, disposition hearings, and permanency planning hearings. Pursuant to § 3-816.1(b)(1), in any of those hearings, "the court shall make a finding whether the local department made reasonable efforts to prevent placement of the child into the local department's custody."[11] Before the court makes its finding, it must "require a local department to provide evidence of its efforts[.]" *Id.* § 3-816.1(b)(4). The court's finding

[11] A juvenile court is required to make additional findings regarding reasonable efforts in connection with a permanency planning hearing, including findings concerning reasonable efforts by the local department to finalize the permanency plan and meet the needs of the child. Cts. & Jud. Proc. § 3-816.1(b)(2).

must "assess the efforts made since the last adjudication of reasonable efforts and may not rely on findings from prior hearings." *Id.* § 3-816.1(b)(5).

The statute provides a list of factors the court is required to consider in making its finding, including:

> (1) The extent to which a local department has complied with the law, regulations, state or federal court orders, or a stipulated agreement accepted by the court regarding the provision of services to a child in an out-of-home placement;
>
> (2) Whether a local department has ensured that:
>
> > (i) A caseworker is promptly assigned to and actively responsible for the case at all times;
> >
> > (ii) The identity of the caseworker has been promptly communicated to the court and the parties; and
> >
> > (iii) The caseworker is knowledgeable about the case and has received on a timely basis all pertinent files and other information after receiving the assignment from the local department;
>
> . . . .
>
> (4) Whether the child's placement has been stable and in the least restrictive setting appropriate, available, and accessible for the child during the period since the most recent hearing held by the court;
>
> . . . .
>
> (7) Whether a local department has provided appropriate and timely services to help maintain the child in the child's existing placement, including all services and benefits available in accordance with State law, regulations, state and federal court orders, stipulated agreements, or professional standards regarding the provision of services to children in out-of-home placements.

Id. § 3-816.1(c).

The court's finding must be in writing if it finds that reasonable efforts have not been made or if it finds one of six specified conditions has not been satisfied. *Id.* § 3-816.1(e). If the court finds that reasonable efforts have not been made, it is required to

send its written findings to the director of the local department, the Social Services Administration, review boards established under provisions of the Family Law Article, and "[a]ny individual or agency identified by a local department or the court as responsible for monitoring the care and services provided to children in the legal custody or guardianship of the local department on a systemic basis." *Id.* § 3-816.1(f). In making its finding, the court is not permitted to "consider a potential loss of federal funding for placement of a child that may result from a determination that reasonable efforts were not made."[12] *Id.* § 3-816.1(d).

B. Mother's Challenge Is Properly Before This Court.

Before turning to the merits, we first must address the children's contention that "it is not at all clear that this issue is preserved for Appellate review." The children argue that Mother may not have preserved her challenge because reasonable efforts was raised only in passing during the disposition hearing and so "the parties and the trial court were not afforded an opportunity to address the challenge or omission." However, Mother was not required to raise reasonable efforts during the hearing. Section 3-816.1 places upon the juvenile court the burden to make a finding concerning reasonable efforts, and further to require the Department "to provide evidence of its efforts before the court makes a

[12] Under the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. §§ 670 – 679c, a state may be eligible for federal reimbursement for a percentage of the state's payments for child welfare services. *Id.* § 674(a). To obtain federal reimbursement, a state is required to make "reasonable efforts . . . to preserve and reunify families . . . prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and . . . to make it possible for a child to safely return to the child's home[.]" *Id.* § 671(a)(15)(B).

finding." *Id.* § 3-816.1(b)(1), (4). Moreover, the court's error was not plain until the court issued its decision.

C. The Juvenile Court Is Required to Make Express Findings Regarding Whether the Department Made Reasonable Efforts to Prevent the Placement of the Children into Its Custody.

"[W]e apply the clearly erroneous standard when reviewing the juvenile court's factual finding that [a local department of social services] made reasonable efforts to preserve and reunify the family." *In re Shirley B.*, 419 Md. at 18. "[I]f 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.* (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). If the court's conclusion is "founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion." *Id.*

Here, the court did not make any finding concerning reasonable efforts in connection with the adjudication or disposition hearings. All parties recognize that the court was obligated to make such a finding, but each has a different take on the court's failure to do so. Mother contends that the court erred in not making the required finding, that the error was prejudicial, and that it requires reversal. The children agree that the court erred but argue that the error was harmless and does not require reversal. The Department characterizes the issue as an "omission updating documentation" and contends that there was "no error" under the circumstances. The children and the Department both emphasize that the finding the juvenile court was required to make concerns efforts "to prevent placement" with the Department, which they suggest was not relevant at adjudication or

disposition because it had already been settled when the children were placed with the Department at the shelter care stage.

We hold that the juvenile court erred in failing to make the finding that is expressly required by § 3-816.1(b). The statute requires that the court make such a finding, does not allow for exceptions, and requires that the court mandate that the Department provide evidence of reasonable efforts before making its finding. Perhaps most significantly for these purposes, the statute also expressly: (1) applies separately to hearings at each relevant stage of the proceedings—including shelter care, adjudication, and disposition—not only the particular stage at which the child is first removed; and (2) requires the court to "assess the efforts made since the last adjudication of reasonable efforts" and prohibits the court from "rely[ing] on findings from prior hearings." *Id.* § 3-816.1(b)(1), (5). In light of these requirements, it is untenable to suggest that the court's finding of reasonable efforts at the shelter care stage obviated the need for such a finding at adjudication or disposition. The statute required such a finding, and it was error for the court not to make it.

The Department suggests that the juvenile court nonetheless did not err because the required finding—"whether the local department made reasonable efforts to prevent placement of the child into the local department's custody," *id.* § 3-186.1(b)(1)—could be made only at the time that the children were removed from Mother's custody, which was at the shelter care stage, and that the court made the required finding at that time. We disagree. Although it is correct that the children were placed temporarily in the Department's custody at shelter care—pending adjudication and disposition—they were placed indefinitely in its custody at disposition. Although the children's physical living

arrangements did not change based on the disposition order—indeed, they did not change based on the shelter care order either—each of the disposition orders specifically provided "that the Respondent shall be placed in the care and custody of the Department of Social Services[.]" The finding that the juvenile court was required to make was therefore whether the Department had made reasonable efforts to prevent placement of the children in the Department's custody at disposition, as opposed to being returned to Mother's custody, regardless of whether the children had previously been placed in the Department's custody.

Legislative history supports this conclusion. The General Assembly enacted § 3-816.1 in 2005, for the stated purpose of "requiring a juvenile court in a certain [CINA] hearing . . . to make certain findings whether reasonable efforts were made by a local department . . . to prevent placement of the child in the local department's custody[.]" 2005 Md. Laws, ch. 504. The bill was intended to "expand[] the [CINA] proceedings . . . at which a court must make findings on whether reasonable efforts were made to" include, among other proceedings, adjudication and disposition hearings. Dep't of Legis. Servs., Fiscal Note and Policy Note, S.B. 696, at 1 (2005). To achieve that purpose, "the bill require[d] the court to consider the actions of a local department in making the required findings and enumerate[d] factors that must be considered." *Id.* Notably, even though the statutory scheme expressly contemplates that a child might be removed from the custody of the child's parents at shelter care, *see In re O.P.*, 470 Md. 225, 256-57 (2020), § 3-816.1 does not exempt the court from making findings regarding reasonable efforts at

adjudication or disposition if the child has already been placed temporarily in the Department's custody.[13]

Having concluded that the court erred in not making the finding required by § 3-816.1(b)(1) of the Courts Article, we must turn to assessing whether that error was harmless. Under the circumstances, we conclude that it was. In a harmless error review, we "must balance 'the probability of prejudice in relation to the circumstances of the particular case.'" *In re Adoption/Guardianship of T.A., Jr.*, 234 Md. App. 1, 13 (2017) (quoting *In re Yve S.*, 373 Md. at 618). To be reversible, an "error must be 'substantially injurious'" and affect the outcome of the case. *Id.* "'[I]t is not the possibility, but the probability, of prejudice' that is the focus." *Id.*

Unlike a determination regarding a change in permanency plan or termination of parental rights, a CINA determination is focused entirely on the child's present circumstances and safety. The CINA decision addresses only whether the child is *presently* in need of court intervention because, as relevant here, the child has been abused or neglected and 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." Cts. & Jud. Proc. § 3-801(f).

[13] In cases in which the timeframe envisioned by the statutory scheme is followed, a court's findings concerning reasonable efforts and the evidence on which they are based may differ little, if at all, from the shelter care hearing to adjudication and disposition. In this case, however, the children were placed in shelter care in November 2018 and the disposition hearing was not held until November 2019. In any event, regardless of the length of the delay between shelter care and disposition, an interpretation of the statutory scheme that would absolve a local department from the requirement to make reasonable efforts during that period just because the children are already in the Department's custody would be inconsistent with the legislative intent embodied in § 3-816.1.

At disposition, if the court finds a child to be in need of assistance, it must then decide either to "[n]ot change the child's custody status" or to "[c]ommit the child on terms the court considers appropriate" to a parent, a relative or other individual, or a local department. *Id.* § 3-819(b)(1)(iii). Here, a finding that the Department had not made reasonable efforts to prevent placement of the children in the Department's custody would not have altered any of the findings on which the court based its disposition order.[14] In other words, regardless of the theoretical effect on the need to place the children with the Department at that time that any additional efforts by the Department before disposition could have produced, the juvenile court was required to base its decision on the circumstances that existed at disposition. Based on those circumstances, the court determined that it was not safe to place the children in Mother's custody. A finding regarding the Department's efforts to that point may have shed additional light on why that situation persisted, but it would not have changed the situation itself.

In arguing to the contrary, Mother relies on a decision by California's intermediate appellate court, *In re Ashly F.*, 225 Cal. App. 4th 803 (2014). In *Ashly F.*, the local department had removed two children from their home after concluding that the children had been physically abused by their mother and that their father had failed to intervene to protect them. *Id.* at 806. The evidence suggested that the mother had beaten the children

[14] To be clear, we are not deciding that the Department did or did not make reasonable efforts to prevent placement of the children with the Department at disposition. We disagree with Mother that the record contains no evidence of such efforts. But when there is evidence that could support a finding either way, the finding is not for this Court to make.

on multiple occasions, but that the father was only aware of the last incident and that he had told the mother to never hit them again. *Id.* After the children had been initially removed from the home, the mother was convicted of child abuse and voluntarily left the home for some time. *Id.* at 807-08. Under California law, the juvenile court was required to make express findings and to identify the facts on which those findings were based, concerning both reasonable efforts to prevent removal and whether there were "reasonable means" to protect the children without removing them from the home. *Id.* at 808-09. The court was also expressly required to consider whether it was possible to remove a parent from the home. *Id.* at 810. The juvenile court instead simply recited that it found that reasonable efforts had been made and that there were no reasonable means to protect the children short of removal, but it did not identify any supporting facts or what reasonable means had been considered. *Id.* at 808.

The appellate court determined that the juvenile court had failed to comply with the statute and, under the circumstances of that case, concluded that the error required reversal. *Id.* at 811. Most notably, the court concluded that there was "[a]mple evidence" in the record that there were "reasonable means" to protect the children short of removal. *Id.* at 810. The court thus concluded that,

> On the record in this case there is a reasonable probability that had the juvenile court inquired into the basis for the claims by [the local department] that despite its efforts there were no reasonable means of protecting the

> children except to remove them from their home the court would have found that claim was not supported by clear and convincing evidence.[15]

Id. at 811.

Although we agree with much in the decision in *Ashly F.*, there are important differences with this case. Notably, in addition to other "reasonable means" that the appellate court concluded the juvenile court should have considered, the record demonstrated that the mother in *Ashly F.* had been willing to voluntarily leave the home, and there was no indication that the father could not care properly for the children if the mother was not present. *Id.* at 810. In contrast, the record here does not provide any reason to conclude that the outcome of the disposition would have been different if the court had made express findings regarding the Department's reasonable efforts to that point.

Mother also relies on this Court's decision in *In re James G.*, in which we reversed a decision to change a permanency plan because the Department had not engaged in reasonable efforts to promote reunification. 178 Md. App. 543, 548 (2008). That case, however, highlights the important differences between a CINA determination and a change in permanency plan. In considering a change in permanency plan to depart from a goal of reunification, whether the Department has engaged in reasonable efforts to promote the plan of reunification is critical to whether that plan should be abandoned. *Id.* at 581-83. And, importantly, a child's safety is not necessarily implicated by a change in permanency plan.

[15] Unlike Maryland law, in which CINA determinations are made under a preponderance of the evidence standard, *see In re O.P.*, 470 Md. at 236, California law requires clear and convincing evidence, *see In re Ashly F.*, 225 Cal. App. 4th at 809.

In a CINA disposition, by contrast, the question is whether there is a present need to place the child in the Department's custody to protect the child's safety. Unless the failure to make a finding concerning reasonable efforts suggests that there was a different path that might have protected the child's safety short of placement in the Department's custody, as was the case in *Ashly F.*, any fault of the Department in not making reasonable efforts would not affect the outcome. Stated differently, a juvenile court would never be justified in placing a child in an unsafe situation because a local department had failed to do enough to make that situation safer. Other consequences might follow for the department in that circumstance, and the court should take any such failure by a department into consideration in making determinations concerning permanency planning and termination of parental rights, but a local department's failure to make reasonable efforts does not justify placing a child's safety in jeopardy.

For these reasons, although the court erred by failing to make the finding required by § 3-816.1(b), we conclude that the error was harmless in the particular circumstances of this case. We will therefore affirm.

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