

Circuit Court for Cecil County
Case No. C-07-JV-25-000021

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 596

September Term, 2025

IN RE: R.D.

Reed,
Tang,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: November 14, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

J.D. (“Father”) and E.B. (“Mother”) are the married parents of one daughter, R.D., who was born in February 2016. On February 24, 2025, the Cecil County Department of Social Services (the “Department”) filed a petition seeking to have R.D. declared a child in need of assistance (“CINA”). After an adjudication and disposition hearing, the Circuit Court for Cecil County, sitting as a juvenile court, granted the petition, adjudicated R.D. a CINA, and committed her to the Department’s care and custody. Father appealed from that judgment and presents three questions for our review, which we have rephrased slightly as follows^{1,2}:

- I. Did the juvenile court clearly err in finding that Father was unable to provide R.D. with proper care and attention, and thereby abuse its discretion in declaring her a CINA?
- II. Did the juvenile court clearly err in finding that the Department made reasonable efforts toward parental reunification?
- III. Did the juvenile court commit reversible error by admitting into evidence part of an Investigation Summary Report prepared by the

¹ Mother did not file a brief or otherwise participate in this appeal.

² In his brief, Father articulated the issues as follows:

- I. Whether the trial court erred in finding the respondent to be a Child in Need of Assistance?
- II. Whether the trial court erred in finding reasonable efforts were made by the Department?
- III. Whether the trial court violated the father’s due process right by admitting the indicated finding where under 11-304 the conductions precedent were not met?

Department, which contained an “indicated” finding that Father sexually abused R.D.?

For the reasons that follow, we answer the first question in the affirmative and need not therefore address the second and third.

BACKGROUND

An Unannounced Home Visit

Mother and Father (collectively, “the Parents”) have a lengthy history with the Department spanning several years. On October 7, 2024, the Department received reports that the Parents had used illicit drugs in front of R.D. During an unannounced home visit conducted that same day, a Department investigator observed “a clear glass pipe containing white substances.” Photographs taken by the investigator at or around the time of that home visit depict the residence and backyard as filled with clutter and in apparent disarray. At the conclusion of the home visit, the Department implemented a safety plan, which both of the Parents signed. The plan required that they: (1) abstain from illicit substances while caring for R.D.; (2) not keep drug paraphernalia in the home; and (3) submit to drug screenings as requested. It also provided that “[t]he family will engage with in-home services.”

Family Preservation Services

Later that same month, the Department assigned Gerald Lennon, a family preservation worker, to R.D.’s case. Mr. Lennon’s role was to ensure R.D.’s well-being and to provide the family access to services necessary to keep her in the home. By the time the case was referred to Mr. Lennon, however, R.D. had been placed with relatives residing

in Delaware (“the Relatives”), Father was incarcerated, and the family was in danger of losing the home.³ Upon inspecting the residence, Mr. Lennon found cluttered conditions consistent with those depicted in the photographs taken by the Department investigator.⁴

In an effort to address concerns regarding Mother’s substance use, Mr. Lennon offered to refer her to a drug treatment facility. However, she declined the offer and denied being addicted to any illicit substances. Mother did, however, accept Mr. Lennon’s suggestion that she apply for Section 8 housing assistance to address the family’s residential instability. Finally, Mr. Lennon offered to provide counseling in response to Mother’s reports of a history of domestic violence in the home.

On October 31, 2024, Mr. Lennon issued a second safety plan. The plan noted “allegations of continued drug use on the part of [Mother]” and required that R.D. continue to reside with the Relatives, whom it charged with supervising “[a]ny and all visits between [Mother] and [R.D.]” It also mandated that Mother submit to random drug screenings at the Department’s request. Although Mother signed the second safety plan, Father did not do so, presumably due to his incarceration. Mr. Lennon issued three additional safety plans between November 22, 2024, and January 17, 2025. In one such plan dated January 3, 2025, Mr. Lennon noted that Mother had tested “positive for multiple substances[,]”

³ According to Mr. Lennon, R.D. had been “safety planned” out of the home due to the drug paraphernalia discovered by the Department’s investigator.

⁴ The condition of the home was a source of concern for Mr. Lennon notwithstanding the fact that the Department’s investigator had ordered a dumpster in which to discard some of the clutter that had earlier been found in the home.

continued to require that R.D. reside with the Relatives, and mandated that visitation with Mother be supervised.⁵

A Collateral Investigation

On or around February 4, 2025, the Department initiated an investigation into allegations that Father had sexually abused R.D. In light of that investigation, the Department issued yet another safety plan on February 5th, which noted “concerns for sexual abuse” and prohibited Father from having contact with R.D. “until further investigation.” Mother signed this safety plan on February 7th, and the Relatives likewise assented to its terms.

Shelter Care

On February 20, 2025, the Department placed R.D. in emergency shelter care, and Mr. Lennon transported her from Delaware to a foster home in Cecil County.⁶ On February 21st, the Department filed a Petition for Continued Shelter Care. After a hearing held that same day, the juvenile court granted the Department’s shelter care request.⁷ In its written order, the court determined that it was contrary to R.D.’s welfare to remain in her home. The court reasoned that the Relatives were no longer available to serve as a relative resource; “Mother [was] homeless and suffer[ed] from [a] substance use disorder”; and

⁵ Although dated January 3, 2025, the safety plan was signed on January 10, 2025.

⁶ Once he had transported R.D. to foster care, Mr. Lennon’s involvement in the case ended.

⁷ The record does not include a transcript of the shelter care hearing.

Father reside[d] in Texas and [was] the subject of an ongoing sexual abuse investigation involving [R.D.]” The court further found that the Department had made reasonable efforts to prevent R.D.’s removal from the home. In support of that finding, the court cited: “[s]afety planning; attempts to locate alternative caregivers; conduct family meeting and [Family Team Decision Meetings]; referrals to substance use treatment for [M]other; [and] random drug screening.”

CINA Petition

On February 24, 2025, the Department filed a CINA petition, which included the following allegations:

The Department commenced a neglect investigation in August[] 202[4],^[8] regarding concerns that [R.D.] was being left unattended and that she was being exposed to drug paraphernalia and substance use by her parents.

* * *

In February[] 2025, the Department commenced an investigation of [Father] regarding allegations of sexual abuse of [R.D.]

Pursuant to further safety planning, a “no contact” provision exists between [R.D.] and [Father].

Pursuant to regular screening, [Mother] has, through December[] 2024, tested positive for illicit substances

[M]other suffers from [a] substance use disorder, for which she has not received adequate treatment.

The relative placement resource, as of February 20, 2025, [was] unable and unwilling to continue to be a placement resource for [R.D.]

⁸ In its CINA Petition, the Department incorrectly stated that the neglect investigation began in August of 2025.

[F]ather is not a resource for [R.D.] at this time.

* * *

The . . . [P]arents are unable to provide a safe and drug-free environment for [R.D.] at this time.^[9]

The Department's Efforts toward Reunification

During the pendency of the CINA proceeding, Alicia Hasty, a Department foster care worker, made numerous efforts to enroll Mother in substance abuse treatment programs. In March 2025, Mother was admitted to Concertive Care Group, an intensive outpatient methadone treatment program. Ms. Hasty also made monthly requests that Mother submit to drug screenings. Of approximately three such requests, Mother complied with only one. Although she was no longer residing in the former family home, Mother reported securing alternate housing, but refused Ms. Hasty's requests to inspect the residence because she did not intend to continue living there. Rather, Mother expressed interest in relocating to Texas.

Ms. Hasty's interactions with Father were far more limited than those with Mother. She spoke with him only twice by telephone—once in February and again in May—and initiated both calls. Ms. Hasty later attributed the limited contact to Father's insistence that all communications with the Department occur through counsel. During one of their two telephone conversations, Father advised Ms. Hasty that he was living in Texas, where R.D.

⁹ On March 19, 2025, the Department filed an amended CINA petition, which was identical to its original save for a longer list of witnesses it intended to call.

had never resided. Father never invited the Department to inspect his Texas residence, where, according to Mother, he had moved three days after being released from jail.¹⁰

An Intervening “Indicated” Finding

The Department’s investigation into the sexual abuse allegations against Father concluded in April 2025 with a finding of indicated sexual abuse against him (“the indicated finding”).¹¹ The Department informed Father of the investigation’s outcome in a letter sent on April 8th. Two days later, the Department mailed Father a “Notice of Action/Opportunity to Appeal Indicated Finding – Hearing Request Form” (“the Notice Form”), advising him that he could appeal the indicated finding by completing, signing, and mailing the Notice Form to the Office of Administrative Hearings (“OAH”) within 60 days of his receipt thereof. Finally, on April 30th, the Department generated an “Investigation Summary Report” (“the Report”), which provided a detailed account of its investigation, including several statements made by R.D. during a forensic interview with the Cecil County Child Advocacy Center.

Adjudication Hearing

On May 6, 2025, the juvenile court held a hearing on the Department’s CINA petition.¹² Although the Parents both appeared and were represented by counsel, Father

¹⁰ Nor did the Department make any effort to inspect Father’s Texas home.

¹¹ The case law often uses “indicated finding of abuse” and “finding of indicated abuse” interchangeably.

¹² The hearing was initially set for March 25, 2025, but was continued at Father’s request to May 6th.

did not take the stand. Rather, Mr. Lennon, Ms. Hasty, and Mother were the sole witnesses and collectively testified to the facts set forth above. For her part, Mother also attested that she had signed the safety plans prohibiting Father from having contact with R.D. because she “was told [she] had to” or she “would get in trouble.” Mother further averred that she did not believe the allegations against Father and expressed a desire that the court grant him custody of R.D.

During its direct examination of Ms. Hasty, the Department sought to admit the Report into evidence, proffering that it contained an indicated finding that Father had sexually abused R.D. Father objected, arguing that the Report included inadmissible hearsay statements by R.D. and was otherwise irrelevant. Specifically, he asserted that R.D.’s out-of-court statements were inadmissible under the “tender years” hearsay exception because the Department had not provided him advance notice of its intent to introduce them into evidence. Alternatively, Father argued that permitting the Department to introduce its own finding violated his right to due process. The Department, in turn, proposed admitting only pages six through nine of the Report, which set forth the indicated finding and identified the parties—“without any . . . underlying statements by any child victim or anyone else.”

Following a lunch recess, the juvenile court announced its ruling on the Report’s admissibility. It sustained Father’s objection to R.D.’s out-of-court statements, reasoning that the requirements of the “tender years” exception had not all been satisfied. However, it admitted the portions of the Report that set forth the indicated finding under the public

records exception. The court explained: “[T]he document establishing the finding[] is a record of a public agency that has a duty to undertake those activities by law and to keep records of it. I think that would meet the hearsay exception.”

The Court’s Factual Findings

After hearing closing arguments, the juvenile court sustained most of the allegations in the Department’s CINA petition. In so doing, it found that R.D.’s family had a history with the Department, which included: (1) an investigation into allegations of neglect and R.D.’s exposure to Mother’s substance use, (2) the implementation of safety plans, (3) an investigation into allegations that Father had sexually abused R.D., and (4) requests that Mother engage in drug screenings. The court further found that Mother suffered from a substance abuse disorder for which she was receiving inadequate treatment and that she lacked a suitable home in which R.D. could safely reside. Relying exclusively on the indicated finding, the court then determined that Father was not a viable resource for R.D., reasoning, in relevant part:

[T]here is documentary evidence from the Department that there was an indicated finding of sexual abuse, that [R.D.] is the alleged victim in that matter, and that [Father] was the named maltreater.

I mean, I’m on the preponderance of the evidence standard here. I’m on more likely than not. *I’ve got an indicated finding from the Department of Social Services as to sexual abuse of a child. I’ve got nothing more than that.* You know, the preponderance of the evidence is often described as 51 percent to 49 percent. It’s less than that. It’s 50.1 percent to 49.9 percent. It is tilting the scales ever so slightly. I have in the record an indicated finding without anything to contest it, except arguments that . . . the time for an administrative appeal of that decision[] hasn’t tolled and that there’s an intention to pursue that appeal.

It's well within [Father's] rights to pursue a judicial review of that appeal, should that appeal at the administrative level not bear the fruit that is sought. But being within an appeal time doesn't stay a finding. I'm not sure what the [c]ourt is supposed to do with that. There's a finding from . . . the executive agency whose task is to investigate and ensure the safety and welfare of the children in the State of Maryland, has made a finding that there was some evidence that supports an act of sexual abuse perpetrated against [R.D.] by . . . [F]ather. *On that document, I think the [c]ourt can find that [the allegation] is sustained, substantiated.*

(Emphasis added). The court also relied on the indicated finding when it subsequently sustained the Department's allegation that Father was unable to provide R.D. with a safe and drug-free environment, stating:

I haven't heard anything about substance abuse allegations as to the natural father. I haven't heard anything about his home in Texas, what it consists of, where it is, who he lives with. And with respect to the [c]ourt having sustained [the allegation that Father is not a resource for R.D.] and by a preponderance of the evidence, the [c]ourt will sustain [the allegation that he is unable to provide her with a safe and drug-free environment].

Next, the court addressed the efforts that the Department had made to prevent placement of R.D. in its custody, stating, in pertinent part:

[T]he Department has a history of providing services to [R.D.'s] family. Family preservation services were in the works or in the offing before whatever occurred that necessitated removal. Safety planning was clearly engaged in by the documents that are in evidence. The [c]ourt finds that . . . the Department attempted to engage . . . [M]other in substance abuse treatment, discussions of enrollment in a Mommy and Me program, discussions of methadone treatment.

Finally, the court found that R.D. had been both neglected and abused, and that the Parents were unable to provide her with proper care and attention.

Disposition Hearing

After addressing the factual allegations in the Department’s CINA petition, the juvenile court moved to the disposition stage. The parties declined to present additional evidence and proceeded directly to closing arguments. In requesting that the juvenile court declare R.D. a CINA, the Department maintained that the sustained allegations in its petition sufficiently supported determinations that she had been abused and neglected and that the Parents were unable to provide her with proper care and attention. R.D.’s court-appointed attorney concurred with the Department, adding: “I can tell you from talking to [R.D.], she very much would like to reunify with her mother as soon as possible. She was very clear to me [that] she wants no contact right now with her father and certainly doesn’t want to live with him.”

Father’s counsel, in turn, argued that the indicated finding, standing alone, was legally insufficient to support a determination that R.D. had been abused. Accordingly, he asked the court to dismiss the action. Alternatively, Father’s counsel requested that the court hold a review hearing in three months and grant Father virtual visitation with R.D. Finally, for his part, Mother’s attorney simply asked the court to place R.D. with Mother once she entered the “Mommy and Me” substance abuse program.

After hearing from the parties, the juvenile court declared R.D. a CINA and committed her to the care and custody of the Department for appropriate placement. The court also authorized in-person visitation with Mother and virtual visitation with Father—both to be supervised by the Department. However, it permitted R.D. to “opt out of the

visitation” with Father. The court memorialized its oral rulings in a written order entered on May 8, 2025. This appeal followed.

STANDARD OF REVIEW

When reviewing a juvenile court’s CINA determination, we apply the following “three distinct but interrelated standards of review.” *In re J.R.*, 246 Md. App. 707, 730 (quotation marks and citation omitted), *cert. denied*, 471 Md. 272 (2020).

Factual findings by the juvenile court are reviewed for clear error. Matters of law are reviewed without deference to the juvenile court.^[13] Ultimate conclusions of law and fact, when based upon sound legal principles and factual findings that are not clearly erroneous, are reviewed under an abuse of discretion standard.

In re T.K., 480 Md. 122, 143 (2022) (internal quotation marks and citations omitted). An abuse of discretion occurs “where no reasonable person would take the view adopted by the juvenile court, or when the court acts without reference to any guiding rules or principles.” *In re M.*, 251 Md. App. 86, 111 (2021) (cleaned up).

DISCUSSION

Parties’ Contentions

Father contends that the juvenile court erred in adjudicating R.D. a CINA because the evidence did not establish that he was unwilling or unable to care for her. He asserts that the “court’s decision was primarily based on an indicated finding of sexual abuse by

¹³ If legal error is found, “further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless.” *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 47 (2019) (cleaned up).

the Department[.]”¹⁴ Absent corroborating evidence, Father argues, the Department did not satisfy its evidentiary burden. Because there was insufficient evidence that he was unfit or that exceptional circumstances existed, Father concludes that the court abused its discretion in declaring R.D. a CINA instead of awarding him sole custody pursuant to Maryland Code (1973, 2020 Repl. Vol.), § 3-819(e) of the Courts & Judicial Proceedings Article (“CJP”).

The Department responds that “[t]ransferring custody to Father under [CJP] § 3-819 was not an available option because . . . the juvenile court found that R.D. had been neglected and[/]or abused by both parents.” It maintains that the record contains sufficient evidence to support that finding, including “the Department’s 2024 neglect investigation[.]” “subsequent safety plans[.]” and its finding of indicated sexual abuse of R.D. by Father. The Department also cites testimony that Father (1) resides in Texas, (2) “has never sought Department inspection or approval of his home[.]” and (3) has been unwilling “to communicate directly with the Department.”

CINA Proceedings

Before adjudicating a child a CINA, the juvenile court must find that “(1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child’s parents, guardian, or custodian are unable or unwilling to

¹⁴ This quotation (and the sentence that follows it) are derived from the section of appellant’s brief wherein he argues that the court erred in *admitting* the indicated finding. Interspersed throughout that section, however, is argument in support of Father’s initial contention that the court erred in *relying on* that indicated finding.

give proper care and attention to the child and the child’s needs.”¹⁵ CJP § 3-801(f). *See also In re M.*, 251 Md. App. at 115. “Unless both of those prongs are proven by a preponderance of the evidence . . . , court intervention is unavailable and a court ordinarily must dismiss the [CINA] case without further involvement.” *In re T.K.*, 480 Md. at 132. *See also* CJP § 3-817(c) (“The allegations in a [CINA] petition . . . shall be proved by a preponderance of the evidence.”).

To satisfy the second prong, the Department must show that “‘both parents are unable or unwilling to give the child proper care and attention.’” *In re R.S.*, 470 Md. 380, 417 (2020) (emphasis retained) (quoting *In re Russell G.*, 108 Md. App. 366, 376-77 (1996)). Thus, “[i]f the allegations in the petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child, the court may not find that the child is a [CINA.]” CJP § 3-819(e). Under such circumstances, however, the court, in its discretion, “may award custody to the other parent” before dismissing the case. *Id.*

Whether a parent is able and willing to care for a child “is a factual determination that an appellate court reviews for clear error.” *In re E.R.*, 239 Md. App. 334, 338 (2018), *cert. denied*, 462 Md. 571 (2019). A juvenile court’s findings of fact are not clearly erroneous if they are supported by competent or material evidence. *See In re Ryan W.*, 434

¹⁵ “[A]lthough a finding of abuse or neglect can inform a court’s decision concerning a parent’s ability or willingness to give proper care, the two prongs are distinct, and both must be satisfied before a court can determine that a child is in need of assistance.” *In re T.K.*, 480 Md. at 134.

Md. 577, 593-94 (2013) (“[T]he juvenile court’s factual findings will not be disturbed if any competent material evidence exists in support of the trial court’s factual findings[.]” (cleaned up)). In reviewing a trial court’s factual findings, however, it is not our role to second-guess the court’s credibility determinations or to reweigh the evidence. *See Bricker v. Warch*, 152 Md. App. 119, 138 (2003). *See also State Sec. Check Cashing, Inc. v. Am. Gen. Fin. Servs. (DE)*, 409 Md. 81, 110 (2009) (quotation omitted) (“[T]he appellate court should not substitute its judgment for that of the trial court on its findings of fact[.]”); *Gruss v. Gruss*, 123 Md. App. 311, 321 (1998) (“We, as an appellate court, will not make factual determinations properly left to the trial court.”).

Father does not challenge the juvenile court’s finding that R.D. was neglected and abused, nor does he dispute the court’s determination that Mother was incapable of caring for her. Accordingly, the narrow question before us is whether the indicated finding was, without more, competent and material evidence supporting the court’s conclusion that Father was unable to provide R.D. with proper care and attention. *See In re Russell G.*, 108 Md. App. at 379 (reversing a CINA adjudication where “the evidence . . . did not support the factual findings upon which the court based its conclusion that [the father] was unwilling or unable to give [the child] proper care and attention[.]”).

“Indicated” Findings of Abuse

An “indicated” finding refers to “a finding that there is credible evidence, which has not been satisfactorily refuted, that abuse, neglect, or sexual abuse did occur.” Md. Code (1984, 2019 Repl. Vol.), § 5-701(1) of the Family Law Article (“FL”). *Accord* Code of

Maryland Regulations (“COMAR”) 07.02.26.02B(17). COMAR 07.02.07.11A(2)(a) sets forth the requirements for making a finding of indicated sexual abuse and provides:

(a) A local department may make a finding of indicated child sexual abuse if there is credible evidence, which has not been satisfactorily refuted, that the following three elements were present during the alleged child sexual abuse:

(i) An act that involves sexual molestation, sexual exploitation, or sex trafficking;

(ii) A child victim; and

(iii) A parent, caregiver, authority figure, or household or family member of the alleged victim responsible for the alleged child sexual abuse, or sex trafficking of a child by any individual.

Although a finding of indicated sexual abuse should be supported by “credible evidence,” in conducting its investigation, the Department is not constrained by the traditional rules of evidence applicable to civil cases. *See Cecil Cnty. Dep’t of Soc. Servs. v. Russell*, 159 Md. App. 594, 612 (2004) (“[A]dministrative bodies are not ordinarily bound by the strict rules of evidence of a law court.” (quoting *Widomski v. Chief of Police of Balt. Cnty.*, 41 Md. App. 361, 378, *cert. denied*, 284 Md. 750 (1979))); *Montgomery Cnty. Dep’t of Health & Human Servs. v. P.F.*, 137 Md. App. 243, 266 (2001) (“[A]dministrative agencies are not bound to observe the technical common law rules of evidence[.]” (quotation marks and citations omitted)).

“Once a local Department of Social Services has made a finding of ‘indicated’ child sexual abuse, an aggrieved party may ask for a contested case hearing before an administrative law judge” (“ALJ”). *S.B. v. Anne Arundel Cnty. Dep’t of Soc. Servs.*, 195

Md. App. 287, 303 (2010). *See also* FL § 5-706.1(b)(1). At such a hearing, the Department bears the burden of defending its finding of indicated sexual abuse by a preponderance of the evidence. *See* COMAR 07.02.26.12B (“The local department bears the burden of proof at the hearing.”); *Tamara A. v. Montgomery Cnty. Dep’t of Health & Human Servs.*, 407 Md. 180, 194 (2009). If an accused is unsuccessful in appealing an indicated finding or fails to exercise his or her appeal rights within sixty days of receiving written notice of the finding, the Department may enter his or her name into its “centralized confidential database[.]”¹⁶ FL § 5-714(d). *See also* FL § 5-706.1(a)(3).

While an aggrieved party may appeal a finding of indicated abuse, where, as here, a CINA case concerning the allegedly abused child is pending, the OAH “shall stay the hearing until the CINA case is concluded.” FL § 5-706.1(b)(4)(i). *See also* COMAR 07.02.26.07B. Conversely, once the CINA proceeding has concluded, the OAH “shall vacate the stay and schedule further proceedings[.]” FL § 5-706.1(b)(4)(ii). *See also* COMAR 07.02.26.07C. However, a CINA determination made during the stay may preclude an alleged abuser from challenging an indicated finding once the stay is lifted “where the elements of collateral estoppel are met.”¹⁷ *Cosby v. Dep’t of Human Res.*, 425

¹⁶ The Department may also enter the accused’s name into the database if he or she “has been found guilty of any criminal charge arising out of the alleged abuse or neglect[.]” regardless of whether a finding of indicated neglect or abuse has been made. FL § 5-714(d)(1).

¹⁷ The doctrine of collateral estoppel applies when the following four requirements are met:

(continued . . .)

Md. 629, 652 (2012). During the stay, moreover, the indicated finding does not constitute a “final agency decision,” as it remains subject to administrative review. *See Chesapeake Bay Foundation, Inc. v. CREG Westport I, LLC*, 481 Md. 325, 348 (2022) (“To be ‘final,’ [an agency] order or decision must dispose of the case by deciding all question of law and fact and leave nothing further for the administrative body to decide.” (quotation marks and citation omitted)); *Priester v. Baltimore Cnty.*, 232 Md. App. 178, 195 (“‘[A]n agency order is not final when it is contemplated that there is more for the agency to do.’” (quoting *Kim v. Comptroller*, 350 Md. 527, 533-34 (1998)), *cert. denied*, 454 Md. 670 (2017)).

In contrast to the Department’s initial indicated finding, an ALJ’s affirmance of that finding constitutes a final agency decision for purposes of seeking judicial review under Maryland Code (1984, 2021 Repl. Vol.), § 10-222 of the State Government Article (“SG”). As such, the ALJ’s decision is “*prima facie* correct and carr[ies] with [it] the presumption of validity.” *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569 (1998). Accordingly, while the Department must defend its indicated finding at a contested case hearing, on judicial review of the ALJ’s decision, “the appellant bears the burden of establishing . . . that the agency’s final decision was not supported by substantial

(1) the issue that was decided in a prior adjudication is identical to the issue that the party seeks to re-litigate; (2) the court issued a final judgment on the merits; (3) the party that seeks to re-litigate the issue was either a party to, or in privity with a party to, the prior adjudication; and (4) the party that seeks to re-litigate the issue was given a fair opportunity to be heard on the issue.

Elec. Gen. Corp. v. Labonte, 454 Md. 113, 142 (2017).

evidence.” *Doe v. Allegany Cnty. Dep’t of Soc. Servs.*, 205 Md. App. 47, 55, *cert. denied*, 427 Md. 609 (2012). In applying the substantial evidence test, a reviewing court determines “whether reasoning minds could reach the same conclusion from the facts relied upon by the agency.” *S.B.*, 195 Md. App. at 304 (quotation marks and citation omitted).

Analysis

Against this legal backdrop, we return to the instant case. In finding that Father was unable to provide R.D. with proper care and attention, the juvenile court relied exclusively on the Department’s finding of indicated sexual abuse. That indicated finding was, in essence, a preliminary determination that there existed credible evidence, which had not been satisfactorily refuted, that sexual abuse had occurred. Given that the court excluded the remainder of the Report, the indicated finding was neither corroborated by evidence nor supported by the Department’s underlying findings of fact. To paraphrase the court, it had an indicated finding by the Department—and nothing more.

As recounted above, the Department mailed Father the Notice Form on April 18, 2025. Because the CINA case was pending at that time, Father could not obtain a contested hearing, as OAH was required to stay the administrative proceeding. *See* FL § 5-706.1(b)(4)(i). Accordingly, an ALJ never had occasion to affirm or modify the tentative agency decision. Moreover, the CINA hearing was held on May 6th—well before the 60-day deadline for requesting a contested case hearing. Given that the indicated finding was never affirmed by an ALJ and that the time for noting an administrative appeal had not elapsed by the date of the court’s ruling, the indicated finding had not ripened into a final

agency decision and therefore was neither *prima facie* correct nor presumptively valid. To the contrary, had a contested case hearing gone forward, the burden would have been on the Department to defend its indicated finding by a preponderance of the evidence.

The Department’s preliminary determination that “credible evidence” exists that Father sexually abused R.D. does not, in and of itself, constitute competent and material evidence that the abuse occurred. Rather, it is tantamount to a general proffer by the Department that such evidence exists. Such a preliminary determination cannot serve as a surrogate for potentially inadmissible evidence on which it may be based. *See In re A.N.*, 226 Md. App. 283, 315 (2015) (“[W]e must maintain the careful distinction between an investigative tool and evidence that has sufficient reliability for consideration in an adjudicative proceeding.”). Absent the evidence itself, the juvenile court was without a factual basis to find that Father was unable to provide R.D. with proper care and attention. Permitting a juvenile court to rest a CINA determination exclusively on a finding of indicated abuse could also allow the Department to bypass meaningful review of that preliminary finding. As noted above, OAH must stay an administrative appeal of a finding of indicated abuse while a CINA case concerning the same allegations is pending. Accordingly, an accused cannot challenge an indicated finding at a contested hearing “until the CINA case . . . conclude[s].” FL § 5-706.1(b)(4)(i). If the court then declares the child a CINA based on the same allegations and finds that the abuse occurred, the accused may later be collaterally estopped from contesting the indicated finding once the stay is lifted. The practical effect would be to insulate an indicated finding from administrative review

and render it functionally self-proving. This court has rejected similar attempts at bootstrapping, explaining that an emergency shelter care report “cannot be used to both state the allegations in the [CINA] [p]etition *and* as evidence to substantiate the allegations in the [p]etition. The [p]etition may not prove itself in an adjudicatory hearing.” *In re M.H.*, 252 Md. App. 29, 54 (2021). (emphasis retained).

See *In re T.K.*, 480 Md. at 154 (holding that the juvenile court “lacked a factual basis for . . . finding that Father was able and willing to provide care” where “the Department proffered that its “due diligence”” led to that conclusion but introduced no supporting evidence). Accordingly, we hold that the court clearly erred in finding that Father was unable to provide proper care based solely on the Department’s indicated finding.

CJP § 3-819(e)

Before turning to the appropriate relief, we will briefly address Father’s apparent assertion that the juvenile court was required to award him custody under CJP § 3-819(e).

That subsection provides:

If the allegations in the petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child, the court may not find that the child is a child in need of assistance, but, before dismissing the case, the court *may* award custody to the other parent.

CJP § 3-819(e) (emphasis added). In *In re T.K.*, the Supreme Court of Maryland identified two prerequisites that must be met before a court may “award custody to the other parent.” 480 Md. at 145 (quoting CJP § 3-819(e)). The Court explained: “First, the allegations in the petition must be sustained against only one parent of a child. Second, there must be

another parent available who is able and willing to care for the child.” *In re T.K.*, 480 Md. at 145 (cleaned up).

Consistent with the two-prong CINA definition, the first prerequisite is satisfied when a juvenile court sustains allegations in a CINA petition which “support determinations that: (1) the child has been abused or neglected; and (2) *one of the child’s parents* is unable or unwilling to provide proper care for the child.” *Id.* at 147 (emphasis added). To satisfy CJP § 3-819(e)’s second requirement, the proponent of the custody transfer must affirmatively establish—and the court must find—that the “other parent” is able and willing to provide proper care. A mere failure by the Department to prove that a parent is unable or unwilling does not suffice. Rather, the capacity of the “other parent” to provide such care must be proven by a preponderance of the evidence.

When both prerequisites are satisfied, a juvenile court “may”—but need not—award custody to the parent against whom the CINA allegations were not sustained. Thus, when both requirements are met, the decision to transfer custody lies within a juvenile court’s discretion. A court should exercise that discretion “only if it determines that doing so is in the best interest of the child.” 480 Md. at 151.

Although the Department did not carry its burden of proving that Father was unable to provide R.D. with proper care and attention, the record does not establish the converse. In other words, we are not persuaded that Father, as the proponent of the transfer, carried his burden of proving by a preponderance of the evidence that he was both able and willing to provide R.D. with proper care. In any event, on the record before us, the juvenile court

could reasonably conclude that awarding Father sole legal and physical custody of R.D. would not be in her best interest. Accordingly, although we will vacate the CINA order, we will not direct the juvenile court to award Father custody of R.D.

The Appropriate Relief

Where, as here, a CINA determination cannot stand, “[o]ur decision as to disposition is guided by the totality of the circumstances and the purpose of the CINA [s]tatute.” *In re M.H.*, 252 Md. App. at 55. “The primary purpose of CINA proceedings is to ‘provide for the care, protection, safety, and mental and physical development of any child coming within the provisions of this subtitle.’” *Id.* at 56 (quoting CJP § 3-802(a)(1)).

R.D. is in the precarious position that Mother is presently unable to properly care for her, while Father presented no evidence of his ability and willingness to do so. At the adjudicatory hearing, moreover, the Department introduced evidence—on which the court did not rely—that called into question Father’s capacity to care for his daughter. Considering R.D.’s circumstances and consistent with the purpose of the CINA statute, we will remand this case to the juvenile court for new adjudicatory and disposition proceedings.¹⁸ *See id.* (vacating and remanding for another adjudicatory hearing where the court’s findings were not supported by competent evidence). Pending the outcome of those

¹⁸ In his brief, Father asks us to “reverse the lower court’s decision and remand the case for further proceedings that adhere to established legal standards and safeguard the rights of all parties involved.” We are, therefore, effectively granting Father the appellate relief he seeks.

proceedings, the custody arrangement in effect as of the date of our mandate will remain in place. *See id.*

**JUDGMENTS OF THE CIRCUIT COURT
FOR CECIL COUNTY VACATED. CASE
REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID BY
APPELLEE.**