

Circuit Court for Frederick County  
Case No. C-10-JV-19-000048

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 720

September Term, 2019

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IN RE: A. K.

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Kehoe,  
Nazarian,  
Arthur,

JJ.

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Opinion by Arthur, J.

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Filed: January 8, 2020

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

In an order dated May 16, 2019, and docketed on May 20, 2019, the Circuit Court for Frederick County, sitting as a juvenile court, found that 11-year-old A. was a child in need of assistance (“CINA”).<sup>1</sup> A. and her mother appealed. We shall affirm.

## **FACTUAL AND PROCEDURAL HISTORY**

### **A. The Child’s Family History**

A. was born in 2008. Her parents, Mother and Father, had begun a relationship in 1999, broke up in 2001, but resumed the relationship in 2007, shortly before A.’s birth.

In 2009, after A. was born, Mother and Father were married. They acknowledge that they argued frequently before A. was born, and their relationship continued to deteriorate after A.’s birth despite their decision to get married.

Mother and Father separated in 2011 and were divorced in 2013. After the divorce, they attempted to reunite and engaged in an on-again, off-again relationship for a period of time.

Initially, the parents agreed to share legal custody: A. would reside primarily with Mother and would visit Father at designated times. Visitation occurred regularly at first, but A. would often act out before visits and resisted leaving her mother. The court ordered therapeutic supervised visitation with Father in August 2017, but terminated the

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<sup>1</sup> A child in need of assistance is a child who requires court intervention because (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 give proper care and attention to the child and the child’s needs.” Md. Code (1974, 2013 Repl. Vol., 2018 Supp.), § 3-801(f) of the Courts and Judicial Proceedings Article

visitation because it did not occur consistently. The court ordered that visitation begin again in June 2018, but it has never resumed.

Mother cites Father's alcoholism, infidelity, and violent temper as significant problems in their relationship. Father acknowledges his troubles with aggression and alcohol and refers to Mother's financial irresponsibility, uncleanliness, and passive parenting approach as stressors during their relationship. Father spent time in jail after pleading guilty to assaulting Mother in 2007 and has been charged with assault on several other occasions.

Mother lives in Frederick County and is unemployed. Father remarried in December 2017 and lives with his current wife in another county. Father owns his own business.

**B. The Child's Mental, Emotional, and Educational Issues,**

A. has seen a therapist since the age of four to address her lack of adjustment to her parents' separation.

On April 15, 2015, when A. was six, the therapist wrote to Mother's attorney to express his concern that A. became very agitated before leaving to visit her father, whom the therapist described as volatile and potentially dangerous. In the therapist's assessment, A.'s anxiety was clinically significant and had probably caused her to repeat kindergarten. The therapist opined that it was harmful for A. to have unsupervised visits with Father.

On approximately June 17, 2015, Mother obtained a final protective order that prevented Father from visiting Mother's home and A.'s school, permitted him to see A.

only once every two weeks, and required all visitation with A. to be supervised. The order remained in force until June 15, 2016.

Despite the protective order, A. continued to experience problems with anxiety. On March 3, 2016, while the protective order was in effect, A.'s pediatrician, Dr. James Lee, prescribed medication to treat an anxiety disorder. In his notes, Dr. Lee remarked that Mother was very negative about Father in front of A.

A.'s history of school attendance is and has been poor. During the 2015-2016 year, when A. was in first grade and the protective order was in effect, A. had 53 "school attendance events" (which include absences, tardiness, or early dismissals).

After the protective order ended, A.'s record of poor attendance record continued. A. had 60 "attendance events" in second grade (in 2016-2017) and 37.5 "attendance events" in third grade (in 2017-2018).

A. struggles to keep up academically and receives low grades in math. She experiences dyscalculia, which hinders her ability to learn mathematics, and she receives help from a math specialist at school. School staff members have attempted to schedule meetings with Mother to discuss A.'s academic needs, but Mother often cancels or fails to attend the meetings.

A. has experienced significant problems with weight gain during the past five years and was diagnosed as morbidly obese in September 2016, as she entered second grade. From 2014 to 2017, A.'s body mass index ("BMI") increased from 26.4 to 31, which is greater than that of 99 percent of all similarly-aged girls. A.'s pediatrician, Dr. Lee, documented that the child endured heel and hip pain as a likely result of her obesity.

The pediatrician reported that the family has unhealthy eating habits involving poor food choice and portion size.<sup>2</sup> A. says that she overeats to cope with the anxiety and stress from her relationship with her father.

In August 2016, as A. was about to enter the second grade, Dr. Lee advised Mother about addressing A.'s weight problem and discussed enrolling her in a school-based healthy-weight program. Mother and A. agreed to participate in the program, and Mother authorized Dr. Lee to share A.'s medical information with the program. A., however, attended only one meeting in the program, because Mother said that the program made A. upset and feel fat. As of March 2019, A. weighed 200 pounds and had a BMI of 35.4, after gaining over 40 pounds in one year.

In October 2017, shortly after she began the third grade, A. was admitted to a mental health facility to receive psychotherapeutic treatment because she expressed “vague suicidal ideation” to a psychiatrist during an appointment. During A.'s intake for the program, Mother attempted to answer most of the intake questions for A., and A. “visually checked with [Mother] before venturing to give any answers.” A. completed the Hamilton Anxiety Rating Scale both with her mother and by herself. When A. completed the scale by herself, it indicated that she did not experience any symptoms suggestive of anxiety. When she completed it with Mother, however, the scale indicated that she had extreme anxiety and depression. During her treatment, A. denied

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<sup>2</sup> The pediatrician and other providers have observed A. arrive at their offices with fast food on several occasions. During one visit, the pediatrician had to advise Mother not to take A. to McDonald's for lunch after an appointment at which A. was treated for diarrhea and stomach pain.

experiencing suicidal ideation or thoughts of self-harm, could not provide any information on her depression or anxiety, and “appeared very guarded.” Mother appeared to be “invested in making [A.] look/sound worse than the actual clinical presentation.” The staff suggested that Mother was attempting “to make a case for revoking [Father’s] visitation rights,” because she had requested a letter “to that extent.”

On the day before her admission to the mental health facility, A. had been admitted to Frederick Memorial Hospital after Mother called the police to report that A. had become suicidal when Father allegedly threatened her on the phone. At the hospital, however, Mother denied that she had heard A. make any suicidal statements, and A. denied any current suicidal ideation. The hospital staff determined that A. was not “at risk” and that the admission was the result of a misunderstanding.

Others have observed the discrepancy between A.’s behavior and Mother’s reports of the child’s severe anxiety and fear of her father. A.’s school counselor reported that Mother provided the school “with excessive detail regarding [A.’s] anxiety” and “negative information regarding [Father],” but school staff members have stated that A. did “not show signs of excessive anxiety, trauma symptoms, or behavior problems at school.” Mother’s reports to the school often refer to Father’s abusive behavior and suggest that A. should not communicate with him. When staff members explain that A. appears to function normally at school, Mother argues that the child is just “putting on a face.” The social worker who supervised A.’s therapeutic visitation with Father reported that, although A. initially resisted participating, she would become engaged and cooperative during visitation and would interact positively with him. The social worker

noted that Mother did not appear to support the therapeutic visitation. Because the family was not making progress, the social worker recommended terminating the visitation despite Father's improvements in interacting more positively with A.

### **C. The 2018 Psychological Custody Evaluation**

On October 20, 2017, the Circuit Court for Frederick County ordered Mother, Father, and A. to participate in a psychological custody evaluation. L. Alexandra Mirabelli, Psy.D., performed the evaluation and authored an extensive report with custody recommendations for the court to consider. To prepare the report, Dr. Mirabelli conducted several interviews, visited the homes of each parent, and reviewed medical and school records to perform the evaluation.

During Dr. Mirabelli's interviews with Mother and A., Mother would instruct A. to tell Dr. Mirabelli about her feelings toward Father, and A. would sometimes look at her mother and appear to be "checking in" when she answered questions. A. emphasized in each meeting that Father was abusive and that she did not want any involvement with him. A. would give examples of Father's abusive behavior, but when asked about the inconsistencies or implausibilities in her examples (such as claiming to remember events that occurred when she was two years old), she could not remember or would change the subject. A. exhibited no emotion as she described her negative experiences with her father. When asked about the positive experiences reported by Father, A. would explain that she had only pretended to enjoy herself and had "put on a face."

During the interviews, Mother would frequently make excessively negative statements regarding Father in A.'s presence, despite being redirected several times by

Dr. Mirabelli. During one appointment, Mother tearfully discussed Father’s infidelity in front of A., and Dr. Mirabelli asked A. to leave the room when Mother continued to discuss the subject after several reminders.<sup>3</sup>

Dr. Mirabelli observed Mother coaching A. by talking about why A. does not want a relationship with Father and then telling A. to tell the doctor herself. Mother did not realize that she was influencing the child to support her statements by discussing her negative opinion of Father and then asking A. to elaborate on those statements herself. A. and Mother would use the same phrases, often verbatim, to describe Father and to explain A.’s desire not to interact with him. A.’s repetition of Mother’s negative statements and her inability to elaborate or explain her views suggested to Dr. Mirabelli that Mother had strongly influenced A.’s feelings.

Dr. Mirabelli believed that Mother’s negative feelings toward Father and her inability to move beyond them causes her to “actively sabotage [A.’s] ability to forge a relationship with her father.” Dr. Mirabelli does not believe that Mother intentionally causes A.’s distress, although “[h]er self-awareness in this regard is exceptionally poor.”

Mother participated in the custody evaluation and appeared engaged during the interviews, but she required repeated reminders to return necessary paperwork and failed

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<sup>3</sup> Similarly, A.’s pediatrician, Dr. Lee, noticed that Mother had spoken negatively of Father in front of A. during several pediatric visits. During a February 2017 appointment, Dr. Lee observed that Mother openly discussed her problems with Father “with a degree of negativity . . . [that] was uncomfortable to hear.” At an October 2018 checkup, Mother tearfully described Father’s past abuse to the pediatrician, in A.’s presence.

to respond to some requests for information. Mother often went off-topic during interviews and required frequent redirection to answer the question at hand. Individual interviews with Mother were arduous because of her detailed responses, and Mother's emotional presentation often varied. She generally appeared tense, anxious, and tearful, but on one occasion she appeared sedated and unsteady and exhibited slurred speech.<sup>4</sup> She takes a number of medications, including two antidepressants and a sedative, and she uses a Fentanyl transdermal patch, which is a narcotic medication for the treatment of pain.

The school staff reported to Dr. Mirabelli that Mother appeared to experience difficulty staying alert during school meetings and that she missed many requested meetings regarding A.'s academic performance because of an unexpected illness or headache.

Dr. Mirabelli visited Mother's home as part of the evaluation. Dr. Mirabelli described the home as "cluttered and disorganized, with laundry in the kitchen and no visible counter space." She observed piles of toys, clothes piled against the wall in the common area, and an air mattress on the floor, where A. sometimes sleeps at night. "Virtually every surface was covered with clutter[,] including fast food containers, project materials, and knick knacks." Dr. Mirabelli described A.'s room, which contained a bunk bed that was not in use and some items in storage, as "not usable." A.

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<sup>4</sup> Similarly, during the CINA petition hearings, the judge observed Mother appear to lose consciousness in the courtroom several times.

reported that she either sleeps on the air mattress or on the couch with her mother.<sup>5</sup> Dr. Mirabelli concluded that the “home appeared cluttered, neglected, and without adequate space to move around comfortably.”

Father participated in the custody evaluation and attended appointments with A. A. was antagonistic and oppositional to Father during the appointments, and she responded minimally to Father’s efforts to interact with her. A.’s behavior often appeared exaggerated and reflected an effort to provoke her father. Father responded appropriately to A.’s oppositional behavior and apologized for his past mistakes as a parent. Dr. Mirabelli described Father as cooperative throughout the process and focused during interviews. Although Father was learning new ways to manage his frustration, Dr. Mirabelli found that because of his history of aggression, he is still at risk for angry outbursts and tolerates stress poorly. According to Dr. Mirabelli, it will require significant effort on Father’s part for him to learn proper coping skills.

Dr. Mirabelli visited Father’s home, where he lives with his wife, who owns her own business. Dr. Mirabelli described the couple’s home as “clean, organized, and nicely furnished” and observed that it includes an appropriate bedroom for A. When Dr. Mirabelli met with Father and his wife, they appeared to be respectful and supportive toward each another and interacted appropriately. Father’s wife stated that she supports rebuilding the relationship between Father and A. and wants to help to protect and care for the child.

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<sup>5</sup> In 2016 A.’s pediatrician, Dr. Lee, had also reported that A. “tends to sleep with mom” because of anxiety.

Dr. Mirabelli expressed concern that several aspects of A.'s alienation from Father hinder her ability to form a relationship with him, and she found that all members of the family contribute to the alienation. Father's problems with anger and aggression contribute to A.'s rejection of him, while Mother's persistent criticism of Father in front of A. exacerbates the child's anxiety and aversion to him. Dr. Mirabelli cited research demonstrating that children benefit psychologically, cognitively, and physically from involvement with their fathers, and she stressed that reducing the animosity between the parents is essential to the child's wellbeing.

After conducting the evaluation, Dr. Mirabelli made custody recommendations to the circuit court based on A.'s immediate needs and her long-term well-being. Dr. Mirabelli presented two possible custody arrangements – one where primary physical custody remained with Mother, and another where Father became the primary custodian, – but she warned that both scenarios presented problematic elements. Mother's tenuous cooperation during the assessment and her own health problems cast doubt on her ability to address A.'s medical and mental health issues. However, because of A.'s alienation from Father and the patience required to manage A.'s behavioral problems, Dr. Mirabelli was unsure whether it was appropriate for Father to be the primary physical custodian.

Because Father's home was a more suitable environment than Mother's and because Mother had failed to meet A.'s physical, psychological, and academic needs over the prior two years, Dr. Mirabelli recommended Father as the primary physical custodian. Father and his wife were making efforts to improve Father's anger management and alcohol use, and the couple was cooperative and proactive during the entire evaluation.

According to Dr. Mirabelli, the research demonstrates that forced interaction with a rejected parent is more likely to be successful with young children than with adolescents, and, without prompt intervention, A.’s ability to restore a relationship with her father will diminish.

If the circuit court determined that placing A. in Father’s care was not in the best interest of the child, Dr. Mirabelli suggested that Mother retain physical custody, “*so long as [Mother] is working with Family Preservation Services and so long as a review could be scheduled within three months to determine whether*” Mother was adhering to several recommendations provided by Dr. Mirabelli. (Emphasis in original.) These recommendations included engaging in family-preservation services, refraining from making disparaging statements about Father in front of A., facilitating visitation with Father, ensuring that A. achieves a 90 percent attendance rate at school, enrolling A. in a weight-management program, demonstrating a reduction in A.’s BMI, and refraining from caretaking while under the influence of sedating medications.

**D. The August 2018 Custody Order and Mother’s Noncompliance**

After considering the psychological custody evaluation, the circuit court issued an order on August 20, 2018, under which Mother maintained sole physical custody of A. The order incorporated Dr. Mirabelli’s recommendations and required Mother to abide by them.

The Frederick County Department of Social Services assigned a social worker, Jessica Williams, to provide family-preservation services to Mother and A. Ms. Williams

began working with the family in September 2018 and met with Mother and A. every other week.

Ms. Williams encountered great difficulty while working with the family. Mother regularly made disparaging remarks about Father during their meetings and, despite Ms. Williams's efforts to redirect the conversation, continued to make such remarks in A.'s presence. During January and February of 2019, Ms. Williams could not meet with A.K, "largely" because Mother cancelled appointments. During the last home visit, Mother prevented Ms. Williams from speaking with A.

Others reported similar issues. School staff members informed Ms. Williams that Mother had been shouting about Father's alleged abuse while she was with A. and that Mother had to be escorted from the school after being asked to stop several times. A.'s pediatrician, Dr. Lee, reported that Mother's negative statements about Father interfered with their discussion of A.'s medical issues. During an October 2018 physical, Dr. Lee said, Mother asked no questions about A.'s health, but tearfully disparaged Father in the child's presence.

Although Ms. Williams encouraged Mother to attend individual therapy, Mother did not attend any treatment sessions for several months, and she revoked the release that permitted Ms. Williams to speak with the mental health program where Mother claimed to be receiving therapy. In addition, Mother refused to allow Ms. Williams to speak with the psychiatrist who prescribed her medications. Ms. Williams had wanted to speak with the psychiatrist because of her concerns about his disciplinary history, particularly given

that Mother was taking a large number of medications and appeared to be sedated at times.

Mother failed to address A.'s weight problems or follow the recommendations of the pediatrician and Ms. Williams. Both the pediatrician and Ms. Williams had encouraged Mother to enroll A. in a nutrition program, Back2Basics, and had given Mother the program's contact information. Mother told Ms. Williams that she had called Back2Basics, but the program's staff members informed Ms. Williams that Mother had never communicated with them. Mother later scheduled three appointments with Back2Basics, but did not attend any. Mother claimed that she cancelled an appointment because A. had suffered a concussion, but the pediatrician did not diagnose A. with a concussion during that time.

Dr. Lee, the pediatrician, stated that A.'s condition requires treatment at Children's National Medical Center in Washington, D.C., and that because of the severity of her obesity, she will not attain a healthy weight without surgical intervention. Dr. Lee worries that Mother's pattern of noncompliance suggests that A. will fail to complete the program at Children's National and will not receive adequate treatment. A. now faces significant risks for severe medical problems, including heart disease and diabetes, as well as emotional problems related to obesity.

Mother also failed to ensure that A. attended school regularly. During the 2018-2019 school year, A. did not meet the court-ordered 90 percent attendance rate, and as of

March 25, 2019, A. had missed 46 full or partial days of school and had 19 unexcused absences.<sup>6</sup>

Dr. Lee reported that A.'s illnesses were often not severe enough to cause her to miss school and were occasionally nonexistent. He expressed concern regarding Mother's mental health and reliability, because she sometimes acted as though she was impaired or agitated during visits and provided a "very confusing" history of A.'s illnesses at an appointment. At a visit on October 10, 2018, Mother claimed that A. had been vomiting and had visited an urgent care facility a few days earlier because of a fever. However, the urgent care records said that A. denied having a fever and that A. did not in fact have a fever, and A. told Dr. Lee that she had not been vomiting.

A. failed to participate in the court-ordered visitation with her father as well. Mother has denied Father access to A. and has claimed that A. refused to visit her father. Father had no visitation with A. between September 2018 and February 2019. He stated that Mother often failed to take A. to scheduled visitations and that, when she did bring the child, A. would refuse to get out of the car.

On October 9, 2018, Mother told the police that Father had sexually assaulted A. while she was in the shower at Father's home in July 2017. Mother claimed that A. had informed her of the incident in mid-September of 2018 and had refused to see Father again. When Mother was asked why she delayed in reporting the alleged abuse until the next month, she could not provide a specific answer. After interviewing Father and A.,

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<sup>6</sup> Seven absences occurred after the Department of Social Services obtained custody of A.

the police closed the case on the ground that it was “unfounded.” The Frederick County Department of Social Services also investigated the allegation, but found “no credible evidence of sexual abuse.” On November 27, 2018, Mother obtained a temporary protective order against Father based on her allegations of sexual abuse, but the court dismissed the case because Mother failed to attend the hearing for the final protective order.

### **E. The CINA Adjudication**

After spending several months in which she tried unsuccessfully to provide services to Mother, Ms. Williams, the social worker, concluded that A. was not safe in Mother’s home. Consequently, on February 28, 2019, the Department of Social Services placed A. in emergency shelter care. On March 1, 2019, the circuit court granted the Department’s petition for continued shelter care.

The petition for continued shelter care was accompanied by a CINA petition. The CINA petition alleged, among other things: (1) that Mother had failed to attend to A.’s medical needs by not ensuring her participation in the weight-management programs recommended by her pediatrician; (2) that Mother had failed to ensure that A. would regularly attend her classes; (3) that A. was alienated from Father because Mother disparaged him in A.’s presence and denied him access to the child; and (4) that A. could not be placed with Father because of his history of violent behavior and anger-management problems, and because of her fear of him and her desire not to have contact with him.

Father and A. stipulated to the allegations in the CINA petition. Mother did not admit or deny the allegations, but agreed that they would be proven if there were a contested adjudicatory hearing. On May 7, 2019, the court concluded that the allegations had been proven by a preponderance of the evidence.

The disposition hearing extended over three days in May 2019. On the basis of the evidence, the circuit court concluded that Mother had neglected A.'s medical care, schooling, and emotional stability. The court expressed its "outrage[]" that Mother had not followed medical direction, instruction, and guidance regarding A.'s health and safety. The court found that Mother had contributed to A.'s anxiety by "continuing to fuel her fear of her father." The court also found that Mother needed professional help in order to gain "sufficient protective capacity" to perform her parental responsibilities. Based on its observation of Mother's testimony and demeanor during the proceedings, the court voiced concern about Mother's mental health.

The court concluded that A. was a CINA and awarded full custody to the Department of Social Services. The court determined that it could not award custody to Father while A. was terrified of him, and Father agreed.

The court ordered that each parent have supervised visitation with the child. The court required that Mother's visitation be supervised because it had observed her (in the court's words) "nodding off" in the courtroom during the hearings.

Finally, the court ordered that A. and her parents participate in family therapy and that each family member engage in individual therapy.<sup>7</sup>

Mother and A. appealed.

### **QUESTION PRESENTED**

Mother poses one question: “Did the circuit court err in finding that A.[] had been neglected by Mother?”

A. poses essentially the same question, though it is embellished with argumentation: “Whether the juvenile court erred in adjudicating the Appellant Child CINA when the evidence did not support a finding of parental neglect or inability to provide ordinary care for the child.”

We perceive no error or abuse of discretion. Consequently, we shall affirm the judgment.

### **DISCUSSION**

In CINA proceedings:

(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,

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<sup>7</sup> At a review hearing on October 7, 2019, the court determined that A. remained a CINA and scheduled a permanency plan hearing for January 28, 2020.

is harmless, and (3) we evaluate the juvenile court’s final decision for abuse of discretion.

*In re O.P.*, 240 Md. App. 518, 546 (2019) (citing and quoting *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018)), *cert. granted*, 464 Md. 586 (2019).

“Under the clearly erroneous standard, this Court does not sit as a second trial court[.]” *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996); *accord L.M. Wolfe Enters., Inc. v. Maryland Nat’l Golf, L.P.*, 165 Md. App. 339, 343 (2005). “Our task is limited to deciding whether the circuit court’s factual findings were supported by substantial evidence in the record[.]” *L.M. Wolfe Enters., Inc. v. Maryland Nat’l Golf, L.P.*, 165 Md. App. at 343.

An abuse of discretion occurs “when the court acts ‘without reference to any guiding rules or principles’” or “where the ruling under consideration is ‘clearly against the logic and effect of facts and inferences before the court.’” *In re Yve S.*, 373 Md. 551, 583 (2003) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (citations omitted)). In a CINA proceeding, the juvenile court’s ultimate decision may be an abuse of discretion if it is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Id.* at 583-84. Juvenile courts “are endowed with great discretion in making decisions concerning the best interest of the child” because “CINA cases are very often fact-intensive.” *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 713 (2011).

A child may be a CINA if (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 give proper care and attention to the child and the child’s needs.” Md. Code (1974, 2013 Repl. Vol., 2018 Supp.), § 3-801(f) of the Courts and Judicial Proceedings Article.

“Neglect” includes the “failure to give proper care and attention to a child by any parent or individual who has . . . custody or responsibility for supervision of the 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). A juvenile court “need not wait for an injury to occur before finding neglect.” *In re Priscilla B.*, 214 Md. App. 600, 626 (2013). Instead, the court is required to consider the totality of the circumstances and any history of neglect by the parents to determine if children are “placed at risk of significant harm” by remaining in their parents’ custody. *Id.* (quoting *In re Dustin T.*, 93 Md. App. 726, 735 (1992)). Courts view neglect as “part of an overarching pattern of conduct” of “inaction [by] a parent over time” and will consider the parents’ past conduct to ascertain their present and future actions. *Id.* at 625 (quoting *In re Adriana T.*, 208 Md. App. 545, 570 (2012)). A parent does not need to intend to neglect a child for the court to find neglect. *Junek v. St. Mary’s Cty. Dep’t of Soc. Servs.*, 464 Md. 350, 363 (2019).

In this case, the court did not err or abuse its discretion in basing a finding of neglect on Mother’s failure to attend to A.’s medical, emotional, and educational needs. Despite guidance from medical professionals, intervention from the Department of Social Services, and court orders, Mother has demonstrated an overarching pattern of neglectful

conduct with no indication that she intends to or is capable of giving proper care and attention to A.’s needs.

For years, Mother has failed to follow medical recommendations to address A.’s increasing obesity, which threatens her physical and mental health. Mother has also failed to follow medical recommendations to address a cause of A.’s obesity – her poor diet. Since A. was diagnosed with obesity in 2016, she has gained 66 pounds, and her BMI has increased from 31.3 to 35.4. A., who now faces a heightened risk of significant health problems, will require intensive treatment to achieve a healthy weight, but A.’s pediatrician expresses doubt that Mother will be able to comply with the regimen, considering her history of noncompliance.

Mother has been warned to refrain from fueling A.’s anxiety by disparaging Father in front of the child, but she appears to be unable to stop herself. Mother regularly failed to bring A. to court-ordered visitation with Father and has made no effort to mend her daughter’s relationship with her father. Mother’s unfounded sexual abuse allegation against Father further suggests that Mother is unlikely to facilitate reunification between A. and Father.

Despite warnings from school staff that A.’s chronic truancy had created “gaps in her learning that need to be addressed,” Mother has failed to ensure that A. attends school on a regular basis, and A.’s school attendance fell by nearly 20 percent below the attendance rate ordered by the court in August 2018. Mother often claims that A. is sick

during these absences, but A.'s pediatrician has found that these alleged illnesses are frequently either benign or nonexistent.

Mother's health problems, including her unresolved mental health problems, contribute to her neglect of A. Several observers, including the circuit court, have remarked that Mother has trouble remaining alert, perhaps because of the medications she takes. According to Dr. Mirabelli, Mother is unaware of the extent to which she is both saddling A. with her views of Father and preventing the child from developing her own views. According to one of A.'s therapists, Mother cannot model healthy behavior, did not follow through with recommendations, and contributed to A.'s anxiety by maintaining poor boundaries and oversharing. Most significantly, a mental health professional expressed the view that Mother seems to be invested in making A. appear to have more significant problems than she really has. Similarly, a school counselor observed that Mother's dire accounts of A.'s anxiety at home are inconsistent with A.'s benign affect and behavior at school. Yet, Mother resisted the Department's recommendation that she undergo therapy.

In arguing that the circuit court erred, A. focuses on the matter of obesity. Because of the large and growing number of overweight and obese children in the United States, she expresses concern that foster care might be used to address what she describes as a public health problem. Citing an appellate decision from Iowa (*In Interest of L.T.*, 494 N.W.2d 450 (Iowa Ct. App. 1992)) and trial court decisions from Pennsylvania (*In re D.K.*, 58 Pa. D. & C.4th 353 (Ct. C.P. 2002)) and New York (*In re Brittany T.*, 835 N.Y.S.2d 829 (Fam. Ct. 2007), *rev'd*, 852 N.Y.S.2d 475 (App. Div. 2008)), she argues

that a court should not remove a child from a parent’s care until the child’s obesity has become life-threatening. Her argument is not entirely consistent with the Maryland CINA statute, whose purpose “is to protect children – not to wait for their injury.” *In re William B.*, 73 Md. App. 68, 77-78 (1987); accord *In re Nathaniel A.*, 160 Md. App. 581, 596 (2005).

In any event, the cited cases tend to support rather than undermine the circuit court’s conclusion. In each of the cases that A. cites, the courts upheld the decision to remove the child from the parent’s home. *In Interest of L.T.*, 494 N.W.2d at 452-53; *In re D.K.*, 58 Pa. D. & C.4th at 359-60; *In re Brittany T.*, 835 N.Y.S.2d at 839. In *In Interest of L.T.*, 494 N.W.2d at 452-53, much as in this case, the Iowa court commented that the mother had been unable to assist the child with her problem of obesity, that the child had failed to lose weight and failed had to attend dietary classes, and that the mother had actively provoked the child’s negative feelings toward her father and had encouraged her poor eating habits as a method of coping with the resulting stress. Similarly, in *In re D.K.*, 58 Pa. D. & C.4th at 359, the Pennsylvania trial court commented that the mother’s own problems interfered with her ability to attend to the child’s special needs. Like Mother in this case, D.K.’s mother “apparently did little or nothing regarding her son’s declining performance in school, and his absenteeism”; “there [was] no

evidence that she did anything to address his” growing obesity; and it was “unlikely that she fully appreciate[d] her son’s situation.” *Id.*<sup>8</sup>

Mother and A. both cite *In re Jertrude O.*, 56 Md. App. 83, 100 (1983), for the proposition that “[t]he fear of harm to the child or to society must be a real one predicated upon hard evidence; it may not be simply gut reaction or even a decision to err-if-at-all on the side of caution.” They contend that the Department failed to introduce “hard evidence” of neglect. We disagree. On the extensive record in this case, particularly the record of Mother’s persistent failure to attend to A.’s medical, emotional, and educational needs, the court’s decision was far from a mere “gut reaction.” After the court-ordered custody evaluation in 2018, the court allowed Mother to retain custody on the condition that she comply with Dr. Mirabelli’s recommendations. It is undisputed that Mother did not comply. In these circumstances, it was a sound exercise of discretion for the court to rule as it did.

Although she concedes that she is not a “perfect parent,” Mother claims that her imperfections do not rise to the level of “neglect” sufficient to deprive her of custody of her child. Mother argues that she was an active parent and that there was insufficient evidence demonstrating that she caused A.’s medical, emotional, and educational problems. For example, Mother cites evidence that she regularly took A. to the doctor

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<sup>8</sup> A. fails to note that the trial court’s decision in *In re Brittany T.* was reversed on appeal. *In re Brittany T.*, 852 N.Y.S.2d 475 (App. Div. 2008). The appellate court based its decision on the absence of evidence that the parents had willfully violated an order regarding the supervision of the child. *Id.* at 480. In Maryland, however, proof of “neglect” does not depend on proof of willful or intentional conduct. *Junek v. St. Mary’s Cty. Dep’t of Soc. Servs.*, 464 Md. at 363.

and brought the child to therapy beginning at a young age. She claims that the record did not show that she caused A.'s obesity, that she discouraged A. from attending school, or that A.'s alienation from her father was primarily the result of her conduct. She cites Dr. Mirabelli's description of her as a "warm and loving parent" who "cultivated a close relationship with her daughter."

Mother is correct that this is not a typical case of neglect, in which a parent has failed to attend to most or all of the child's needs. Nonetheless, despite Mother's attention to A., the record is replete with evidence to support a finding of neglect.

According to Mother, the Department did not show that A.'s obesity was caused or worsened by Mother's failure to give her proper care and attention. To the contrary, in 2016, Mother withdrew A. from a weight-management program that her pediatrician had recommended. After A. had gained another 60 pounds, Mother resisted efforts to enroll A. in another weight-management program in accordance with the recommendations in Dr. Mirabelli's custody evaluation report. Mother appears not to have heeded the pediatrician's advice that A.'s weight problems do not result from a genetic or physiological factor, but from a poor diet (including fast food and large portions) and a lack of exercise. Finally, to the extent that A.'s obesity is attributable to "comfort eating," one could infer that Mother has contributed to the problem by increasing A.'s anxiety about her father.

Mother goes on to argue that the Department did not show that she "discouraged" A. from attending school. Her assertion is accurate as far as it goes, but there was certainly evidence that Mother did not encourage or require A. to attend when she was

well enough to go. For example, the pediatrician, Dr. Lee, reported that A.'s illnesses were often minor and were sometimes nonexistent. Furthermore, on a number of occasions, Mother claimed that A. was experiencing symptoms that A. denied having or symptoms of which there was no objective evidence.

Finally, Mother attacks the circuit court's assertion that she "fueled" A.'s fear of Father, complaining that the Department introduced no evidence that A.'s health or welfare would be enhanced if she had more contact with Father. We do not think it controversial that a child might benefit from interaction with her father, as Dr. Mirabelli wrote in her custody evaluation. As for Mother's contention that she is not responsible for A.'s alienation from Father, suffice it to say the contention is refuted by an abundance of evidence reflecting Mother's abject inability to refrain from disparaging Father in A.'s presence, even when she is admonished not to do so.

In summary, the court had an ample factual basis for its findings of neglect, and the court did not abuse its discretion in the final decision.

**JUDGMENT OF THE CIRCUIT COURT  
FOR FREDERICK COUNTY AFFIRMED;  
COSTS TO BE PAID BY APPELLANTS.**