

Circuit Court for Worcester County
Case No. C-23-JV-23-000047

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 765

September Term, 2025

IN RE: K.B.

Tang,
Kehoe, S.
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: December 23, 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).

This case arises from an exceptions hearing before the juvenile court sitting in the Circuit Court for Worcester County. Thirteen-year-old K.B. and her maternal grandmother (“Grandmother”) appeal an order that removed K.B. from Grandmother’s custody. On appeal, K.B. and Grandmother present the following issues, which we have rephrased and reorganized for clarity:¹

¹ Some of the questions presented in K.B.’s and Grandmother’s respective briefs overlap. The questions presented in K.B.’s brief are:

- I. Did the court err in removing K.B. from the only home she has ever known with [Grandmother] where the court acknowledged that it had received no evidence of an immediate risk to K.B.’s safety and K.B. would be devastated by the move?
- II. Did the court err when, at the CINA review hearing stage, it applied the legal standard of a disposition hearing and misapplied Maryland Family Law § 9-101?
- III. Did the court err in considering improper prejudicial and post-trial evidence without opportunity for rebuttal, despite appellant’s objection and request to be heard?
- IV. Did the court err in excluding K.B., a party to the case, from her own hearing, where the court based its reasoning on generalities about children of a certain age attending court, rather than specifics regarding K.B. and her position?

The questions presented in Grandmother’s brief are:

- I. Did the court err as a matter of law by applying § 9-101 of the Family Law Article to justify its removal of K.B. from [Grandmother] without making a new finding of neglect?
- II. Was the evidence insufficient for the court to endorse removal of K.B.?
- III. Where the court discredited Dr. Scott’s evaluation due to potential conflict and bias, did the court commit error by giving that evaluation weight?

Grandmother joins and adopts the arguments made by K.B. in her brief.

- I. Did the court err in applying Md. Code Ann., Fam. Law (“FL”) § 9-101 in removing K.B. from Grandmother’s custody?
- II. Was the evidence sufficient to justify the removal of K.B.?
- III. Did the court properly weigh the psychological evaluator’s opinion in rendering its decision?
- IV. Did the court abuse its discretion in taking judicial notice of the step-grandfather’s criminal charges after the presentation of all evidence?
- V. Did the court err in excluding K.B. from the courtroom during the exceptions hearing?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

BACKGROUND

K.B., born 2012, is the oldest of her mother’s (“Mother”) seven children. Mother has “mild to moderate intellectual disabilities.” Mother relied on her own mother, Grandmother, to assist with care for her children and to make responsible decisions. Mother has a history with the Worcester County Department of Social Services (“DSS”). One of her daughters, Cl., was determined to be a child in need of assistance (“CINA”)² after multiple reports of abuse and neglect when living with Mother. In August 2021, Mother’s parental rights to Cl. were terminated, and the child was adopted by non-relatives in November 2021.

² “CINA” means a child in need of assistance. Md. Code Ann., Cts. & Jud. Proc. (“CJP”) § 3-801(g). A child in need of assistance is a child who requires court intervention because the child has been abused, has been neglected, has a developmental disability, or has a mental disorder; 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. CJP § 3-801(f)(1)–(2).

Among the four other children in Grandmother’s care, three were involved in CINA proceedings. One of Mother’s daughters, Br., suffered a violent attack by a caregiver and was subsequently taken to the hospital. Following her discharge, Br. was sent home with Grandmother, who was instructed to ensure that she attended all necessary follow-up medical appointments to monitor her recovery. However, Grandmother failed to take Br. to any of these appointments. As a result, the child was sheltered in July 2020, adjudicated as CINA, and was eventually adopted, with Cl., by non-relatives in November 2021.

In January 2024, one of Mother’s sons, D., was placed in shelter care while he was living with Grandmother and left in the care of an unidentified caregiver. Another son, L., an infant who was also residing with Grandmother, was similarly left in the care of an unidentified caregiver. Both children were adjudicated CINA and were subject to a pending termination-of-parental-rights hearing during the exceptions hearing at issue here.³

Grandmother not only cared for some of Mother’s children, but she also looked after two of her own children, one of whom is B.B. (K.B.’s aunt), along with their children. B.B. has significant cognitive delays and legal blindness, among other conditions. She primarily relied on Grandmother to make decisions for her until the fall of 2024, when the court granted guardianship of B.B. to DSS after determining that Grandmother had financially exploited her. There had been previous referrals regarding allegations that Grandmother punched B.B. and instances of medical neglect; for example, after B.B. broke her ankle,

³ Mother’s other two children were not the subject of any CINA proceeding; they have been in their father’s custody.

Grandmother allegedly told her to “walk it off.” In addition, Grandmother’s husband (“Grandfather”) was indicated for sexual abuse of B.B. and her child while they were under Grandmother’s care.

CINA Petition, Adjudication, and Disposition

In February 2016, Grandmother became the legal guardian of K.B. On February 27, 2023, DSS received a referral indicating that K.B. was academically delayed. K.B. tested more than three grade levels below her peers, performing at a second-grade level in reading, writing, and math. Additionally, DSS had concerns that Grandmother had not followed up on referrals made by K.B.’s pediatrician for her to see specialists regarding developmental issues. Reports also included that K.B. had not seen a dentist since 2014.

On June 1, 2023, DSS filed a petition alleging that K.B. was a child in need of assistance. At that time, K.B. was living with Grandmother along with other family members, including Mother.

At the adjudicatory and disposition hearings on August 4, 2023, Grandmother stipulated to facts contained in the petition, and the court found that K.B. was a CINA based on Grandmother’s neglect. The court ordered that K.B. remain in Grandmother’s custody under an order of protective supervision to DSS.⁴ The court ordered Grandmother to

⁴ When a court exercising juvenile jurisdiction adjudicates a child as a CINA, that determination does not necessitate removal of the child from their home. *See CJP § 3-819(b)(1)(iii).* The court may order the child to remain in their home under an Order of Protective Supervision. CJP § 3-819(c)(1). An Order of Protective Supervision directs the Department “to assure that a remedial program is carried out; and [a]uthoriz[es] [DSS] supervision of the child in the child’s own home.” COMAR 07.02.01.02.B(24).

complete a mental health evaluation and a fit-to-parent evaluation, attend parenting classes, and ensure that K.B. attends school and all medical, dental, and mental health appointments. The court also issued an order controlling conduct prohibiting Grandmother from, *inter alia*, refusing DSS access to enter her home, refusing DSS access to any adult or child living in the home, and participating in any conversations or meetings between DSS and the other adults in the home.⁵

January 2024 Review Hearing

On January 5, 2024, a magistrate held a review hearing. DSS reported that after the disposition hearing, K.B.’s family experienced housing instability. In August 2023, after the adjudication hearing, the family’s electric and water services were disconnected due to nonpayment. Several family members had moved into an acquaintance’s rental property with Grandmother and K.B. The family stayed there for approximately three weeks before being asked to leave on September 22, 2023. After that, they stayed in a hotel in Ocean City. However, they were asked to leave a few days later due to a physical altercation between two of K.B.’s adult family members.

By the first week of October 2023, Grandmother and K.B., along with other family members, which included three adults and four children, had settled into another hotel in

⁵ An order controlling conduct is authorized by CJP § 3-821(a), which provides: “The court, on its own motion or on application of a party, may issue an appropriate order directing, restraining, or otherwise controlling the conduct of a person who is properly before the court, if the court finds that the conduct . . . will assist in the rehabilitation of or is necessary for the welfare of the child.”

Ocean City. The family was living at this hotel at the time of the review hearing in January 2024.

Mother gave birth to her seventh child, L., in December 2023. Grandmother assumed the role of primary caregiver for the newborn. There were concerns that K.B. had taken on caregiving responsibilities for her younger siblings and cousins in the home. Nevertheless, Grandmother assured the court that K.B. was attending school and keeping up with medical appointments.

DSS had referred Grandmother to attend parenting classes and complete various assessments, including a mental health assessment, a psychological evaluation, and a fit-to-parent evaluation; however, Grandmother had not yet completed all of these assessments.

K.B.’s Court Appointed Special Advocate (“CASA”)⁶ reported concerns about Grandmother’s suitability to care for K.B. and recommended that DSS pursue alternative placements for her.

At the conclusion of the hearing, the magistrate recommended continuing the order of protective supervision and continuing to allow K.B. to remain in Grandmother’s custody, along with requiring Grandmother to complete the recommended assessments and services. The court reviewed and adopted the magistrate’s recommendation.

⁶ “A Court Appointed Special Advocate (“CASA”) has been described as ‘a trained community volunteer, appointed by a judge, to represent the best interests of children in cases that come before the court due to alleged abuse or neglect.’” *In re Billy W.*, 387 Md. 405, 410 n.1 (2005) (citation omitted); *see* CJP § 3-830.

June 2024 Review Hearing and July 2024 Status Hearing

The next review hearing took place on June 7, 2024, before the magistrate. Though K.B. made progress in the classroom since the last review hearing, she continued to miss school and was often tardy. A school absence report dated May 6, 2024 documented that K.B. was absent from school more than 30 times, the majority of which were unexcused, and that she was tardy on more than 20 days.

K.B. and Grandmother had relocated since the January hearing. Grandmother shared that she planned to move into an apartment with her husband, Grandfather. DSS was unaware of Grandmother’s intention to live with Grandfather and expressed concerns about this arrangement. DSS noted there were records regarding Grandfather that could affect K.B.’s safety. It requested that these records be reviewed *in camera* and that another hearing be set in July.

At a status hearing on July 8, 2024, the magistrate, having reviewed the records relating to Grandfather, found them relevant to K.B.’s CINA case. The magistrate recommended that Grandfather and K.B. have no unsupervised contact and that DSS supervise in-person contact but recommended that communication by phone or FaceTime be permitted. The court signed an order adopting the magistrate’s recommendations.

October and November 2024 Hearings

The magistrate held another review hearing on October 28, 2024. K.B. was reported to be attending school regularly. She continued to receive regular medical and dental care.

Between the status hearing in July and the review hearing in October, Grandmother and K.B. moved into a new motel. However, their housing situation remained unstable. Grandmother was late on rent twice and faced eviction if she was late a third time.

While DSS was concerned about Grandmother’s lack of progress and her ability to care for K.B., it noted that K.B. was attending school. DSS recommended continuing the order of protective supervision.

The magistrate recommended Grandmother’s continued custody of K.B. under the order of protective supervision and the order of controlling conduct, which the court adopted. The court also ordered that any visitation between K.B. and Grandfather continued to be supervised by DSS. Further, Grandmother was ordered to complete the fit-to-parent evaluation.

On October 29, 2024, DSS received information that Grandmother and her family members were about to be evicted from the motel. In response, DSS decided to shelter K.B. In addition to the unstable housing situation, DSS reported concerns about Grandmother’s behavior, which included yelling at K.B. and calling her names, and concerns about K.B.’s hygiene.

At an emergency placement hearing on November 1, 2024, the magistrate recommended dismissal of DSS’s removal petition due to insufficient evidence that the family had been evicted and ordered K.B. to be returned to Grandmother’s home. Following an immediate review hearing on November 4, 2024, the court ratified the magistrate’s recommendation returning K.B. to Grandmother’s custody.

December 2024: Concerns of Sexual Abuse by Grandfather

As early as 2015, there were concerns regarding allegations of sexual abuse by Grandfather. In December 2015, Mother expressed concern about K.B. interacting with Grandfather because he gave her disabled sister, B.B., a sex toy. As a result, K.B. was interviewed at the Child Advocacy Center to assess her safety. During this interview, K.B. did not disclose any abuse, and no further investigation was conducted.

Allegations of sexual abuse resurfaced in January 2024 during a CINA case involving B.B., her boyfriend, F.M., and their child, C. During this case, DSS learned that while B.B., F.M., and C. lived with Grandmother and Grandfather, Grandfather had sexually abused C. In addition, several individuals, including Mother, voiced concerns about Grandfather sexually abusing B.B.

In December 2024, DSS received a report that K.B. made a statement that “a friend, family member[,] or Uncle had pulled her into a room and done things to her.” The Department requested an interview with K.B. through child protective services. K.B. was interviewed on December 11, 2024. A detective with the Worcester County Sheriff’s Office interviewed Grandmother on the same day.

During her interview, K.B. appeared confused about why she had been brought in. She claimed that she was sexually abused by F.M. K.B. told the interviewer that F.M. first sexually abused her when she was 6 years old and again when she was 10 years old. When the interviewer sought further information about what occurred, K.B. was unable to provide details other than that he had her facing backwards and put “his thing into [her].” She

denied that Grandfather sexually abused her, stating that the order prohibiting her from seeing him was based on a lie that he sexually abused her. She accused F.M. of lying and saying Grandfather had sexually abused her.

After K.B.'s interview, a detective interviewed Grandmother. The detective told Grandmother that K.B. seemed confused during her interview about who had sexually abused her. Grandmother told the detective that DSS believed Grandfather touched K.B. inappropriately because B.B. and F.M. made allegations against him. The detective asked why Grandmother thought it was F.M. who sexually abused K.B. She said that the night before the interview, when she told K.B. she would be going to be interviewed because DSS wanted to know if Grandfather ever touched her inappropriately, K.B. responded saying F.M. "pulled his zipper down and did things with me."

After noting that various reports had stated that Grandfather had committed sexual abuse and that Grandmother had moved the family away from him, the detective asked why F.M. was now considered a suspect of sexual abuse. Grandmother expressed her confusion regarding the conflicting reports and stated that she did not believe anyone had sexually abused K.B. Grandmother also stated that she had not seen Grandfather in months, despite K.B.'s report that she had to intervene in a fight between Grandmother and Grandfather less than a week earlier.

January 2025: Grandmother's Fit-To-Parent Evaluation

In January 2025, Dr. Samantha Scott completed a fit-to-parent evaluation of Grandmother. She prepared a report in which she concluded that, though Grandmother did

not meet the criteria for a formal psychiatric diagnosis, Dr. Scott believed Grandmother had not processed the traumas she experienced throughout her life. Dr. Scott noted that Grandmother tended to suppress, minimize, and deny her struggles and her family members' struggles. Interviews and reports pointed to Grandmother following a similar pattern with her family members, which impacted her ability to properly care for and support their emotional, medical, and academic needs.

Dr. Scott had previously evaluated other family members before evaluating Grandmother. In the fall of 2020, Dr. Scott performed neuropsychology and parenting evaluations of Mother, concluding that she had a mild cognitive impairment and mild to moderate intellectual disability, which interfered with her ability to live and function independently and may require partial or fully assisted living. Dr. Scott also evaluated B.B. and F.M., between February and August 2024, due to DSS involvement with their daughter C. She concluded that B.B. and F.M. were unable to meet C.'s needs on their own.

During one of two interviews with Dr. Scott, Grandmother mentioned the birth and subsequent removal of K.B.'s siblings from Mother while they lived with Grandmother. She did not take accountability for her involvement in the removal of Mother's children after failing to follow through with medical care for certain children and failing to have one of the children's babysitters preapproved as DSS required.

Grandmother recounted the history of the sexual abuse allegations against Grandfather, stating that B.B. had become jealous early in their relationship and made false claims. She believed B.B. felt threatened by Grandmother's relationship with Grandfather

and wanted attention. Grandmother stated that B.B. initially asked Grandfather to scratch her back and later retracted her statements. Additionally, she noted that F.M. and his sister revived B.B.’s allegations, intending to affect Grandmother’s life, and that B.B. went along with it due to her need to please others.

Dr. Scott provided recommendations based on her evaluation and diagnostic impressions. She noted that she did not believe K.B. to be in immediate physical danger in Grandmother’s care, but that her social, emotional, behavioral, academic, and mental health needs were not being met. She expressed concern that K.B. could be at risk of further victimization because of her limitations and that Grandmother did not seem capable of protecting her from future harm. Dr. Scott recommended exploring alternative placements that could offer K.B. support and stability, that K.B.’s interactions with Mother and Grandmother be supervised to ensure they did not cause her additional distress, and that K.B. begin trauma therapy and attend appointments regularly.

March 2025 Review Hearing and April 2025 Exceptions Hearing

On March 24, 2025, the magistrate conducted a CINA review hearing. DSS recommended that K.B. be committed to its custody. The magistrate held a child consultation with K.B., reviewed multiple exhibits, and heard testimony from several witnesses. At the conclusion of the hearing, the magistrate recommended that K.B. be committed to DSS’s custody for out-of-home placement. K.B. and Grandmother both filed exceptions.

A *de novo* exceptions hearing was held on April 22, 2025. K.B. appeared at the hearing. Although the court prohibited her from staying in the courtroom, she was allowed to remain outside where her counsel could confer with her as needed during the hearing.

The court took judicial notice of reports in K.B.’s case that documented the information recounted above. These reports included more recent ones from November and December 2024, which included that K.B. felt “tired of holding all her emotions and feelings inside about the abuse in her family.” She expressed a desire to run away during her childhood due to the violence in her home and felt “paralyzed” by it. Despite a court order prohibiting contact between K.B. and Grandfather, she found herself in the middle of an altercation between him and Grandmother. It was also reported that K.B. had been discharged from mental health services due to missed appointments.

The court also took judicial notice of orders pertaining to other family members and to B.B.’s guardianship matters. Additionally, a video of Grandmother’s interview with the Worcester County Sheriff’s Office and Dr. Scott’s reports were admitted into evidence without objection.

As of April 2025, K.B. had missed 24 days of school and arrived late 16 times during the school year. Her absences and tardiness led to her missing her first-period reading intervention class on 39 occasions.

Grandmother testified that she and K.B. currently live in a home with no other family members. However, the evidence showed that one of Grandmother’s daughters and two of her children also resided there. K.B.’s case worker expressed concern that when

multiple family members live together, there tended to be “drama” and intense dynamics among them.

At the conclusion of the hearing, the court reserved its decision *sub curia*.

On April 25, 2025, DSS filed a Motion to Accept Additional Evidence, requesting that the court take judicial notice of an April 25, 2025 indictment of Grandfather on two counts of sexual abuse of a minor (not involving K.B.) and an order conditioning his pretrial release to home confinement on having no contact with any minor. K.B. filed a written response opposing DSS’s motion.

Court’s Decision

On May 12, 2025, the court issued its oral ruling. The court found that Grandmother’s involvement with DSS in other cases was significant for assessing K.B.’s situation. These previous cases included instances where Grandmother failed to ensure that one of Mother’s children, Br., attended follow-up medical appointments after experiencing a violent incident with a caretaker. Additionally, two of Mother’s other children, D. and L., were left in the care of an unidentified caretaker. There were also concerns regarding the medical neglect and financial exploitation of her own daughter, B.B., who has cognitive delays.

In addition, the court observed that there were no records indicating that K.B. attended school for six years, from kindergarten through either fifth or sixth grade, and noted that she was three grade levels behind her peers. Although Grandmother claimed to have been homeschooling K.B., no documentation was provided to support this assertion.

Additionally, the court pointed out that Grandmother had been prosecuted for failing to ensure that K.B. attended school, resulting in a probation before judgment and placement on probation. While K.B.’s academic progress had improved, she continued to accumulate absences.

The court raised concerns about K.B.’s unstable housing situation while living with Grandmother, which the court noted was not enough for the court to consider K.B. unsafe. However, the instability, along with the issues of family violence and the experiences of family members regarding sexual abuse while in Grandmother’s care, rose to a level requiring intervention.

The court expressed concern about K.B.’s consistent exposure to Grandfather, given the allegations of sexual abuse by him. The court reviewed Grandmother’s recorded interview with the Sheriff’s Office and noted her inability to grasp the severity of the situation. Additionally, the court found that Grandmother’s responses during the interview were inconsistent and erratic. Furthermore, although there was no dispute that Grandfather had been indicted for the sexual abuse of B.B. in March 2024, Grandmother contested the validity of that finding.

The court took judicial notice of Grandfather’s indictment without ruling on the Department’s motion because the indictment was part of the public record. The court made no conclusions about his guilt or innocence but rather noted that the charges “corroborate[d]” DSS’s “repeated concern” about his sexual abuse of family members.

Ultimately, the court found that Grandmother “was not a reliable witness, nor has she been straightforward with the Department through its involvement.” The court also observed that the extreme dysregulation within the family dynamics appeared to have gone unnoticed by Grandmother.

Since the exceptions hearing concerned the magistrate’s recommendations, the court reviewed the pertinent procedural history. It explained that CINA review hearings were held to review Grandmother’s progress under the applicable CINA statutes. The court stated that these hearings were “reviews of disposition” and were “custody hearings.” Thus, the court determined that it was bound by the constraints contained in Family Law § 9-101, which requires the court to determine whether abuse or neglect is likely to occur if custody is granted to the party who neglected the child. Based on the evidence before it as well as the pattern of neglect that “weave[d] through all of the facts in this case,” the court “[could not] make the desired finding that there’s no likelihood of further neglect.” The court denied the exceptions and affirmed the magistrate’s recommendation for out-of-home placement for K.B.

We shall supply additional facts as they become relevant to the discussion.

STANDARD OF REVIEW

There are “three distinct[] but interrelated standards of review” applied to a juvenile court’s findings in CINA proceedings. *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018). First, the juvenile court’s factual findings are reviewed for clear error. *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 708 (2011). 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. *Id.* at 719. Second, we determine “without deference” whether the juvenile court erred as a matter of law; if the court erred, further proceedings are ordinarily required unless the error is harmless. *H.W.*, 460 Md. at 214. Finally, we evaluate the juvenile court’s ultimate decision for abuse of discretion. *In re Yve S.*, 373 Md. 551, 583 (2003). A decision will be reversed for abuse of discretion only 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 (citation omitted).

DISCUSSION

I.

Application of FL § 9-101

K.B. and Grandmother argue that the juvenile court erred by applying the wrong legal standard to remove K.B. from Grandmother’s custody. Grandmother contends that the court incorrectly applied FL § 9-101, which she claims is relevant only when the court is considering granting custody or visitation rights, as was the case during the disposition hearing on August 4, 2023. Grandmother claims the court implicitly found that there was no likelihood of further abuse or neglect by Grandmother when it placed K.B. in her custody at that hearing. She argues that it was then DSS’s burden to prove new incidents

of abuse or neglect to justify K.B.’s removal at the exceptions hearing, an obligation it did not fulfill.⁷

Grandmother argues that, since there were no new incidents of neglect, the only applicable statute for removing K.B. from her custody after the disposition hearing is CJP § 3-820. She contends that this statute allows for the removal of a child only to protect them from serious immediate danger, of which the court found no evidence.

A.

Relevant Overview of Law

After a CINA petition is filed, the juvenile court must hold an adjudicatory hearing to decide whether the allegations in the petition are true. CJP §§ 3-801(c), 3-817. The 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 give proper care and attention to the child and the child’s needs.” *Id.* § 3-801(f).

⁷ To bolster her argument, Grandmother contends that “procedural due process” required the court to make a new finding of neglect to justify removal of K.B. from Grandmother at the exceptions hearing. Her due process argument, however, is not preserved. *See Md. Rule 8-131(a)* (“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.”); *Tucker v. State*, 237 Md. 422, 425 (1965) (“An objection can not be made for the first time upon appeal.”). Grandmother did not object at the proceeding below to a violation of her due process rights. She did not raise the due process argument that she now raises on appeal. Nor did the court decide the issue on its own volition. Accordingly, her reliance on due process is not preserved.

If the court makes this finding, it then holds a disposition hearing. *Id.* § 3-819(a); *see also* Md. Rule 11-216(a)(2). At the disposition hearing, the court determines whether the child is, in fact, a CINA and, if so, the nature of any necessary court intervention. *See* CJP §§ 3-801(m), 3-819(a). If the court determines that the child is a CINA, it may take one of three actions: (1) decide not to change the child’s current custody status; (2) commit the child to the custody of a parent, relative, or another suitable individual; or (3) commit the child to the custody of the local department of social services or the Maryland Department of Health. *See id.* § 3-819(b)(1)(iii).

At the disposition hearing in August 2023, pursuant to an agreement by the parties, the court found K.B. was a CINA but allowed her to remain with Grandmother under an order of protective supervision. Since K.B. was determined to be CINA, the court was also required to consider CJP § 3-816.2(a). Section 3-816.2(a) provides, in relevant part, that at a review hearing, the court shall evaluate the safety of the child and determine the continuing necessity for and appropriateness of any out-of-home placement. *See* CJP § 3-816.2(a)(2)(i)–(ii).

In cases where abuse or neglect is evidenced in a CINA case, the court’s role is “necessarily more pro-active.” *In re Yve S.*, 373 Md. at 570 (citation omitted). Where a child has been declared a CINA because of abuse or neglect, the court is constrained by the requirements of FL § 9-101 *Id.* at 587. FL § 9-101 provides:

- (a) In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.

(b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

The Supreme Court of Maryland has explained the significance of FL § 9-101 in CINA proceedings, stating:

This section directs the court to deny custody to the parent unless the court makes a specific finding that there is no likelihood of further abuse or neglect. The burden is on the parent previously having been found to have abused or neglected his or her child to adduce evidence and persuade the court to make the requisite finding under § 9-101(b).

In re Yve S., 373 Md. at 587 (internal citations omitted).

This Court has clarified that “the source of the court’s authority to make custody and visitation determinations does not stem from § 9-101 alone.” *Baldwin v. Baynard*, 215 Md. App. 82, 108 (2013).

The best interest of the child standard is the overarching consideration in all custody and visitation determinations. In assessing the best interests of the child, “[a] trial court, acting under the State’s *parens patriae* authority, is in the unique position to marshal the applicable facts, assess the situation, and determine the correct means of fulfilling a child’s best interests.”

Id. (quoting *In re Mark M.*, 365 Md. 687, 706 (2001)).

This Court has also clarified that the focus of FL § 9-101 “is not on a particular child but on the party guilty of the previous abuse or neglect.” *In re Adoption No. 12612*, 353 Md. 209, 234 (1999). The statute applies when the abuse was directed against *any* child because it ensures that “the party responsible for abusing or neglecting a child in the past will not abuse or neglect the child or children whose custody or visitation is within the

court’s control, whether or not they were the ones subjected to the previous abuse or neglect.” *Id.*

B.

Analysis

We are not convinced by Grandmother’s attempt to limit the application of FL § 9-101 to only the initial grant of custody to Grandmother during the disposition hearing. A dispositional custody order is temporary and modifiable. *In re X.R.*, 254 Md. App. 608, 630 (2022) (explaining that the “CINA statute is permeated with provisions that underscore the impermanence of a dispositional custody award”). FL § 9-101 applies to “any custody or visitation proceeding.” When a juvenile court decides on the best custodial arrangement—whether at the dispositional stage or during a later review hearing—it is considered a custody proceeding. *See, e.g., In re X.R.*, 254 Md. App. at 627 (explaining that when the court determines the custodial arrangement at a dispositional stage of a CINA proceeding, it constitutes a custody proceeding).

At the exceptions hearing, DSS recommended modifying the custodial arrangement and that K.B. be committed to the Department’s custody. The court was not only required to evaluate the child’s safety and determine the appropriateness of any out-of-home placement under CJP § 3-816.2(a)(2)(i), (ii), but it was also constrained by the requirements of FL § 9-101. *See In re Yve S.*, 373 Md. at 587. Therefore, the court’s application of FL § 9-101 during this hearing was correct.

We disagree that the court should have applied the standard under CJP § 3-820 instead. That statute provides:

After a CINA disposition, when the court has ordered a specific placement of a child, *a local department may remove the child from that placement prior to a hearing* only if:

- (1) Removal is required to protect the child from serious immediate danger;
- (2) The child's continued placement in the court-ordered placement is contrary to the welfare of the child; or
- (3) The person or agency with whom the child is placed has requested the immediate removal of the child.

CJP § 3-820(a) (emphases added). In other words, the statute governs the procedure for removal of a child from a court-ordered placement that the local department effectuates in advance of court authorization. However, the specific circumstance that would trigger this procedure under the statute was not before the court.

II.

Sufficiency of the Evidence

K.B. and Grandmother argue that there was insufficient evidence to justify the removal of K.B.⁸ They contend that the court was required to focus on the current circumstances and the child's best interests, rather than solely on historical patterns. Grandmother claims that DSS did not present any new allegations of neglect prior to the review hearing that would warrant K.B.'s removal. According to them, the court relied on

⁸ Grandmother argues that there was insufficient evidence to remove K.B. under CJP § 3-820. Because we conclude that this statute was inapplicable to the review hearing at issue, we need not address this argument.

“stale and irrelevant evidence” from before the last review hearing and overlooked the progress that Grandmother and K.B. had made.

They also argue that the court improperly relied on speculation without factual findings, placing significant weight on Grandfather’s unproven criminal charges for sexual abuse of an unidentified minor. Grandmother contends that under FL § 9-101, her only requirement was to prove that there was no likelihood of neglect recurring. According to Grandmother, there was no probability that neglect by Grandmother was likely, and that the court based its decision on a gut reaction rather than a genuine concern for K.B.’s safety. Grandmother concludes that removing K.B. is not in her best interests, as the permanency plan was focused on reunification. By taking K.B. away from Grandmother—her only available caregiver—the court’s decision undermined the goal of achieving permanency for K.B.

Maryland courts have held that a finding of whether neglect exists is determined by a “totality of the circumstances.” *In re J.R.*, 246 Md. App. 707, 752 (2020). In accordance with CJP § 3-801(t), “neglect” is defined as follows:

(t)(1) “Neglect” means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or individual who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:

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

“[N]eglect might not involve *affirmative* conduct.” *In re Priscilla B.*, 214 Md. App. 600, 625 (2013). Rather, the court may assess “neglect by assessing the *inaction* of a parent over time. To the extent that inaction repeats itself, courts can appropriately view that pattern of omission as a predictor of future behavior, active or passive[.]” *Id.* This is because “[i]t 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.” *In re Adriana T.*, 208 Md. App. 545, 570, (2012) (internal citation omitted). A court need not wait for a child to suffer affirmative abuse or neglect before such a finding can be made. *Priscilla B.*, 214 Md. App. at 626. “The purpose of [the CINA statute] is to protect children—not to wait for their injury.” *In re William B.*, 73 Md. App. 68, 77–78 (1987). Therefore, “parents’ ability to care for the needs of one child is probative of their ability to care for other children in the family.” *Id.* at 77.

We disagree with K.B. and Grandmother regarding the assertion that the court relied on outdated information. Additional evidence of Grandmother’s neglect was presented following the disposition, during various review hearings, and especially after the November 2024 hearing. This information “weave[d] all through the facts in this case,” prompting the court to reconsider custody with Grandmother.

For instance, while K.B.’s school attendance showed some improvement, she still accrued unexcused absences and tardiness. Moreover, she missed 39 remedial reading sessions, which the court deemed significant. In addition, the evidence included K.B.’s

disclosures about the emotions she had been suppressing regarding the violence she witnessed in her family. She described how witnessing some of the physical abuse had left her “paralyzed” with fear. The court also reviewed the video of the interview conducted with Grandmother by the detective following K.B.’s forensic interview. Grandmother’s responses suggested that she either could not or was unwilling to acknowledge the seriousness of the allegations.

Contrary to K.B.’s and Grandmother’s assertions, the court was entitled to consider the history of neglect. The Supreme Court of Maryland has made it clear that “[c]ourts should be most reluctant to ‘gamble’ with an infant’s future; there is no way to judge the future conduct of an adult excepting by his or her conduct in the past.” *McCabe v. McCabe*, 218 Md. 378, 384 (1958). “[T]he court need not wait until the child suffers some injury before determining that he is neglected[.]” *In re Dustin T.*, 93 Md. App. 726, 735 (1992). As we wrote in *In re Dustin T.*, the juvenile court may examine the parents’ “track record” to determine if a child is “merely placed at risk of significant harm.” *Id.* (emphasis in original).

The court expressed that it could not ignore several critical issues, including the failure to provide necessary medical care for Mother’s child, Br., a child with life-altering injuries; the failure to ensure that B.B. received medical attention for her broken ankle; and the fact that Grandmother was found to have financially exploited B.B. Additionally, there was a failure to send K.B. to school and to protect the grandchildren from violence and

potential sexual abuse. As the court explained, “That failure to protect is neglect, pure and simple.”

The court further explained that “the recent cases” involving Grandmother and “the family’s past” were “not just an indicator of the future, it’s a picture of a continuing pattern of neglect that has overshadowed [K.B.’s] life.” Given Grandmother’s history of neglect of K.B. and the neglect and abuse of other children in her care and the conditions that precipitated this CINA case, the juvenile court’s findings that it could not conclude that no further neglect would occur and that it was in the child’s best interest to be removed from Grandmother’s custody were supported by the evidence.

III.

Dr. Scott’s Evaluations

Grandmother argues that the juvenile court erred or abused its discretion by considering Dr. Scott’s evaluation, claiming it was biased because she had previously evaluated other family members who expressed negative feelings about Grandmother.

At Grandmother’s request, the court admitted into evidence the American Psychological Association Guidelines for Psychological Evaluation in Child Protection Matters. According to Grandmother, one of these guidelines states that psychologists conducting child protection evaluations should strive to avoid role conflicts and multiple relationships that could compromise their objectivity. She emphasized that several factors could create role conflicts or introduce biases. For instance, these challenges may arise when evaluating multiple parties or dealing with the complexities involved when experts

assess successive generations of a family, as Dr. Scott did in evaluating K.B.’s various family members.

After its review of the guidelines, the court stated that it had “declined to give great weight” to the evaluation because of Dr. Scott’s potential bias based on her evaluations of other family members. However, “the weight of the evidence otherwise suggests and validates her ultimate conclusions.” The court explained that Dr. Scott’s “findings are absolutely consistent with the other evidence before this [c]ourt in [K.B.’s] case . . . and in the other cases before the [c]ourt.”

We conclude that the court did not err or abuse its discretion in giving Dr. Scott’s findings and conclusions the weight that it did. Evidence admitted becomes available for consideration for any purpose and may be accorded any weight by the court. *In re Faith H.*, 409 Md. 625, 646 (2009). The court was entitled to consider how much weight to give to Dr. Scott’s conclusions. We do not weigh the evidence, as that is the responsibility of the trier of fact. *Pryor v. State*, 195 Md. App. 311, 329 (2010). We cannot say that the court erred in weighing Dr. Scott’s conclusions in the manner it did.

Grandmother cites *In re Marriage of Adams & Jack A.*, 148 Cal. Rptr. 3d 83, 103 (Cal. App. 4 Dist. 2012), to support her argument that the court should not have considered Dr. Scott’s conclusions at all. However, her reliance on this case is inapt. In *Adams*, the father sought to remove the custody evaluator because of the evaluator’s bias. *Id.* at 87. When the father asked the evaluator to recuse himself, the evaluator refused, forbade the father and his counsel from contacting him, and proceeded to write a biased report against

the father. *Id.* at 92. The trial court denied the father’s motion without a hearing and proceeded to the custody hearing, in which the court awarded the mother sole legal custody based at least in part on the evaluator’s biased report. *Id.* at 97.

The appellate court concluded that under these circumstances, the trial court abused its discretion by denying the father’s motion for the removal of the evaluator. *Id.* at 101. Because the trial court relied on the evaluator’s biased report in awarding custody to the mother, the appellate court reversed the award of custody. *Id.* at 103. The appellate court expressly stated that its conclusion was “limited to the unique facts before [it].” *Id.* at 101 n.9. Unlike the trial court in *Adams*, the court here recognized Dr. Scott’s potential bias and expressly declined to give great weight to her evaluation. Instead, it indicated that it relied primarily on other evidence, noting that Dr. Scott’s findings and conclusions were consistent with and validated other evidence that had been admitted. For the reasons stated, the court did not err in weighing Dr. Scott’s evaluation in the manner that it did.

IV.

Judicial Notice of Grandfather’s Criminal Charges

K.B. and Grandmother argue that the circuit court erred in considering evidence of Grandfather’s criminal charges of child sex abuse after the close of evidence and before ruling without providing an opportunity for argument and rebuttal.

As mentioned, after the parties presented their cases, the court scheduled a hearing to issue its ruling. After the last day of trial, DSS filed a motion to admit additional evidence. It wanted the court to take judicial notice of Grandfather’s criminal charges, for

which he had recently been indicted. K.B. opposed the request, explaining that her counsel had not had an opportunity to object to the presentation of such evidence, the ability to cross-examine witnesses or present additional evidence regarding this.

The court addressed DSS's motion in its oral ruling. It explained that it would take judicial notice of his criminal charges, but it limited its consideration of the charges to corroboration of DSS's concerns about Grandfather:

Counsel for [DSS] asked that the [c]ourt accept additional evidence of those charges. This [c]ourt determined that it need not grant that motion. This is a public record at this point and it can take judicial notice of the charges now pending against [Grandfather]. These criminal charges were filed on April 22nd, he has been to the court, has had a bond review, and is on pre-trial release. And while the [c]ourt can most certainly note no conclusion about his guilt or innocence, it would note that the criminal charges certainly corroborate [DSS's] repeated concerns about [Grandfather's] sexual abuse of [B.B.], perhaps of [B.B.'s child, C.], and perhaps as well of [K.B.].

On appeal, K.B. argues that the court erred in taking judicial notice of Grandfather's criminal charges because she was unable to address this fact with argument or rebuttal evidence. If given the opportunity, she would have demonstrated how she was even more protected because Grandfather was now under a court order preventing contact with children or questioned Grandmother and other witnesses about his charges.

We conclude that the court did not err in taking judicial notice of Grandfather's criminal charges. A trial court's decision regarding judicial notice is governed by Maryland Rule 5-201, which states as follows:

(a) Scope of Rule. This Rule governs only judicial notice of adjudicative facts. Sections (d), (e), and (g) of this Rule do not apply in the Appellate Court or the Supreme Court.

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When Discretionary. A court may take judicial notice, whether requested or not.

(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to Be Heard. Upon timely request, a party is entitled to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing Jury. The court shall instruct the jury to accept as conclusive any fact judicially noticed, except that in a criminal action, the court shall instruct the jury that it may, but is not required to, accept as conclusive any judicially noticed fact adverse to the accused.

We review the trial court’s decision to take judicial notice for abuse of discretion. In reviewing a trial court’s exercise of discretion, we “will not find an abuse of discretion unless there is a ‘showing that a court acted in a harsh, unjust, capricious and arbitrary way.’” *E. Shore Title Co. v. Ochse*, 453 Md. 303, 336 (2017) (citation omitted). There is no such showing here. When the juvenile court took judicial notice of Grandfather’s criminal charges, it clarified that it did not make any judgments regarding his guilt or innocence. The court’s consideration of this information simply supported DSS’s concerns about Grandfather’s presence around K.B., a point that had already been discussed by the parties throughout the hearing.

K.B. argues that the court’s review of the criminal charges amounted to reopening the case to allow new evidence without giving her an opportunity to respond or challenge that evidence, which resulted in prejudice against her. However, even if we were to consider the issue from that standpoint, we would still conclude that the court did not abuse its discretion.

The trial court’s discretion to receive or reject additional evidence once trial is over “is very broad.” *Della Ratta v. Dyas*, 183 Md. App. 344, 374 (2008). When considering whether to reopen a case to receive additional evidence, the court takes into account “whether the proffered evidence is ‘essential’ to a party’s case or ‘supplemental,’ whether a party will be improperly prejudiced, and whether the omission was inadvertent.” *Id.* (internal citations omitted). We have held that it is an abuse of discretion not to reopen a trial when the evidence a party is seeking to introduce is material to the party’s case. *See Valerino v. Little*, 62 Md. App. 588, 601 (1985); *accord Cooper v. Sacco*, 357 Md. 622, 639–40 (2000). When it comes to minor or supplemental evidence, “the discretion of the trial judge as to whether to reopen the case will be broader.” *Cooper*, 357 Md. at 643. While courts have discretion to reopen a case to receive additional evidence, an abuse of discretion may occur when there is “‘improper’ prejudice against a party in reopening or not reopening a case.” *Id.* at 637.

To the extent that the case was reopened to admit evidence of the charges, this was not prejudicial. K.B. argues that she would have addressed how much more protected she felt now that Grandfather was under a court order in the criminal case, prohibiting him

from contacting children. She also intended to question Grandmother and other witnesses about the allegations against him. However, the allegations of Grandfather’s sexual abuse were significant topics during the hearing, and both parties addressed them throughout the proceedings. And in her closing statements, K.B. made a similar argument that DSS could impose a “legal protective order” against Grandfather to alleviate concerns about her safety.

In its oral ruling, the court indicated that it was not convinced that a protective order, or even an order in the criminal case prohibiting him from having contact with children, would ensure K.B.’s safety. This skepticism stemmed from the other evidence presented during the hearing, which led the court to doubt that Grandmother could effectively protect K.B. from Grandfather.

Additionally, as noted earlier, the court did not make a determination regarding Grandfather’s guilt or innocence concerning the charges. Instead, the court considered these charges merely to support the concerns that DSS had already raised, based on evidence presented during the trial. For the reasons stated, the court did not abuse its discretion in taking judicial notice of the criminal charges after the case had closed and before ruling.

V.

Child’s Presence During the Exceptions Hearing

K.B. argues that the circuit court erred in excluding her from the exceptions hearing. She argues that she had a right to be present in the courtroom to assist counsel during the hearing.

On April 22, 2025, K.B. attended a *de novo* exceptions hearing in court, which began at 9:30 a.m. However, K.B.’s attorney had not yet arrived. The court inquired why K.B. was in the courtroom instead of at school, where it believed she “should be.” The court expressed strong disapproval of children attending contested hearings that pertain to their custody and access, particularly in the case of a 12-year-old, referring to K.B., who was actually 13 at the time of the hearing.

Mother’s counsel stated that Mother did not want K.B. to be in court, especially since the child had already missed three days of school since the last hearing. DSS also opposed the child being present in the courtroom during the proceeding. Grandmother’s counsel deferred to K.B.’s counsel.

While waiting for K.B.’s attorney to arrive, the court addressed K.B., explaining that it would be inappropriate for a child of K.B.’s age to be in the courtroom during a contested hearing where the child is the subject of “argument[s] back and forth.” The court asked K.B. to step outside of the courtroom.

When K.B.’s attorney arrived, the court heard opening remarks from counsel. K.B.’s counsel addressed K.B.’s presence in court. She explained that K.B. is a party to the proceeding and has “a right to attend the court hearing, she wanted to attend the court hearing, and that is why she is here.” The court reiterated its view “that children who are the subject of custody cases and/or juvenile cases, unless it is a delinquency case, especially in a case like this that is highly contested, it is most likely not in their best interest that they

be here, especially since they have counsel” who “will be advocating for her and also representing her best interest.”

K.B.’s counsel responded that in a CINA proceeding, “it is extremely important for not only the child’s voice to be heard but they be allowed to participate in the court hearing when that is their position as they are a party.”

The court did not “believe that any [c]ourt . . . who should be looking out for a best interest of minors, especially children that are under the age of 15, that may have developmental delays,” should allow a child to “be present during a court hearing when there are issues of access and the reasons why each party is arguing either for or against access.” The court noted that the magistrate had already consulted K.B., so the child’s “voice has been heard, and it’s part of the court record.”

Ultimately, the court allowed K.B. to remain present outside the courtroom during the proceeding. Her counsel was permitted to step out and discuss matters with K.B. as needed during the proceeding. The court explained:

THE COURT: So certainly you are welcome to excuse yourself at any point in time if you wish to talk to her. I believe she should be in school, especially given an ongoing failure to send case when [Grandmother] is still on probation. I can’t imagine that when we balance out what’s important for [K.B.] that her presence here today could not be adequately represented by you[.]

[K.B.’s COUNSEL]: It’s not just her position, Your Honor, it’s not just her voice, but her active participation in the evidence that is received. And I understand, this is a fundamental difference that I didn’t see us, you know, agreeing on, since this is your courtroom. I don’t know what else to say about that.

THE COURT: Okay. All right. If it is your position that she should stay here and not go to school today so that you can interact with her as needed, I’ll

accept that. I don't think it's particularly good for her, especially given her issues with her academic performance, but I would accept that if you believe she needs to stick around so that you can talk to her and get her position on things, that's fine. I do not want her in the courtroom. I don't think it's in her best interest for her to be part of this.

Before this Court, K.B. argues that she was a party in the CINA proceeding and therefore had a fundamental right to be present in the courtroom during the exceptions hearing and to consult with her lawyer. She contends that the court's suggestion for her counsel to excuse herself from the courtroom to consult with K.B. was neither practical nor fair, as this approach placed K.B. at a significant disadvantage in accessing justice. K.B. asserts that her due process rights entitle her to be heard in a meaningful way and at a meaningful time. In addition, K.B. argues that the court's exclusion was not based on any individualized finding of harm or detriment to K.B. but rather on a generalized policy preference.

Under the circumstances, we conclude that the court did not abuse its discretion in excluding K.B. from the courtroom during the hearing and allowing counsel to consult with her as needed. Maryland Rule 11-108(d)(1) states, “A determination of who may or shall be excluded from a CINA or voluntary placement hearing is governed by [CJP] § 3-810(b).”⁹ CJP § 3-810(b)(1) addresses the juvenile court’s ability to exclude certain individuals from a hearing:

⁹ Rule 11-108 is derived from former Rule 11-110 (2021), which provided in relevant part:

The hearing . . . may be conducted out of the presence of all persons except those whose presence is necessary or desirable. If the court finds that it is in

In any proceeding in which a child is alleged to be in need of assistance or in any voluntary placement hearing, the court may exclude the general public from a hearing and admit only those persons having a direct interest in the proceeding and their representatives.

CJP § 3-810(b)(1); *see also* Md. Rule 11-109 (2022) (excusing the child’s presence from juvenile proceedings for good cause).

A child is a party to a CINA proceeding. *See* CJP § 3-801(v)(1)(i) (defining “party” to include “[a] child who is the subject of a petition”). Certainly, the child would be considered a person who has a direct interest in the proceeding. “A CINA proceeding is essentially civil in nature.” *In re Maria P.*, 393 Md. 661, 672 (2006). “[I]t is clear that the right [to be present for and to participate in the trial of one’s case] emanates . . . from the common law of Maryland, from the due process clause of the Fourteenth Amendment to the U.S. Constitution, from the Maryland equivalent of that clause, Article 24 of the Declaration of Rights, and from Article 19 of the Declaration of Rights.” *Green v. N. Arundel Hosp. Ass’n, Inc.*, 366 Md. 597, 618 (2001). “This right, however, is not absolute, and ‘there are circumstances in which a civil case may proceed without the attendance of a party and, indeed, with the party excluded.’” *In re Maria P.*, 393 Md. at 678 (quoting *Green*, 366 Md. at 618–19).

the best interest of a child who is the subject of the proceeding, the presence of the child may be temporarily excluded except when the child is alleged to have committed a delinquent act.

Md. Rule 11-110(b) (2021).

Due process “does not require procedures so comprehensive as to preclude any possibility of error.” *Id.* at 674. Instead, “due process merely assures reasonable procedural protections, appropriate to the fair determination of the particular issues presented in a given case.” *Id.* at 674–75. “The determination of whether the exclusion of a party constitutes sufficient prejudice, either presumed or actual, to warrant a new trial depends, to some extent, on the circumstances.” *Id.* at 678. The focus of our analysis should not just hinge upon the exclusion of a party from the proceedings, but “why the exclusion was prejudicial.” *Id.* (quoting *Green*, 366 Md. at 621). The “asserted denial of due process is to be tested by an appraisal of the totality of the facts in a given case.” *Id.* at 675.

In re Maria P. is instructive. During the CINA adjudicatory hearing, the Department made a motion to close the courtroom to everyone except court personnel, the child’s counsel, certain social workers, and the petitioner/mother’s counsel. *Id.* at 670. The Department specifically requested that the mother be excluded from the courtroom during the child’s testimony. *Id.* Mother’s counsel objected, and the judge granted the Department’s request to exclude the mother. *Id.* The judge excluded the mother from the courtroom only during the child’s direct and cross-examination. *Id.* The judge noted that the proceeding focused on the child’s allegations, and “that the allegation of the County is that her mother has not responded appropriately, and therefore, there may be some influence on” the child due to her age. *Id.* The judge also found that it was in the child’s best interests “not [to] be subjected to any type of influence that may cause her to shade her testimony.” *Id.* at 670–71.

The Supreme Court of Maryland held that the juvenile court abused its discretion in excluding the mother from the hearing. *Id.* at 676. There was no indication on the record that the judge considered the mother’s due process rights. *Id.* The judge did not conduct an inquiry into the reasons for the mother’s exclusion; no testimony was placed on the record, and no inquiries were made of the Department regarding the specific reasons for Petitioner’s exclusion during the child’s testimony. *Id.* In such a situation, the Court was “unable to discern the judge’s exercise of discretion if he or she does not state, or there does not exist, on the record, the factual basis for his or her decision.” *Id.* at 676–77.

The procedure in that case resulted in the exclusion of the mother “based merely on the Department’s allegation that [she] would unduly influence [the child’s] testimony.” *Id.* at 678. The Court explained that excluding the mother “on the basis of a brief mention of the Department’s allegations alone resulted in unfairness and prejudice to [the mother], and thus denied her due process.” *Id.* The mother was unable to confer with her attorney during the child’s testimony and was permitted by the court to do so only before the child’s cross-examination. *Id.* The Court held that the juvenile court abused its discretion in excluding the mother from the proceedings without making any specific factual finding as to the propriety of her exclusion. *Id.* at 679.

In contrast to *Maria P.*, the record in this case reveals that the court considered K.B.’s due process rights and expressed the factual basis for its decision to exclude her from the hearing. The court noted that this case was “highly contested,” which we understand referred to the sensitive nature of the evidence, which included difficult topics

related to Grandmother’s behavior, psychological evaluations of both K.B.’s mother and grandmother, and allegations of child sexual abuse by Grandfather. Given K.B.’s young age, the court expressed concern about her being exposed to such challenging testimony.

The court considered the parties’ positions. After considering the arguments from K.B.’s attorney, the court acknowledged the necessity for K.B. to be present for consultations with her counsel. However, it also recognized the importance of protecting K.B.’s best interests by preventing her from being exposed to the contentious nature of the hearing. As a result, the court required K.B. to remain outside the courtroom during the proceedings but allowed her attorney to step out to discuss matters with her as needed. This situation is unlike *Maria P.*, in which the mother was prejudiced and denied due process because the court permitted the mother to confer with her attorney only before cross-examination of the child. In the instant case, K.B.’s counsel was not restricted in consulting with K.B. during the hearing. For the reasons stated, the court did not abuse its discretion in excluding K.B. from the courtroom during the hearing.¹⁰

¹⁰ K.B. cites various policies and recommendations from different organizations to support her argument that a child’s participation in a CINA proceeding is essential. See, e.g., National Council of Juvenile and Family Court Judges, *Seen, Heard, and Engaged: Children in Dependency Court Hearings* (2012) [hereinafter NCJFCJ], <https://perma.cc/EG32-FCTL>; Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings § 9 (ABA 2011) [hereinafter ABA Model Act], <https://perma.cc/2F89-L7EK>; American Bar Association, *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (1996), <https://perma.cc/2PB4-Q6ZF>. However, K.B.’s reliance on these sources is unavailing for various reasons.

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

First, these sources are merely recommendations for legislative action and policy changes. They encourage and provide guidance for bringing children to court for hearings, but they are not binding on this Court.

Second, as these sources acknowledge, Maryland is already one of several states with laws recognizing children's right to attend hearings. *See* NCJFCJ at 4–5; *see, e.g.*, CJP § 3-823(j) (requiring the court to consult on the record with the child in an age-appropriate manner to obtain the child's views on permanency); Md. Rule 11-109 (2022) (requiring the custodian to bring the child to all hearings unless the child's presence is excused by the court for good cause; allowing child's attorney to waive child's presence in any proceeding other than a delinquency proceeding or a child consultation pursuant to CJP § 3-823(j)).

Finally, although these sources recommend that children appear in court at hearings, they acknowledge that this is not an absolute rule; there are circumstances where a child may be excluded from a hearing. *See* NCJFCJ at 4 (recommending that children be brought to court, “unless the judge decides it is not safe or appropriate”); *id.* at 9 (recognizing that “if certain parts of the court proceeding raise unusually upsetting issues, the child can be excluded from that part of the hearing”); ABA Model Act, § 9, Commentary (“Factors to consider regarding the child's presence at court and participation in the proceedings include . . . whether the child would be severely traumatized by such attendance;” considering “excluding the child during harmful testimony”).