Circuit Court for Howard County
No. C-13-JV-19-000016
No. C-13-JV-19-000017
No. C-13-JV-20-000022

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1436

September Term, 2022

IN RE: SU. N., SA. N., & SO. N.

Graeff,
Berger,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: May 16, 2023

*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.

This appeal arises from an order of the Circuit Court for Howard County, sitting as a juvenile court, that indefinitely eliminated all in-person visitation between two parents and their three children.

During a hearing concerning the parents' exceptions to a magistrate's recommendations, a caregiver for the children asked the court to suspend parental visitation. The caregiver, who was not under oath and not subject to cross-examination, claimed that the parents made false reports to local authorities about child abuse in the caregiver's home. Through counsel, the mother requested an evidentiary hearing for the purpose of challenging the caregiver's allegations. The court denied her request and issued an order eliminating all in-person visitation between the parents and their children.

The parents appealed from the visitation order. In her appeal, the mother contends that the court erred when it eliminated her in-person visitation without affording her a hearing to challenge the allegations against her. Her contention is correct. Consequently, this Court will reverse the juvenile court's visitation order, which will have the effect of reinstating the parents' in-person visitation with their children.

BACKGROUND

A. Initial Juvenile Court Proceedings and Out-of-Home Placements

S.W. ("Mother") and J.N. ("Father") are the parents of three children. Their first child was born in June 2016, their second child was born in December 2017, and their third child was born in January 2020.

In January 2019, the Howard County Department of Social Services filed petitions requesting shelter care for the first child (then two-and-a-half years old) and the second

child (then one year old). At that time, the two older children lived with Mother in Howard County. The Circuit Court for Howard County, sitting as a juvenile court, placed both children in the custody of the Department.

After an adjudicatory hearing, the juvenile court found that each child was a child in need of assistance or "CINA."[1] The court ordered that the two children would remain in the custody of the Department for placement in foster care. The orders stated that Mother and Father would "have visits with the child[ren] as is directed by [the Department]." After a permanency planning hearing in June 2019, the court established permanency plans for both children of reunification with their parents.[2]

In July 2019, the Department placed the two children in the care of their maternal aunt, Ms. W., who lives in California with her husband, Mr. B., and their three children. To facilitate the placement under the Interstate Compact on the Placement of Children,[3] Ms. W. became a licensed foster care provider in the State of California.

After the children relocated to California, Mother and Father began having contact with them through Facetime. The parents also had in-person visits when they travelled to

[1] The term "'[c]hild in need of assistance'" means "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, 2020 Repl. Vol.), § 3-801(f) of the Courts and Judicial Proceedings Article.

[2] In June 2019, the State charged Mother with second-degree child abuse and criminal neglect with respect to both children. Mother was acquitted of those charges in May 2021.

[3] Md. Code (1984, 2019 Repl. Vol.), §§ 5-601 to 5-611 of the Family Law Article.

California for two weeks in August 2019.

The parents' third child was born in January 2020. Two weeks after the child's birth, the Department filed a petition alleging that the child was a CINA. The court ordered that the child be placed in shelter care. At two separate hearings, the court found both parents in contempt for their refusal to produce the child as required by the shelter care orders. Once the parents produced the child, the Department placed the child in the care of Ms. W. in California, along with the child's two older siblings. After an adjudicatory hearing in February 2020, the court found the third child to be a CINA and continued the child's placement with Ms. W.[4]

After review hearings in June 2020 and September 2020, the court continued the placement of the three children with Ms. W. and maintained the permanency plans of reunification. The court ordered that the parents would continue to "have visits with the child[ren] as directed by [the Department]." Review hearing orders note that parental access was "set up via Facetime" every weekday evening for "15-minute intervals."

B. Proposed Changes to Permanency Plans and the Parents' Exceptions

Shortly before a permanency plan review hearing on March 10, 2021, the Department requested that the court change the permanency plans for all three children to adoption by a relative, with Ms. W. and Mr. B. identified as caregivers. Mother and Father objected to the request to change the permanency plans of reunification.

[4] Both parents appealed from the order finding their third child to be a CINA. This Court affirmed that order in an unreported opinion. The parents filed a petition for certiorari. Their petition was later dismissed.

The electronic docket indicates that the family magistrate filed a proposed order on March 10, 2021, the same day as the review hearing. Among other things, the proposed order included a provision to change the permanency plans for all three children to adoption by a relative. The court signed the proposed order and docketed it four weeks later, on April 5, 2021.

On the following day, Mother filed exceptions. Mother's counsel asserted that, after the review hearing, her counsel diligently monitored the electronic docket awaiting the magistrate's recommendations. She asserted that that the magistrate first served a copy of the report and recommendations by email on April 5, 2021, a few hours before the court filed the order adopting the magistrate's proposed order.

Father also filed his own exceptions. Father's counsel asserted that she first received the magistrate's report and recommendations on April 5, 2021, and that she did not observe a copy of the report and recommendations on the electronic docket at any time before that date. The parents' exceptions remained pending at the time of the next review hearing in August 2021.

A few weeks before that hearing, both parents had travelled to California with the hope of visiting the children in person. Those in-person visits did not occur, because the parents disagreed with Ms. W. about measures to protect against the spread of COVID-19 during the visits.

After the review hearing in August 2021, the magistrate again recommended permanency plans of adoption by a relative for all three children. Mother filed additional exceptions to the magistrates' recommendations.

In November 2021, Mother and Father travelled to California and participated in four in-person visits with the children. The parents returned to California in January 2022 and participated in four additional visits.

The magistrate held another permanency plan review hearing in February 2022. At that time, the magistrate again recommended permanency plans of adoption by a relative. Mother filed additional exceptions.

Meanwhile, the court conducted a multi-day exceptions hearing beginning in December 2021 and continuing in January 2022. The exceptions hearing resumed in June 2022, but it did not conclude. The court scheduled the exceptions hearing to resume on October 12, 2022. The court issued a hearing notice, which identified the proceeding as: "Hearing – Exceptions."

The court, acting through a judge different from the one who conducted the exceptions hearing, cancelled the next permanency plan review hearing, which had been scheduled to occur in July 2022. The judge filed a hearing sheet, which stated: "Review not held. Court defers 6 month review."[5] The hearing sheet noted that the exceptions hearing was already set to continue on October 12, 2022. The court did not issue any hearing notice for the "defer[red]" permanency plan review proceedings.

The Department filed a report in preparation for the exceptions hearing scheduled

[5] The previous permanency plan review hearing occurred on February 9, 2022. By statute, the juvenile court is required to conduct a hearing to review the status of each child under its jurisdiction every six months. Md. Code (1974, 2020 Repl. Vol.), § 3-816.2(a) of the Courts and Judicial Proceedings Article. Under this statute, the court was required to hold a permanency plan review hearing on or before August 9, 2022.

for October 12, 2022. In the report, the Department stated that, during the summer of 2022, Mother and Father travelled to California with the intention of having in-person visits with the children. According to the Department, the parents initially had supervised visits twice per week at an office for the local department of social services. In early August 2022, however, the local department in California informed the Department that it no longer had the capacity to accommodate those visits. The Department was unable to arrange for an alternative visitation center during the parents' trip to California. Ms. W. and Mr. B. offered to allow Mother to have visits with the children at their home, but they refused to allow Father to be present at their home. Mother declined their offer. The parents resumed having access to the children through Facetime twice per week.

In its report for the exceptions hearing, the Department recommended that any parental visits with the children "continue to be supervised[.]" The Department said that it perceived "no reason" why Mother "should not continue to enjoy visits with the children at this time[.]" The Department also said that it was unable to make recommendations about visitation with Father because he failed to cooperate with a parenting capacity evaluation.

C. Proceedings on October 12, 2022

On October 12, 2022, the juvenile court conducted a remote hearing through Zoom to address the parents' exceptions. Mother appeared with her attorney. Father appeared without representation.

Three weeks before the scheduled exceptions hearing, Father's attorney had

notified the court that she had obtained a protective order against Father and that she was no longer able to represent him. The court granted the attorney's request to strike her appearance.

When the hearing began on October 12, 2022, Father informed the court that he was still searching for an attorney and that he did not wish to proceed without representation.[6] The court announced that it would grant Father a continuance so that he could continue to seek representation. The court then announced that the exceptions hearing would resume three months later, on January 11, 2023.

At that point, the parties began to discuss the scheduling of a permanency plan review hearing. Counsel for the Department informed the court that another circuit court judge had cancelled the previously scheduled permanency plan review hearing. Counsel stated that he understood that the other judge had intended to schedule a permanency plan review hearing along with the exceptions hearing. Mother's attorney disagreed, stating that he was under the impression that no review hearing had been scheduled.

Before the court resolved this issue, the discussion turned to a new subject. The attorney for the children asked the court to "at least admonish the parents to not harass the caregivers during phone calls or Zooms with the children." The attorney for the children asserted: "There's been quite a history of harassment, especially since our last court hearing." The attorney claimed that there had been "multiple CPS reports against

[6] During the hearing, a representative from the Office of Public Defender told the court that its office was "declining at this time . . . to appoint a panel attorney" for Father because none of its other panel attorneys were "willing to represent" him.

the caregivers." The attorney said that she did not know "the specific other items," but suggested that those reports were available "online if the [c]ourt would like to inquire."

The court said that it had "no problem addressing the issue," but asked for "some clarification" about what the attorney for the children was "saying or alleging that the parents" had done. The attorney said that she would "defer" to the caregivers, Ms. W. and Mr. B., "to answer the specifics as to what's being said." The court observed that Ms. W. was no longer part of the Zoom meeting. The court then asked Mr. B. for more information. The following discussion occurred:

> [MR. B.]: We've had multiple allegations placed against us where they were stating that kids was falling down the stairs. The most recent one, they alleged that my fifteen-year-old son sexually assaulted [one of the children]. So, we had CPS come out. We had [the local police department] come out. And all of it was just allegations. Everything was unfounded. But they were trying to have my fifteen-year-old son taken from our house via CPS. And they also -- it seems like every time before court, they file these allegations which puts our documents on hold.
>
> THE COURT: I'm sorry, puts your what on hold?
>
> [MR. B.]: Puts our documents to take kids into our home, puts it in a pending status because we're under investigation. It seems like as soon as we get off investigation, we're back on investigation because of the same allegations have been filed.
>
> THE COURT: How many CPS complaints have been filed since we were last here in June?
>
> [MR. B.]: One with CPS in June. We had one in July. And we just had another one in September. So, there's between two of them and also, it's been filed with [the local police department] where they would stop by and do a so-called wellness check because somebody's calling the police department asking -- stating that the kids are not eating, the kids are unhealthy, the kids -- whatever they can think of. They're just making these allegations saying that we're not providing care for the kids. I mean, even as far as saying the kids are drinking out of dirty cups and just a whole

> bunch of miscellaneous stuff. But, because it's being filed with CPS, they have to come out and do an investigation. And the same thing with [the police department]. I mean, here it is -- they told [the police department] some stuff, but they didn't tell [the police department] too much about sexual abuse because I believe they are aware that would be a crime. But they did not hesitate to tell that to the CPS Department. And every time CPS comes out, they have to strip search the kids, which is causing the kids more trauma. We've been trying to do the stranger danger thing with the kids to teach them about strangers and their bodies. But every time CPS comes out, they strip them down or check them out.
>
> [FATHER:] What he's saying is a bunch of --
>
> THE COURT: [Father], I hear you and you are interrupting. Okay, Mr. [B.].
>
> [MR. B.] Just to be said, all of these allegations have been unfounded.

The court asked Mr. B.: "What is it that you're asking for?" He proceeded to ask the court to suspend parental visitation:

> [MR. B.]: I'm wanting to stop visitations because they are -- every time we have visitation, the kids end up with nightmares afterwards. The behavior of the kids are not good after the visitations. And it's even --
>
> THE COURT: How often are visitations occurring?
>
> [MR. B.]: When they are in town, twice a week. When they're not in town, I believe it's during Facetime. I think that's Monday, Wednesday and it may be Friday. If not, when they're in town, it's twice a week at the Visitation Center.
>
> THE COURT: How are the Facetime visits going?
>
> [MR. B.]: They go great. Most of the time, they are good but it's the aftereffect. After the visitations, the kids go through some kind of trauma and they have nightmares every night for at least a week.
>
> THE COURT: Okay.
>
> [MR. B.]: And a lot of times, the kids don't want to speak to the parents.

THE COURT: That's normal. That's normal.

[MR. B.]: Sometimes they go --

THE COURT: Oh, I'm sorry, go ahead. I was talking. Go ahead.

[MR. B.]: Sometimes they have great visitations and sometimes they don't. But we deal with the repercussions afterwards regarding the nightmares and being up two or three o'clock in the morning trying to, you know, make them feel better, rub their backs, rub their hair, you know, to tolerate the screaming that comes from the nightmares and the trauma that's been placed on them.

At that point, Mother told the court that she would "like to chime in whenever" the court would "allow [her] to" do so. The court directed Mother to speak to her attorney. The court permitted Mother to speak to her attorney privately in a breakout room from the primary Zoom meeting.

When Mother and her attorney rejoined the Zoom meeting, the court asked Mr. B. whether he had anything else to say. His remarks continued:

[MR. B.]: Lastly, I have one last thing to say is they have also showed up at the kids' school unannounced which that triggered the school to give us a call to find out what was going on and why are people there asking about the kids. They were supposed to go through -- they're supposed to go through DSS, through the Department of Social Services, before they just reach out to the school. And both of the kids have an Individual Educational Plan, an IEP, and the parents won't sign off on it where they get special services because they've been traumatized, and the parents won't sign off. Now we need to have the parents sign off and they won't sign off on the Individual Educational Plan which is kind of staggering the kids' growth. They can't receive special services as of now for their autism disorder.

Mother then told the court that she would "like to comment on those things also." The court told her that she "need[ed] to go through [her] lawyer first." Mr. B. informed the court that he had finished his comments. The court again allowed Mother to speak

with her attorney in a private breakout room.

While Mother and her attorney were temporarily absent, a courtroom clerk asked the court: "Do you want this to count as a Review Hearing?" The court replied: "For now, yes."[7] Moments later, Mother and her attorney rejoined the Zoom meeting.

Mother's attorney told the court that his client "would like to be heard" concerning Mr. B.'s request to modify visitation. The court said that it would hear from Mother's attorney before hearing from counsel for the Department.

Mother's attorney objected to Mr. B.'s request to modify visitation and requested an evidentiary hearing for the purpose of challenging his allegations. Her attorney stated:

> [COUNSEL FOR MOTHER:] Your Honor, you've already postponed the hearing. [Father] doesn't have an attorney here and you've already concluded that before the Court takes any significant action, he should have the opportunity to find one. I think I commented earlier that what [the other circuit court judge] did, and I have the order -- the hearing sheet right in front of me, is to not schedule a review at all. And so, I think it would be appropriate to schedule a review where these issues can be addressed. [Mr. B.] was not testifying under oath. He was not subject to cross-examination. We didn't have a full evidentiary hearing on his claims. I don't think there would be a problem with you admonishing the parents to strictly adhere to what is authorized in the court order and nothing else. But I think to change the order would take a more formal proceeding than this has become.

In response, the court rejected the request and ended the proceedings. The transcript reads:

> THE COURT: Okay. I completely disagree with you, and you can bring that up on an appeal. I am issuing an order that is going to restrict the

[7] The hearing sheet in connection with this hearing states that the court "[p]roceed[ed] with a [r]eview hearing" after postponing the exceptions hearing so that Father could seek representation. This "[r]eview hearing" consisted entirely of discussions concerning the allegations made by Mr. B.

> access of the parents to only Facetime visits. There are no personal visits pending our review on January 11th, 2023, at 1:00 p.m. I will issue this order today. I will see you all January 11th.
>
> [MOTHER]: Your Honor --
>
> THE COURT: Thank you.
>
> [MOTHER]: My attorney said I could chime in before everything is final.
>
> THE COURT: We're done. Off the record.

Although the court had indicated earlier that it wished to hear from counsel for the Department concerning the request to modify visitation, the court ended the proceedings without inquiring into the Department's position. The court did not request any further remarks from the attorney for the children, who had not asked for the changes to visitation but had merely asked the court to "admonish the parents" against "harassment" of the caregivers during Facetime calls and in-person visits. Nor did the court request any remarks from Father, who was unrepresented and, moments earlier, had requested and obtained a continuance for the purpose of seeking counsel.

On October 17, 2022, the court filed an order titled "Permanency Plan Review Hearing Order." The order stated that the parties had appeared for a "continuation of the [e]xceptions hearing that began in December 2021." The order stated that, after Father had "appeared for the hearing without counsel," the court "found good cause to postpone this matter in order for Father to try to obtain counsel."

The order went on to grant Mr. B.'s request to suspend parental visitation. The order stated:

> The children's attorney informed the Court that there have been problems

> recently with the children and requested that the Court hear from the caregivers for the children. The Court inquired of [Mr. B.] and was informed that the Mother and Father have had in-person visits and Facetime visits with the children and allegations of child abuse have been made to DSS by the parents. There have been approximately 3 reports to DSS, and the police and all allegations have been unfounded. The most recent allegation was of child sexual abuse by their 15-year-old son. The allegation was investigated and unfounded, however, the children had to be subjected to a strip search, which is not in their best interest. The children have also been having behavioral problems after each visit. [Mr. B.] asked that the in-person visits be terminated.
>
> The parents, specifically the Mother, has a history of making allegations against the children's caregivers. The Mother's actions of making abuse allegations that subject the children to strip searches by DSS are not in the children's best interest. It is in the children's best interest to have limited contact with the children pending further review by this Court. The parent's access to the children should be by Facetime, or similar remote/video program.

The court ordered that the three children would remain in the custody of the Department for continued placement in foster care with Ms. W. and Mr. B. The court further ordered "that the mother and father shall have access/visits with the children by Facetime, or similar video program, and shall not have in-person visits without prior approval by this Court[.]" The order stated that, aside from the change to visitation, prior orders governing the care and custody of the children would remain in effect.

After the entry of the order modifying visitation, Mother filed a timely notice of appeal. Father filed a separate notice of appeal.

The electronic docket indicates that the circuit court concluded the exceptions hearing in January 2023. In connection with the final stages of the exceptions hearing, the Department filed a report in which it stated that the Department was continuing to facilitate contact between the parents and children through Facetime "for about 15-20

minutes" on weekday evenings, twice per week. The Department continued to recommend "supervised visitation" between Mother and the children. As of the date of this opinion, the court has not yet issued its decision concerning the parents' exceptions.[8]

QUESTIONS PRESENTED

Mother, through counsel, filed an appellate brief. Father, who is unrepresented, did not file an appellate brief.

In this appeal, Mother seeks the reversal of the order suspending all in-person visitation between Mother and her children. Mother asks this Court to reinstate her weekly, supervised, in-person visitation with the children. Mother presents two questions for review:

> 1) Did the juvenile court err as a matter of law and abuse its discretion when it totally suspended [Mother's] supervised, in-person visitation with her children with minimal notice to the parents and without holding a contested evidentiary hearing?
>
> 2) Did insufficient evidence support the court's October 14, 2022 order fully suspending [M]other's supervised, in-person visitation with her children?

Mother challenges the juvenile court's decision on three grounds. First, she argues that the court erred when it ordered a change to visitation without holding a hearing as required by Md. Rule 11-218. That Rule provides that, in a CINA proceeding, when any

[8] One of the proposed orders to which the parents excepted is now more than two years old. The other is a few months less than two years old. For the two oldest children, the CINA case is now four years old. For the youngest child, the case is almost as old as she is – three years. Under § 3-823(h)(5) of the Courts and Judicial Proceedings Article, "[e]very reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement."

person seeks "a change in . . . visitation . . . and a hearing is requested, a hearing shall be held." Md. Rule 11-218(c). Mother argues that the court violated the express terms of this Rule when it denied her request for a hearing on the caregiver's request to modify visitation.

Second, Mother argues that, independently of any violation of Md. Rule 11-218, the juvenile court erred when it eliminated her in-person visitation without due process of law. She argues that she received inadequate notice of any request to terminate her in-person visitation. She further argues that the court denied her any reasonable opportunity to challenge the caregiver's unsworn allegations through cross-examination or the presentation of other evidence. She contends that the proceedings through which the court suspended her visitation amounted to a "one-sided trial by surprise[.]"

Third, Mother argues that the evidence was insufficient for the juvenile court to eliminate her in-person visitation. She argues that the court received no testimony or other evidence whatsoever during the proceedings on October 12, 2022. She also argues that Mr. B.'s unsworn allegations, at most, might be characterized as a proffer, describing the testimony that he might provide if allowed to testify. She observes that "proffers are not evidence and, where [a] matter is contested, [they] cannot provide the basis for necessary factual findings." *In re T.K.*, 480 Md. 122, 152 (2022); *see also In re M.H.*, 252 Md. App. 29, 53-55 (2021) (holding that the court's factual findings from the contested adjudicatory hearing, which were based solely on an unadmitted report and proffers by the parties, were clearly erroneous and not supported by competent evidence). In addition, she argues that, even if the court had received evidence to support its

findings, those findings did not justify the decision to eliminate her in-person, supervised visitation.

After Mother filed her brief, the Howard County Department of Social Services filed a notice informing this Court that it has elected not to file an appellate brief.

The attorney for the children filed a one-page "line" purporting to inform this Court of the children's "position" in this matter. The attorney for the children noted that the children, given their ages, do not have considered judgment. In her role as advocate for the children, the attorney asserted that the juvenile court "correctly suspended in-person visits" and asked this Court to affirm the visitation order.

Mother moved to strike the "line" filed by the attorney for the children, on the ground that the document does not comply with the requirements for the form and contents of an appellate brief. *See generally* Md. Rules 8-502 to 8-504. Before oral argument, this Court granted the motion to strike. Even if we did consider the line filed by the attorney for the children, we would conclude that this document fails to address the substance of the issues presented in Mother's appeal.

The attorney for the children cited § 3-816.3 of the Courts and Judicial Proceedings Article, which establishes that a foster parent or caregiver has the right to receive prehearing notice and the "right to be heard" in CINA proceedings. The attorney for the children asserted that Mr. B.'s statements were "allowable" under this statue. The attorney for the children also cited § 3-802 of the Courts and Judicial Proceedings Article, which describes the general purposes of the CINA statute, including the purpose of promoting the welfare and best interests of children in the court's jurisdiction.

Without elaboration, the attorney for the children asserted that the visitation order was "in furtherance" of this provision and in the "best interests" of the children.

The assertions made by the attorney for the children fail to address the contentions raised in this appeal. Mother has not challenged the court's decision to allow Mr. B. to speak during the proceedings. In fact, her argument expressly assumes that a person with supervision of a child found to be a CINA, such as Mr. B., "may be able to make an oral, rather than written, petition to the court to modify an existing order." Moreover, Mother agrees with the basic proposition that a court "must evaluate the child's best interests when making a visitation determination." Mother's appeal focuses on the procedures that a court must follow before it makes this type of visitation decision. Specifically, she contends that the juvenile court could not properly determine that it was in the best interests of the children to modify visitation based solely on Mr. B.'s allegations, where the parents lacked notice and a meaningful opportunity to contest the allegations.

In short, neither the Department nor the attorney for the children have suggested any basis for upholding the order modifying visitation. We shall proceed to evaluate Mother's contentions of error by the juvenile court.

DISCUSSION

As Mother correctly observes, non-custodial parents have an important liberty interest at stake in decisions concerning visitation with their children. Generally, parents have a fundamental, constitutionally-protected interest in the care and custody of their children. *See, e.g.*, *In re R.S.*, 470 Md. 380, 412-13 (2020); *In re Yve S.*, 373 Md. 551, 565-68 (2003). When a parent's child had been placed in the custody of another person,

the parent ordinarily "'has a right of access to the child at reasonable times.'" *In re Jessica M.*, 312 Md. 93, 113 (1988) (quoting *Radford v. Matczuk*, 223 Md. 483, 488 (1960)). This "'right of visitation is an important, natural and legal right,'" but it is "'not an absolute right[.]'" *Id.* (emphasis omitted) (quoting *Radford v. Matczuk*, 223 Md. at 488).

"'[T]he best interests of the child may take precedence over the parent's liberty interest in the course of a custody, visitation, or adoption dispute.'" *In re Mark M.*, 365 Md. 687, 706 (2001) (quoting *Boswell v. Boswell*, 352 Md. 204, 219 (1998)). Parental visitation "may be restricted or even denied when the child's health or welfare is threatened." *Id.*, 365 Md. at 706. The "standard for denying parental visitation is generally quite strict[,]" and, accordingly, "'it would only be in an exceptional case and under extraordinary circumstances that the right of visitation will be denied[.]'" *Id.* (quoting *Shapiro v. Shapiro*, 54 Md. App. 477, 482 (1983)); *see also In re Iris M.*, 118 Md. App. 636, 648 (1998) (noting that "[i]t is extremely unusual to deny visitation of a child by the natural parent in this State"). For example, a court may suspend all visitation between a parent and child where the parent previously committed child abuse and the court does not specifically find that there is no likelihood of further abuse if visitation rights are granted to that parent. *See In re J.J.*, 231 Md. App. 304, 347-48 (2016).

In light of the interests at stake, courts must afford a parent due process when making determinations about parental visitation. "Despite the informal nature of proceedings in juvenile court, '. . . standards of fairness must be observed.'" *In re Maria P.*, 393 Md. 661, 677 (2006) (quoting *In re Johnson*, 254 Md. 517, 524 (1969)). In this

case, Mother "clearly has a liberty interest in the care and custody of her child, and when, as in a CINA proceeding, a state seeks to change the parent-child relationship, 'the due process clause is implicated.'" *In re Maria P.*, 393 Md. at 676 (quoting *Wagner v. Wagner*, 109 Md. App. 1, 25 (1996)). A fundamental requirement of due process is "'the opportunity to be heard at a meaningful time and in a meaningful manner.'" *Burdick v. Brooks*, 160 Md. App. 519, 525 (2004) (quoting *Pitsenberger v. Pitsenberger*, 287 Md. 20, 30 (1980)) (further quotation marks omitted). "Generally, due process requires that a party to a proceeding is entitled to both notice and an opportunity to be heard on the issues to be decided in a case." *In re Katherine C.*, 390 Md. 554, 572 (2006) (quotation marks omitted).

In her brief, Mother asserts that this Court's opinion in *In re M.C.*, 245 Md. App. 215 (2020), is "particularly instructive" and "compels reversal" of the visitation order. In that case, a juvenile court found a child to be a CINA and granted one parent "unsupervised once-weekly visitation with [the child] 'so long as [the parent] test[ed] negative for illicit substances on an ongoing and random basis.'" *Id.* at 220-21 (emphasis omitted). The local department later filed a motion to change the parent's visitation to supervised visitation. *Id.* The local department supported its motion with a police report and an unsworn memorandum from a social worker, claiming that the parent had violated a protective order, failed to complete weekly drug tests, and tested positive for cocaine. *Id.* at 221-22. The parent opposed the motion, asked for a hearing, and proffered testimony to dispute the department's allegations. *Id.* at 219, 230-31. The juvenile court granted the department's motion, without a hearing, and changed the parent's visitation

from unsupervised to supervised. *Id.* at 222.

On appeal, this Court held that the juvenile court "abused its discretion when, based on conflicting proffers, it changed [the parent's] visitation order from *unsupervised* to *supervised* without holding a hearing." *In re M.C.*, 245 Md. App. at 224 (emphasis in original). This Court reasoned that the local department, as the party requesting a change to the existing visitation order, bore the burden of proof with respect to its motion. *Id.* at 231. The local department's motion "contained allegations and a proffer that, if proven, could justify a decision to modify visitation[,] [b]ut they did not suffice in themselves to compel" a change in the visitation order. *Id.* The parent "proffered facts that, if proven, could justify a decision to deny relief, but were insufficient in themselves to compel such a decision." *Id.*

This Court held that "a court abuses its discretion by not receiving testimony as to material, disputed allegations when requested by a party unless the disputed allegation is immaterial" to the court's decision. *In re M.C.*, 245 Md. App. at 231-32 (citing *In re Damien F.*, 182 Md. App. 546, 584 (2008)). The local department's allegations "raised a substantial question as to the safety and welfare of [the child] during unsupervised visitation," but those allegations "were disputed, and [the parent] requested a hearing to present testimony and witnesses." *In re M.C.*, 245 Md. App. at 232. This Court concluded that the juvenile court "should not have modified [the parent's] visitation with [the child] without a hearing, and that [the parent's] rights to due process were violated when visitation was modified without one." *Id.* (citing *In re Maria P.*, 393 Md. at 679).

At the time of the *In re M.C.* opinion, the rules governing CINA proceedings and

various other juvenile proceedings were codified in Chapter 100 of Title 11 of the Maryland Rules. In that case, the local department had argued that no hearing was required, because the governing rule allowed the court to vacate or modify an existing order "'without a hearing.'" *In re M.C.*, 245 Md. App. at 231 (quoting former Rule 11-116(c)). Notwithstanding the language of that Rule, this Court concluded that, under the circumstances of that case, the juvenile court was required to hold a hearing and to receive testimony concerning the disputed allegations. *Id.* at 231-32.

Effective January 1, 2022, this State's highest court reorganized and substantially revised the rules governing juvenile causes. *See* Court of Appeals of Maryland, Rules Order, 208th Report (Nov. 9, 2021). The rules governing CINA proceedings are now located at Chapter 200 of Title 11 of the Maryland Rules. *See* Md. Rule 11-201 (2022). These revised Rules govern the proceedings at issue in this appeal.

Maryland Rule 11-218(a)(1) now provides that, except as otherwise provided by another statute or rule, "an order of the court entered in a CINA proceeding may be modified or vacated if the court finds that action to be in the best interest of the child." A court "may proceed under this Rule on motion of a party, on petition of any other person, institution, or agency having supervision or custody of a respondent child, or on its own initiative." Md. Rule 11-218(b)(1).[9] Any motion or petition to modify an existing order

[9] The court here did not purport to act on its own initiative. The court purported to act on what it described as Mr. B.'s request "that the in-person visits be terminated." Mother notes that a foster care provider is not considered to be a "party" to a CINA case. *See* Md. Code (1974, 2020 Repl. Vol.), § 3-801(u)(2) of the Courts and Judicial Proceedings Article. Nonetheless, Rule 11-218(b) expressly allows either "a party" or

in the proceeding must "set forth concisely and with particularity the relief sought and the grounds for that relief." Md. Rule 11-218(b)(2). "If the relief sought is a change in the custody, guardianship, visitation, or commitment of a respondent child and a hearing is requested, a hearing shall be held." Md. Rule 11-218(c).

Collectively, the *In re M.C.* opinion and Md. Rule 11-218 identify two sets of circumstances, either of which will trigger the need for a hearing on a request to modify visitation for a CINA. Under *In re M.C.*, 245 Md. App. at 231-32, the court must "receiv[e] testimony as to material, disputed allegations when requested by a party, unless the disputed allegation is immaterial" to the visitation decision. Under Md. Rule 11-218(c), the court must hold a hearing whenever a party or person moves or petitions for a change in visitation of the child and "a hearing is requested[.]"

In her appeal, Mother asserts that it is "unquestionabl[e]" that she disputed the allegations made by the caregiver. She notes that she "repeatedly attempted to address the court herself and was directed to speak with her counsel." Emphasizing that Mr. B. "was not testifying under oath" and "was not subject to cross-examination," her attorney then requested an "evidentiary hearing" to address the allegations and request to modify visitation. In response, the court stated that it "completely disagree[d]" with Mother's attorney, invited the attorney to "bring that [issue] up on appeal," and summarily eliminated all in-person visitation. The court ended the proceedings without giving Mother, Father, or any other party a further opportunity to address the request to modify

"any other person . . . having supervision or custody of a respondent child" to move or petition for modification of an existing order.

visitation.

Mother argues that, to the extent that she failed to make a formal proffer of testimony disputing Mr. B.'s allegations, it was only because the court precluded her from doing so. Mother also argues that, unlike the parent in *In re M.C.* who received a written motion setting forth the basis for the requested change to visitation, she had no opportunity to prepare and submit a response to the request. Mother further argues that, once the court made it clear that its ruling was final, any further objection or argument would have been futile.

We conclude that, under the circumstances, the court's decision violated the principles applied in *In re M.C.* In this context, when the juvenile court "is 'presented with a request by counsel for the parent or parents to be allowed to present witnesses . . . as a threshold matter, the court should ask counsel to denote the allegations asserted to be in dispute.'" *In re M.C.*, 245 Md. App. at 231 (quoting *In re Damien F.*, 182 Md. App. at 583). Accordingly, if a parent requests an evidentiary hearing, the court cannot simply cut off all opportunities to dispute the allegations against the parent. In this case, when Mother's attorney requested an evidentiary hearing, the court, at a minimum, should have inquired further to assess which allegations were in dispute. After doing so, the court could assess whether those disputes were material to the visitation decision. The court erred when it made its ruling without making this threshold inquiry.

In addition, we agree that Mother was entitled to a hearing under Md. Rule 11-218(c). This provision includes mandatory language. It requires the court in CINA proceedings to hold a hearing on a motion or petition to modify visitation when a hearing

is requested. This rule does not require that the party make an additional evidentiary proffer along with the hearing request. We agree with Mother that the limited proceedings that occurred on October 12, 2022, do not amount to the "hearing" that is required by Md. Rule 11-218(c). At a minimum, "the right to a hearing embraces an adequate opportunity to defend[.]" *Wagner v. Wagner*, 109 Md. App. 1, 25 (1996); *see also In re J.R.*, 246 Md. App. 707, 757 (2020) (reversing dispositional order placing child in care of local department where the parents "were not given the opportunity to present evidence" on that issue). Here, the court listened to unsworn allegations from one participant, entertained the request to suspend parental visitation in the absence of any prior notice, received no evidence or arguments from the parties to the proceeding, and ruled on the request over one parent's objection. Moreover, the court did so even after it found good cause to grant a continuance so that Father, who was unrepresented, might seek counsel. These proceedings cannot be said to satisfy the hearing requirement of Md. Rule 11-218(c).

In her brief, Mother recognizes that "a juvenile court might properly limit a parent's access to a child without the court first conducting a thorough evidentiary hearing when responding to an immediate, serious emergency situation." Thus, when presented with allegations giving the court reason to believe that visitation might result in immediate harm to a child, the court might suspend parental visitation, temporarily, while awaiting a contested hearing on the allegations.

We agree with Mother that the juvenile court's actions do not resemble this type of emergency intervention. Neither Mr. B., nor the attorney for the children, nor the court

itself described the situation as an "emergency" or anything equivalent to one. During the proceedings on October 12, 2022, Mr. B. made allegations about events that occurred months or weeks earlier, in "June," "July," and "September" of that year. The court proceeded to eliminate all in-person visitation until, at the earliest, the exceptions hearing that was scheduled to resume on January 11, 2023. Nothing in the record indicates that the court provided any opportunity for the parents to challenge Mr. B.'s allegations or to contest Mr. B.'s request to suspend visitation when the exceptions hearing resumed.[10] By all indications, the court made a final visitation decision, subject to modification only by further court order; it did not issue an emergency order pending further review.

For the reasons stated in this opinion, the order entered on October 17, 2022, is reversed. The order is reversed to the extent that it purports to make factual findings based on the statements made by Mr. B. The order is reversed to the extent that it provides that "the mother and father shall not have in-person visits without prior approval by [the juvenile court], and pending further [o]rder of [the juvenile court]." Consequently, as this case moves forward, the prior orders entered in the three CINA cases will govern the parents' visitation rights. If any party or other person with custody or supervision of the children makes a motion or petition to modify those prior orders, the court should proceed in accordance with Md. Rule 11-218 and other applicable law, including the decision in *In re M.C.*, 245 Md. App. 215 (2020).

ORDER OF THE CIRCUIT COURT FOR HOWARD COUNTY REVERSED; CASE

[10] Hearings on exceptions to a family magistrate's recommendations are "limited to those matters to which exceptions have been filed." Md. Rule 11-104(f)(2)(A).

REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY HOWARD COUNTY DEPARTMENT OF SOCIAL SERVICES.

The correction notice(s) for this opinion(s) can be found here:

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