Circuit Court for Baltimore County
Case No. C-03-JV-24-000446

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1518

September Term, 2024

IN RE: J.E.

Berger,
Leahy,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: June 10, 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 with Rule 1-104(a)(2)(B).

This appeal arises from an order of the Circuit Court for Baltimore County, sitting as a juvenile court, finding respondent J.E. to be a Child in Need of Assistance ("CINA") and awarding custody to the Prince George's County Department of Social Services ("the Department"). Ms. N., mother of J.E. ("Mother") and Mr. E., father of J.E. ("Father"), appealed the circuit court's order. On appeal, Mother and Father presented two questions for our consideration, which we have consolidated and rephrased:

1. Whether the circuit court made clearly erroneous factual findings at Adjudication.

2. Whether the circuit court erred as a matter of law in finding that J.E. is a Child in Need of Assistance.

For the reasons explained herein, although we find some errors in the court's factual findings, we shall affirm the circuit court's ultimate CINA finding.

FACTS AND PROCEDURAL HISTORY

Mother's history with the Department

In February 2017, Mother's first child, N.H. was born. Shortly thereafter, the Department initiated a risk of harm assessment regarding concerns about her parents' ability to care for her. At that time, no father was identified. According to Department reports, "there were specific concerns about the parents' substance use, domestic violence, and cognitive limitations." During the investigation, additional concerns arose surrounding N.H.'s eating and failure to gain weight. The Department also reported that, at that time, Mother mentioned to family members and medical providers "that she heard voices that told her to do things." Mother reported to N.H.'s pediatrician that she was "having negative thoughts about N.H. that included harming her." The Department reported that the

"Agency worked with the family to address the above listed issues with minimal success." Mother's parental rights to N.H. were terminated and the case was closed in January 2019 with custody and guardianship of N.H. granted to relatives.

In January 2019, Mother gave birth to her second child, H.N. Five days after birth, H.N. was discharged from the hospital into shelter care and placed in a foster home. The Department's reports indicate that this removal was based on "ongoing concerns regarding [Mother]'s untreated mental illness and substance abuse, as well as the conditions in the home." The Department reported that in February 2019, Mother received a psychological evaluation at BTST [Better Tomorrow Starts Today], a mental health agency, and was diagnosed with a schizoaffective disorder. It was then recommended that she complete a fitness to parent assessment. In October 2019, Mother completed a court-ordered psychological parenting evaluation with Dr. Robert Kraft. According to the Department,

> Dr. Kraft completed the IQ testing with Mother, including the Parent Awareness Skills Survey, which is a clinical tool designed to illuminate strengths and weaknesses and awareness skills a parent accesses in reaction to typical childcare situations. Mother's performance on the parent awareness skill survey resulted in a standard score of 72, a lower borderline value that is exceeded by 97% of the normative sample population of parents.

Based on this assessment, the Department reported that,

> Mother's cognitive limitations, lack of insight, and lack of adequate knowledge of parenting practices represent significant risk factors for dysfunctional parenting, particularly with very young children. It was recommended that Mother continue receiving individual supportive psychotherapy. Due to her cognitive limitations, Dr. Kraft reported that she is not a good candidate for insight-oriented psychotherapy. It was also recommended that Mother receive one-on-one parenting

> support where a provider could model appropriate parenting practices, complete a substance abuse evaluation and follow any treatment recommendations.

Mother's parental rights to H.N. were voluntarily terminated in October 2021 and H.N. was adopted in July 2022.

Mother's third child, R.N., was born in November 2020 at Franklin Square Hospital. Following his birth, the Department received a substance exposed newborn referral from the hospital after Mother tested positive for marijuana at delivery. The Department conducted a risk assessment and, after a Family Team Decision Making Meeting, determined that R.N. should be taken into Department custody. In the shelter care order, the Department cited Mother's inability "to provide appropriate care due to her uncontrolled mental health and substance abuse issues." In May 2022, Father was identified as R.N.'s father. At the time, he was incarcerated. Father briefly engaged with the Department after learning of R.N., and he expressed an interest in reunification. When the Department sent Father release forms for mental health and substance abuse providers, however, he did not respond and never resumed contact. Mother and Father's parental rights to R.N. were terminated in May 2023.

Mother maintained a contentious relationship with the Department during this period. It is clear from the record that Mother struggled with establishing and maintaining a strong bond with her children during the supervised visitation periods she attended. She often became frustrated and distracted by her anger towards the supervising social workers when they would make suggestions regarding how Mother attended to her children, what she brought to feed them, or how she responded to their needs. At one visit, Mother became

angry at H.N. when she referred to her foster mother as "mom." Mother's struggle with needing support and guidance while rejecting what she perceived as interference by the Department is evident from the Department's reports. The Department reported that Mother became easily overwhelmed when supervising both H.N. and R.N., and appeared to favor spending time with H.N.

The Department's notes also indicate that Mother demonstrated limited knowledge of child development and behavior. During visitation with both H.N. and R.N., Mother often ignored R.N. and lashed out at H.N. for behaviors the Department classified as developmentally appropriate. The Department offered several examples in which Mother was unable to appropriately engage with her children, including one in which she believed two-year old H.N. was saying "a**hole" when she was trying to say "pretzel." Mother became "fixated on this throughout the rest of the visit, instead of engaging with her children." Mother continued to become angry and yell at H.N. any time she said the word "pretzel."

The Department reported that Mother struggled to adapt to her children's needs during visits, explaining that Mother

> appears fixated on the plans that she had for the visit and lacks the ability to be flexible with [R.N.] and to engage [R.N.] in varying ways to improve the over all [sic] visit. For example, during a visit in April, [Mother] brought several books to the visit. [R.N.] is mobile and prefers to move around. [Mother] strapped him into a chair in the visitation room to read him books.

Mother "yelled/demanded that [R.N.] is her child and that she will read all of the books to him," despite suggestions from her mother and the social worker that other activities may

be more appropriate. At another visit, when the social worker suggested that Mother feed R.N. fewer snacks, Mother "began to yell and curse at [the social worker] and would not calm down." Her "behavior escalated quickly, and administrators and security were called to the room to intervene. She continued to yell and curse at staff. [Mother] was asked to leave the building due to her behavior . . . On her way out, [Mother] damaged the wheelchair accessible door . . . by pushing through the door with excessive force."

The Department also expressed concerns regarding Mother's unwillingness to submit to substance abuse and mental health evaluations. Although Mother did complete some substance abuse testing that produced negative results, she did not consistently fulfill the Department's requests for regular drug testing following R.N.'s birth. Most concerning to the Department, however, was Mother's unwillingness to share her mental health records. It appears from the record that Mother did engage in mental health treatment with Thrive Behavioral Health at least through 2022. Mother did not, however, agree at any point during this period or beyond to sign the release documents necessary to permit the Department to review her records. Mother allowed Thrive to confirm with the Department that she was receiving ongoing therapy, but the Department was unable to obtain updated evaluations or diagnoses beyond the 2019 report from Dr. Kraft. Mother cited her distrust of the Department as the primary reason for refusing to share her mental health records. The Department's inability to "collaborate with Mother's mental health providers to mitigate risk factors for safety," appears to be a primary reason for continuing to shelter both H.N. and R.N. in the lead up to Mother's parental rights being terminated.

Removing J.E. from Mother's custody

On April 23, 2024, Mother gave birth to her fourth child, J.E., at the Baltimore Washington Medical Center ("BWMC"). At the time of J.E.'s birth, Father was incarcerated at the Baltimore City Correctional Center. Following J.E.'s birth, Care Manager Tenesha Ellis ("Ellis") received a consult for Mother based on Mother "being late to prenatal care, unclear mental health history, incarcerated [father of the baby], and her 3 other children being in foster care." Medical records note that Mother had first obtained prenatal care at twenty-seven weeks. Mother indicated that she "worried about presenting to care because she reports that the other three children were 'stolen' by social services/CPS." It appears from the medical notes that Mother believed that obtaining private insurance, rather than using Medicaid, would provide some protection from Department involvement. She indicated that once she knew she was pregnant, she "had to get good insurance," which she did. According to Ellis's notes, Mother also discussed with her obstetrician the possibility of obtaining doula services and having a home birth to avoid the hospital, where two of her children were removed, and expressed concern that naming her child and obtaining a social security number for him would potentially lead to removal. Mother did, however, obtain prenatal care, present to the hospital to give birth, name her child, and apply for his social security number.

During her consultation with Ellis, Mother confirmed a history of PTSD, anxiety, and depression. According to Ellis's notes, Mother's prenatal record indicated that Mother reported to her obstetrician that she was diagnosed with schizophrenia for "hearing voices." Mother denied this diagnosis when Ellis inquired about it. Mother told Ellis that her mental

health conditions are "mild and well controlled without medication or treatment," and that she had discontinued medication and therapy. When asked about her three other children, Mother denied that they had been put in foster care and indicated that they lived with her mother and that she had no open case with the Department.

Following the consultation, Ellis made a referral to Lauren Smith ("Smith") at the Department "due to concerns that [Mother] may have an open case as well as active concerns keeping her from being able to properly care for her children at this time." Ellis also noted "concern for the extreme measures that [Mother] has considered not to have CPS involved," and "uncertainty about the extent of her untreated mental health." In reply, Smith told Ellis "to place a hold on the infant's discharge." Ellis also noted that Mother "is not aware that this report was made for safety reasons."

The following morning, Ellis contacted Smith to follow up because Mother was requesting discharge. When she did not receive a response, she contacted the main Department screening line and spoke with Emily Rivera, who reiterated the "need to hold the infant's discharge as the patient's rights to her prior children were involuntarily terminated and she cannot leave with this infant." A short time later Ellis was contacted by Megan Whitman ("Whitman"), who was assigned to Mother's case. Whitman told Ellis that "the plan is to place this child into foster care as the patient is unable to care for the infant." Whitman said she would contact Mother to inform her of the plan, but Ellis "shared concerns regarding informing [Mother] via telephone and stated she would talk with the treatment team to develop a plan to inform [Mother] and follow up." Whitman agreed and said she would come to the hospital the following day with the shelter agreement. Neither

Whitman nor any other employee of the Department had seen, spoken with, or evaluated Mother or J.E. when this decision was made.

Following this call, Ellis met with Mother's treatment team to discuss options for informing Mother that her child would be taken into foster care. When they arrived at the room, however, Mother told them she would be staying an additional night. Ellis, therefore, chose not to inform Mother of the Department's plan to remove J.E. When Ellis spoke with Whitman, she "was in agreement with the decision not to inform [Mother] based on past experience with [her]." A note was added to Mother's chart alerting hospital staff not to inform Mother that the Department had been contacted.

The next afternoon, Whitman and another social worker, Faith James, arrived at the hospital. Ellis contacted the security supervisor to "be on the unit on standby" while the Department informed Mother that they would be taking her child into custody. Ellis explained what happened next in her notes:

> [Mother] expressed a number of concerns regarding the removal and her history with [the Department]. Unfortunately, [Mother] became argumentative with the worker and refused to allow her to take the infant. She did threaten to harm the worker if she tries to take the infant but did not make any attempts to do so. [Mother] stated a belief that her rights were being violated and requested to call the police. The Security Supervisor informed her there is an Anne Arundel County Police Officer on site and offered to have him come speak with the patient; she agreed. The [Department] Workers exited the room as not to continue to escalate the patient. The officer responded to the unit and tried to calm the patient. The patient was encouraged to attend the court hearing and ensure the judge hears her side of the situation.
>
> During the conversation, [Mother] was very tearful, crying hysterically and hyperventilating. She went to snatch the crib

> card from the side of the bassinet causing it to shift. At that time, this writer removed the bassinet with the baby in it from the room as a safety precaution. The team attempted to leave the room to allow her time with her mother to calm down.
>
> A short time later [Mother] was heard screaming and crying so a Code Green was called to obtain behavioral health support. [Mother's care team] responded to the code. Lindsay-Psych CRNP completed an assessment with [Mother], reasoned with her and offered medication assistance to help calm her but [Mother] declined. [Mother's] mother stepped out prior to the code green but then returned and was able to support [Mother]. So, the code was cleared.

During the Code Green event, Mother spent 110 minutes with nurse practitioner Lindsay Brooke Abbott ("Abbott"), CRNP for a psychiatric evaluation. Abbott wrote:

> [Mother] was visibly distraught upon initial approach. Continued affective and mood lability. At least at this time, however, [Mother] appears to be appropriately distressed by a highly distressing situation. There is no evidence of acute psychiatric decompensation. She is not floridly psychotic. There is some concern regarding the possibility of an underlying developmental/intellectual disorder. [Mother] generally presents as somewhat childlike. She spoke at length about her desire to raise a family. Spoke at length re: perceived unfairness related to the continued prohibition that she raise her own children . . . [Mother] suggested that, per [the Department], she was previously required to meet with an outpatient psychiatrist. Insisted that this psychiatrist did not find a primary psychiatric disorder. [Mother] reported that her first child was removed in 2017 on account of concerns regarding lead and mold within her mother's home. She stated that her second child was removed in 2019 even though she had acquired her own apartment at that time. [Mother] repeatedly endorsed perceived responsibility to her children. Spontaneously demonstrated that she has tattooed all of their names on her left anterior forearm. While agitated/distraught, she made somewhat provocative but also extremely vague statements regarding a desire to harm anyone involved in taking her children away from her.

Abbott further noted that Mother "remained cooperative throughout interview." She reported "[i]ncreased spontaneous speech. Sometimes LOUD but clearly emotion-driven." Abbott found that Mother was "neither manic nor hypomanic," that she expressed no "formal thought disorder," and that there was no "overt delusional material evident." For her plan, Abbott wrote:

> At least at this time, [Mother] appears to be appropriately distressed by a high distressing situation. There is no evidence of acute psychiatric decompensation. She appears to be highly motivated to attend an upcoming hearing related to [the Department] decision for removal. There is no clear indication for inpatient psychiatric treatment on an involuntary basis.

During this time, J.E. was discharged into the custody of the Department.

At the shelter care hearing the following day, the court found that remaining in his home was contrary to J.E.'s welfare and that it was not possible to return him to his home because of the family's long history with the Department; prior termination of both Mother and Father's parental rights to their other children; Mother's diagnosis with Schizoaffective Disorder, Adjustment Disorder, and other personality disorders; Mother's self-report that she was no longer in mental health treatment; and Father's incarceration. The court also found that the Department made reasonable efforts to prevent or eliminate the need for J.E.'s removal, citing: "Child Protective Service investigation/risk assessment completed; on-going family services case; referrals made, records reviewed; and Family Team Decision Making meeting held, family members explored." It was ordered that Mother shall "cooperate with the Department by providing family background information; signing Release of Information forms regarding educational, medical, mental health, and substance

abuse services and treatment that are necessary to provide services to the child and family." An adjudication hearing was scheduled for June 24, 2024.

Following J.E.'s removal, Mother initially attended weekly visits with him. During the visits, the Department reported that Mother "needed guidance on how to hold [J.E.]'s head properly," and that she "wanted reassurance," from the Department, but that she was "able to meet [J.E.]'s basic needs during her visit such as feeding, burping, and changing his diaper." Mother last visited with J.E. on May 30, 2024. Following that visit, Mother stopped attending visits either by not showing up or failing to confirm the visitation time. Mother also declined to attend any of J.E.'s pediatrician appointments.

On May 24, 2024, Whitman visited Mother's new apartment to conduct an assessment. Mother's home was furnished with lamps, tables, a dining room set, couch, and a bed. It also had a bassinette, an infant car seat, and baby formula. According to the Department's June 10 report, however, it did not appear that Mother was actively living in the apartment because it had "minimal furniture," and there "was no food in the refrigerator or indications meals were being prepared there." Mother declined to provide a lease agreement to the Department.

On June 6, 2024, Mother did not attend the scheduled Family Team Decision Making meeting because she "was under the impression that it was an adoptions meeting." Father, who was still incarcerated, did attend the meeting remotely but told the Department that he had no intention of working with them when he was released. Father also failed to provide any proof of income to the Department. Father was released from incarceration on June 12, 2024, and did attend a supervised visit with J.E. on July 25. According to the

Department, Father told the social worker that he did not need assistance with the baby because he has eighteen other children. He did not attend any further visits with J.E. and has remained unwilling to work with the Department.

On June 25, 2024, Mother filed a motion to postpone adjudication because her attorney was ill. A new hearing was schedule for September 17, 2024. Ahead of the hearing, the Department filed its Amended CINA Petition with Request for Commitment. In the petition, the Department included the following allegations in support of its request:[1]

> 1. . . . [Mother] planned to have a home birth so Child Protective Services would not know she had another baby. [Mother] . . . contemplated giving a fake name at admissions. [Mother] was also reluctant to name her son due to worries his name would be associated to a social security number and CPS would be notified and 'steal' her baby.
>
> 2. . . . During the removal process, [Mother] became verbally aggressive towards staff and made threats to physically harm them. Hospital security and Anne Arundel Police needed to assist with the removal process. Once the baby was removed from the room, a code purple was called, indicating [Mother] needed mental health supports.
>
> 3. [Mother] appeared delusional regarding how the concerns were reported and presented as hyperverbal. Despite attempts to deescalate the situation, she was adamant "no one was stealing her baby." Hospital staff assisted with removing the baby from the room. [Mother] attempted to [g]rab the crib but was unsuccessful.
>
> 4. BWMC staff reported that [Mother] is "child-like" and needs reminders to feed [J.E.] and attend to his basic needs.

[1] Paragraphs 6 through 8 outline the Department's previous encounters with Mother resulting in termination of her parental rights to her three other children. Because these facts are discussed above and are not contested, we do not reproduce them here.

. . .

9. [Mother] is diagnosed with Schizoaffective Disorder, Adjustment Disorder with depressed mood, and other specified personality disorder with schizotypal features. She reported to BWMC that she is no longer in mental health treatment, due to it not being helpful.

10. [Mother] is diagnosed with Borderline intellectual functioning; her cognitive limitations impact her ability to use sound judgment and implement safe parenting practices. In October 2019, [Mother] completed a Psychological Evaluation of Parenting Capacity. Dr. Robert Kraft reported that, "[Mother]'s cognitive limitations, lack of insight and lack of adequate knowledge of parenting practices represent significant risk factors for dysfunctional parenting, particularly with very young child."

11. The Department also has concerns pertaining to [Mother]'s history of domestic violence. [Mother] has continued to engage with [Father] . . . with whom [Mother has] reportedly ha[d] a history of domestic violence.

12. [Father] . . . is unable to provide care to [J.E.] At the time of [J.E.]'s birth, father was incarcerated at the Baltimore City Correctional Center. Since [Father]'s release from the Baltimore City Correctional Center on June 12, 2024, father has not cooperated with the Department. [Father] has a 2022 2nd Degree Assault conviction (and two subsequent violations of probation). . . . [Father] does not have stable housing and has not provided the Department with employment verification.

The Department also noted in their petition that,

> [r]easonable but unsuccessful efforts were made to prevent or eliminate the removal of [J.E.] from the home and/or prevent or eliminate the need for a CINA finding on behalf of [J.E.]. Specifically, exploring relatives, facilitating visitation between [J.E.] and parents, making referrals to parents for services, reviewing records, communicating with hospital staff and holding a post-shelter Family Team Decision Making Meeting.

During the September adjudication hearing, the Department called two witnesses, Whitman and Valarie LaSota-Brown ("LaSota-Brown"), supervisor in the Family Preservation Program. Whitman testified that on the day of J.E.'s birth, the hospital called the Department's screening unit regarding Mother because "[t]hey were reporting concerns regarding [Mother's] mental health as well as her other three children not being in her care, and great extremes . . . trying to avoid Departmental involvement prior to [J.E.'s] birth." She explained that Mother had "disclosed that she attempted to have a home birth. When that did not occur, she did consider giving a false name upon admission. She also did not seek prenatal care until 27 weeks. And she was under the impression that if she got private insurance, we would not also be notified." Whitman also testified that when she spoke to Ellis over the phone, Ellis informed her that hospital staff "reported that [Mother] was childlike and needed reminders and prompts to feed [J.E.] and attend to his basic needs."

At the time of J.E.'s removal, Whitman testified that she "coordinated with hospital staff to have security on site . . . purely for safety concerns based on the history that I read throughout the case." Upon entering Mother's room, Whitman testified that Mother

> immediately knew why I was there and became very agitated, started yelling stating that I was trying to steal her child, that she has private insurance so I was violating HIPAA. She also stated that no one was going to take her child, and if I tried to do so, she was going to F me up. She also stated that I was violating her American rights and that she wanted the police to be called due to me stealing her child.

At that time, an Anne Arundel County police officer present on the floor was brought to Mother's room. Whitman testified that the officer notified her that "he was not able to

assist in the removal." She informed him that Mother "actually requested his services. So, he did go in and speak to her."

Regarding Mother's mental health, Whitman testified that "[i]t is disclosed that she has been diagnosed with borderline intellectual functioning as well as schizoaffective disorder, adjustment disorder with depression, mood and other specific mental health, personality disorder." When asked if she had discussed mental health treatment options with Mother, Whitman testified that Mother told her she "is not in mental health services," that "she preferred to talk to family and friends and that she did not trust any referrals the Department made."

Whitman also testified regarding her interactions with Mother and Father since J.E.'s removal. She stated that she tried to engage with Mother to complete a service plan, but Mother told her "absolutely not." Whitman was not able to confirm where Father was living at the time. She testified that he "disclosed that he was living with his oldest daughter but provided [Mother]'s mother's address as his." Whitman testified that she did not make any referrals because the "parents reported they didn't need any and were not willing to work with myself or the foster care worker."

Both Whitman and LaSota-Brown testified regarding the Department's allegations of ongoing domestic violence concerns. Whitman testified that the concerns come "[j]ust from what I read in the history that it continues to be an ongoing concern with all three children." On cross-examination, LaSota-Brown was asked when the last incident of domestic violence had taken place. She replied, "in 2022," referencing a "second degree assault from the Maryland Judiciary Search, and in past records from the Department."

LaSota-Brown then clarified that "back in February 2017, there -- it was reported there was domestic violence . . . December 19, 2020, in the past records." She was not able to recall any details about these reports and was not able to offer any evidence that there have ever been issues of domestic violence between Mother and Father. It was later confirmed that the assault Father was charged with was against his father, and that Mother was not involved in any way.

LaSota-Brown also testified to her impressions of Mother and Father, saying:

> After reviewing the records, the history, and the current involvement with the team, with the Department's long history working with the family, including the parents' unwillingness to cooperate with the Department, and lack of insight, and concern regarding mental health, lack of mental health treatment, and parenting, I do not feel like the family has demonstrated their ability to be able to provide the care and need that this little child needs.
>
> And it is unclear as to the living, you know, housing, employment. Both parents have stated that they feel like they do not need mental health services. And it's unstable. So, I would, from my history with the Department, working with families on this case, I would say I would not be in agreement with this child to be returned to these parents, and would be concerned about neglect.

Mother also testified during the hearing. Speaking about her ability to care for J.E., she said,

> I did every single thing that a very good parent would do with their child. I held him perfectly. I knew how to take care of my child. I did everything good with my child. I held my child, I fed my child, I burped my child, I changed his diaper. I have done everything good to my child.

She also spoke about her preparations for J.E. to come home from the hospital, saying,

> I have prepared everything for him. I had everything that was baby for him for him to be prepared to live in my new apartment that is fit for a child . . . I had a bassinet, I had diapers, bottles. I had baby food, Similac. I had bottles. I had a baby carriage, a car seat. I had a lot of things for my baby that I was ready to take care of.

Mother testified that she was currently financially stable and working part time at Domino's Pizza. Regarding childcare, Mother testified that her mother would care for J.E. when she was at work and if her mother was not available, "[t]here's daycare."[2]

Speaking about her mental health, Mother denied having any current diagnoses and stated that the treatments she had previously been offered were "not even close to being helpful because they just gave me medicines that made me have all side effects, bad side effects, that really hurt me physically."

Father did not testify during the hearing, but his counsel argued that the Department had not met its burden with respect to the domestic violence allegation. Father's counsel also argued that,

> [w]ith respect to paragraph 12, there were allegations made that Mr. Edwards has not provided employment verification. Well, he told one of the Department representatives, one of the workers, that he was in a band and that he had regular gigs and as was conceded by the witness, in a gig economy, it's probably cash or under the table. So, how is he supposed to provide that employment? He's told them that he has future engagements, that he makes a significant amount of money to be able to support himself. So, I just don't believe the Department has met its burden to sustain these allegations by a preponderance of the evidence against the father.

[2] The Department presented evidence that Mother's mother was not a suitable source of childcare because of her own history with the Department.

At the close of adjudication, the circuit court found that all facts in the Department's petition were sustained, and that it was contrary to J.E.'s welfare to remain in his home. The court stated:

> There's nothing documented. There's nothing confirmed. There's no visits. This is so very difficult, and aside from the fact, even if there were no history here. If there were no history, we have nothing confirmed on, you know, home living situation. We have nothing confirmed on any kind of day care. We have no prior, you know, no information confirming any employment or any way to support this minor child.

The court also relied heavily on both Mother and Father's failure to attend visits as well as Mother's attempts to avoid Department involvement. Of the latter, the court said, "I'm very frightened that this child might be disappeared or otherwise. This is quite a concerning situation considering."

The court then moved to disposition. During this phase, the Department argued that it was seeking to find J.E. a CINA based on the "concerning history," and "concerning circumstances surrounding J.E.'s birth," and well as "the parents' response post-shelter." The Department argued that

> Neither parent has been in any form or fashion been willing to work with the Department. Really this is almost nothing has changed since May of 2023 as far as the Department can tell. We have no employment confirmation. We have no stable housing. We have no indication that J.E. would be safe in his parents' care. Certainly, they have not demonstrated that they are in any position to be able to provide J.E. the care that he needs as a young five-month-old who has no ability to self-protect himself.

The Department also argued that

> Father has been very unwilling to accept the Department's help despite Ms. Whitman reaching out to him at some point in time . . . Father reported he has 18 other children and is not interested in the assistance from the Department. So, there's really nothing more that the Department could have done in this case, and parents have post-shelter just continued to show that they are in no position to be willing or able to care for J.E. and to give him what he needs.

Counsel for Mother countered that, even in light of the court sustaining all of the allegations in the Department's petition, that Mother "does not believe that those allegations rise to a level of CINA, does not rise to a level showing that she has neglected or abused or cannot take proper care of her child, J.E." Father's counsel also argued that "[d]espite the allegations in the petition being sustained, we would argue that it doesn't rise to a finding or the level of a finding of a child in need of assistance."

At the close of these arguments the circuit court found J.E. was a CINA and ordered that he be committed to the Department. The court also found,

> that the evidence presented sustained that reasonable efforts to prevent or eliminate the need for removal of the child were made as follows:
>
> A Child Protective Services investigation/risk safety assessment completed; on-going family services case; referrals made, records reviewed; Family Team Decision Making meeting held, family members explored; communicated with hospital staff; facilitated visitation.

This timely appeal followed.

STANDARD OF REVIEW

In CINA cases, this court utilizes three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). The Supreme Court of Maryland described the three interrelated standards as follows:

> We point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8–131 (c)] applies. [Second,] if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

Id. at 586.

DISCUSSION

Parents are vested with a constitutionally protected fundamental liberty interest in the care and custody of their children, without undue interference by the State. *Koshko v. Haining*, 398 Md. 404, 422 (2007); *see also In re Yve S.*, 373 Md. at 565. Indeed, the United States Supreme Court has explained that "the interest of parents in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000). This liberty interest, though fundamental, is not absolute. *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497 (2007). A parent's liberty interests in the care and custody of their children "must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect." *Id*.

"The Maryland General Assembly has enacted a comprehensive statutory scheme to address those situations where a child is at risk because of his or her parents' inability or unwillingness to care for him or her." *In re Adoption/Guardianship No. 10941 in Juvenile Court for Montgomery Cnty.*, 335 Md. 99, 103 (1994). Pursuant to this scheme, a child can be found to be a Child in Need of Assistance. CINA cases involve a two-step process. At the adjudication hearing, the court determines whether the allegations raised in the CINA petition have been properly established. CJP § 3-817. Unless a CINA petition is dismissed, the court must subsequently hold a disposition hearing. CJP § 3-819. At this hearing, the court will determine whether a child requires assistance, and if the court makes such a determination, it will then decide the intervention necessary "to protect the child's health, safety, and well-being." CJP § 3-801(m). If the child is not a CINA, the court must dismiss the case. *In Re C.E.*, 456 Md. 209, 217 (2017); CJP § 3-819(b)(1)(i).

I. The circuit court erred in sustaining some, but not all, facts in the Department's petition.

A. Amended CINA Petition

Mother argues on appeal that the circuit court erred by sustaining all the facts in the Department's amended CINA petition because it contained allegations that were not supported by competent evidence. The Department counters that, even if certain facts were misconstrued, such an error was harmless given that the "most material facts" -- concerns regarding Mother's mental health and fitness to parent -- were amply supported by evidence. "In a contested adjudicatory hearing, the Department must present evidence

sufficient to prove the petition's allegations by a preponderance of the evidence." *In re M.H.*, 252 Md. App. 29, 43 (2021); CJP § 3-817(c).

Here, the Department presented evidence in the form of medical records, prior Department reports, and witness testimony that in 2019, Mother was diagnosed with various mental health disorders and cognitive and intellectual functioning limitations that "represent significant risk factors for dysfunctional parenting, particularly with very young children." The Department also presented significant documented evidence and witness testimony that Mother has consistently resisted efforts by the Department to collaborate with her in obtaining renewed evaluations and necessary supports to address concerns related to these diagnoses. The record supports that since at least 2021, the Department has requested that Mother sign "Release of Information forms regarding education, medical, mental health, and substance services and treatment that are necessary to provide service to the child and family," but that Mother has yet to comply with this request. Mother further reported to BWMC at the time of J.E.'s birth, and confirmed in her testimony during the hearing, that she was no longer in mental health treatment because it was not helpful.

Although Mother's 2019 diagnoses alone would ordinarily not support a conclusion that Mother continues to suffer from these disorders today, Mother's refusal to obtain renewed evaluations over the course of several years makes it reasonable for both the Department and the court to rely on that report in determining Mother's current mental health status. For this reason, the court did not err in sustaining facts related to Mother's mental health disorders and cognitive and intellectual limitations.

The Department presented competent evidence to support its allegations regarding Mother's attempts to avoid Department involvement. Although we agree with Mother that she did not "plan" a home birth, Mother's efforts to avoid Department detection are substantially supported by her medical records and testimony at the hearing. There is no dispute that Mother did, in fact, consider numerous actions in the hope of preventing the Department from removing J.E., including delaying prenatal care, considering a home birth, contemplating giving a false name at hospital admissions, and expressing reluctance at naming J.E. and applying for his social security number. The court, therefore, did not err in sustaining facts related to these actions.

Finally, the Department presented competent evidence to support its allegation that "BWMC staff reported that [Mother] is 'child-like' and needs reminders to feed [J.E.] and attend to his basic needs." This information is not included in the medical records, as Mother correctly indicates, but Whitman testified during adjudication that when she spoke with Ellis by telephone following J.E.'s birth, Ellis informed her of this concern. The characterization of Mother as "child-like" is also supported by notes related to Abbott's evaluation of Mother following J.E.'s removal. Although the context of that evaluation is different, it serves as support of hospital staff's perception of Mother at the time of J.E.'s birth. The court, in hearing this testimony and reviewing the records, did not err in sustaining this fact.

The Department did not, however, present sufficient evidence to support its allegation that "[h]ospital security and Anne Arundel Police needed to assist with the removal process." Both medical records and testimony confirm that the Department

requested that a member of hospital security be present outside Mother's room when they informed her that J.E. would be taken into custody. No evidence was offered by the Department, however, that this individual was involved in J.E.'s removal. Although it is not disputed that Mother became verbally aggressive towards the staff and that she required behavioral support following J.E.'s removal, there is nothing to suggest security was needed to assist with the removal. Similarly, Anne Arundel County Police were not needed to assist with the removal. All evidence presented by the Department clearly indicates that Mother requested police presence due to her concern that her rights were being violated at the time of the removal. Rather than assisting the Department with the removal, the police officer provided support to Mother. The Department's mischaracterization of this allegation goes well beyond a "semantic issue," as the Department classifies it, and the court erred in sustaining it based on the evidence presented.

The Department also failed to present sufficient evidence that Mother "appeared to be delusional regarding how the concerns were reported and presented as hyperverbal." The Department did not present any evidence that Mother exhibited delusional behavior. The Department cites in its petition that Mother was "adamant 'no one was stealing her baby.'" Records indicate that Mother frequently referenced the Department stealing and trafficking her children, something Mother also testified to during the hearing. Medical records indicate that Mother was under the impression that obtaining private insurance would protect her from having her child "stolen" due to enhanced HIPAA protections. There is no evidence present in the record, however, that these beliefs rendered Mother "delusional," particularly given her long history with the Department removing her

children. Characterizing these removals as "stealing" is not overtly delusional. Mother shared all of these beliefs with Abbott during her psychiatric evaluation and Abbott concluded that "[n]o overt delusional material [is] evident." There is also no mention in medical records, nor was any testimony offered, that Mother presented as hyperverbal. There is no doubt that Mother has exhibited a great deal of anger and distrust toward the Department, and that Mother lacked an accurate understanding of how she might prevent Department interference. To characterize this behavior as delusional, especially when no medical professional has made such a finding, is unsubstantiated hyperbole. For these reasons, the circuit court erred in sustaining this allegation.

Finally, the Department failed to present sufficient evidence to support its allegation that Mother and Father have a history of domestic violence. At the hearing, when asked about these concerns, neither Whitman nor LaSota-Brown were able to provide any substantive evidence that domestic violence has been an issue between Mother and Father at any point during their relationship. Both witnesses relied on prior Department reports that also failed to provide any details to back up the allegations. It appears from the record that allegations of domestic violence have been consistently repeated in Department reports without any supporting evidence and that the Department was unable to substantiate them during the hearing. For this reason, the court erred in sustaining this allegation.

Despite the court's error in sustaining the forgoing unsupported allegations, we hold that this error was harmless. "In the interest of the orderly administration of justice, and to avoid useless expense to the state and to litigants in its courts, it has long been settled policy of this court not to reverse for harmless error." *In re Yve S.*, 373 Md. at 616. "[T]he

complaining party has the burden of showing prejudice as well as error. If prejudice is shown, this Court will reverse." *Id.* An error is harmless when it "does not affect the outcome of the case." *Id*. at 617. Here, as we will explain below, the allegations properly sustained by the court, along with additional evidence presented during the hearing, are sufficient to support the court's finding at disposition that J.E. is a child in need of assistance. Although we agree with Mother that the Department's mischaracterizations of certain facts and allegations within the petition are highly inappropriate, Mother has not shown that these mischaracterizations caused harm severe enough to change the ultimate outcome of the case. We caution the Department, however, to avoid such mischaracterizations in the future.

B. Reasonable efforts to prevent removal

Mother also argues on appeal that the Department failed to make reasonable efforts to prevent J.E.'s initial removal from her custody in the hospital. She contends that none of the efforts listed in the Department's petition constitute reasonable efforts to prevent this removal. Mother further argues that the Department did not conduct an investigation before deciding to remove J.E. and, in fact, did not even make contact with Mother and J.E. until the time of removal. Instead, the Department instructed the hospital social worker to place a hold on J.E.'s discharge based on its history with Mother, informed the hospital that the plan was to place J.E. in foster care, and instructed the hospital not to inform Mother of this decision. We agree with Mother that the Department did little to nothing to prevent J.E.'s initial removal and, instead presumed without any further investigation that shelter care was appropriate based solely on Mother's prior history. We hold, however,

that the question of whether the Department made reasonable efforts to prevent J.E.'s initial removal was not before the circuit court during adjudication and is not before us now.

Mother's argument that this issue is preserved for appellate review rests on the contention that the circuit court, during the adjudication hearing, was required to evaluate the Department's reasonable efforts both before and after the shelter care hearing. The Department counters that this question is not preserved for appeal because, during adjudication, only efforts made since the shelter care hearing are up for review. The Department contends that because the shelter care decision was itself appealable, Mother's failure to appeal that decision renders her challenge of the Department's initial reasonable efforts unpreserved. We agree.

Pursuant to CJP § 3-816.1, the circuit court is required to make a finding as to whether the Department has made reasonable efforts to prevent placement of the child into the Department's custody. This requirement applies independently at each stage of the proceedings -- shelter care, adjudication, and disposition. *Id.* At each stage, the Department is required to provide evidence of reasonable efforts, and the court is required to make a new finding. "The court's finding under this subsection shall assess the efforts made since the last adjudication of reasonable efforts and may not rely on findings from prior hearings." CJP § 3-816.1(b)(5).

Mother argues that the nature of a shelter care hearing demands that the court make a renewed finding of reasonable efforts to prevent initial removal at adjudication because this is the first hearing where facts are adjudicated and the first opportunity for the court to fully hear evidence of what efforts were made to prevent removal. "[S]helter care is by

definition temporary during the pendency of a CINA proceeding and intended to deal with a serious risk to the child's safety and welfare during that period." *In re O.P.*, 470 Md. 255, 251 (2020). "Shelter care is not a component of every CINA case. Rather, it involves a separate proceeding in which the juvenile court decides whether to authorize interim protection for a child who may be at risk in the home while the CINA petition is pending." *Id.* at 237. During a shelter care hearing, the rules of evidence do not apply and "reasonable grounds is the appropriate standard for a juvenile court to apply." *Id.* at 271.

At a shelter care hearing, a court may continue shelter care only if the court finds that:

> (1) Return of the child to the child's home is contrary to the safety and welfare of the child; and
>
> (2)(i) Removal from the home is necessary due to an alleged emergency situation and in order to provide for the safety of the child, or
>
> (ii) reasonable efforts were made but were unsuccessful to eliminate the need to remove the child from the home.

CJP § 3-815(d). Because this determination "is not a 'step toward the final Disposition' of a CINA proceeding," it "runs its course not in the path of the CINA Adjudication, but collaterally, in its own lane, without advancing or hindering the final CINA decision." *In re O.P.*, 470 Md. at 253. For this reason, it "is effectively unreviewable on direct appeal," and therefore "reviewable under the collateral order doctrine." *Id.*

Here, pursuant to CJP § 3-816.1, the court's shelter care determination that the Department had made reasonable efforts to prevent J.E.'s initial removal was not up for review during adjudication. The circuit court properly reviewed the Department's efforts

since the shelter care hearing and found that they were adequate. Because a shelter care determination runs collaterally to a CINA proceeding, these two findings exist independent of one another. Mother's concerns regarding the Department's lack of reasonable efforts to prevent initial removal should have been raised in an interlocutory appeal immediately following the shelter care order. Because the circuit court was not required to, and did not, review these efforts during adjudication, no finding of reasonable efforts to prevent the initial removal is available for our review. We, therefore, find that this issue is not preserved.

II. Based on properly sustained evidence, the circuit court did not err in finding J.E. a CINA.

Mother argues on appeal that the court committed legal error when it found J.E. was a CINA because the court's underlying finding of neglect was unsupported by evidence. At Disposition, the court determines if the child is a CINA.

> "Child in Need of Assistance" means a child who requires court intervention because:
>
> (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and
>
> (2) The child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs.

CJP § 3-801(f). The CINA subtitle defines "neglect" as:

> The leaving of a child unattended or other failure to give proper care and attention to a child by any parent . . . under circumstances that indicate:
>
> (1) That the child's health or welfare is harmed or placed at substantial risk of harm; or

(2) That the child has suffered mental injury or been placed at substantial risk of mental injury.

CJP § 3-801(s)(1).

A. Remaining in Mother and Father's custody presented a risk of substantial harm to J.E.

Because J.E. was removed from Mother's custody immediately following his birth, there is little primary evidence to suggest that Mother directly neglected J.E. Maryland courts have held, however, that a finding of whether neglect exists is determined by a "totality of circumstances." *In re J.R.*, 246 Md. App. 707, 725 (2020). "[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, "it has long been established that a parent's past conduct is relevant to a consideration of the parent's future conduct. Reliance upon past behavior as a basis for ascertaining the parent's present and future actions directly serves the purpose of the CINA statute." *In re Adriana T.*, 208 Md. App. 545, 570, (2012). A court need not wait for a child to suffer affirmative abuse or neglect before such a finding can be made. "The purpose of [the CINA statute] is to protect children -- not 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." *In re William B.*, 73 Md. App. 68, 77 (1987).

Here, available evidence supports a finding that J.E. was at substantial risk of harm if he was returned to Mother and Father's custody. Mother's history with the Department, is well supported. The Department provided reports and records dating back to 2020 that document the Department's interactions with Mother, her relationship and interactions with her children during visitation, and the Department's efforts to provide various methods of support to Mother during this period. The record reflects that Mother has been and remains deeply distrustful of the Department and unwilling to productively collaborate with the Department towards completing goals and tasks necessary to permit reunification. This includes Mother's refusal to provide up to date and complete information related to employment, childcare plans, and stable housing. Although Mother did permit the Department to visit her apartment, the Department reported and testified that the apartment did not appear lived in, and that Mother was unwilling to provide proof that she had a lease at that location. Both past and present attempts to visit and evaluate other residences at which Mother has resided have been either inconsistent or lacking. Father has similarly refused to provide the Department with information related to employment, income, housing, mental health, or substance use.

As the Department suggests on appeal, Mother's mental health and cognitive limitations raise the most significant concerns regarding J.E.'s safety. As previously discussed, in 2019, Mother was diagnosed with a number of mental health and personality disorders. She was subsequently diagnosed with borderline intellectual functioning and cognitive limitations that "impact her ability to use sound judgment and implement safe parenting practices." The results of Dr. Kraft's parenting capacity evaluation indicated that

Mother's "cognitive limitations, lack of insight and lack of adequate knowledge of parenting practices represent significant risk factors for dysfunctional parenting, particularly with very young children." Because the Department has been unable to obtain an updated evaluation, it is not unreasonable for both the Department and the court to rely on these findings when evaluating the current risk of harm. These concerns coupled with the Department's history with Mother and Father provide sufficient evidence from which the court could find that returning J.E. to his parents' care would present a substantial risk of harm.

B. Mother and Father are unable or unwilling to give proper care and attention to J.E.

Mother also argues that the court erred in finding that she was unwilling or unable to offer J.E. proper care and attention. In support of this argument, Mother argues that she had housing with no safety concern, income, a plan for daycare, furniture, toys, and formula for an infant. Mother also testified that she had a plan for transporting J.E. to medical appointments and the support of her mother. She testified that she only stopped attending visits with J.E. because the Department was cancelling the appointments. The Department counters that both parents failed to attend visits despite offers of transportation and flexibility in scheduling, and neither parent attended J.E.'s pediatrician appointments when the Department provided the appointment information. The Department also argues that, although Mother testified that she planned to use daycare, she never presented any concrete plans for childcare. The Department has frequently had trouble getting in contact with

Mother and Father for long periods of time, and it remains uncertain where either parent is currently living.

We agree with the Department that the evidence presented supports a finding that neither Mother nor Father appear willing or able to care for J.E. In addition to the Department's concerns regarding housing, income, and childcare, Mother and Father's consistent unwillingness to engage with the Department further supports this finding. Even crediting Mother's testimony regarding her apartment and employment, it remains true that Mother has refused to collaborate with the Department to address its legitimate concerns regarding her mental health. Although Mother's distrust of the Department and hesitance to submit to mental health evaluation or share her medical records is understandable, her failure to do so creates a barrier to reunification that cannot be overcome. This refusal, then, evinces an unwillingness to do what is necessary to parent J.E. The same can be said for Father's overt refusal to engage with the Department to address any of its concerns.

Based on the evidence presented and properly sustained during the hearing, the court did not commit legal error by finding that J.E. was neglected pursuant to the CINA statute.

CONCLUSION

For the foregoing reasons, we hold that the circuit court erred in sustained facts found in paragraphs (1), (2), and (11) of the Department's Amended CINA Petition, but that it properly sustained the remaining allegations. We further hold that, because the properly sustained facts provided an adequate legal basis for the court's ultimate finding, that the error was harmless. We decline to address Mother's contention that the Department failed to make reasonable efforts to prevent J.E.'s initial removal because, we

hold that this issue was not preserved for appeal. Finally, we hold that the circuit court did not commit legal error in finding J.E. was neglected pursuant to the CINA statute based on the totality of properly sustained facts presented at adjudication and disposition. Relying on these facts and legal conclusions rendered therefrom, the circuit court did not abuse its discretion in finding J.E. a child in need of assistance.

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