

Circuit Court for Baltimore County  
Case No. C-03-JV-22-000508

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND\*\*

No. 1600

September Term, 2022

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In Re J.S.

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Shaw,  
Tang,  
Kenney, James A., III  
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Tang, J.

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Filed: May 18, 2023

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

\*\* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

The Baltimore County Department of Social Services (“the Department”), an appellee, filed a petition to have J.S., an appellee, the minor child of K.R. (“Mother”), appellant, and L.S. (“Father”), an appellee, declared a child in need of assistance (“CINA”) by the Circuit Court for Baltimore County, sitting as a juvenile court. Following separate adjudication and disposition hearings, the court sustained the allegations of the petition against Mother, determined that Mother neglected J.S., and found that there were no allegations of abuse or neglect against Father, who was willing and able to care for J.S. The court ruled that J.S. was not a CINA, transferred custody of J.S. to Father, and terminated its jurisdiction.

Mother appeals, presenting one question, which we rephrase slightly:

1. Did the juvenile court err by sustaining the allegations of the petition against Mother, determining that she neglected J.S., and transferring custody to Father?

For the following reasons, we hold that the juvenile court did not err and affirm the judgment of the court.

### **BACKGROUND**

J.S. was born in October 2010 and is now 12 years old. He has been diagnosed with autism spectrum disorder, attention deficit hyperactivity disorder (“ADHD”), and speech delay. At all relevant times, Mother and Father shared legal custody of J.S. and Mother had primary physical custody of him under the terms of a custody order entered by the Circuit Court for Baltimore County, Case No. 03-C-12-000263. For most of J.S.’s life, Father had access to J.S. every other weekend from Friday evening through Sunday

evening, though his visitation recently had been reduced to one weekend night every other weekend.<sup>1</sup>

### **Department’s Prior Involvement with Mother**

The Department received various reports about J.S. between 2015 and 2021. In 2015, the Department investigated a report that J.S. was sexually abused by his half-brother. That investigation was closed as “unsubstantiated.” In 2019, the Department investigated a report that Mother’s home was “in deplorable condition” with “feces all over the floor and a gas leak.” In 2020, Mother was criminally charged with failure to send J.S. to school. In 2021, while J.S. was virtually learning during the COVID-19 pandemic, the Department received a report that Mother lifted her shirt to expose her bare breasts to then 10-year-old J.S. It also received reports that J.S. had “poor school attendance [and] multiple missed medical appointments[.]” The poor condition of Mother’s home also raised concerns. None of the reports led to J.S. being removed from Mother’s care.

### **Instant Investigation**

On July 5, 2022, the Department received a referral for suspected neglect of J.S. The reporter advised that Mother came to the emergency department at Northwest Hospital around 1 a.m. complaining of back pain. She had J.S., then age 11, with her,

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<sup>1</sup> The reason for this reduction in Father’s access was not apparent from the record.

and her luggage. This was “about the eighth time” she had been seen in the emergency room in the prior two weeks. “J.S. was observed to be unkempt and disheveled.” The reporter was concerned that Mother was “using the hospital as shelter.”

Three days later, Mother and J.S. appeared for a meeting at the Department. Breanna Radke, a child protective services social worker with the Department, interviewed Mother and J.S. J.S. told Ms. Radke that he and Mother were evicted from their apartment “around springtime.” Thereafter, they stayed in motels with financial assistance from other people for an unknown period. After Mother “ran out of money,” they began “sleep[ing] at the hospital every night or on a park bench at night.” He described their nightly routine as follows: “[he] and his Mom would spend some time in Target. They would charge their devices. Once Target closed they would proceed to the hospital where they would stay overnight until the following day.”

J.S. disclosed that he had not showered in days and had been wearing the same shirt for three days. J.S. told Ms. Radke that “there had been times when there wasn’t much to eat” and he worried about how they would get food. He explained that after Mother got paid, they would quickly run out of money. Mother sent money to her fiancé in Connecticut with the expectation that he would move to Maryland, but he never came. Mother corroborated that statement, telling Ms. Radke that she sends her fiancé money on a weekly basis.

Mother told Ms. Radke that she and J.S. slept in hospitals or on park benches. She explained that she had spent all her money for the month except for \$20. She advised

that she intended to move to California with J.S. on August 1, 2022. She did not have housing in California and told Ms. Radke that she planned to stay in a motel until she could secure it. She did not have a job there and had not done any research about employment opportunities or how to enroll J.S. in school in California.

At the end of the meeting, Mother told Ms. Radke that she had planned to go to the hospital with J.S. that night but “could not because she didn’t want CPS to get involved.” Instead, they would “sleep outside on a bench.” Ms. Radke informed Mother that that “plan was not appropriate . . . and [was] unsafe[.]” Ms. Radke contacted Father and reached a verbal agreement with Mother that J.S. would stay with Father for the weekend.

After Ms. Radke learned from Father that Mother had contacted him over the weekend and attempted to persuade him to return J.S. to her care, the Department entered into a safety plan with Mother on July 12, 2022. The terms of the plan were that J.S. would stay with Father until further notice and that Mother would not seek to remove J.S. from his care or from school.

The following day, Ms. Radke learned that Mother had gone to J.S.’s school and endeavored, unsuccessfully, to pick him up. The school administrators “reported multiple [additional] concerns.” J.S., who had an individualized education plan (“IEP”) because of his autism diagnosis and his speech delay, “was nearing about a hundred days tardy from school and . . . would show up at around 1 o’clock in the afternoon.” He had been absent 25 times that year. He was struggling to progress in classes that were held

during the morning hours because of his tardiness. The school had reached out to Mother, but “she didn’t consider these concerns a big deal” and blamed her back pain for J.S.’s attendance issues.

The school advised that Mother’s “previous escalated behavior” had prompted the administrators to issue a no-trespass order. School officials observed that Mother “struggled to understand what is real and what is not” and “becomes easily frustrated about simple things.” Mother called the school daily, sometimes multiple times, about “little things that she felt . . . needed their immediate attention.” On one occasion, she made various phone calls to complain that the school bus driver had not greeted her.

#### **CINA Petition**

On July 19, 2022, the Department filed the CINA petition containing ten allegations. In addition to the above facts, the Department alleged that Father told the Department that Mother prevents him from visiting with J.S., blocks his number, and lies to him about J.S.’s school attendance. That same day, the court held a shelter care hearing and entered an order for continued shelter care in the custody of Father pending an adjudication hearing, with liberal supervised visits between Mother and J.S.

#### **Events Pending Adjudication**

Sometime after J.S. entered Father’s care, Mother traveled to California. Though she had initially stayed with a friend there, that “situation [did] not work[] out,” and she was again homeless. Prior to the adjudicatory hearing, Mother was out of touch with the

Department for over a month. She had no in-person visits with J.S. and infrequent phone contact.

Meanwhile, J.S. was doing well in Father's care. The Department had assessed Father's home and determined that it was "safe and appropriate," that J.S. had his own bedroom, and that there was adequate food. J.S. had completed summer school at his former school before transitioning to a school that was close to Father's home for the next school year. The school reported no concerns about attendance or any other issues. J.S. had joined the school band, playing the violin. Father ensured that J.S. went to sleep by 10 p.m. each night and got eight hours of sleep. J.S.'s paternal grandmother, who lived near Father, provided care for J.S. when Father was at work during non-school hours. J.S. was very close to his grandmother and enjoyed spending time with her.

Since J.S. entered Father's care, J.S. expressed to Ms. Radke that he felt relieved that he no longer had to worry about where he would be sleeping. He reported that he had missed Father and was happy to spend more time with him. He felt "safe" and wanted to remain with Father.

### **Adjudication Hearing**

On October 4, 2022, the court held a remote hearing at which the Department, Father, Mother, and, at times, J.S., were present with their respective counsel. Mother was traveling home from California on the day of the hearing and was unavailable when the hearing began. Her counsel waived her presence until she was able to appear remotely later in the proceeding.

In its case, the Department called Ms. Radke, who was accepted as an expert in child welfare and risk and safety assessment, and introduced the statements made to her by J.S. during the July 8, 2022 interview, which we recounted above.<sup>2</sup> It also introduced Mother’s medical records from Northwest Hospital, which reflect that Mother was seen in its emergency department eight times between May 20, 2022 and July 18, 2022, with all visits taking place after she and J.S. were evicted.

In addition to the “instability of J.S.’s living conditions” *supra*, Ms. Radke also had concerns about Mother’s mental health. As mentioned, J.S.’s former school reported that Mother fixated on minor issues and that her “escalated behavior” had been sufficiently troubling for the school to prohibit her from entering the grounds. Ms. Radke observed that Mother had an “inability to get along with people.” This had resulted in Mother not seeking help from Father “simply because of her conflict with him.” Mother was “difficult to have a conversation with and appears to not be based in reality.” Ms. Radke suggested to Mother that she might benefit from consulting with a therapist, but Mother denied that she had any reason to seek help.

Ms. Radke opined that J.S. was at substantial risk of harm if he returned to Mother’s care. She explained that Mother has “little to no insight about her financial

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<sup>2</sup> Section 11-304 of the Criminal Procedure Article permits the juvenile court in CINA proceedings to admit out-of-court statements made by a child younger than 13 to a social worker if certain conditions are satisfied and the statement has particularized guarantees of trustworthiness. *In re J.J.*, 231 Md. App. 304, 324-29 (2016). Mother does not challenge the admission of J.S.’s statement on appeal.



decision making and her housing deficit and its impact on the safety and well-being of J.S.” Mother did not appreciate that her decision to sleep outside on a bench or repeatedly bringing J.S. to hospital emergency rooms “where people are coming and going with disease” puts him at risk of harm. Ms. Radke believed that if J.S. were returned to Mother’s care, she would likely attempt to take him to California, further isolating him from Father. Ms. Radke opined that Father was able to provide for J.S.’s needs and was “more than capable” of taking care of J.S.

In his case, Father testified that before J.S. entered his care, Mother denied him access to J.S. under the terms of the court-ordered visitation schedule, blocked his number when they argued, and withheld information from him, including the facts of her homelessness and J.S.’s poor school attendance. When Mother first was evicted, she asked Father if she and J.S. could stay with him. He offered for J.S. to stay with him but told Mother she was not welcome. Mother blocked his number in response to that conversation. Father explained that he always had sought to spend time with J.S., filing petitions for contempt in the parties’ custody case on more than one occasion.

In her case, Mother testified that she was evicted from the apartment where she and J.S. had lived on May 19, 2022. After they were evicted, Mother sought help from a friend at church who initially paid for them to stay somewhere for four weeks and then arranged for them to live with a woman he knew for three weeks. The woman with whom they were living became “really impatient” for Mother to find a permanent place to stay, so Mother and J.S. moved out. Mother then paid for motel rooms in June and

July because she did not want to take J.S. to a shelter. Mother admitted that she and J.S. occasionally slept on park benches. She denied that they ever went to the hospital to sleep. According to Mother, J.S. never went hungry when he was in her care and always had a place to shower and to brush his teeth. Mother denied that she ever blocked Father from seeing J.S.

On cross-examination, Mother testified that she was not currently employed. She was at the airport because she was traveling back to Maryland from California, where she had been “visiting friends.” She was looking into housing for her and J.S. in the Los Angeles area.

Mother denied that J.S. missed school or medical appointments when in her care. She admitted that he was late to school sometimes but explained that his bus was unreliable. She said that if J.S. told Ms. Radke that he went hungry, he was lying. Mother felt disrespected by school staff, by Ms. Radke, and by Father. When she felt disrespected by Father, she blocked his number.

### **Adjudication Ruling**

The court sustained the allegations of the CINA petition, concluding that the Department met its burden of proof as to the substance of the petition. The court found good cause to delay disposition to October 24, 2022. The court found that it was contrary to J.S.’s welfare for him to be returned to Mother’s custody at that time, entered an adjudication order pending disposition that sustained the ten allegations of the CINA petition, and continued the shelter care order placing J.S. in Father’s care.

### **Disposition Hearing**

The disposition hearing proceeded on October 24, 2022. The court admitted the Department's court report dated September 23, 2022, and an addendum dated October 19, 2022, without objection. The Department, Father, and J.S.'s counsel all took the position that the court should find that Mother neglected J.S. and transfer custody to Father.

Mother argued that she had cared for J.S. to the best of her abilities despite poverty and had only recently struggled to house him after being evicted. She maintained that the court should find that J.S. was not a CINA and leave the existing custody arrangement between the parties in place.

The court made the following relevant findings. The Department made reasonable efforts to avoid removing J.S. from Mother's care; investigated and assessed his educational needs; and attempted to put a safety plan in place. Mother's poor physical health, her homelessness, and her financial instability were not "in and of themselves" reasons to remove J.S. or to find neglect. Those factors along with Mother's "unstable mental health" and failure to ensure that J.S. attended school were "extremely concerning" to the court. Considering that J.S. had an IEP, consistent attendance at school was even more essential to meet his needs. Mother's decision to move to California without any plan for housing or employment as well as her attempted violation of the safety plan also were significant to the court. On those bases, the court determined that Mother neglected J.S.

Conversely, there were no allegations of abuse or neglect against Father, who was the non-custodial parent when the events giving rise to the petition occurred. Because a child is a CINA only if both parents are unwilling or unable to give proper care and attention and Father was willing and able to do so, the court found that J.S. was not a CINA.

The court found by a preponderance of the evidence that it was contrary to J.S.’s welfare to be returned to Mother’s care. The court further found that, since J.S. was removed from her care and had been in Father’s care, Father was meeting his needs. Custody was awarded to Father, with the right of reasonable visitation for Mother. The court dismissed the case and terminated its jurisdiction. The court entered an order to that effect on October 26, 2022. This timely appeal followed.

#### **STANDARD OF REVIEW**

We apply three interrelated standards of review to a juvenile court’s determinations in a CINA proceeding. *In re R.S.*, 470 Md. 380, 397 (2020). The court’s factual findings are reviewed for clear error. *Id.* Matters of law are reviewed *de novo*, without deference to the juvenile court. *Id.* We review final conclusions for abuse of discretion when they are based on “‘sound legal principles’ and factual findings that are not clearly erroneous[.]” *Id.* (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). An abuse of discretion occurs “‘where no reasonable person would take the view adopted by the [trial] court’ or when the court acts ‘without reference to any guiding rules or

principles.” *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (quoting *North v. North*, 102 Md. App. 1, 13 (1994)).

### DISCUSSION

In this case, the juvenile court acted under the authority of Md. Code, Cts. & Jud. Proc. (“CJP”) § 3-819(e) by removing J.S. from Mother’s care and transferring custody to Father. That statute provides that the court may not find that a child is a CINA “[i]f the allegations in [a CINA] petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child[.]” In that circumstance, the court “may award custody to the other parent” before dismissing the case. *Id.* Before exercising its authority under § 3-819(e), however, the court first must “sustain[] allegations in the petition that are sufficient to support determinations that: (1) the child has been abused or neglected; and (2) one of the child’s parents is unable or unwilling to provide proper care for the child.” *In re T.K.*, 480 Md. 122, 147 (2022).

Mother contends that the court erred in making the threshold findings that J.S. was neglected and that Mother was unable or unwilling to provide proper care for him. Consequently, she asserts that the court was without authority to exercise discretion under § 3-819(e) to transfer custody to Father. Rather, the court was obligated to find that J.S. was not a CINA, dismiss the case, and terminate its jurisdiction, leaving the custody order between the parties in place.

The Department responds that the court properly sustained all ten allegations of the petition against Mother and determined that Mother neglected J.S. and was unable or

unwilling to provide proper care for him. Having made these threshold findings, the court did not abuse its discretion by transferring custody of J.S. to Father, who the court found was able and willing to care for him. Father and J.S. likewise argue that the court did not err by sustaining the allegations of the CINA petition, finding that Mother neglected J.S., and transferring custody to Father.<sup>3</sup>

**A. Court Did Not Clearly Err by Sustaining Allegations of CINA Petition.**

Mother contends that the evidence adduced by the Department did not support the court’s findings that certain allegations in the CINA petition were sustained. In her brief, Mother compares *seriatim* each of the ten allegations in the petition with the evidence adduced at the adjudication hearing. She does not challenge all factual findings made by the court. Rather, she contends that certain, proven factual findings did not independently establish that Mother neglected J.S. and/or were irrelevant to the determination of neglect. We address those points in the next section. In this section, we focus on the allegations that Mother contends were not supported by the evidence.

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<sup>3</sup> In his brief, Father contends, without citation to any legal authority, that Mother’s appeal was not timely with respect to the court’s adjudication order sustaining the allegations of the petition against her because she did not note her appeal within thirty days after that ruling. A final judgment is one that settles all the claims against all the parties, *Salvagno v. Frew*, 388 Md. 605, 615 (2005), and “leave[s] nothing more to be done in order to effectuate the court’s disposition of the matter.” *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989). Here, the adjudication order sustained the allegations of the petition against Mother and continued the interim shelter care order but did not dispose of the CINA petition. The later disposition order finding that Mother neglected J.S., transferring custody to Father, and terminating the juvenile court’s jurisdiction was the final judgment. Thus, Mother’s appeal was timely.

In Paragraph 4 of the petition, the Department alleged:

On 7/8/22, the Department met with [Mother] and [J.S.] at the agency for an initial visit. During the interview with [J.S.], he confirmed the allegations of being in a different hospital every day of the week and all hours of the night. [J.S.] informed the Department that his bag of clothing had been stolen, that he had not showered in approximately four days, and that he sometimes went hungry.

Mother contends that there was no evidence that J.S. told Ms. Radke his clothing had been stolen and that the evidence showed that J.S. told her that they spent time in motels except for “some unspecified number of occasions” when they stayed outside or in hospitals. She likewise disputes that the testimony supported the allegation that J.S. “went hungry.”

In sustaining this allegation, the court found that the evidence was “factually slightly different” but that the Department had proven “the substance” of it. We agree. Ms. Radke testified that J.S. told her he was “sleep[ing] at the hospital *every* night or on a park bench at night” when Mother “ran out of money and no one could support” motel stays. (Emphasis added.) “[T]here had been times when there wasn’t much to eat” and J.S. worried about how they would get food. With respect to the claim of “stolen” clothing, the substance of it – that J.S. did not have adequate, clean clothing – was supported by evidence that he had been wearing the same clothes without showering for days.<sup>4</sup> The court did not clearly err by sustaining the allegation.

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<sup>4</sup> In any event, the claim that J.S.’s clothes were “stolen” was not essential to the court’s ultimate determination of neglect, nor was there any indication that the court

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(Continued...)

In Paragraph 5 of the petition, the Department alleged, in part:

During the same interview, [Mother] informed the Department that she does not have a home and often sleeps in hospitals. She advised that her primary reason for going to the E.R. was for “back pain,” but then would stay to sleep. [Mother] also advised that she and [J.S.] have also slept on park benches in Reisterstown due to lack of housing.

The court found the allegation sustained consistent with Ms. Radke’s testimony at adjudication, though it noted that the testimony was slightly different than as alleged. Mother contends that the differences were “substantial[.]” We disagree. Ms. Radke testified that Mother told her that she and J.S. have “slept in hospitals and on benches outside.” She further testified that at the conclusion of the initial meeting, Mother informed Ms. Radke that it had been her plan to take J.S. to a hospital that night, but since she did not wish to get in trouble with the Department, they would instead sleep on a park bench. The evidence supported the allegation, and the court did not clearly err by sustaining it.

In Paragraph 9 of the petition, the Department alleged, in part:

The school also reported concerns with [Mother’s] lack of follow through with tasks asked of her. The school stated that Mother was informed of [J.S.]’s need for a vision exam that was never scheduled. [Mother] was also reportedly not consistent with PRP services set up for [J.S.]

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(...continued)

relied on it in making its decision to transfer custody to Father. *See In re Mark M.*, 365 Md. 687, 707 (2001) (“A trial court . . . is in the unique position to marshal the applicable facts, assess the situation, and determine the correct means of fulfilling a child's best interests.”).



Mother contends that there was no evidence that “J.S. actually missed any medical examinations or appointments or was otherwise in need of medical care that he was not receiving.” She emphasizes that she testified “without contradiction” that J.S. had not missed any appointments. Ms. Radke, however, testified that the school reported that there were things asked of Mother regarding “medical follow-up for J.S.” that she had not “followed up on”; “the lack of follow-up” was “consequential to [J.S.] because of his autism and need for consistency and access to services and support.” The evidence was sufficient to sustain the allegations that Mother was not following through with tasks asked of her by school personnel.

**B. Evidence Supported Court’s Determination that Mother Neglected J.S.**

Mother primarily contends that the court erred by determining that the sustained allegations supported a finding that she neglected J.S. She emphasizes that the issue before the court was not “whether [she] was a perfect mother or whether [Father] was in a position financially to provide J.S. with more.” In her view, the allegations, viewed as a whole, showed that Mother was struggling with poverty and homelessness, but they did not evince a pattern of behavior that warranted a finding that she had neglected J.S. She argues that the “concerns” raised by the Department and J.S.’s school about her mental health were not relevant given that there was no evidence that Mother is mentally ill. She disputes the significance of her history with the Department given that there were no prior findings of neglect or abuse and J.S. never previously was removed from her care. She also disputes the significance of her visits to the emergency department given that the

Department did not adduce evidence refuting Mother’s legitimate medical complaints. She maintains that there was no evidence that she ever left J.S. unattended or failed to take actions to protect his health or welfare. She asserts that her attempted violation of the safety plan should be afforded little weight because there was no evidence that J.S. was at substantial risk of harm in Mother’s care.

We are not persuaded by Mother’s argument. As pertinent here, “neglect” means the “failure to give proper care and attention to a child by any parent . . . under circumstances that indicate . . . [t]hat the child’s health or welfare is harmed or placed at substantial risk of harm[.]” CJP § 3-801(s). Neglect involves “an overarching pattern of conduct.” *In re Priscilla B.*, 214 Md. App. 600, 625 (2013). It need not “involve affirmative conduct[.]” but may be found through “the *inaction* of a parent over time.” *Id.* (emphasis in original). “In determining whether a child has been neglected, a court may and must look at the totality of the circumstances[.]” *Id.* at 621.

The court focused upon various aspects of the Department’s case in reaching its ultimate determination that Mother neglected J.S. beyond Mother’s homelessness and financial instability. First, the court found that the instability of Mother’s mental health had prevented her from giving J.S. proper care and attention. In so finding, the court relied both upon the evidence adduced and the court’s firsthand observations of Mother during her testimony at the adjudication hearing. *See In re Yve S.*, 373 Md. at 585-86 (emphasizing that the trial court “is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what

disposition will best promote the welfare of the minor”). The evidence established that Ms. Radke and school administrators found that Mother was detached from reality. Ms. Radke opined that Mother demonstrated little insight into how her decision-making impacted her son. The evidence showed that as a direct result of her interpersonal conflicts, Mother was unable to work cooperatively with J.S.’s school to meet his special needs, failed to use Father as a resource for J.S. when she lost her housing, and reacted defensively when hospital staff offered a social work consultation to address Mother’s repeated visits to the emergency room. All this evidence supported the court’s finding that Mother’s mental health impacted her decision-making regarding J.S.

Second, the court found significant Mother’s failure to ensure that J.S. attended school on a regular basis. The evidence established that J.S.’s school attendance amounted to some level of absence for more than half of the school year. Mother told school officials that her back pain was the underlying reason for J.S.’s attendance issues but testified at the adjudicatory hearing that his school bus did not always arrive. There also was evidence that Mother had been criminally charged with failure to send J.S. to school in 2020. Given that J.S. was diagnosed with autism, ADHD, and speech delay, the court reasoned that regular attendance was “extremely important to meet the child’s needs.” Notably, since J.S. entered Father’s care, he had completed summer school and had no attendance issues.

Finally, Mother’s attempted violation of the safety plan factored into the court’s determination that she failed to give proper care or attention to him. The day that J.S.

entered Father’s care, Mother had planned to sleep on a park bench with him overnight. Though Ms. Radke explained to Mother that this was not a safe or appropriate plan for J.S., within days Mother tried to convince Father to return J.S. to her care. After the Department intervened to create a formal safety plan for J.S., which required him to remain in Father’s care until further notice, Mother then tried unsuccessfully to violate that plan. The testimony also established that Mother intended to move J.S. to California without a plan for his care. The sum of this evidence signaled that Mother placed her desire to maintain custody of J.S. over his interest in a safe and stable living environment.

On this record, the court did not abuse its broad discretion by determining that J.S. had been neglected and that Mother was unable or unwilling to provide proper care and attention to him.

**C. Court Did Not Err by Transferring Custody of J.S. to Father.**

As the Supreme Court of Maryland<sup>5</sup> recently explained in *In re T.K.*, if the juvenile court finds that the allegations of the CINA petition are sustained against only one parent and the other parent is able and willing to care for their child, “the court then must decide whether to exercise [its] discretion” to transfer custody to the other parent. 480 Md. at 133, 150. The best interest of the child is the overarching consideration in the exercise of the court’s discretion. *Id.* at 133.

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<sup>5</sup> At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

Mother does not directly challenge the court's determination that Father was able and willing to provide care for J.S. The evidence plainly was sufficient to support that determination. The Department had assessed Father's home to be safe and appropriate, and Father testified to his willingness to provide care for his son going forward.

The evidence also supported the court's discretionary decision to transfer custody to Father. J.S. was thriving in his care. He was attending school regularly, had begun playing an instrument, and was getting adequate sleep. The school had no concerns about him. J.S. expressed to Ms. Radke that he no longer felt anxious about his living arrangements, he felt safe with Father, and he desired to stay in Father's care. The court did not err or abuse its discretion by transferring J.S. to Father's custody and terminating its jurisdiction.

**JUDGMENT OF THE CIRCUIT FOR  
BALTIMORE COUNTY, SITTING AS A  
JUVENILE COURT, AFFIRMED. COSTS  
TO BE PAID BY APPELLANT.**