

Circuit Court for Baltimore City
Case No. C-821197002

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2014

September Term, 2022

IN RE: J.F.

Beachley,
Shaw,
Killough, Peter K.
(Specially Assigned),
JJ.

Opinion by Shaw, J.

Filed: November 3, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

On July 16, 2021, the Baltimore City Department of Social Services filed a petition in the Circuit Court for Baltimore City alleging that J.F. was a child in need of assistance (“CINA”) due to abuse by her parents, mother K.M. and father T.F. An adjudicatory hearing was held, and at its conclusion, the magistrate recommended the case be dismissed and that custody of J.F. be awarded to her mother. The Department and J.F. timely filed exceptions to the recommendations and an on-the-record exceptions hearing was held. Following a review of the transcripts, evidence and exhibits, the parties’ stipulations, and arguments of counsel, the juvenile judge held that J.F. was a CINA. The judge then granted custody of J.F. to her mother and terminated its jurisdiction of the case. The court’s final order continued a previous Order Controlling Conduct (“OCC”) regarding supervised visitation with the father. Mother timely appealed and presents three questions for our review:

1. Did the juvenile court err in finding J.F. to be a CINA?
2. Could the juvenile court simultaneously make a CINA finding, while also awarding full custody to one parent and terminating jurisdiction?
3. Did the juvenile court err in continuing an Order Controlling Conduct after jurisdiction was terminated?

Father timely appealed. He adopted Mother’s questions and presents one additional question:

1. Was the Circuit Court’s finding that Dr. Holick’s conclusions were unreliable clearly erroneous?

For the following reasons, we affirm in part, and reverse in part. We remand for further proceedings consistent with this opinion.

BACKGROUND

On July 14, 2021, Mother called J.F.’s pediatrician after she noticed that then-four-week-old J.F.’s left leg was swollen and warm to the touch. The next day, J.F.’s pediatrician advised Mother to take J.F. to Sinai Hospital, which Mother did. The hospital found that J.F.’s leg was red and swollen due to bleeding underneath her skin. A physical examination was performed that included x-rays and bloodwork. The x-rays revealed that J.F. had suffered a large “bucket-handle” fracture to her left shin bone (proximal left tibial metaphysis) and fractures to eleven of her ribs, including seven broken ribs on her left side and four broken ribs on her right side.

Mother and Father lived together in the home and cared for J.F., but they had “[a]bsolutely no explanation” for J.F.’s injuries. Mother stated she was with J.F. the entire day on the 14th, without any pets in the home, and J.F. had not experienced any “trauma, falls, animal or insect bites, or environmental exposures.” Mother denied she had hurt J.F. and denied that Father had hurt J.F.

The hospital concluded that J.F.’s injuries were the result of non-accidental trauma, consistent with “child abuse.” Medical staff stabilized J.F.’s fractured leg in a cast and sent the Baltimore City Department of Social Services a report of J.F.’s injuries. Upon receiving the report, the Department assigned a caseworker from Child Protective Services (“CPS”), who determined that J.F. was not safe in the custody of her parents. The caseworker identified J.F.’s maternal grandmother, D.B. (“Grandmother”), as an

appropriate placement and placed J.F. with Grandmother upon discharge from the hospital. The Department then filed a CINA petition with a request for shelter care, which was authorized the same day, continuing J.F.’s placement with Grandmother.

A juvenile magistrate commenced an adjudicatory hearing on August 5, 2021, which resulted in the scheduling of further hearings on multiple days in September and October of 2021. The court conducted a shelter care hearing and found that J.F. could be returned home to Mother and Father. In response, the Department amended the CINA petition. The additional allegations included CPS’ finding that Mother and Father were indicated for abuse of J.F. and J.F.’s genetic test results, which were negative for any bone disease or underlying bone fragility syndrome. After reviewing the amended petition, the court authorized continued shelter care to the Department and Grandmother.

The adjudicatory hearing on the petition as amended resumed on January 25, 2022. Dr. Scott Krugman, a board-certified pediatrician and expert in child abuse, was the first expert witness to testify. Dr. Krugman consulted with physicians in the emergency department at Sinai Hospital when J.F. was admitted and subsequently reviewed her records. Dr. Krugman testified that J.F.’s injuries had “to occur from significant forces to bones . . . and having no history of injury does not make sense and is not consistent with the injuries.” Dr. Krugman found that the eleven fractures to J.F.’s ribs resulted from “significant forces” from “intentional acts.” Dr. Krugman concluded the fracture to J.F.’s left shin bone was “a specific grab around the shin and yank injury.”

Dr. Michael Holick, a board-certified internal medicine physician, who maintains a clinic at Boston University Medical Center, also testified. Dr. Holick was accepted as an

expert in metabolic bone disease, Ehlers-Danlos Syndrome (“EDS”), Vitamin D deficiencies, and endocrinology. He testified that he had examined both Mother and Father, and made a diagnosis of EDS in both parents, thus giving J.F. a 75% chance of developing EDS. He acknowledged that he does not treat children and that established medical criteria for EDS does not support a pediatric EDS diagnosis in patients under five years of age. He also acknowledged there was no support from other medical professionals in any other field regarding a connection between infants diagnosed with EDS and bone fragility.

On February 8, 2022, after Mother completed a parent-fitness assessment with a psychologist, parenting classes, and successful supervised visits with J.F., the Department determined J.F. could be returned to Mother’s care and custody with Department support and oversight. Upon its request, the juvenile court rescinded the shelter care order and permitted J.F. to be returned to Mother’s care under an OCC. The Order stated:

1. Mother, [K.M.], shall permit no unsupervised contact between father, [T.F.], and [J.F.];
2. Father, [T.F.], shall have no unsupervised contact with [J.F.];
3. Mother shall ensure that [J.F.] is supervised by the maternal grandmother, [D.B.], when mother is working;
4. Mother shall ensure that [J.F.] is supervised at all times;
5. Mother and maternal grandmother are the only individuals permitted to supervise contact between [J.F.] and her father, unless prior approval for someone else to supervise is approved by BCDSS;
6. Mother and father will cooperate with Family Preservation services;
7. Mother and father will allow announced and unannounced home visits by BCDSS and child’s counsel;

8. Mother shall ensure that [J.F.] attends all of her medical appointments and provide documentation of attendance to BCDSS;
9. Mother shall maintain stable and appropriate housing; and
10. Mother will reach out to BCDSS if she feels overwhelmed caring for [J.F.].

Ms. Venus Jones, the CPS caseworker assigned to J.F.’s case, and Mother testified on July 8, 2022. Ms. Jones was responsible for making the initial contact with J.F. at the hospital to do a safety assessment, to interview alleged maltreaters, medical staff and witnesses, and to make a decision about safety and placement based on the circumstances. Ms. Jones performed an investigation, during which she interviewed both Mother and Father. Ms. Jones testified that Mother advised her that she and Father were J.F.’s caregivers. Ms. Jones also testified that Father reported he was in treatment for substance abuse. Ms. Jones stated that at the conclusion of her investigation in October 2021, both parents were “indicated” for child abuse. Mother testified that she did not cause J.F.’s injuries and that she did not believe that the fractures could have been caused by someone hurting J.F. The court then continued the adjudicatory hearing to July 11, 2022.

On that date, two expert witnesses, Dr. Debra Counts and Dr. Mahim Jain, testified. Dr. Debra Counts, M.D., a board-certified pediatric endocrinologist testified that she was “99 percent” certain that J.F.’s injuries were not “related to vitamin D deficiency or rickets” based on her evaluation of J.F.’s x-rays and alkaline phosphatase levels. Dr. Counts also testified that “fractures in infants are not part of the EDS diagnosis.” Dr. Mahim Jain, M.D., a board-certified physician in pediatrics and clinical genetics, testified that J.F.’s

genetic make-up was “normal” and there were no indicators of a “severe bone fragility condition.”

The parties made closing arguments on September 19, 2022, and on October 3, 2022, the magistrate placed his recommendations on the record, finding that “Dr. Holick has given a plausible explanation” and “[J.F.] is not a child in need of assistance.” J.F. and the Department filed timely exceptions. J.F. requested a de novo hearing, and the Department requested a hearing on the record.

On January 4, 2023, the juvenile court convened a hearing on the exceptions where the parties learned that the magistrate had not produced the required written report with his recommended findings. While the hearing was scheduled to be de novo, the parties agreed to take an exception on the record with a stipulation summarizing the magistrate’s verbal recommendations. The parties also agreed that the court could review the transcripts from the adjudicatory hearing, in conjunction with all other “evidence previously admitted,” which included the experts’ opinions and reports.

The hearing was reconvened the next day and the parties presented closing arguments. The Department requested that J.F. be found a CINA, custody be granted to Mother, and Father’s contact with J.F. remain supervised. J.F. requested that Mother be granted custody, and Father have supervised contact. Mother and Father requested that J.F. not be found a CINA, and the case be dismissed.

The judge announced his decision at a hearing on January 17, 2023. The judge noted his concern regarding the parties’ stipulation and amended it to “reflect that it was [the] Magistrate[’s] findings and not this Court’s findings. Otherwise ... it would have

made having a[sic] exception on the record almost m[oo]t.” No objections were lodged to the judge’s corrections. The judge stated that he did not agree with the Magistrate’s finding that Dr. Holick’s “conclusions provide a plausible explanation other than child abuse for J.F.’s injuries. The uncertainty of Dr. Hollack’s [sic] medical conclusions contrast sharply with the amount of evidence suggesting J.F.’s wounds were the result of abuse.”

The judge found that J.F. was a victim of abuse and that her parents were unable or unwilling to care for her and the court declared her to be a CINA. After a brief discussion with counsel, the court reconvened on the matter of custody. The Department requested custody to Mother, limited supervised contact with Father, and termination of the court’s jurisdiction. J.F. agreed with the Department’s request and added “we wish to continue with the current Order Controlling Conduct as it pertains to supervised visitations.” Father sought no change in custody or supervised visitation, other than that the visit supervisor is not limited to Mother or the maternal grandmother. Mother requested custody, continued supervised visitation with Father, and termination of the Court’s jurisdiction.

The judge awarded custody to Mother and “with regards to the custody and visitation, the existing order with the modification that the parties can negotiate or determine the visitation specifics, that it will not be limited to the individuals currently named, will be ordered, and that the Court’s involvement will be terminated once these orders are published.” Mother and Father timely appealed.

STANDARD OF REVIEW

In CINA cases, this Court applies three distinct but interrelated standards of review: (1) factual findings by the juvenile court are reviewed for clear error; (2) legal questions

are reviewed de novo; and (3) a juvenile court’s conclusion of law and fact is reviewed for abuse of discretion. *In re Yve S.*, 373 Md. 551, 586 (2003). When the appellate court scrutinizes factual findings, the clearly erroneous standard of Rule 8-131(c) applies. Maryland Rule 8-131(c). 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. *In re Yve S.*, 373 Md. at 586. 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. *In re M.*, 251 Md. App. 86, 111 (2021) (citations omitted).

An abuse of discretion exists “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 Andre J.*, 223 Md. App. 305, 323 (2015) (citation and quotation marks omitted) (alteration in original). A circuit court’s ultimate decision will be left undisturbed unless it is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.” *In re Ashley S.*, 431 Md. 678, 704 (2013) (citation and quotation marks omitted).

DISCUSSION

In *Troxel v. Granville*, the Supreme Court of the United States reaffirmed the long-standing principle that the Due Process Clause of the Fourteenth Amendment “protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.” 530 U.S. 57, 66 (2000). The Court observed this interest as “perhaps

the oldest of the fundamental liberty interests recognized by this Court.” *Id.* at 65. As stated by our Court in *Basciano*, “Maryland courts, in turn, have ‘consistently echoed the Supreme Court, declaring a parent’s liberty interest in raising a child a fundamental one that cannot be taken away unless clearly justified.’” *Basciano v. Foster*, 256 Md. App. 107, 131 (2022) (quoting *In re Yve S.*, 373 Md. 551, 566 (2003)). We have deemed the right to rear one’s children as essential and have included this right among a parent’s basic civil rights. *In re Yve S.*, 373 Md. at 566. A CINA proceeding provides a mechanism to determine whether government intrusion in a parent's relationship with a child is justified. “[A]dhering to statutory requirements, both procedural and substantive, is critical when the safety of the child and the fundamental rights of parents are at issue.” *In re T.K.*, 480 Md. 122, 144 (2022) (quoting *In re M.H.*, 252 Md. App. 29, 44 (2021)).

I. The Circuit Court did not err in finding J.F. was a CINA.

In Maryland, when a petition is filed alleging that a child is a CINA, the circuit court is required to hold an adjudicatory hearing to determine whether the allegations in the petition are true. Md. Code Ann. Cts. & Jud. Proc. §§ 3-801(c) and 3-817(a). An allegation that a child is a CINA must be proven by a preponderance of the evidence. *In re Nathaniel A.*, 160 Md. App. 581, 595 (2005). If such a determination is made, the court must then hold a disposition hearing to determine, among other things, whether the child is in need of assistance. Cts. & Jud. Proc. § 3-819(a)(1). A CINA is 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. Cts. & Jud. Proc. §3-801(f)(1)-(2).

a. The parties' stipulation did not resolve the material disputes of fact.

Mother argues the juvenile judge's acceptance of the stipulation from the original adjudication resolved all material disputes of fact. She contends the court erred in accepting the stipulation, then retroactively rejecting it, and making new factual findings. Mother asserts that she was not afforded notice that the court would rely on information outside of the stipulation.

The Department and J.F. argue that the parties agreed to proceed with an on the record exceptions hearing and agreed to present a stipulation to the court regarding the magistrate's recommendations. The parties also agreed that the court could review the transcripts and exhibits from the prior hearings.

Under Section 3-807 of the Courts and Judicial Proceedings Article, any party may file written exceptions to a magistrate's findings, conclusions, and recommendations. However, the party must specify those items objected to. Md. Code Ann., Cts. & Jud. Proc. § 3-807. A party who files exceptions may elect a hearing de novo or a hearing on the record before the court. *Id.* A de novo hearing is a "new hearing of a matter, conducted as if the original hearing had not taken place" and requires a "reviewing court's decision of a matter anew, giving no deference to a lower court's findings." *Black's Law Dictionary* 738 (8th ed. 2004). A hearing "on the record" limits the reviewing court to "the record made before the magistrate." Maryland Rule 11-103. An on the record hearing shall be held

either on an agreed statement of facts or on the part of the record that is relevant to the exceptions. *Id.*

A “stipulation is an agreement between counsel akin to a contract.” *State v. Broberg*, 342 Md. 544, 558 (1996). “Like contracts, stipulations are based on mutual assent and interpreted to effectuate the intent of the parties.” *Id.* The purpose of a stipulation is to familiarize the court with relevant facts which are not disputed in order to streamline the proceeding. *Bloom v. Graff*, 191 Md. 733, 736 (1949).

Here, the parties agreed to an on-the-record exceptions hearing as to the issue of whether J.F. was a CINA. The parties, including Mother, also agreed to a stipulation, in the absence of the Magistrate’s written report¹, that included the amended CINA petition and the Magistrate’s findings as to each of the thirteen allegations. As previously noted, the parties, including Mother, decided that the judge could review the transcripts and exhibits, which included the experts’ opinions and reports.

THE COURT: All right. So, I’m going to need some time to review this, and rather than you making arguments essentially in a vacuum without me having had the benefit of at least familiarizing myself with what you have listed as what you would like me to review, if we could reconvene tomorrow morning. That should give me sufficient time to review the transcripts and the exhibits, and the preliminary facts, or the agreed-upon facts. Is that acceptable to everyone?

MS. NEWSON (Counsel for Department): Yes, Your Honor.

MS. LUNN (Counsel for J.F.): Yes, Your Honor.

¹ The Magistrate failed to file a written report in accordance with the CINA statute by the date of the exceptions hearing.

MR. KIRSCH (Counsel for Father): Yes, Your Honor.

MS. LICHTERMAN (Counsel for Mother): Yes, Your Honor. I would also just ask that the Court review Mother’s exhibits, as well. I know that Ms. Lunn had listed most of the BCDSS exhibits, but I would ask that Mother’s exhibits be reviewed, as well.

THE COURT: Okay. All right.

At the hearing on January 17, 2023, prior to rendering its decision, the stipulation was amended by the court to reflect that it referred to the “Magistrate’s findings.” The judge asked if “anybody has any strong feelings” on the issue and Mother did not object. Mother’s argument, therefore, that the court erred in accepting the stipulation and then made a finding prior to her receiving notice is not properly preserved, as she had ample opportunity to note any objection.

Assuming arguendo, her argument is preserved, we hold the court did not err. All parties, including Mother, were in agreement that in addition to the stipulation, the transcripts and evidence could be reviewed by the court. In fact, Mother specifically requested the court to review her exhibits. We hold that there was simply no agreement that the stipulation would resolve all of the material facts and that it would constitute the entirety of the record for the court’s consideration.

b. The juvenile court properly found that J.F. was abused.

Mother and Father’s arguments regarding whether J.F. was abused are intertwined; thus, we address them together. Mother contends the juvenile court erred in finding that J.F. was abused. Because the Magistrate found that the parents provided a plausible

explanation for J.F.’s injuries and that the parents did not act abusively, she argues there could be no finding of abuse. Father argues, in his brief, that the trial court erred in finding abuse and the court failed to evaluate Dr. Holick’s testimony in light of *Daubert* and Maryland Rule 5-702. Father further argues that if Dr. Holick’s testimony was properly considered, the court would have found a plausible cause of J.F.’s injuries. During oral argument before this Court, Father’s attorney stated, however, that *Daubert* was not implicated. We, therefore, shall decline examination of that issue based on the following exchange at oral argument:

JUDGE: So, you agree that *Daubert* is not relevant in this case, no one objected to the admissibility of either experts’ testimony?

MS. SMITH (attorney for Father): I was using it more as an exemplary, exemplary of how expert testimony, even expert testimony, where you may have a novel issue of how, of what weight, or how it should be examined or considered. Uh, so that’s the only reason why that was there. I don’t know that I made that clear, but that’s why it’s there.

Appellees J.F. and the Department contend that the judge was the ultimate finder of fact and he properly determined that, based on the medical evidence, J.F. had been abused. Appellees assert that it was within the juvenile court’s discretion to decide “which evidence to accept and which to reject.” *Grimm v. State*, 447 Md. 482, 505-06 (2016).

Abuse is defined as the “physical or mental injury of a child under circumstances that indicate that the child’s health or welfare is harmed or is at substantial risk of being harmed by: (i) A parent or other individual who has permanent or temporary care or

custody or responsibility for supervision of the child; or (ii) A household or family member.” Md. Code Ann., Cts. & Jud. Proc. § 3-801(b).

On review, this Court “will give due regard to the opportunity of the trial judge to judge the credibility of the witnesses.” Maryland Rule 8-131. The opinion of an expert witness, the grounds on which it was formed, and the weight to be accorded are for the trial judge’s determination as the finder of facts. *See Great Coastal Exp., Inc. v. Schruiefer*, 34 Md. App. 706, 724 (1977) (holding that the judge in a civil bench trial acts as factfinder, and may find a witness persuasive or unpersuasive, regardless of the witness’s expert status).

Mother’s argument that the magistrate’s findings precluded a finding of abuse is without merit. This matter proceeded on exceptions filed by the parties. As previously discussed, the magistrate’s recommendations did not limit the juvenile court in making its own factual findings and ultimate determination.

There was no dispute that J.F. sustained serious physical injuries and it is undisputed that Mother and Father were her “only caregivers” when the injuries were sustained. Three medical experts, Dr. Krugman, Dr. Jain, and Dr. Counts, who were board-certified in pediatric specialties, testified that J.F.’s injuries were consistent with “child abuse.” The remaining expert, Dr. Holick, testified that abuse was not indicated, and that the child had a 75% chance of inheriting a genetic disorder that could cause bone fragility. The trial court, in evaluating the testimony of the experts, stated:

There was significant disagreement over whether the diagnostic used by Dr. Hollack [sic] is applicable to infants like J.F. and that Dr. Hollack [sic] did not establish to within a

degree of medical certainty that EDS is associated with bone fragility in children. Given the lack of certainty as to the science underpinning of Dr. Hollack’s [sic] diagnosis, the Court does not agree with the Magistrate’s finding that Dr. Hollack’s conclusions provide a plausible explanation other than abuse for J.F.’s injuries. The uncertainty of Dr. Hollack’s [sic] medical conclusions contrast sharply with the amount of evidence suggesting J.F.’s wounds were the result of abuse.

The court then found that abuse had occurred, stating:

In light of the evidence that J.F.’s injuries were non-accidental rather than the result of a genetic predisposition towards bone fragility, the Court finds that J.F. was the victim of abuse. This Court has the authority to declare a child CINA. With a preponderance of the evidence, it is this Court’s conclusion that the child (1) has been abused or neglected and (2) her parents are unable or unwilling to provide proper care and support for the child.

On this record, we hold that the court’s factual findings were fully supported by substantial evidence and are not clearly erroneous. *See Oliver v. Hays*, 121 Md. App. 292, 306 (1998). The testimony from the pediatric specialists was clearly “competent material evidence” and it was within the court’s purview to assess the credibility of the witnesses who testified. Ultimately, the judge determined that the evaluations and opinions of the pediatric specialists were more competent and persuasive than Dr. Holick’s and that based on the evidence, J.F. had been abused. *In re Ryan W.*, 434 Md. 577, 593-94 (2013).

c. The Court did not err in finding that Mother was unable to provide proper care to J.F.

The second prong of the CINA statute requires an examination of whether “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” after the court has determined that the child

has been abused. Cts. & Jud. Proc. §3-801(f)(1)-(2). This is a factual determination that an appellate court reviews for clear error. *In re Ashley S.*, 431 Md. 678, 704 (2013).

Mother argues the juvenile court erred in finding that J.F. was a CINA because she was able and willing to provide proper care to J.F. Mother asserts the court relied solely on her past conduct in justifying its finding that she was unable to provide proper care. Mother points to the eleven months prior to disposition, when she cared for J.F. under the OCC.

The Department and J.F. argue that Mother never acknowledged that J.F. had been abused nor did she act on her own to prevent Father from having unsupervised access to J.F. J.F. notes that Mother’s care from February 2022 to January 2023 was supported by the Department and under an OCC. J.F. argues that Mother’s history did not establish her ability to provide proper care in the absence of court intervention.

In its ruling, the juvenile court found that J.F. had been the victim of abuse and that “the preponderance of evidence also supports a finding that J.F.’s parents are unable or unwilling to provide sufficient care for the child. In determining the fitness of the parents, this Court observes it has long established that the parents’ past conduct is relevant to consideration of the parents’ future conduct.”

The CINA statute requires that, in making such determinations, the court must examine the totality of the circumstances. *Id.* at 621. The Supreme Court of Maryland has made clear that “courts should be most reluctant to ‘gamble’ with an infant's future; there is no way to judge the future conduct of an adult excepting by his or conduct in the past.” *In re J.R.*, 246 Md. App. 707, 753 (2020) (quoting *McCabe v. McCabe*, 218 Md. 378, 384

(1958)); Md. Code Ann., Cts. & Jud. Proc., § 3–801 et seq. It is also well established that parents have a duty to protect their child from abuse or neglect by a person in their household. *In re X.R.*, 254 Md. App. 608, 624 (2022). “To the extent that inaction repeats itself, courts can appropriately view that pattern of omission as a predictor of future behavior, active or passive[.]” *In re Priscilla B.*, 214 Md. App. 600, 625 (2013).

In the present case, neither parent took responsibility for the multiple injuries J.F. suffered nor did they believe she had been abused. Throughout the duration of the proceedings, Mother did not care for J.F. or supervise her without the Department’s support and she did not testify that she would be able to supervise J.F. in the presence of others, including J.F.’s father, on her own. As such, no evidence was presented to the court that she was willing or able to properly care for her child independently. The court was presented with evidence that J.F. had serious physical injuries, her caretakers denied involvement and denied that anyone else was the source of the injuries. Further, there was no evidence of measures that the parents had independently taken to provide for their child’s safety.

Accordingly, we hold the court did not err in its finding that neither parent was able or willing to provide J.F. with proper care and attention. We note also that the court did not indicate, nor does the record reflect, that the court’s decision was based solely on Mother’s prior conduct. Mother’s argument is without merit.

II. The Juvenile Court failed to make the required findings.

Family Law § 9–101 provides:

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

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

F. L. § 9-101.

Once a court determines a child to be in need of assistance, the court is bound by the requirements of F. L. § 9-101 in awarding custody and the court must first find that there is not a likelihood of further abuse or neglect. *See In re X.R.*, 254 Md. App. 608, 628 (2022). The statute requires a “specific finding” and thus, an implicit finding does not satisfy that requirement. *In re T. K.*, 480 Md. 122, 159 n.23 (2022).

The juvenile judge, here, found that J.F. had been abused by her parents and as allowed by statute, the judge decided to make a custody determination. The court, however, failed to make an explicit finding that there was no likelihood of further abuse or neglect. F. L. § 9-101. For that reason, we remand this matter for the court’s consideration and articulation of the F. L. § 9-101 requirements as applicable to this case.

III. The Juvenile Court erred in continuing the Order Controlling Conduct.

Section 3-821(a) of Courts & Judicial Proceedings provides that:

(a) The court, on its own motion or on application of a party, may issue an appropriate order directing, restraining, or otherwise controlling the conduct of a person who is

properly before the court, if the court finds that the conduct:

- (1) Is or may be detrimental or harmful to a child over whom the court has jurisdiction;
- (2) Will tend to defeat the execution of an order or disposition made or to be made under this subtitle;
or
- (3) Will assist in the rehabilitation of or is necessary for the welfare of the child.

Cts. & Jud. Proc., § 3–821.

An order issued under Section 3-821 is intended to be a temporary, provisional arrangement for a child during the pendency of a CINA adjudication and disposition. *In re J.R.*, 246 Md. App. 707, 746 (2020); Cts. & Jud. Proc., § 3–821. Once the court makes a determination and terminates its jurisdiction, it has no authority to enforce such an order or to ensure compliance. Rather, any modification would need to be filed in a separate family court proceeding. Section 3-804(c) of the Family Law Article provides that: “[a]fter the court terminates jurisdiction, a custody order issued by the court in a CINA case: (1) [r]emains in effect; and (2) [m]ay be revised or superseded only by another court of competent jurisdiction.”

While it is clear from the record that the court wanted to provide safeguards for J.F., it is unclear how and under what circumstances the court intended that those safeguards be effectuated. Upon remand, if the court finds that an Order Controlling Conduct is appropriate to protect the child’s safety, it should specify whether the court will retain

jurisdiction with a requirement that the Department monitor and protect J.F. from further abuse or whether the court will terminate its jurisdiction with no such intervention.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED IN
PART, REMANDED IN PART; COSTS TO
BE PAID BY APPELLANT.**