

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 496

September Term, 2016

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IN RE J.B. & N.F.

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Eyler, Deborah S.,  
Woodward,  
Nazarian,

JJ.

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Opinion by Eyler, Deborah S., J.

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Filed: November 14, 2016

This appeal arises from an order by the Circuit Court for Cecil County, sitting as a juvenile court, which adjudicated J.B. (born April 2012) and N.F. (born March 2014) children in need of assistance (“CINA”),<sup>1</sup> based on physical abuse by their father, T.B. (“Father”) and stepmother, C.B. (“Stepmother”), and declined to grant custody of the children to their mother, C.G. (“Mother”), on the ground that she was unable to provide the children with proper care. Mother noted a timely appeal of the juvenile court’s order, asking us to consider whether the juvenile court erred in finding that she was unable or unwilling to provide her children with proper care under the CINA statute.<sup>2</sup>

Finding no error or abuse of discretion, we shall affirm the juvenile court’s order.

### **FACTS AND PROCEEDINGS**

On February 17, 2016, the Cecil County Department of Social Services (“DSS”) petitioned the juvenile court for continued shelter care of J.B. and N.F., after having removed the children from the home they shared with Stepmother and Father, their custodial parent, and placed them in emergency shelter care on February 12, 2016. DSS filed a CINA petition relating to both children the same day.

DSS’s Emergency Shelter Care Hearing Report detailed that on February 8, 2016,

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<sup>1</sup> Pursuant to Md. Code (1974, 2013 Repl. Vol.), §3-801(f) of the Courts & Judicial Proceedings Article (“CJP”), a “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.”

<sup>2</sup> Neither Father nor Stepmother appealed the juvenile court’s ruling.

it had received a referral regarding allegations of abuse and neglect of J.B. and N.F.<sup>3</sup> One of Stepmother's children, T.W., reported that Father and Stepmother hit N.F. on her "butt and back," put their hands over her mouth when she cried, and call her a "fat bitch."

According to T.W., Father and Stepmother also hit J.B. on his back, legs, and buttocks and squeezed his face. On one occasion, J.B. drank cleaning liquid, and Father put his finger down the child's throat to make him throw up but may not have called poison control. On another occasion, when J.B. found food in Stepmother's closet, Stepmother yelled, "Get your fat ass out of it," and had two of her other children hold J.B. down while she hit him on the back and buttocks with a ladle, leaving red marks.

T.W. further reported that Father and Stepmother sell and use "pills" they keep in a safe in their bedroom. He stated that J.B. and N.F.'s mother resides in New Jersey, where his family lived "a couple of years ago."

On February 11, 2016, Elkton Police Department officers arrested Stepmother and T.W.'s biological father, who also lives in Father's and Stepmother's home, on charges of abuse of T.W. When the officers asked Father if they could assess J.B. and N.F. for injuries, he "appeared apprehensive" but permitted the assessment, which revealed bruises on N.F.'s forehead, arms, and legs and a large cut on J.B.'s stomach, scratches and bruising on his forehead, bruising on both legs, and red, blue, and black marks on his

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<sup>3</sup> The report also pertained to abuse of 12-year-old T.W., the biological son of Stepmother, who lived with Father and Stepmother. T.W. is not involved in this appeal.

back and buttocks.

As a result of those injuries, Father was arrested. J.B., N.F., and T.W. were removed from the home and placed in Cecil County foster homes.

During individual meetings with Child Protective Services' ("CPS") investigators, Stepmother denied ever using physical punishment on the children. She refused to give the investigators the name of J.B. and N.F.'s biological mother, saying "she is drama." When Father was informed that J.B. and N.F. would be entering foster care, his affect was flat. He provided the name of the children's mother, C.G., but stated that he had custody of the children.<sup>4</sup>

According to DSS, on February 11, 2016, Stepmother was charged with two counts of second-degree child abuse and two counts of second-degree assault, and Father was charged with one count of second-degree assault. They were released on bail on February 12, 2016.

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<sup>4</sup> New Jersey court records obtained by DSS revealed that on September 17, 2013, the court granted shared custody of J.B. to Father, Mother, and Father's father, F.B., with F.B.'s home designated the child's primary residence and Father's and Mother's home designated the child's alternate residence. On May 7, 2014, the court denied Father's request for emergency custody of J.B., on the ground that the court was not satisfied that Father had adequately complied with Division of Child Protection and Permanency services so as to merit custody at that time. On January 26, 2015, the court granted Father's and Stepmother's application seeking custody of J.B., with their home designated his primary residence. The court further granted their application to relocate J.B. to Maryland. On February 3, 2016, the New Jersey court memorialized an agreement between Father and Mother that Father would have primary residential custody of N.F., with supervised visitation to Mother.

DSS contacted the Salem County and Gloucester County, New Jersey Departments of Youth and Family Services (“DYFS”) and discovered that there had been a January 2016 physical abuse allegation against Mother relating to a five-year-old daughter in her care. The investigation further revealed that Stepmother and T.W.’s biological father had “significant DYFS involvement” from 2000 to 2013, including allegations of physical abuse, substance abuse, neglect, and domestic violence.<sup>5</sup>

On February 17, 2016, the juvenile court granted DSS’s request for shelter care of J.B. and N.F. J.B. and N.F. were placed in the custody and under the guardianship of DSS pending further disposition. An adjudicatory and dispositional hearing was scheduled for March 16, 2016.

DSS’s report in advance of that hearing reiterated the facts behind J.B.’s and N.F.’s referral regarding allegations of abuse. It further revealed that DSS had received paperwork from the New Jersey court relating to custody of N.F. The order, dated February 3, 2016, stated that Father and Mother agreed that Father would have primary residential custody of N.F. Mother was entitled to one to two short visits per month, supervised by Father or Stepmother. Longer visits or overnights were at Father’s

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<sup>5</sup> In 2013, Stepmother and T.W.’s father had received in-home services in Cecil County. DSS paid the rent so the family would not become homeless and offered information to Stepmother regarding a domestic violence shelter as a result of her “rocky” relationship with T.W.’s father. DSS expressed concerns about Stepmother’s inability to understand the impact of school absenteeism and domestic violence upon the children. DSS had also investigated a report that Stepmother permitted a 17-year-old male to sleep in a bed with her 11-year-old daughter and that Stepmother had sexual relations with the 17-year-old in front of her children.

discretion.

The report detailed that the children were then doing well in, and adjusting to, their foster care placements. J.B. was found to have “an overall happy demeanor” and was attending pre-school and day care. He did not speak many words, however, instead communicating with a mixture of words, sounds, and gestures.

N.F., while “smiley and friendly,” was said to lose her temper easily, and was not speaking. She was attending daycare but was not sure how to play with toys.

During the one supervised visit to date with Mother, both children showed excitement at seeing her, and her interactions with them were age appropriate. Mother remained engaged with the children during the entire visit. DSS reported that Mother maintained good contact with DSS, inquiring often about the children.

The children had also had one supervised visit with Father and Stepmother. Both children were happy to see Father and readily climbed onto his lap. When Stepmother tried to put N.F. on her lap, however, the child showed distress and began to cry. Father and Stepmother were constantly engaged with the children and remained in contact with DSS about their care.

At the close of its report, DSS requested that the court find J.B. and N.F. CINA, with custody to DSS for “appropriate placement, visitation[,] and the assessment of barriers to reunification and services to correct those barriers.” DSS also requested that Mother and Father enter into and abide by the terms of a written service agreement with DSS.

At the March 16, 2016 hearing, the parties initially agreed that a New Jersey court had granted custody of J.B. to Father and Stepmother, so Stepmother was a proper party to the hearing. They further agreed, however, that reports relating to N.F. would be separated from those relating to J.B. in the future for purposes of confidentiality, as Stepmother did not have custody of N.F.

In presenting their case, DSS and the children, through counsel, submitted on the DSS report, as detailed above. Mother did not oppose the court's receiving the information in the report that relayed how the children came to be in DSS's care but asked the court to make a finding that there was nothing in the report alleging any abuse or neglect on her part. If there were no such finding against her, Mother continued, the court could not make a CINA adjudication because the applicable statute requires that there be no parent able to care for the abused or neglected child, and she was ready, willing, and able to provide for their care. She asked the court to award her custody of J.B. and N.F.

Stepmother and Father also submitted on the DSS report, leaving it to the court to make a CINA finding, but declining to admit to any allegations contained in the report. Father and Stepmother objected to the children being placed with Mother, with Father stating he would prefer that they remain in foster care.

DSS requested that the court keep the children in its custody for appropriate placement. It could not support Mother's request for custody because she, a New Jersey resident, had not been subject to Interstate Compact Placement on Children ("ICPC")

approval by New Jersey.<sup>6</sup> In addition, given the apparently valid New Jersey court order granting custody of J.B. to Father and Stepmother, Mother had lost custody of J.B. at some point for reasons unknown to DSS and the court. The children’s attorney added that he believed there to be a COMAR section that requires ICPC approval for placement of a child out of the state. Mother’s attorney asserted that the ICPC does not become controlling law unless and until the child is adjudicated CINA; therefore, DSS was “putting the cart before the horse” in arguing that the ICPC precluded a custody determination to Mother.

The court sustained the facts as related in the DSS report. The court found the reports of abuse to be “graphic and concerning” and supportive of the allegations against Father and Stepmother.

The court found nothing in the ICPC that requires an adjudication of CINA before granting custody to an out-of-state parent. Before making a CINA disposition, however, the court desired further information regarding Mother’s alleged loss of custody of J.B. The court therefore continued the matter for 30 days to allow information to be gathered. The court’s written order confirmed that no disposition had been entered and re-set the disposition hearing for April 20, 2016.

DSS’s report in advance of the April 20, 2016 hearing detailed a follow-up with

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<sup>6</sup> Codified in Maryland Code (1999, 2012 Repl. Vol.), § 5–601 *et seq.* of the Family Law Article, the ICPC provides the rules on relocating a child in the foster care system from one state to another.



the New Jersey DYFS regarding its involvement with Mother. DYFS reported that Mother had been referred to it on five occasions between 2011 and 2016, involving allegations of: medical neglect (not following up on doctor's visits); drug shopping from doctor to doctor while pregnant; two referrals for physically fighting in front of her children; and physical abuse (domestic violence involving a restraining order).

According to DSS, J.B. was still doing well in his foster placement, playing t-ball with the other foster children. Although he appeared to have trouble maintaining focus, J.B.'s school's staff members indicated how much he had improved during the month and a half since the last report; and his teachers reported he had not been as physically aggressive as he had been, was not hiding under tables, and was able to focus more on speech and occupational therapy. Overall, he was smiling more, and he appeared calmer and happier.

N.F. was still not speaking and continued to lose her temper easily, throwing temper tantrums and throwing herself on the floor when angered. She was sleeping through the night but struggling with naptime, screaming if left alone to fall asleep. N.F. was attending a licensed daycare center and was doing well with other children, usually exhibiting a friendly demeanor.

Since the March 2016 hearing, DSS reported that Mother had been a no-call/no-show for two of the three scheduled visits with J.B. and N.F. During the one visit Mother attended, on March 18, 2016, she remained engaged with the children and brought them Easter baskets.

Father and Stepmother had remained consistent in their visits, having had five since the previous court hearing. J.B. remained most comfortable with Father but interacted with Stepmother when she brought him snacks or a tablet to play with. J.B. tended to get upset when the visits ended. N.F. first exhibited greater comfort with Father than Stepmother, but as of the report date, was “comfortable with both adults.”

At the April 20, 2016 hearing, Stepmother’s attorney verified that the most recent order by the New Jersey court, dated January 26, 2014, granted custody of J.B. to Father and Stepmother and permitted them to relocate J.B. to Maryland.<sup>7</sup> Notwithstanding the custody order, Mother’s attorney asked that custody of the children be granted to her, as she had not abused or neglected them and was ready and able to care for them.

In support of her position, Mother testified that she was then living in an “income based” two-bedroom furnished apartment in Glasboro, New Jersey, for which she paid \$41 monthly rent with public assistance. She also received food stamps and cash assistance. She had two other children, A.D., aged 5, and J.S., aged four months, who lived in the apartment with her. Mother’s boyfriend, B.S. (J.S.’s father), was spending a great deal of time in the apartment and contributed to the household expenses, but Mother denied that he was living with her.

Mother explained her CPS history in New Jersey, as detailed in the DSS report.

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<sup>7</sup> Counsel later corrected herself and confirmed that the order was actually dated January 26, 2015.

She admitted that CPS had received a referral of physical abuse of A.D. in January 2016, but insisted that the abuse was at the hands of the child's father, not herself. The father struck the child, she said, and it was she who called the police and DSS. A March 29, 2016 letter from the State of New Jersey Department of Children and Families ("DCF"), entered into evidence as Mother's exhibit 1, confirmed that the allegation of abuse or neglect regarding A.D. was "Not Established," meaning, "some evidence indicates that a child was harmed or placed at some risk of harm, but there is not a preponderance of the evidence that the child has been abused or neglected per N.J.S.A. 9:6-8.2." Mother presented certificates from A.D.'s school showing the child's perfect attendance for two consecutive months at school; Mother added that A.D. does very well academically.

Regarding the referral for medical neglect, Mother said that DCF had made no finding of neglect. The child to whom the referral pertained was not removed from her care, and the case was closed by the county.

Mother denied the allegations of drug shopping from doctor to doctor while she was pregnant, although she admitted she had sought a prescription for Tramadol during her pregnancy, for sciatica. She said she had passed each urinalysis drug test required by Gloucester County, New Jersey as a condition of receiving assistance. She further denied fighting in front of the children.

Mother believed that she was to be in a position to take care of all her children and wanted J.B. and N.F. to live with her "more than anything." She was not then working, but said she had been applying for positions and had day care lined up for the children

through Social Services. She also professed to have retained a pediatrician. Mother stated that she did not have a valid driver's license. She took public transportation to get around and had saved \$122 for transportation in case of emergencies.

Mother explained that she had missed some visits with J.B. and N.F. while they were in shelter care because A.D. was sick on one occasion and Mother thought it appropriate to stay home with her. On another occasion, Mother had been involved in an auto accident and was unable to attend.

On cross-examination by Stepmother's attorney, Mother stated that she and Father and Stepmother had adhered to a visitation schedule for J.B. and N.F. prior to DSS's involvement, facilitated by text messages between her and Father. She denied counsel's claim, gleaned from those text messages, that she and her boyfriend, B.S., had gotten into a physical altercation during a visit, which had resulted in N.F. being hit by something Mother had thrown at B.S. She further denied a claim that J.B. had picked up an unmarked prescription bottle at her home and brought it to Father and Stepmother.

Mother acknowledged that Father and B.S. "had an issue," which led to her asking Father to call the police to get B.S. to leave her home. She did not deny sending Father a text message advising that B.S. was treating her badly and had stolen her anxiety medication. She recalled sending a text message to Father advising that B.S. had gotten "three perc's off someone," which she flushed down the toilet because he lied to her. She further recalled sending a text message to Father, stating she had "smacked" B.S. "about him talking shit about you guys and my kids."

In response to questioning by DSS’s attorney, Mother explained that she began a relationship with Father in New Jersey in 2010, when her daughter A.D. was approximately eight months old. She and Father moved in with his father, F.B., in approximately June 2011, and they lived there for “a couple months.” When F.B. decided to move to Federalsburg, Maryland, she and Father moved with him. After a short period of time, they and F.B. moved to Baltimore, where J.B. was born, and then returned to Salem, New Jersey.<sup>8</sup> While she and Father were living in their own home in Salem, her relationship with Father “started going rocky[.]” He left her and began a relationship with Stepmother. Mother moved in with her mother in Salem in the beginning of 2015, eventually getting her own apartment in mid-2015.

Mother said she had let Father gain custody of J.B. because, at the time, she was living with her mother and did not have a proper place for him to live. Once she obtained her own housing, she found it difficult to regain custody of J.B. because Stepmother interfered with her communication with Father. She believed that Father and Stepmother had tricked her into signing over custody of N.F. when she thought they were simply changing the visitation schedule. Over the course of the previous year, however, she admitted she had not petitioned the New Jersey court to correct the alleged error.

In closing, DSS argued that it continued to seek a CINA adjudication for J.B. and N.F., as Mother was an out-of-state, non-custodial parent, and if custody were granted to

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<sup>8</sup> Presumably, N.F., whose birthdate is in March 2014, was born close in time to Father and Mother’s return to New Jersey.

her without a proper home study, that would violate the ICPC. The children’s attorney agreed, pointing out that Mother had not had custody of J.B. and N.F. for 15 months and had made no effort to regain it during that time. In addition, during the past six years, she had lived in seven different residences and planned to house four children in one bedroom in her New Jersey apartment.

Father’s attorney added that it appeared that Mother was “certainly living on the edge,” that is, having only \$122 in savings, not having a car, not being able to drive, while trying to obtain custody of four children under the age of five. Father asked that the children be adjudicated CINA and not placed with Mother.

Mother maintained her position that the children were not CINA and should be placed with her. Mother’s counsel asserted that being poor and living in a small house were not sufficient grounds on which to deny her custody of her children. Counsel reiterated that Mother had always been compliant with DSS and its New Jersey counterpart and had never been found to abuse or neglect her children.

The juvenile court ruled as follows:

The court has listened carefully to the testimony and the demeanor, and to the—both the direct examination and the cross-examination, and has the following concerns.

I have concerns with reference to the medication with—by [Mother’s] own admission there was an issue with medication, and she confirmed the existence and the—that those texts had, in fact, occurred. The court is concerned with her lack of stability. I lost count of the number of places she has lived. By her own testimony she has had multiple homes, with multiple people. She’s left good homes for bad homes. Again, there is a drug issue. She admitted that they were not kept where the—the drugs were not kept where they were away from the children.

The court finds that she is not ready, willing and able. She has a

history of decisions that are not in the best interest of her children, including the two children who are the subject of today’s hearing, in having not regained—not even attempted to regain custody of them, and having moved—moved them around to multiple homes.

Based on that the court finds by a preponderance of the evidence that [J.B.] and [N.F.] are children in need of assistance, and I grant custody to the department for appropriate placement.

The court set the next hearing for October 1, 2016. The court’s written order memorializing its ruling was filed on April 22, 2016. The order further required that Mother, Father, and Stepmother undergo psychological, parenting, and drug and alcohol evaluations. Mother noted her timely appeal from the court’s order on May 19, 2016.

### DISCUSSION

Mother contends the juvenile court erred in adjudicating J.B. and N.F. CINA and declining to award custody to her pursuant to CJP §3-819(e) because the court had no factual basis upon which to find that she had abused or neglected the children, or that she was not ready, willing, and able to regain custody of them.

In child custody disputes, Maryland appellate courts apply three different standards of review:

“When the appellate court scrutinizes factual findings, the clearly erroneous standard. . .applies. [Secondly,] [i]f it appears that the [juvenile 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 [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [juvenile court’s] decision should be disturbed only if there has been a clear abuse of discretion.”

*In re: Yve S.*, 373 Md. 551, 586 (2003) (quoting *Davis v. Davis*, 280 Md. 119, 125–26 (1977)).

In this matter, Mother challenges both the juvenile court’s fact-finding and its ultimate decision. Therefore, we must determine whether the juvenile court clearly erred in its fact-finding and whether it abused its discretion in its ruling, which adjudicated the children CINA and declined to grant custody to Mother.

The “broad policy” of the CINA statutes is “to ensure that juvenile courts (and local departments of social services) exercise authority to protect and advance a child’s best interests when court intervention is required.” *In re Najasha B.*, 409 Md. 20, 33 (2009). If, as here, the juvenile court determines that a child is a CINA, it has the discretion to grant custody of the child to a parent, a relative, or other individual, or a local department. CJP §3-819(b).

Custody decisions must be made based on what the court finds to be in the child’s best interest, the “governing standard.” *In re Adoption/Guardianship of Rashawn H. and Tyrese H.*, 402 Md. 477, 495 (2007). There is “a presumption of law and fact—that it is in the best interest of children to remain in the care and custody of their parents.” *Id.* But, “[a]s with so many other legal presumptions, experience and reality may rebut what the law accepts as a starting point.” *In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 67 (2013) (quoting *Parham v. J.R.*, 442 U.S. 584, 602 (1979)). In cases involving abuse, neglect, or abandonment, it is “clear that, although the right to parent is essential in our cultural and legal understanding, it has limitations.” *Id.*

The juvenile court therefore possesses “a ‘wide discretion concomitant with [its] ‘plenary authority to determine any question concerning the welfare of children within



[its] jurisdiction[.]”” *Reichert v. Hornbeck*, 210 Md. App. 282, 305 (2013) (quoting *Bienenfeld v. Bennett-White*, 91 Md. App. 488, 503–04 (1992)) (additional citations omitted). “Such broad discretion is vested in the [juvenile court] because only [the juvenile court judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; he 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.” *Baldwin v. Bayard*, 215 Md. App. 82, 105 (2013) (quoting *Yve S.*, 373 Md. at 585-86). Custody determinations are within this discretion, and they are rarely disturbed on appeal. *Rashawn H. and Tyrese H.*, 402 Md. at 495.

Before adjudicating a child a CINA, the juvenile court must determine, by a preponderance of the evidence, that the child requires court intervention because he or she has been abused or neglected, has a developmental disability, or has a mental disorder and that the child’s parents, guardian, or custodian are unable or unwilling to give the child and the child’s needs proper care and attention. CJP §3-801(f); CJP §3-817(c). In this matter, Mother does not dispute the juvenile court’s finding that J.B. and N.F. were abused. Instead, she asserts that because she was not the abusive parent and was ready and willing to provide J.B. and N.F. with proper care, the court should not have

adjudicated them CINA based on her lack of readiness or declined to grant her custody.<sup>9</sup> We disagree.

The undisputed evidence presented at the adjudicatory hearings, through Mother’s own testimony and DSS’s investigation, showed that Mother gave birth to four children, by three different fathers, within five years. Between 2010 and 2015, she lived in no fewer than six residences in Maryland and New Jersey, evidencing a lack of stability. Although she has lived at her current residence since mid-2015 (paid for with State assistance), her apartment has only two bedrooms, and her plan, if she were granted custody of J.B. and N.F., was to place three children in one bedroom.<sup>10</sup> Although the parties disagree on the applicability of the ICPC to this custody determination, there is no dispute that no home study has been completed to determine the appropriateness of Mother’s apartment or her suggested living arrangement for the children.

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<sup>9</sup> Mother is, of course, correct in her statement that a child may not be adjudicated CINA if one of his or her parents is ready and willing to care for the child. In *In re Russell G.*, 108 Md. App. 366, 376-77 (1996), we found that the language of the CINA statute is clear and unambiguous and held that “a child in the care and custody of a parent or parents is a CINA only if *both* parents are unable or unwilling to give the child proper care and attention. . . . A child who has at least one parent willing and able to provide the child with proper care and attention should not be taken from both parents and be made a ward of the court.” (Emphasis in original.) *See also* CJP §3-819(e) (“If the allegations in the 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, the court may not find that the child is a child in need of assistance, but, before dismissing the case, the court may award custody to the other parent.”).

<sup>10</sup> Presumably, her infant, then sleeping in a bassinet in Mother’s bedroom, would eventually be housed in the children’s room, as well.

For unexplained reasons, J.B.'s paternal grandfather gained primary physical custody of the child in 2013. In 2015, Mother relinquished physical custody of J.B. entirely to Father, who moved the child to Maryland, purportedly because she did not have a place for him to live. In 2016, Mother also relinquished physical custody of N.F., which she claimed stemmed from trickery by Father and Stepmother. Despite that claim and the fact that she was only granted short, supervised visits one or two times per month (and had missed two of three visits between the filing of the CINA petition and the adjudicatory hearing), Mother made no effort to regain custody of either child.

Mother was unemployed and maintained no driver's license to facilitate procuring or keeping a job. She mentioned only a vague plan for her job search.

Text messages between Mother and Father tended to show that Mother maintained a rocky, and perhaps abusive, relationship with B.S., her current boyfriend who spends a significant amount of time in her home; she did not deny that she had "smacked" him on one occasion when he spoke ill of her children, and a text message conversation with Father appeared to show that she threw something at B.S. on another occasion, accidentally hitting N.F. with the projectile. Mother had asked Father on one occasion to call the police to eject B.S. from her home, and there was at least a hint that B.S. had procured narcotics from someone and then lied about it to Mother. Father also claimed that J.B. had found an unsecured, unlabeled prescription pill bottle in Mother's home, notwithstanding Mother's insistence that she locked up her medication.

Mother had been referred to the New Jersey DYFS on five occasions between 2011 and 2016, involving allegations of medical neglect, drug shopping, physical fighting in front of her children, and domestic violence. DYFS had also investigated a report of abuse of Mother's daughter, A.D. just months prior to the abuse investigation giving rise to this matter.

The juvenile court, having "listened carefully to the testimony" and viewed the demeanor of the parties, found by a preponderance of the evidence that Mother's readiness and ability to care for J.B. and N.F. were questionable and that her decision-making to date did not fall in favor of the best interests of the children. We cannot say that the court's factual findings were clearly erroneous or that its ultimate decision declining to grant custody to Mother was an abuse of its discretion in determining that the best interest of the children, at this time, is to remain in the custody of DSS.

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