UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2605

September Term, 2015

IN RE: I.P.

Krauser, C.J.,
Woodward,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: July 20, 2016

Appellant C.K., the mother of appellee I.P., appeals from a judgment of the Circuit Court for Baltimore City, sitting as the juvenile court, finding I.P. a child in need of assistance (CINA), and placing her in the custody of appellee Baltimore City Department of Social Services (BCDSS). Appellant presents the following questions for our review:

> "1. Did the court err by finding that I.P. was a CINA?
>
> 2. Did the court err by committing I.P. to BCDSS and refusing to order that she be placed with Ms. K. in residential treatment?"

We shall hold that the trial court did not abuse its discretion, and thus, we shall affirm.

I.

Appellee BCDSS filed a CINA petition in the Circuit Court for Baltimore City against appellant alleging neglect. At the adjudication hearing before the Magistrate in the circuit court, sitting as the juvenile court, on November 18 and 19, 2015, all parties stipulated to the following statement of facts:

> "1. [In October]/2015, Respondent [I.P.] was born at Johns Hopkins Bayview Hospital. At the time of respondent's birth, respondent did not test positive for any illegal or intoxicating substance.
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> 2. At the time of respondent's birth, mother was in the Johns Hopkins Hospital Center for Addictions and Pregnancy ('CAP') program and did not test positive for any illegal or intoxicating substance.
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> 3. During mother's pregnancy with the respondent, mother first sought prenatal care at approximately 28 weeks. At the time mother enrolled in the CAP program, she tested positive for

> marijuana and acknowledged use of alcohol during the pregnancy.
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> 4. Mother has three other children who have been found CINA by this court. On 06/23/15, mother's parental rights were terminated with respect to these children.
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> 5. In August of 2012, mother tested positive for marijuana at the birth of respondent's sibling, [redacted]. At that time mother acknowledged use of marijuana and alcohol during the pregnancy, to having very limited prenatal care, [redacted] and to a history of depression.
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> 6. Mother participated in an initial assessment by this Court's Family Recovery Program FRP on 1/4/13, but left the program without completion. Mother again agreed to participate in this Court's Family Recovery Program after the birth of this respondent, but failed to attend FRP Court review on November 13th 2015.
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> 7. At the CAP program, and at the time of respondent's birth, mother acknowledged prior diagnoses of Bipolar Disorder and depression. After respondent's birth, mother left the CAP residential program, but reports that she continued to receive mental health services through the CAP program.
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> 8. Mother's last reported living situation is with a non-relative in a home BCDSS cannot approve due to CPS history of other residents and overcrowding.
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> 9. Mother has no disclosed source of income.
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> 10. Respondent's father reports that he resides with relatives in a home where respondent may not live. Father reported that he is not able to provide respondent's care at this time."

After receiving additional evidence at the adjudicatory hearing, the Magistrate recommended that I.P. be declared a CINA and committed to the custody of BCDSS.

Appellant filed timely exceptions to the Magistrate's recommendations. The circuit court accepted the adjudicatory facts agreed-to during the adjudication hearing and on December 17, 2015, conducted a *de novo* hearing for dispositional purposes only. Appellant did not attend the dispositional hearing and her counsel presented no evidence. Appellant's counsel requested a postponement because appellant could not walk to court in the torrential rain. I.P.'s counsel and counsel for BCDSS objected to the postponement on the grounds that appellant had failed previously to appear at the court's Family Recovery Program hearings and the BCDSS report indicated the Department had no contact with appellant in almost a month. The court denied appellant's request for postponement.[1]

The following facts were adduced at the hearing. I.P. is appellant's fourth child. Before I.P. was born in October 2015, E. was born in 2008, J. was born in 2011, and N. was born in 2012. At the time E. was born, appellant was 16 years old and resided with her grandmother who had a negative history of involvement with child protective services. Appellant repeatedly left E. in the home without telling her grandmother that she was leaving, or would leave E. with her mother overnight. The court committed appellant to the custody of BCDSS in January 2009 on a runaway warrant and the Department took E. into shelter care. After appellant was located in early February 2009, she ran away again two days later. She was again detained in October 2009 and released on probation. In 2011,

[1]Appellant does not contest the circuit court's denial of her request for postponement in this appeal.

appellant regained custody of E. under the juvenile court's supervision through an Order Controlling Conduct, which required appellant to live in her mother's home with E. and to provide BCDSS and E.'s counsel unannounced access to E. and the home. By August 2011, BCDSS and E.'s counsel could not locate appellant.

In March 2012, the circuit court declared E. and J. to be CINA due to neglect. Appellant was living a transient lifestyle, had failed to seek proper medical care for the children, was not employed or enrolled in an educational program, and failed to maintain contact with BCDSS.

Child N. was born in August 2012, and was sheltered immediately to the custody of BCDSS. Appellant had used marijuana and alcohol while pregnant with N., she had engaged in very limited prenatal care, and admitted a history of depression. When N. was born, appellant was living in her grandmother's house, which was overcrowded. Appellant moved out after giving birth to N., without providing an updated address to BCDSS. Appellant failed to comply with a service agreement she made with BCDSS by not engaging in required services including mental health therapy and anger management classes, and she stopped attending parenting classes. The court referred appellant to its Family Recovery Program, but she did not return for any services after attending the initial assessment. In March 2013, the circuit court found N. to be a CINA. On June 23, 2015, over appellant's objection, the circuit court terminated her parental rights in E., J. and N.

During her pregnancy with I.P., appellant did not seek any prenatal care until she was 28 weeks pregnant. Appellant suffers from bipolar disorder and depression. She admitted to using alcohol and smoking marijuana during her pregnancy. Appellant tested positive for marijuana on August 18, 2015. Appellant entered residential treatment at the Center for Addictions and Pregnancy at Johns Hopkins Hospital in September 2015, where a counselor recommended that appellant attend a residential addiction treatment center initially without I.P.

Appellee child I.P. was born in October 2015 free of alcohol or any illegal substances. The circuit court conducted a shelter hearing and sheltered I.P. to the custody and care of BCDSS the day after she was born. Appellant then left the Center for Addictions and Pregnancy residential program and did not enroll at another inpatient addiction treatment center. She moved in with non-relative housemates who had prior histories with child protective services, in a house that appellant conceded would be improper for I.P. Following the shelter hearing, a family preservation officer referred appellant to the court's Family Recovery Program for assistance in seeking mental health treatment, substance abuse treatment, and housing assistance. Appellant did not comply with Family Recovery Program services and by the end of October 2015, stopped contacting her Family Recovery Program counselor, stopped attending substance abuse treatment groups, failed to appear for two of three Family Recovery Program court hearings, and was formally discharged from Family Recovery Program and the Center for Addictions and Pregnancy on November 12, 2015.

Appellant failed to appear for mandatory drug testing on November 10, 13, 17, 24, and 30, 2015. Appellant tested positive for marijuana use on November 20, 2015. In early December 2015, appellant requested that the Family Recovery Program counselors assist her in seeking in-patient treatment for both mental health and substance abuse. Appellant completed an initial interview at the Gaudenzia inpatient treatment center, but failed to follow-up from that initial interview and never returned to Gaudenzia.

During closing argument, counsel for appellant requested that the court find that I.P. is not a CINA and to continue the hearing to allow an extra day for appellant to appear in court so that I.P. could be placed in her care. Counsel requested that, in the alternative, if the court declared I.P. a CINA, that custody of I.P. be given to appellant under an order of protective supervision or an order controlling conduct, so that she could take I.P. with her to a residential inpatient treatment facility.

In closing argument, BCDSS and counsel for I.P. asked that the court determine that I.P. was a CINA and that the court commit her to BCDSS for continued placement in foster care. The court noted that appellant had not participated in drug or alcohol treatment, and that the Family Recovery Program counselor recommended her for inpatient treatment, initially without I.P., but that she had not begun that program. The court noted the prior termination of parental rights cases involving appellant's three older children and looked at the history with respect to those cases. Based on those facts, the court concluded that I.P. was a CINA and should remain in BCDSS custody.

This timely appeal followed.

II.

Before this Court, appellant argues that the circuit court erred by declaring I.P. to be a CINA and by committing her to BCDSS. Appellant contends that the stipulated facts combined with the court orders revoking her parental rights in her three other children were insufficient to support a finding by a preponderance of the evidence that I.P. is a CINA. Appellant argues that the evidence that she was diagnosed with bipolar disorder, that she admitted to alcohol and marijuana use and was not consistently in drug treatment, that she was "transient," and her parental rights in her three older children were terminated without her consent did not warrant a conclusion that I.P. would be at risk in her custody. She argues that I.P. had not suffered any harm, and that the court erred by making such a speculative finding especially given that the court concluded that there was no clear link between appellant's drug use and her parenting capacity.

In the alternative, Appellant argues that even if I.P. is a CINA, the court erred by committing I.P. to BCDSS and refusing to order that she be placed with appellant in a residential treatment program. Appellant maintains that after declaring I.P. a CINA, the trial court was obligated first to strengthen I.P.'s family ties and to separate her from appellant only when necessary for the child's welfare by considering placing I.P. with appellant in an inpatient facility.

Appellee BCDSS argues that the circuit court exercised its discretion properly in I.P.'s best interests in declaring I.P. a CINA and committing her to BCDSS's custody. Appellee BCDSS argues that the adjudicatory facts established that appellant had engaged in a pattern of conduct and inaction that placed I.P. at a substantial risk of harm including use of marijuana and alcohol during the pregnancy, failure to seek prenatal care until the 28th week of pregnancy, and living in an overcrowded house not suitable for I.P. Further, appellee BCDSS asserts that the court did not abuse its discretion in denying appellant's request that I.P. be placed with appellant while she attended an inpatient treatment program in that appellant had failed previously to engage adequately in such a program on a number of occasions and no evidence suggested that appellant could safely provide for I.P.'s care in her residence or elsewhere.

Appellee I.P. argues that the court's decision to find her a CINA was supported by the facts, was consistent with consideration of the proper statutory factors, and was not an abuse of discretion.

III.

The purpose of CINA proceedings is to protect children and promote their best interests. *In re Rachel T.*, 77 Md. App. 20, 28 (1988). The statute empowers the court to find that a child is in need of assistance when a care giver cannot tend properly to the child's needs, stating as follows:

> "(f) 'Child in need of assistance' means a child who requires court intervention because:
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> (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and
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> (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."

Md. Code (1974, 2013 Repl. Vol.), § 3-801(f) of the Courts & Judicial Proceedings Article ("CJ"). In this case, the circuit court considered an allegation of neglect. The statute defines "neglect" as follows:

> "(s) 'Neglect' means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or individual who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:
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> (1) That the child's health or welfare is harmed or placed at substantial risk of harm; or
>
> (2) That the child has suffered mental injury or been placed at substantial risk of mental injury."

CJ § 3-801(s). It is clear from CJ § 3-801(s), "that there may be neglect of a child without actual harm to the child. A 'substantial risk of harm' constitutes 'neglect.'" *In re Andrew A.*, 149 Md. App. 412, 418 (2003). We have held that a judge can act in anticipation of harm, as follows:

> "The judge need not wait until the child suffers some injury before determining that he is neglected. This would be contrary

> to the purpose of the CINA statute. The purpose of the act is to protect children—not to wait for their injury."

In re William B., 73 Md. App. 68, 77-78 (1987). We reject appellant's argument that because I.P. had not yet suffered any harm when the court declared I.P. a CINA that the court cannot act. Actual harm is not required for a finding of neglect, or for the court to intervene to protect the child.

Along with evidence of current circumstances that endanger a child, the circuit court may consider a parent's history in determining if a child is in need of assistance. A previous finding that another child of that parent had been deemed a CINA could be relevant, given the circumstances. *See In re Nathaniel A.*, 160 Md. App. 581, 601 (2005). Neglect need not involve affirmative conduct, and the court can assess neglect by assessing the inaction of a parent over time, including the likelihood of inaction repeating itself, which we view appropriately as a predictor of future behavior. *In re Priscilla B.*, 214 Md. App. 600, 625 (2013). A parent's past conduct is relevant to a consideration of future conduct. *In re Dustin T.*, 93 Md. App. 726, 731 (1992); *see also Miller v. Miller*, 191 Md. 396, 408, 62 A.2d 293, 298 (1948) ("In making our decision [as to the future welfare of the infant at issue] we should not gamble about that future. We can only judge the future by the past."). In particular, we have held that a "parents' [past] ability to care for the needs of one child is probative of their ability to care for other children in the family." *William B.*, 73 Md. App. at 77.

In reviewing a decision of the circuit court, sitting as a juvenile court, ordinarily we apply three different levels of review. *In re Shirley B.*, 419 Md. 1, 18 (2011). First, we review the circuit court's factual findings to determine whether they are clearly erroneous. *Id.* Second, we determine *de novo* whether the court erred as a matter of law, in which case further proceedings will be necessary unless we determine that the error is harmless. *Id.* Finally, we review the circuit court's ultimate conclusion for an abuse of discretion. *Id.* An abuse of discretion occurs "where no reasonable person would take the view adopted by the [trial] court." *Fontaine v. State*, 134 Md. App. 275, 288 (2000). The burden of proof for a CINA petition, a preponderance of the evidence, is lower than the burden the State bears when seeking to permanently terminate parental rights, where a much more drastic and permanent interference justifies the higher burden of proof of clear and convincing evidence. Md. Rule 11-114(e)(3); *In re Colin R.*, 63 Md. App. 684, 697 (1985); *see also* Md. Code (1984, 2006 Repl. Vol.), § 5–313 of the Family Law Article. As appellee BCDSS brought the petition, it bears the burden of proof. *See* Md. Rule 11-114(c); *In re Nathaniel A.*, 160 Md. App. at 597.

In this case, appellant does not contend that the circuit court was in error in its factual findings or decisions on matters of law. Appellant does not contest the bases for the court's decision, only that the facts the court found were insufficient to sustain the CINA finding or that I.P. should be placed in BCDSS custody. Thus, we only consider the conclusion of the

court—that I.P. is a CINA and should be placed with BCDSS—to decide if the court abused its discretion.

The evidence was sufficient for the circuit court to conclude that I.P. is a CINA and should be placed with BCDSS instead of with her. The court did not abuse its discretion. Appellant admitted to using marijuana and alcohol during her pregnancy with I.P., and had not been successful in engaging in drug treatment despite several opportunities. She did not seek prenatal care until approximately 28 weeks into the pregnancy. Appellant's living situation was not stable and her most recent residence prior to the dispositional hearing was not an adequate home for I.P. It was overcrowded and people there had negative histories with BCDSS. Appellant had no source of income. Appellant requested that I.P. be placed with her in a drug treatment facility, but at the time I.P. was born and at the time of the dispositional hearing, appellant was not enrolled in such a program and had declined prior opportunities to do so. Perhaps the most crucial indicator of potential future neglect to I.P. was that the circuit court decided, by clear and convincing evidence, to terminate appellant's parental rights in her three other children only four months before I.P. was born. Appellant did not contest these facts at the dispositional hearing. Given this evidence, the circuit court did not err in finding a pattern of neglect that legitimized the concern that I.P. would suffer from the same neglect. In considering all of these factors, the circuit court did not abuse its

discretion in finding that I.P. is a CINA. That the circuit court placed I.P. with BCDSS instead of placing her with appellant was not an abuse of discretion.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS WAIVED.