Circuit Court for Montgomery County

Case No. 06-I-16-000174

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2424

September Term, 2016

IN RE: D.E.

Eyler, Deborah S.,
Wright,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: July 28, 2017

In December of 2016, the Montgomery County Department of Health and Human Services (the "Department") filed a petition in the Circuit Court for Montgomery County requesting that D.E., son of J.S., appellant, be declared a Child in Need of Assistance ("CINA").[1] On January 17, 2017, following a hearing, the circuit court, sitting as a juvenile court, granted the Department's petition and ordered that D.E. be committed to the Department for placement in foster care. In this appeal, appellant presents the following questions for our review, which we rephrase:[2]

1. Did the juvenile court err in admitting into evidence a report by the Department that contained hearsay?

2. Did the juvenile court err in finding D.E. to be a CINA based on neglect?

For reasons to follow, we answer appellant's questions in the negative and affirm the judgment of the circuit court.

[1] Md. Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article ("CJP"), § 3-801(f) defines "child in need of assistance" as "a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs."

[2] Appellant phrased the questions as:

1. Did the court err by admitting prejudicial hearsay statements by accepting the Department's unredacted 181 into evidence instead of the mother's proposed redacted version?

2. Did the lower court err in finding D.E. to be a CINA based on parental neglect?

BACKGROUND

D.E. was born on October 22, 2004, to appellant and an unidentified father.[3] In May and December of 2008, the Department conducted separate investigations concerning appellant and her children, including D.E., based on allegations of domestic violence and neglect. In February of 2009, the Department again investigated allegations of neglect concerning appellant after she absconded from a shelter where she and her children, including D.E., had been placed. That same year, D.E. and his half-sister, V.G., were declared CINA "based upon mother's mental health issues" and "domestic violence witnessed by the children."

In 2010, appellant was convicted of three counts of abduction. Appellant later explained that the convictions resulted from an incident in which she had taken three of her children, including D.E., out of the care of their foster parents because the children had reported being abused by the foster parents. In 2011, appellant gave birth to a child, E.G., who was removed from appellant's care at birth and declared CINA. That same year, the paternal grandmother of D.E.'s half-siblings, Ms. G., was awarded custody and guardianship of D.E.

In 2015, D.E. alleged that he was being abused by Ms. G., so appellant, acting on D.E.'s behalf, obtained a protective order and eventually filed assault and abuse charges against Ms. G. Around the same time, D.E. began spending weekends with appellant at

[3] The alleged father was contacted by the Department but, according to the Department, he denied paternity and refused to engage with the Department or participate in paternity testing.

her home. Following his stays with appellant, D.E. would return to Ms. G.'s care "behaving disrespectfully and threatening to run away." When asked where he wanted to live, D.E. would state that he wanted to live with appellant. Ms. G. eventually agreed to cede custody of D.E. back to appellant.

On November 5, 2016, a Montgomery County Police Officer responded to appellant's home after receiving a report of a missing juvenile. Upon the officer's arrival, appellant told the officer that D.E. had run away from home. Appellant also stated that D.E. had run away approximately seven times, and that she had reported three of those incidents to the police. D.E. ultimately returned to the home that same day.

On November 23, 2016, a Montgomery County Police Officer again responded to appellant's home, this time after receiving a report of domestic violence. After arriving at the home, the police learned that D.E. and his half-brother, E.G., had been in an altercation and that appellant was not at home. The Department investigated the incident and learned that D.E. had been left alone by his mother to care for his siblings. The Department made contact with appellant, who admitted to leaving D.E. "in charge."

On November 29, 2016, the Department attempted to speak with D.E., but he refused and stated that "he could only speak with [the Department] after getting permission from his mother." Shortly thereafter, the Department received a phone call from D.E.'s school counselor, who informed the Department that D.E. told the counselor that appellant had "thrown him into walls" and said "horrible things to him." D.E. also told the counselor that appellant told D.E. that if D.E. spoke with the Department, he

would be sent to a "group home where he will be stabbed." Nevertheless, D.E. agreed to speak with the Department the following day.

At that meeting, D.E. reported that he resided with appellant and his five half-siblings. D.E. stated that the father of two of his half-siblings had "shoved, punched, and kicked" him after appellant had asked the father "to discipline him." D.E. also stated that appellant had "spanked" him "with a metal spoon, plastic spoon, or a belt on his hands, arms, or legs." D.E. reported that he did not want to return to appellant's home because appellant "does nothing all day" and because "he has to do all of the chores and cleaning." D.E. further reported that he did not feel safe at home.

On December 1, 2016, the Department attempted an unannounced home visit at appellant's residence but was unable to establish contact. A few days later, appellant contacted the Department regarding D.E. She explained that D.E. "keeps lashing out and is violent toward his siblings." Appellant reported that she had tried to schedule D.E. for therapy, and that she had previously contacted the police regarding D.E. "being violent." Appellant also reported that she had not used physical discipline on D.E. since October of 2016.

On December 4, 2016, two Montgomery County Police Officers responded to appellant's home after receiving a report of a juvenile runaway. Appellant informed the officers that D.E. had run away, and that she had last seen him approximately three days prior. Appellant was unable to provide the officers with any indication as to D.E.'s whereabouts, and she did not provide the officers with any explanation as to why she waited three days to report D.E. missing. Appellant informed the officers that D.E. had

recently been taken for a mental health evaluation, which resulted in a referral for counseling, but she had chosen to "spend time with her son and 'bond' with him in lieu of professional counseling." One of the officers ultimately forwarded a copy of the police report to the Police Department's Child Abuse Division, noting appellant's "self-reported lack of compliance in providing her son prescribed counseling, and the three day delay in reporting [D.E.] as missing to the police."

On December 5, 2016, D.E.'s school principal contacted the police about D.E. "potentially being a runaway" after D.E. had returned to the school rather than go home. When a Montgomery County Police Officer reported to D.E.'s school, the principal informed the officer that D.E. had run away from home a few days prior because, according to D.E., "he was afraid that he was going to get a beating because of the CPS [Child Protective Services] situation." The principal also informed the officer that D.E. had previously stated "that he was physically abused by his mother and his mother's boyfriend."

Appellant later met D.E. and the officer at D.E.'s school, and the officer eventually transported appellant and D.E. to the Montgomery County Crisis Center. Upon arriving at the Crisis Center, D.E. and appellant "got into an argument about [D.E.'s] behaviors," and appellant "walked out of the Crisis Center and could not be located." D.E. then spoke with a counselor at the Crisis Center, stating that he "is always sad at home," that he "is tired of taking care of all of his siblings," and that appellant "is mean to him and hits him which is why he keeps running away." Repeated attempts by the Department to reach appellant by phone were unsuccessful. When the Department

did finally manage to contact appellant, she accused D.E. of lying and stated that she left the Crisis Center because D.E. "threw a juice box at her head." Following the incident, the Crisis Center issued a report in which it diagnosed D.E. with "oppositional defiant disorder" and "parent-child relational problem."

On December 7, 2016, the Department met with appellant at her residence. During that meeting, appellant informed the Department that she was concerned for D.E.'s safety because he frequently ran away and, when he did, she was unable to locate him. Appellant also stated that these issues had been ongoing since February of 2016. Appellant then told the Department that it was not safe for D.E. to return to her care at that time.

On December 7, 2016, the circuit court, at the request of the Department, held an emergency shelter care hearing regarding D.E. Following the hearing, the court found that returning D.E. to appellant's care was contrary to D.E.'s welfare, and it ordered that he be placed in the temporary care and custody of the Department. The court then scheduled another shelter care hearing for December 12, 2016. Following that hearing, the court again found that returning D.E. to the care and custody of appellant was contrary to his welfare. The court ordered that D.E. be placed in the care and custody of the Department pending an adjudicatory hearing.

The adjudicatory hearing was held on December 29, 2016, January 6, 2017, and January 17, 2017. At that hearing, the Department called Holly English, an assessment social worker with the Department, who testified as an expert in the field of social work. Ms. English testified that, as part of her duties in investigating D.E.'s case, she prepared

an "181 document." Ms. English explained that the Department keeps an electronic and paper record of every investigation and that each record contains every document, phone call, and interview related to a particular investigation. She then explained that social workers like herself must complete an "181 document," which is a synthesis of the allegations and other pertinent information contained in the record.

Following Ms. English's explanation, the Department offered into evidence the 181 document that Ms. English had completed regarding D.E.'s case. Before the court could admit the evidence, appellant's counsel asked if he could "inquire the witness," which the court permitted. As part of that inquiry, Ms. English admitted that the 181 document included descriptions of events that predated her involvement in the case. She also admitted that the 181 document was a combination of her words and the words of the other Department workers who authored the documents contained in the record.

At the conclusion of the inquiry, appellant's counsel argued that the 181 document should not be admitted into evidence because it contained hearsay. The court disagreed and allowed the document into evidence. Appellant's counsel then stated that he had "a redacted version" of the 181 document that he wanted the court to use instead. The court suggested that the parties "talk about that at a break."

The court then permitted appellant to call two witnesses. The first witness, Mr. Antonio H., a family friend, testified that a few months prior to the hearing, he was babysitting at the family home when D.E. started "being disrespectful" after Mr. H. asked D.E. to do some chores. When D.E. was "about to get disciplined," he ran out of the door "screaming abuse." Mr. H. stated that a similar incident occurred about a week later.

Mr. H. also stated that by "discipline" he meant that he planned to talk to D.E. about his actions.

Appellant's second witness, Ms. Jo-Ann K., another former babysitter of D.E., testified that she noticed "a behavior change" in D.E. starting a few months prior to the hearing. During that time, Ms. K. had observed an incident where D.E. "grabbed one of the kids by the arm and twisted him around." Ms. K. stated that she tried talking with D.E. but that she gave up because "he didn't seem to understand what I was saying."

After Ms. K.'s testimony, the Department reminded the court that appellant's counsel "wanted to offer a redacted version of the 181." Before the parties could discuss the redacted document, D.E.'s counsel stated that she had not finished reviewing the document. The court then stated that it would hold off on the issue until after lunch.

The Department then recalled Ms. English, who testified that, in her expert opinion, it was not safe for D.E. to return to appellant's care at that time. Ms. English explained that she based this opinion on, in part, conversations she had with D.E. and appellant. During these conversations, appellant stated that she could not manage D.E.'s behaviors and that he posed a risk to her and her other children, while D.E. maintained that he suffered frequent physical discipline. Ms. English also highlighted the incident at the Crisis Center on December 5, 2016, when appellant abandoned D.E. "without talking to any adults" and without "making any plan for his care." On cross-examination, appellant's counsel asked Ms. English about allegations of abuse D.E. had previously made against his former foster parents and Ms. G. In so doing, appellant's counsel made several references to statements made by D.E. regarding these allegations of abuse, all of

which were contained in the 181 document that had previously been admitted by the juvenile court.

Following Ms. English's testimony, the court recessed for a lunch break. When the court reconvened after lunch, the Department called Jennifer Sedera, D.E.'s school counselor. Ms. Sedera testified that D.E. had "always been a very good student." Ms. Sedera reported that she became aware of D.E.'s situation with appellant based on conversations she had with D.E., which were outlined in the 181 document. Ms. Sedera also testified that appellant had been involved in a recent altercation at school, during which he hit another student and was suspended.

After the Department rested its case, appellant called her cousin, Tiarsha W., who testified that D.E.'s behavior had been "getting out of hand" and that he had "not been himself." She also reported that during the previous Thanksgiving holiday, she observed D.E. being "aggressive" with the other children and using "foul" language. Ms. W. denied seeing any evidence that D.E. was being abused by appellant.

D.E.'s guardian, Ms. G., testified that D.E. came into her care in 2011 and that he was "mostly a compliant child." In or around 2015, D.E. began spending weekends at appellant's residence. Around the same time, Ms. G. began noticing that D.E. "was different," and that he was "not listening" and was "being disrespectful." Ms. G. testified that this behavior escalated throughout the year. Finally, in December of 2015, after D.E. had claimed Ms. G. abused him, the situation became "too stressful," so Ms. G. decided

to permit D.E. to live with appellant. In January of 2016, Ms. G. filed a petition in the circuit court to relinquish her guardianship rights back to appellant.[4]

Appellant testified that, prior to November or December of 2015, D.E.'s behavior was "fine" but that around this time "his demeanor was slightly changing." Then, in December of 2015, Ms. G. informed appellant that she and D.E. had gotten into an argument, and that he had kicked her car and threatened to run away. That same night, Ms. G. brought D.E. to appellant's house, where he remained. Appellant ultimately filed a court action seeking custody of D.E., to which Ms. G. consented.[5]

Appellant testified that, following D.E.'s move back with her, "he was doing very well." After a short time, however, D.E. began "lashing out" and showing "signs of anger." According to appellant, D.E. also became aggressive toward the other children in the house. He would "hit them" and "spit on them," and he would tell them "I hate you all" and "I wish you were never born."

Appellant then testified to an incident that occurred in October of 2016, during which D.E. became upset after appellant purchased a costume for him for Halloween. At one point, D.E. pushed another child and tried to run out of the house, but appellant and another individual blocked his exit. Appellant called the police, and D.E. was taken to the hospital, where he was diagnosed with depression and given a recommendation that

[4] The record is unclear as to the status of Ms. G.'s petition.

[5] The court action was ultimately dismissed because appellant failed to serve D.E.'s father.

he receive therapy. Appellant reported that she attempted to schedule therapy, but D.E. kept running away.

Appellant also testified regarding the incident at the Crisis Center in December of 2016. According to appellant, when she and D.E. met with one of the therapists at the Crisis Center, D.E. began yelling and calling her stupid. When appellant attempted to leave the room, D.E. "threw a juice bottle across the room." Appellant then told the therapist that D.E. "needed to be helped in another way," and that he should not be returned home. Appellant explained that she came to this decision because D.E. would only run away if he returned home.

Regarding D.E.'s allegations of abuse, appellant testified that she never punched him or hit him, but she did admit to "physical discipline with a spoon." Appellant also denied the allegation that D.E.'s half-siblings' father, Mr. G., had abused D.E.; however, appellant did admit that Mr. G. was barred from the home in April of 2016 because he "had an incident where he got upset, and he punched a hole in the wall and was yelling in front of the kids." She also admitted that Mr. G. had behaved "inappropriately in front of the kids in the past." On cross-examination, appellant admitted that she did not reach out to the Department for help when D.E. began exhibiting serious behavior problems in May of 2016. Appellant also reported that she did not reach out to D.E.'s school counselor, Ms. Sedera, but that she did contact the school's principal.

At the close of all evidence, appellant's counsel asked the court to strike from the Department's CINA petition certain statements made by D.E., all of which had been derived from the 181 document that had previously been admitted into evidence.

Appellant's counsel again asked the court to consider his redacted version of the 181 document. After brief arguments, the court considered the issue waived and decided not to admit the redacted version, explaining that the court had "already ruled on this" and that it was "a little late in the day" and "not fair to the other litigants after they've already rested their cases."

During closing argument, appellant's counsel conceded that appellant was unable to care for D.E. and that D.E. should be declared CINA, but maintained that such a finding could not be based on neglect because the only evidence of neglect against appellant came from statements made by D.E., which, according to appellant, were unsubstantiated. Appellant's counsel requested, therefore, that the court declare D.E. to be a CINA based on a finding of "mental disorder." In the end, the court denied that request and sustained the allegations in the Department's petition:

> Nobody's really talked about [D.E.] being left in charge babysitting when he wasn't supposed to be at his age. Seems negligent on its face, and by statute, but whether that's true or not, Court really doesn't have to get into that either because the finding, I don't have to agree with [appellant's counsel's] argument. He's acting out and this may be oversimplification of his arguments because he wants to go to a different foster home or he's acting out because he's got too many chores. I mean these, again, are serious, significant allegations that he's making and clearly, he is acting out at home. That's quite a drastic response to doing a lot of chores.
>
> Clearly, there is something going on. Common sense tells you that at home and these sentences seem to dovetail, make sense. You don't have to be an expert to say that this is a kid with issues. I'm not saying [appellant's counsel] is wrong about mental disorder for this child, but I just don't know if I have the evidence, again, from the Court . . . . And therefore . . . based upon the testimony in the report, I do sustain all the facts [in the Department's petition].

The court then went on to disposition and found that D.E. was a CINA based on neglect:

> I do find that the Department has met its burden. That this child meets the definition of . . . neglect by totality of all the previous findings from the adjudication and I think with all that's going on and I don't think this is a simple case, as someone indicated, I don't think it's simple at all, but I think there's a lot going on here and a lot this Court doesn't know about and probably a lot the parties, the attorneys don't know about yet.
>
> But I do find, based upon the factual findings in the adjudication, they clearly show neglect of this child, who has many issues going on at the home and we can go through paragraph by paragraph of the different things that have gone on, what is said, what is one, what he's had to do, and even taking the testimony of the mother, where [sic] not even getting into any issues until November after having his starting in December and she, apparently, the testimony was from Ms. G. that he reacted that way when he came home from visits from the mother. So, there were issues at that time.
>
> It's not disputed that the mom, or for that matter, the father, whose [sic] not in the picture at all and doesn't want to be in the picture, is unable to, and in his case, unwilling, to care for [D.E.], but I find this is a child in need of assistance based upon neglect.

DISCUSSION

I.

Appellant first argues that, by accepting into evidence the Department's unredacted 181 document, the juvenile court erroneously admitted prejudicial hearsay statements made by D.E. regarding allegations of abuse and neglect. Appellant contends that those statements constituted primary and secondary hearsay and were therefore inadmissible. Appellant also contends that the court's reason for admitting the statements, namely, that they were admissible under the "business records exception" to the hearsay rule, was erroneous because the statements lacked trustworthiness.

The State counters, and we agree, that the issue is waived. When a piece of evidence is generally admissible but may contain objectionable material, trial counsel has an obligation to bring such objectionable material to the trial court's attention. *See Haile v. Dinnis,* 184 Md. 144, 153 (1944) ("After evidence has been admitted, and an application is made to the court to exclude it, then the onus rests upon the party making the application, to confine his objection to that portion of the evidence which is illegal.") (Internal citations and quotations omitted). Moreover, "[i]t is well established that a party opposing the admission of evidence shall object at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." *Wimbish v. State,* 201 Md. App. 239, 260 (2011) (quotations and citations omitted). Finally, "absent a continuing objection, an 'appellant waive[s] its objection to [the] admission [of testimony] by permitting subsequent testimony to the same effect to come in without objection.'" *Pulte Home Corp. v. Parex, Inc.,* 174 Md. App. 681, 763-64 (2007) (quoting *State Roads Comm'n v. Bare,* 220 Md. 91, 95 (1959)).

Here, appellant does not claim that the entire 181 document was inadmissible; rather, she claims that only those portions of the document containing hearsay were inadmissible. Therefore, in order to preserve the issue for our review, appellant's counsel needed to inform the court as to the nature of the objectionable material, or at least request a continuing objection, at the time the 181 document was offered. Appellant's counsel did neither. Instead, he waited until the close of all evidence to inform the court as to which portions of the document he wanted excluded. By that time, all parties, including appellant, had relied on the unredacted 181 document when taking testimony

and had referenced many of the alleged hearsay statements. Furthermore, many of the disputed statements had already been admitted through other evidence, such as police reports, which appellant did not challenge. For these reasons, appellant's claims regarding alleged hearsay in the 181 document are not preserved for our review.

Assuming, *arguendo*, that the issue was preserved, we are persuaded that the juvenile court did not err in admitting the statements contained in the 181 document. "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). Such out-of-court statements are inadmissible unless they are permitted by applicable constitutional provisions or statutes, or unless they fall under one of the hearsay exceptions recognized by the Maryland Rules. Md. Rule 5-802. One such exception is the "public records exception" of the Maryland Rules, which provides that "public records and reports" are not excluded by the hearsay rule. Md. Rule 5-803(b)(8). The rule defines a public record or report as "a memorandum, report, record, statement, or data compilation made by a public agency setting forth (i) the activities of the agency; (ii) matters observed pursuant to a duty imposed by law, as to which matters there was a duty to report; (iii) in civil actions and when offered against the State in criminal actions, factual findings resulting from an investigation made pursuant to authority granted by law; or (iv) in a final protective order hearing conducted pursuant to [Md.] Code [1984, 2012 Repl. Vol.)], Family Law Article [("FL")], § 4-506, factual findings reported to a court pursuant to [FL] § 4-505, provided that the parties have had a fair opportunity to review the report." *Id.*

The Court of Appeals discussed the public records exception at length in *Ellsworth v. Sherne Lingerie, Inc.,* 303 Md. 581 (1985).[6] There, the plaintiff, Elizabeth Horton Ellsworth, sued the defendants, Sherne Lingerie, Inc. and Cone Mills Corporation, after a nightgown the plaintiff was wearing caught fire, causing severe burns. *Id.* at 586. At trial, the plaintiff sought to introduce as substantive evidence several reports authored by officials of the Federal government under the Flammable Fabrics Act and for the benefit of the President and Congress. *Id.* at 600. These reports detailed "the incidence and severity of burns caused by ignition of clothing that was subject to the Federal standard in order to overcome the inference that clothing which complied with that standard was not unreasonably dangerous." *Id.* at 601. The trial court refused to admit the reports into evidence, in part because the reports contained hearsay. *Id.* at 604. The court ultimately entered a directed verdict in favor of the defendants on several of the plaintiff's counts, and the jury found in favor of the defendants on the remaining counts. *Id.* at 589.

After the plaintiff noted an appeal, the Court of Appeals reversed, albeit on grounds separate and distinct from the public records exception.[7] *Id.* at 598.

[6] Although the Court of Appeals decided *Ellsworth* several years before Md. Rule 5-803(b)(8) was enacted, the Maryland Rule was derived without substantive change from Rule 803(8) of the Federal Rules of Evidence, which the Court of Appeals expressly adopted in *Ellsworth*. *See Ellsworth,* 303 Md. at 606, 612; s*ee also* Committee Note to Md. Rule 5-803 of the Annotated Code of Maryland.

[7] The Court of Appeals found reversible error in the trial court's instructions to the jury. *Ellsworth,* 303 Md. at 598. Regarding the government reports, the Court ultimately decided "not to rule on the admissibility of these reports because that determination should be made in the first instance by the trial judge if they are offered on retrial." *Id.* at 613.

Nevertheless, the Court considered several evidentiary questions regarding the reports, including the application of the public records exception, as such questions were "likely to recur upon retrial." *Id.* at 600. In so doing, the Court conceded that the reports were "clearly hearsay in character, and contain not only primary hearsay, but secondary and tertiary hearsay as well." *Id.* at 604. Despite these concessions, the Court went on to insinuate that the public records exception did not support a finding that the reports should be excluded on hearsay grounds:

> *McCormick on Evidence* § 315, at 888 (E. Clearly 3d ed. 1984) describes the common law exception for public records: "The common law evolved an exception to the hearsay rule for written records and reports of public officials under a duty to make them, made upon firsthand knowledge of the facts. These statements are admissible as evidence of the facts recited in them."
>
> The modern trend has been to admit public records when the information is gathered by a public officer under a statutory duty to investigate and record or certify facts ascertained by other than personal observation. 5 J. Wigmore, *Evidence* § 1635, at 531 (3d ed. 1940) states:
>
> > "Now there may be cases in which the officer's duty clearly does involve his ascertainment of facts occurring out of his presence and requiring his resort to sources of information other than his own senses of observation; . . . . When such a duty clearly exists, the general doctrine above, that a witness should have personal knowledge, need not stand in the way, for (as already noted) it has its conceded limitations; and where the officer is vested with a duty to ascertain for himself by proper investigation, this duty should be sufficient to override the general principle. It is true that due caution should be observed before reaching the conclusion that the law has in fact in a given case intended to invest the officer with such an unusual duty. But when it clearly appears that a duty has been prescribed to investigate and to record or certify facts ascertained other than by personal observation, then it follows that, in accordance with

> the general principle of the present exception, the statement thus made becomes admissible."

Id. at 604-05.

The Court then discussed the federal courts' treatment of Rule 803(8) of the Federal Rules of Evidence, from which Md. Rule 5-803(b)(8) is derived without substantive changes:

> Initially, some courts expressed concern over the admission of reports where the government official did not appear to have firsthand knowledge of the facts. There is now general recognition, however, that the hearsay nature of the evidence is a factor to be considered in determining the presence or absence of trustworthiness, but the presence of any level of hearsay does not, by that fact itself, render the report untrustworthy.

Id. at 607-08.

In the end, the Court concluded that public records have a "presumption of reliability," and that the public records exception "appropriately allows the reception of reliable facts, and will be recognized in this state[.]" *Id.* at 612. The Court cautioned, however, "that the term 'factual findings' will be strictly construed and that evaluations or opinions contained in public reports will not be received unless otherwise admissible under this State's law of evidence." *Id.* (footnote and citations omitted). The Court also stated that "the burden rests upon the party opposing the introduction of a public record to demonstrate the existence of negative factors sufficient to overcome the presumption of reliability[.]" *Id.* Such "[i]ndicia of unreliability may be contained in the report itself, or may be disclosed by the evidence of the party offering the report." *Id.*

In light of the plain language of Md. Rule 5-803(b)(8) and the Court of Appeals' discussion in *Ellsworth,* we are persuaded that the Department's 181 report, along with

the disputed hearsay statements, was admissible under the public records exception to the hearsay rule. Ms. English, a social worker for the Department, testified that she compiled the report as part of her regular duties and pursuant to the Maryland Code of Regulations. *See* COMAR 07.02.07.09.[8] Moreover, none of the disputed hearsay statements contained any conclusions or opinions by the Department, but rather were statements of fact by D.E. regarding incidents of abuse and neglect as reported. Thus, these statements, because they were included in the Department's report, were presumptively reliable, and the burden was on appellant to present evidence to the juvenile court as to why the report, or any particular statement, was untrustworthy. Appellant failed to do so, and none of the

[8] That section states:

> A. A local department shall complete and document an investigation using assessment tools and forms required by the Administration.
>
> B. A local department or, in a joint investigation, a law enforcement agency shall:
>
> > (1) To the extent possible, complete an investigation within 10 days of receiving a report; or
> >
> > (2) If additional time is required, complete the investigation within 60 days of receiving a report.
>
> C. An investigation is complete when the local department has completed the requirements of Regulation .07A of this chapter and a supervisor has approved the finding.

reasons presented on appeal, even if properly before this court, are sufficient to carry appellant's burden.[9]

Finally, even if we were to conclude that the juvenile court erred in admitting the Department's 181 report, any error was harmless. As we discuss in greater detail *infra*, appellant admitted that she was unable to give proper care and attention to D.E. and that, if he were returned to her care, she was certain that he would continue running away, which placed his health and welfare at substantial risk of harm. Therefore, had the juvenile court excluded all of D.E.'s statements contained in the Department's 181 report, sufficient evidence remained from which the juvenile court could make a finding of neglect. In fact, the juvenile court did not mention any of the disputed allegations of abuse made by D.E. when rendering its disposition, choosing instead to focus on appellant's admitted inability to care for D.E. *See In re Adoption/Guardianship No. T96318005,* 132 Md. App. 299, 311-12 (2000) (finding harmless any error in the admission of documents regarding the appellant's motivation for child abuse, as "[t]he actual abuse of [the child], . . . was what [the judge] focused on in rendering his decision"). Because appellant was not prejudiced by the court's admission of the

[9] Appellant claims that "D.E.'s credibility was extensively questioned" and that "D.E.'s interests were adverse to his mother's." Appellant maintains that, under those circumstances, "it is beyond cavil to assume that an individual's statements are trustworthy solely because they are reported to a public agency." Appellant does not, however, cite to any statute, rule, or case in support of his proposition that hearsay statements contained in a public record are inherently untrustworthy because the declarant's credibility was questioned or because the declarant's interests were contrary to a party's interests. Moreover, appellant presents no argument that the preparer of the report, Ms. English, falsified the record or was otherwise untrustworthy.

disputed statements, reversal on these grounds would be unwarranted. *See In re Yve S.,* 373 Md. 551, 618 (2003) ("It is not the possibility, but the probability, of prejudice which is the object of the appellate inquiry.") (citation omitted).

II.

Appellant next contends that the juvenile court erred in finding D.E. to be a CINA due to neglect. Appellant contends that the court's basis for its finding of neglect – that appellant failed to act when action was warranted – was not supported by the evidence. Appellant maintains that D.E.'s potentially injurious behavior did not begin until Halloween of 2016 and that, when it did, she took appropriate action, such as calling the police, contacting D.E.'s principal, and taking D.E. to the hospital. Appellant also maintains that she tried to enroll D.E. in therapy "but could not due to D.E.'s absconding." Appellant avers, therefore, that she was improperly "criticized" for failing to engage D.E. in therapy and for failing to contact the Department or D.E.'s school counselor and that none of these criticisms formed a basis for neglect. Although appellant concedes that D.E. is a CINA, she argues that, in light of D.E.'s increasingly dangerous behavior and certain mental-health diagnoses, the more appropriate basis for such a finding would be "either developmental issues or a mental disorder."

The State disagrees, arguing that the evidence supported a finding of neglect but did not support a finding that D.E. was developmentally disabled or had a mental disorder. The State notes the following evidence in support of the court's finding: appellant waited three days to call the police after D.E. went missing; appellant acknowledged that D.E. frequently ran away; appellant admitted that she chose to "bond"

with D.E. rather than enroll him in therapy; and, appellant admitted to exposing D.E. to repeated incidents of domestic violence. The State further notes, by contrast, a relative lack of evidence to support a finding that D.E. had a mental disorder. The State avers, therefore, that the juvenile court's finding of neglect was not clearly erroneous.

Appellate review of a juvenile court's decision regarding child custody involves three interrelated standards. First, any factual findings made by the juvenile court are reviewed for clear error. *In re Yve S.,* 373 Md. at 586 (citation omitted). Second, any legal conclusions made by the juvenile court are reviewed *de novo*. *Id.* (citation omitted). "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 [court's] decision should be disturbed only if there has been a clear abuse of discretion." *Id*. (quoting *Davis v. Davis,* 280 Md. 119, 126 (1977)).

Md. Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article ("CJP"), § 3-801(f) defines "child in need of assistance" as "a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." When a petition is filed alleging that a child is a CINA, the circuit court must hold an adjudicatory hearing to determine whether the allegations in the petition are true. CJP §§ 3-801(c) and 3-817(a). If so, the court must then hold a disposition hearing to determine, among other things, whether the child is a CINA. CJP § 3-819. 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) (citation omitted).

As noted, a child may be found to be a CINA if it is proved that the child has been neglected. "'Neglect' means leaving a child unattended or other failure to give proper care and attention to a child . . . under circumstances that indicate: 1) that the child's health or welfare is harmed or placed at substantial risk of harm; or 2) that the child has suffered mental injury or been placed at substantial risk of mental injury." CJP § 3-801(s). "In determining whether a child has been neglected, a court may and must look at the totality of the circumstances[.]" *In re Priscilla B.,* 214 Md. App. 600, 621 (2013) (citation omitted). As this Court explained:

> It makes sense to think of "neglect" as part of an overarching pattern of conduct. Although neglect might not involve *affirmative* conduct (as physical abuse does, for example), the court assesses neglect by assessing the *inaction* of a parent over time. To the extent that inaction repeats itself, courts can appropriately view that pattern of omission as a predictor of future behavior, active or passive: "[it] has long been established that a parent's past conduct is relevant to a consideration of the parent's future conduct. Reliance upon past behavior as a basis for ascertaining the parent's present and future actions directly serves the purpose of the CINA statute." Differently put, "[c]ourts 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 her conduct in the past."

Id. at 625-26 (internal citations omitted) (emphasis in original).

We hold that the juvenile court was not clearly erroneous in finding that D.E. was a CINA based on neglect. The evidence established that appellant had a history of neglect dating back to 2008, and that D.E. had previously been declared CINA and removed from appellant's care. The evidence also established that in the months leading

up to the CINA hearing, the police had responded to appellant's home on multiple occasions because D.E. had run away. Each time, appellant could not provide any information as to where D.E. was located or how to contact him. During one incident, D.E. had been gone from the home for nearly three days before appellant contacted the police. The police also responded to the home for a domestic violence incident and learned that appellant had left D.E. home alone and responsible for his younger siblings.

Although appellant did show some initiative in response to D.E.'s behavioral issues and penchant for running away, her efforts were wholly inadequate. Despite appellant's current claim that D.E.'s behavioral issues did not manifest until October of 2016, appellant told the Department that these issues had been ongoing since February of that year. Over that time, appellant did virtually nothing to address D.E.'s behavioral problems, which only became more severe and resulted in a pattern of high-risk behavior, *i.e.*, running away from home. Appellant was repeatedly told that D.E. needed mental-health therapy, yet she failed to ensure that he received such treatment. In fact, the one time that D.E. did receive some treatment – at the Crisis Center on December 5, 2016 – appellant abandoned him without making any arrangements for his care. Before doing so, appellant told the Crisis Center staff that D.E. should not be returned to her care because he would continue to run away and she could not help him. Appellant made a similar statement to the Department, admitting that D.E. was not safe in her care and that she could not prevent him from running away. Even Ms. English, who was qualified as an expert in social work, testified that it was not safe for D.E. to return to appellant's care.

Based on these facts, clear evidence was adduced that, at the time of the CINA hearing, appellant had failed to give proper care and attention to D.E. under circumstances that indicated that D.E.'s health or welfare was placed at substantial risk of harm. That there may have been some indication that D.E. suffered from a mental disorder or developmental disability is irrelevant. Accordingly, the juvenile court did not err in finding D.E. a CINA based on neglect.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.