Circuit Court for Somerset County
Case Nos. C-19-JV-24-000095, C-19-JV-24-00096

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

Nos. 2514 & 2515

September Term, 2024

IN RE: JC.F. AND IN RE: JX.F.

Ripken,
Tang,
Kehoe, S.,

JJ.

Opinion by Ripken, J.

Filed: July 30, 2025

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

In February of 2025, the Circuit Court for Somerset County, sitting as a juvenile court, found that Jc.F. and Jx.F.[1] were children in need of assistance ("CINA").[2] The children were placed in the physical and legal custody of K.W., their mother ("Mother"). The Worcester County Department of Social Services[3] ("the Department") was granted protective supervision to ensure compliance with the service plan for the children. The orders provided for L.F., the children's father ("Father"), to have weekly supervised visitation with the children. Father appealed the court's orders, and presents one issue for our review in this consolidated appeal:

Whether the circuit court committed error in allowing inadmissible hearsay into evidence.[4]

For the reasons to follow, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Jc.F. was born in May of 2017. At birth, Jc.F. tested positive for marijuana. Mother and Father lived together with Jc.F. until Mother pursued assault charges against Father

[1] We refer to the minor children by the initials used by the circuit court and parties.

[2] A CINA is a child who requires court intervention due to abuse, neglect, developmental disability, or mental disorder and whose parents or guardian are unable or unwilling to give the child proper care and attention. Md. Code (1974, 2020 Repl. Vol.), Cts. & Jud. Proc. ("CJP") § 3-801(f)–(g).

[3] The Worcester County Department of Social Services handled the investigations underlying this case because the Somerset County Department of Social Services had a conflict of interest.

[4] Rephrased from:

Did the juvenile court err in admitting hearsay without exception?

stemming from an incident in August of 2018. Less than four months later, Jx.F. was born in December of 2018. Father pled guilty to second degree assault and was sentenced to ten years of incarceration, with all but time served suspended, followed by three years of probation. Father was ordered to have no contact with Mother except for child-related matters and no contact with the children until a visitation order was established.

Custodial History of the Children

In February of 2020, an Order for Custody and Visitation was issued by the Circuit Court for Somerset County wherein sole legal custody was awarded to Mother and the parties were to equally share physical custody of the children. In October of 2020, Father filed a Petition to Modify Custody alleging that Mother had lost her housing and had denied Father visitation. Later that month, the circuit court modified the custody order and granted Father sole legal and physical custody of the children. Mother was awarded visitation; however, no set visitation schedule was established.

In June of 2022, Mother filed a Petition to Modify Custody, asserting that she had gained housing and employment. Mother also noted difficulties communicating with Father and accessing the children for visitation. The allegations in the petition filed by Mother gave rise to an investigation into alleged neglect, conducted by the Somerset County Department of Social Services ("Somerset Department"). The Somerset Department concluded that neglect was "ruled out." The circuit court found that there was a material change in circumstances for multiple reasons, including the parties' agreement that the October 2020 custody order was "not working." The circuit court entered an order in February of 2023, in which the court found that it was in the best interests of the children

to remain in the sole legal custody and primary physical custody of Father. The court noted the findings of the magistrate who heard the evidence, which expressed that Father "[had] a strong support system in place to help him with the children in the form of his two sisters and his Aunt[.]" The court established a schedule for twice-weekly visitation with Mother, as well as a schedule for holidays. Accordingly, the children were in the sole legal custody and primary physical custody of Father beginning in October of 2020.

CPS Referrals and Investigations into Neglect

In 2024, three separate Child Protective Services ("CPS") referrals gave rise to investigations into neglect. The investigations were conducted primarily by Department[5] CPS investigators Leslie Valerio[6] and Althenia Jolley. The referrals were made in April, August, and October of 2024. Valerio and Jolley testified at the adjudicatory hearing as to the allegations in the referrals and the subsequent investigations.

The Department received a CPS referral in April of 2024 ("the April referral") alleging that Jc.F. had expressed suicidal thoughts; had stated that Father punched him; and believed Father wanted to kill him. Jc.F. made some of these statements to his teacher, who then filed a petition for emergency evaluation. Jc.F. was transported to TidalHealth, where a behavioral health evaluation concluded that Jc.F. was not in need of inpatient care but

[5] The Somerset Department conducted two prior investigations, the first in November of 2018 resulting in an alternative response to neglect with Mother and the second in September of 2023, when the children were in the custody of Father. The 2024 referrals were investigated by Worcester County rather than Somerset because Father's role in local government created a conflict for the Somerset Department.

[6] The transcript uses the spelling "Valero." However, exhibits in the record which were authored by Valerio use the spelling "Valerio." Accordingly, we adopt the latter spelling.

did require outpatient follow-up. The Department opened an alternative response for neglect.[7]

In August of 2024, the Department received another CPS referral ("the August referral") alleging issues with the living conditions of Father's home. The referral alleged that the home had a broken front window, that the kitchen did not have cabinets or food, and that there were mice in the home. The referral also alleged that Father left the children at home alone. Jolley investigated the referral rather than pursuing another alternative response process.[8] Jolley visited Father's home; Father initially did not permit her to enter the home. Jolley photographed the exterior of the home, including a broken front window. Jolley then attempted to schedule a home visit. Father rescheduled the visit on four separate occasions. Jolley was eventually permitted access to visit the home ten days subsequent to her first attempt.

As part of the investigation, Jolley spoke to both children separately; both stated that Father had left them home alone, and that one of Father's sisters, S.W., had later arrived to care for them after Father had departed. Jolley indicated that Jc.F. did not want to discuss discipline that occurred in Father's home. Jx.F. told Jolley that Jc.F. did not listen

[7] At the hearing, Valerio explained that an alternative response is a process in which Department workers meet with the family to provide guidance and resources; however, the process does not result in a finding of abuse or neglect. An investigative response involves a similar process but does conclude with a finding as to whether abuse or neglect occurred. *See* Md. Code (1984, 2019 Repl. Vol.), Fam. Law ("FL") § 5-706(d).

[8] Valerio explained that, to her understanding, the August report was accepted as an investigative response rather than as an alternative response because there had been an alternative response for neglect within the past year.

to Father and that Father "doesn't do anything" in response. Jolley also spoke to T.C., S.W.'s wife, who stated that she and S.W. had arrived at Father's home to find the children unattended. T.C. noted that it took Father an hour to return home after she and S.W. telephoned him.

Jolley also spoke with a learning support specialist at the children's school who was familiar with both children. The specialist noted that Jc.F. had some behavioral issues at school. The specialist indicated that Father became more attentive to Jc.F.'s behavioral needs following the emergency petition to TidalHealth in April. As to Jx.F., the specialist described him as serious and "very quiet" in a manner not typical of his age group. The specialist also noted that Jc.F. was receiving school-based counseling through Chesapeake Health Care ("CHC"). Jolley spoke with Jc.F.'s therapist, who indicated that while Father's sisters were heavily involved with the children, Father was sometimes hard to contact. The therapist noted that both CHC and the school had recommended to Father that Jc.F. should undergo a psychiatric evaluation, and that Father had not followed through with the recommendation. The therapist described Jc.F. as talkative, academically above his grade level, and physically aggressive.

Jolley's investigation into the August referral was completed in September of 2024. Jolley concluded that the children had been left unattended for over an hour, despite both being too young to be home without supervision. The investigation closed with a finding of indicated neglect of both children, with Father as the maltreater.

Shortly after the closure of the investigation into the August referral, the Department received another CPS referral. The referral, which was received in October of 2024 ("the

October referral"), again raised allegations that the children were not properly supervised and that there were concerns with the condition of the home. Additionally, the referral alleged that the children did not attend school on a regular basis. Valerio was assigned to the investigative response.

Valerio initially attempted a home visit two days after the referral was received, and Father denied her entry into the home. After several scheduled home visits were rescheduled by Father, Valerio and her supervisor, Dawn Blades, made an additional attempt to visit the home on October 16, 2024, one week after the first attempted home visit. Father declined to allow Valerio and Blades to enter the home. Father indicated that the children were with his sister N.F. Father agreed to, and signed, a safety plan allowing for the children to remain with N.F. until Valerio was permitted to assess the conditions of the home. Valerio and Blades then called N.F., who indicated that the children were not with her, nor were they in school. Valerio then observed Father exiting the home with the children. Father stated that he would bring the children to his other sister, S.W. Hence, Valerio and Blades then went to S.W.'s home. S.W. told them that she did not have the children with her and had not heard from Father. Valerio and Blades attempted to telephone Father. As he did not answer, they left him a voicemail.

Later the same day, Valerio was contacted by Mother questioning why another investigation had been opened. Mother indicated that she "would not speak to any concerns" and informed Valerio that she had petitioned for full custody of the children, and the proceeding was ongoing. The following day, Valerio requested through text message to visit Mother's home, and Mother refused.

Subsequently, Valerio and Jolley visited Father's home. Father allowed them entry on this occasion. In the home, they observed a table in the front of the house which was covered with clothes and trash. The children's shared bedroom had twin beds; however, one bed was covered in unfolded clothes. Father indicated that he had purchased dressers for the children, which were in boxes in the children's room and needed to be assembled. Valerio and Jolley observed that the kitchen did not have cabinets or cookware, and the stove and microwave were disconnected. Father explained that he was renovating the kitchen and was waiting for new cabinets to arrive. Valerio asked Father whether he owned any firearms. Father said that he did and that it was stored in an attic; when Valerio requested to see it to confirm it was stored safely, Father showed Valerio a rifle, which was stored above the children's closet, unloaded. Valerio noted that Father had previously informed her and Blades that he did not own a firearm. Valerio recommended that Father enroll in mental health services due to his "habitual lying" to Department workers and the "disarray" of the home.

Valerio next spoke to Jx.F.'s teacher. The teacher described Jx.F. as a quiet child who typically did not have behavioral issues in school. However, she stated that recently, Jx.F. had physically lashed out at another student. The teacher stated that when she asked Jx.F. about his behavior, he told her that Jc.F. hurt him and Father did not do anything about the incident. The teacher had previously been Jc.F.'s teacher and told Valerio that Jc.F. had been "aggressive." She noted that Jx.F. had tardiness and attendance issues.

November 2024 Petition for Emergency Evaluation

While the investigation into the October referral was ongoing, Jc.F. was sent to the school administrative office by his teacher for disruptive behavior in class. Father was contacted and agreed to come pick Jc.F. up from school. While waiting, Jc.F. began to pick up and throw items in the office of the school administrator who was supervising him. The administrator then moved Jc.F. to the "vestibule" of the building. Jc.F. began to destroy and throw furniture, and attempted to leave the school building; and other staff members, including a School Resource Officer ("SRO"), arrived to assist. The school secretary placed four calls to Father, who did not answer. Jc.F. then reached for the SRO's weapon. The SRO filed a petition for emergency evaluation, and Jc.F. was immediately transported to TidalHealth.

Jc.F.'s TidalHealth records were admitted into evidence at the adjudication hearing. The records indicate that upon being transported to TidalHealth, Jc.F. told hospital staff that he became upset and could not breathe in the school vestibule because of his asthma. A behavioral health evaluation concluded that Jc.F. was deemed unsafe and in need of inpatient treatment. Hospital staff made efforts to find a bed for Jc.F. at a pediatric inpatient care facility. In the meantime, Jc.F. remained at TidalHealth. The Department was informed of the situation, and Valerio requested hospital staff to alert her immediately if Jc.F. was discharged.

The night of November 18, 2024, Father discharged Jc.F. from TidalHealth against medical advice. Previously, at the urging of Jc.F.'s school-based therapist, Father had scheduled a psychiatric evaluation for Jc.F. at CHC on the morning of November 19, 2024.

Father explained at the adjudicatory hearing that he discharged Jc.F. from TidalHealth to bring him to his appointment at CHC for a second opinion on whether Jc.F. required inpatient care. Father also indicated that he was unhappy with keeping Jc.F. at TidalHealth for an extended period.

TidalHealth notified the Department that Jc.F. had been discharged against medical advice. The Department issued a shelter authorization, and Valerio went to Father's home along with another Department worker. The Department also requested police assistance in removing Jc.F. from Father's home. At approximately 1:30 a.m. on November 19, 2024, Valerio, the other Department worker, and several police officers arrived at Father's home. Officers knocked on the door and spoke to Father through the door, but Father denied them entry into the home. Father came outside to speak to the Department workers and officers and continued to refuse to comply with the shelter authorization. After several hours, the Department workers and officers left Father's home.

Father brought Jc.F. to his appointment at CHC. A CHC provider performed a psychiatric intake evaluation and concluded that Jc.F. needed a "higher level of care" for stabilization. The CHC evaluation noted that much of the information contained in the narrative had come from Jc.F.'s medical records as Father "provided minimal details and often minimized symptoms" and "denied most psychiatric [symptoms]" which were reflected in Jc.F.'s records.

Later in the day on November 19th, the Circuit Court for Somerset County conducted a shelter care hearing. The court granted shelter care and placed both children in the temporary care of the Department. The court scheduled a CINA adjudicatory hearing

for December 19, 2024. The Department returned Jc.F. to TidalHealth, where he was reassessed and again recommended for inpatient treatment. The Department closed the investigation into the October referral with a finding of indicated neglect.

CINA Proceedings

The Department filed CINA Petitions as to both children. The Department asserted that both children should be adjudicated CINA due to neglect, particularly because of the conditions of Father's home, concerns about the children being left unsupervised, and Jc.F's ongoing mental health concerns.

Following several postponements, the circuit court conducted an adjudicatory hearing on February 25, 2025. Valerio and Jolley testified to their investigations and Jc.F.'s hospitalization. CPS Intake Worksheets documenting the referrals, Contact Notes created by Valerio and Jolley, and the resulting Investigation Summary Reports were admitted into evidence. The court also admitted Jc.F.'s school and medical records into evidence, some of which were offered by Father.

Father testified and explained that his landscaping business often resulted in long working hours, at least from April through November. Father said that when work prevented him from watching the children, his sisters or his aunt would provide care. Father described Jx.F. as a well-behaved child and a good student with no behavioral issues until CPS involvement. Father described Jc.F. as more open in personality and a very intelligent child.

Father described the condition of his house as "great," and stated that he had put substantial time and money into restoring the home. Father stated that the broken window

observed by Jolley was damaged by a stone thrown by a neighborhood child, and that he had repaired the window within three days. Father admitted that his kitchen was under repair during the Department workers' visit; however, he asserted that the stove was working and only the cabinets needed to be installed. Father further asserted that the rifle stored in the top of the children's closet would not have been accessible to the children due to the height of the storage area.

As to Jc.F.'s mental health issues, Father stated that they were caused by bullying at school. Father stated that he had supported Jc.F. receiving mental health services and had agreed to the recommended psychiatric evaluation. Father also stated that he opposed medication for Jc.F. Father believed counseling was having a positive effect on Jc.F.'s behavior. Father asserted that the CHC evaluation was altered after Jc.F's provider spoke with CPS. Father denied minimizing Jc.F.'s symptoms; Father explained that Jc.F.'s explosive behaviors occurred at school due to bullying and that Father has never observed such behaviors.

As to Jc.F.'s hospitalization, Father speculated that Jc.F. may have believed that the SRO's weapon, which Jc.F. reached for, was a toy.[9] Father stated that he initially agreed with Jc.F.'s hospitalization so that Jc.F. could receive a thorough evaluation. However, Father also noted that he was unhappy with Jc.F. remaining in the children's psychiatric unit at TidalHealth because the other children there were much older than Jc.F. Father

[9] Father also referred to the SRO's weapon as a 'taser.' The hospital records, school records, and investigative notes documenting the incident consistently identify the weapon as a gun or firearm.

explained that he was told it would take two weeks to find Jc.F. an inpatient placement; however, Father hoped it would be sooner. Father recounted discharging Jc.F. against medical advice.

T.C.—Father's sister-in-law—also testified at the adjudicatory hearing. She explained that she and S.W. frequently cared for the children while Father was at work; however, she had not seen the children since the beginning of August of 2024 due to relationship issues between herself and S.W. T.C. denied having knowledge of the children being left unattended. T.C. denied telling Jolley that she and S.W. found the children at home unattended in August of 2024.

The Department asked the court to sustain the allegations in the petition and find that both children had been neglected. Counsel for the children agreed with the Department that the evidence supported a neglect finding. Mother also agreed that the children had been neglected. Father argued that the allegations relating to neglect had not been proven.

The circuit court found that the majority of the allegations in the petition had been sustained. The court found that the condition of the home was not appropriate for the children. The court found that there was credible evidence the children were left unattended on at least one occasion. The court also found that Jc.F.'s mental health needs had not been appropriately addressed. The court found that the conditions of the home and failure to address Jc.F.'s mental health needs constituted neglect.

The court proceeded to a disposition hearing the same day, and the children were determined to be CINA and placed in Mother's custody and under the protective

supervision of the Department. Father was granted weekly supervised visitation. Father noted the instant timely appeal.

DISCUSSION

THE CIRCUIT COURT DID NOT ERR IN ADMITTING THE CHALLENGED EVIDENCE.

After a CINA petition is filed in circuit court, the court must hold an adjudicatory hearing at which the petitioner has the burden to prove the allegations in the petition by a preponderance of the evidence. Md. Code (1974, 2020 Repl. Vol.), Cts. & Jud. Proc. ("CJP") § 3-817. The rules of evidence apply at an adjudicatory hearing. *Id.*; *In re O.P.*, 470 Md. 225, 236 (2020). "If the court finds that the allegations in the petition are true, the court then holds a separate disposition hearing to determine whether the child is, in fact, a CINA and, if so, the nature of any necessary court intervention." *In re O.P.*, 470 Md. at 236. The court has discretion whether to strictly apply the rules of evidence at a disposition hearing. *Id.* Because the evidence Father challenges as hearsay was admitted during the adjudicatory stage of the proceeding, the rules of evidence strictly apply.

This Court's review of a circuit court's rulings in a CINA case applies "three interrelated standards of review." *In re I.Q.*, 264 Md. App. 265, 298 (2025) (quoting *In re T.K.*, 480 Md. 122, 143 (2022)). This Court reviews the circuit court's factual findings for clear error; matters of law *de novo*; and ultimate conclusions under an abuse of discretion standard. *Id.* "Whether evidence is hearsay is an issue of law reviewed *de novo*." *Gordon v. State*, 431 Md. 527, 536 (2013) (quoting *Bernadyn v. State*, 390 Md. 1, 7–8 (2005)). The applicability of a hearsay exception is also a question of law. *Id.* at 538. The factual findings

underpinning the circuit court's legal conclusions, however, are reviewed for clear error. *Smith v. State*, 259 Md. App. 622, 666–67 (2023).

A. The circuit court did not err in admitting the challenged exhibits.

i. Party Contentions

Father contends that the circuit court admitted hearsay evidence at the adjudicatory hearing and thus committed legal error. He raises challenges to the admission of seven documents, which are:

- Petitioner's Exhibit 11, a Contact Note of Valerio's communication with a school employee regarding Jx.F., which contains an account of the school employee's statements.

- Petitioner's Exhibit 16, an Investigation Summary Report setting forth the Department's findings from the October referral regarding Jc.F., which contains statements from hospital staff at TidalHealth and Jc.F.'s mental health provider.

- Petitioner's Exhibit 17, an Investigation Summary Report setting forth the Department's findings from the October referral regarding Jx.F., which contains statements from both children.

- Petitioner's Exhibit 19, a Contact Note of Jolley's communications with a school employee and Jx.F., which contains an account of the employee's and Jx.F.'s statements.

- Petitioner's Exhibit 20, a Contact Note of Jolley's communication with Jc.F., which contains an account of Jc.F.'s statements.

- Petitioner's Exhibit 21, an Investigation Summary Report setting forth the Department's findings from the August referral regarding Jc.F., which contains statements from T.C. and both children.

- Petitioner's Exhibit 22, an Investigation Summary Report setting forth the Department's findings from the August referral regarding Jx.F., which contains the same statements as those in Exhibit 21 from T.C. and both children.

Father contends that the exhibits, while themselves potentially admissible as business or public records, contain secondary and tertiary hearsay statements which required a separate hearsay exception for those statements to be admissible.[10] He contends that no such separate exception was put forth for any of the seven exhibits.

The Department contends that all seven challenged documents were properly admitted. The Department asserts that the exhibits were produced pursuant to duties imposed by law and thus are admissible under the public records exception. The Department contends that once the exhibits were established to be public records, Father had the burden to demonstrate that the exhibits should be excluded as unreliable and that Father did not meet that burden.

Mother asserts that the court correctly admitted the challenged exhibits as public records and asks this Court to affirm the circuit court's rulings. Counsel for the children filed a line adopting the arguments of the Department.

[10] Father also contends that the records should be excluded for the rationale underlying the exclusion of Court Reports under Maryland Code (2006, 202 Repl. Vol.), Section 3-816 of the Courts and Judicial Proceedings ("CJP") Article. CJP Section 3-816(c)(1) states that a case study prepared pursuant to a juvenile court's order in a CINA proceeding is not admissible as evidence in an adjudicatory hearing. Father asserts that this statute should extend to the exclusion of other types of documents generated by the Department. The reports under CJP Section 3-816(c)(1) are intended to aid the juvenile court in assessing an appropriate placement for a child in the dispositional stage of a CINA proceeding. *See In re Faith H.*, 409 Md. 625, 645 (2009). The records at issue before us are of a different character, and thus not excluded under CJP Section 3-816.

ii. Analysis

1. The challenged documents were admissible under the Public Records exception.

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). Hearsay is generally inadmissible unless an exception applies. *See* Md. Rule 5-802. One such exception exists for "Public Records and Reports." Md. Rule 5-803(b)(8). A record made by a public agency is admissible if it sets 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 . . . , factual findings resulting from an investigation made pursuant to authority granted by law[.]

Id. The Supreme Court of Maryland first recognized the Public Records exception in *Ellsworth v. Sherne Lingerie, Inc.*, 303 Md. 581 (1985).

Ellsworth examined the admissibility of five annual reports which the Secretary of Health, Education and Welfare and the Consumer Product Safety Commission were jointly required to produce pursuant to statute. *Id.* at 589. The Court examined the common law exception, adopted by the Federal Rules of Evidence, and held that the Public Records exception "appropriately allows the reception of reliable facts" because an investigator with a public duty can be relied upon to make accurate reports. *Id.* at 605, 612. Quoting favorably from *McCormick on Evidence*, the Court explained,

> To some extent, the conclusions of a professional investigator making inquiries required by his professional and public duty contain assurances of reliability analogous to those relied upon as assuring accuracy of his

> statements of fact from firsthand knowledge. A skilled investigator can be presumed to report as accurate or to rely upon a hearsay statement only after inquiry into its accuracy. . . . Much of the same could be said of his conclusions. In both cases, it is clear that the report and its conclusions are recognized by all concerned to lay the foundation for future official action, which is likely to stimulate the same habitual accuracy in reporting facts known that underlies the exception for official records generally.

Id. at 605 (quoting *McCormick on Evidence* § 317, at 737–38 (E. Cleary 2d ed. 1972)).

The Court further recognized that "the hearsay nature of the evidence [in a report] 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 608. Thus, a record which qualifies under the Public Records exception is presumptively trustworthy and should only be excluded unless demonstrated to be untrustworthy or unreliable, even where the record contains secondary and tertiary hearsay. *See id.* at 607 (quoting *Ellis v. Int'l Playtex, Inc.*, 745 F.2d 292, 300 (4th Cir. 1984)). The party opposing admission of the record has the burden to demonstrate untrustworthiness or unreliability. *Id.* at 607.

This Court applied the Public Records exception to a comparable CINA case in *In re H.R.*, 238 Md. App. 374 (2018). There, in a Termination of Parental Rights hearing in which the rules of evidence strictly applied,[11] the circuit court admitted seven reports prepared by county social workers in anticipation of permanency plan review hearings. *Id.* at 402–03. We examined *Ellsworth* and held that because the reports documented the activities of the Department and were prepared pursuant to a duty imposed by law, they

[11] *See In re Adoption of Jayden G.*, 433 Md. 50, 77 (2013) (citing Md. Rule 5-101(c)).

were presumptively admissible. *Id.* at 406–07. Though the appellant in *In re H.R.* asserted that the records were "self-serving position papers" prepared in anticipation of an adversarial proceeding, we held that this assertion did not meet the burden of demonstrating unreliability. *Id.*

There are two types of records at issue in this case: Contact Notes, which document Valerio's and Jolley's observations during their investigations; and Investigation Summary Reports, which set out the ultimate findings of each investigation. The Department contends that these records set out the activities of the Department and are made pursuant to a duty imposed by law. Upon receiving a report of child abuse or neglect, the Department is required to conduct an investigation, which includes "obtain[ing] information from the reporting source, parents, other relatives, community members, and other appropriate community sources[.]" COMAR 07.02.07.07(A)–(B).[12] The Department also has a legal duty to maintain a record of its CPS responses, including "[n]otes of contacts and interviews[.]" COMAR 07.02.07.18(B)(2)(a). At the closure of an investigation, the Department must "[e]nsure that the record is complete" and "[c]omplete a written report of its disposition and any necessary services[.]" COMAR 07.02.07.13(A), (C)(1). The Department and its workers—here, Valerio and Jolley—had a duty to investigate the CPS referrals and document the investigations. The duty included conducting interviews consistent with those documented in the Contact Notes and preparing written final reports.

[12] The requirements for departmental investigations into child abuse and neglect allegations are set forth in Maryland Code (1984, 2019 Repl. Vol.), Section 5-706 of the Family Law Article.

The records thus document the Department's activities and set forth "matters observed pursuant to a duty imposed by law, as to which matters there was a duty to report[.]" Md. Rule 5-803(b)(8)(A)(i)–(ii). Both types of documents are presumptively admissible under the Public Records exception.

Because the exhibits fall under the Public Records exception, they are presumptively trustworthy, even containing secondary and tertiary hearsay. *See Ellsworth*, 303 Md. at 608. Father's assertion that the statements of others set out in the exhibits required an additional hearsay exception is therefore incorrect. Father attempts to distinguish *Ellsworth* and *In re H.R.* by contending that their holdings are inapplicable to the facts of the case before us. We do not agree.

Father first contends that because *Ellsworth* predates the current Maryland Rules of Evidence, its holding is limited by the subsequent adoption of Rule 5-805, which he contends requires an applicable exception for each layer of hearsay.[13] While Father is correct that *Ellsworth* predates adoption of the Maryland Rules of Evidence, our application of *Ellsworth* in *In re H.R.* demonstrates that *Ellsworth* remains good law following the adoption of the Maryland Rules. *See In re H.R.*, 238 Md. App. at 404–06. Additionally, the Maryland Rules are derived from the Federal Rules of Evidence. *See*, *e.g.*, Md. Rule 5-803 Committee Note (stating that the Rule is derived from Federal Rules

[13] Father additionally contends that *Ellsworth* is factually dissimilar to this case because it concerned "highly specialized, complex government reports" rather than Department documents in the CINA context. Father's contention appears to suggest a narrow reading of *Ellsworth*; however, nothing in *Ellsworth* indicates that the Public Records exception should be limited to the context in which it was decided. We therefore decline to adopt the narrow reading Father suggests.

of Evidence 801(d)(2) and 803). The Federal Rules have a comparable rule to Maryland Rule 5-805 which was in effect at the time *Ellsworth* examined the application of the Public Records exception in the federal courts. *See* Fed. R. Evid. 805. The *Ellsworth* Court, in examining the federal Public Records exception, observed a general trend among federal courts to admit reports where "the government official did not appear to have firsthand knowledge of the facts." *Id.* at 607–08. *Ellsworth*'s general principle that secondary and tertiary hearsay is admissible within public records stands. *See In re H.R.*, 238 Md. App. at 404–06. This principle is in accordance with the rationale for the Public Records exception. Under the exception, the professional judgment of public employees is relied upon; the hearsay nature of the contents of a record is a matter for the court to consider when assessing the weight of the evidence, rather than a barrier to its admissibility. *See Ellsworth*, 303 Md. at 608.

Father also contends that *In re H.R.* is not applicable because that case addressed only the general admissibility of reports containing "factual recitations about routine matters[.]" *In re H.R.*, 238 Md. App. at 407. However, Father has not demonstrated that the presence of secondary and tertiary hearsay statements within the exhibits before us renders the reports—mandatory on the Department to make and maintain—non-routine matters. Merely asserting that the exhibits contain additional levels of hearsay is not sufficient to render the exhibits inadmissible. *See Ellsworth*, 303 Md. at 608.

2. Father did not meet his burden of demonstrating that the exhibits were untrustworthy.

At the hearing, Father objected to the admission of the challenged exhibits on broad hearsay grounds. However, Father limited specific allegations of untrustworthiness to certain exhibits containing statements from the children.[14] Father had the burden as to each exhibit to which he objected to overcome the presumption that the exhibit was trustworthy. *See In re H.R.*, 238 Md. App. at 406. In objecting to Exhibit 19, Father asserted that "child's counsel has already indicated in her motion to quash that [Jx.F.] is not reliable or not competent as a witness." Father's objections to Exhibits 20 and 22 reiterated the same argument that the children were alleged to be unreliable or incompetent witnesses.

Father's objection refers to motions filed by counsel for the children which moved to quash the subpoenas of Jc.F. and Jx.F. Both children were subpoenaed to testify at the adjudicatory hearing by Father. Counsel for the children asserted that Jc.F. was seven years old and suffered from Disruptive Mood Dysregulation Disorder (DMDD) and Attention Deficit Hyperactive Disorder (ADHD) and that he "[did] not have considered judgment and [was] not a competent witness to testify" at the adjudicatory hearing. Similarly, counsel asserted that Jx.F. was six years old and that "[d]ue to his age, [Jx.F. did] not have considered judgment and [was] not a competent witness to testify" at the hearing. Father replied to both motions and requested that the court deny them or, in the alternative,

[14] Father's brief appears to raise a broad challenge to the trustworthiness of all secondary and tertiary hearsay in the exhibits. However, at the hearing, Father's specific allegations concerning reliability were limited to the statements of the children. We therefore limit our analysis to Father's arguments as to those statements.

conduct a preliminary determination of the children's competency to testify. The circuit court, after considering the motions and responses, quashed the subpoenas.

Father's objection does not meet his burden to demonstrate untrustworthiness because the circuit court's orders do not amount to a determination that the children were unreliable. Circuit courts have authority to quash subpoenas pursuant to Maryland Rule 2-510(e). The rule provides that, on motion of a person served with a subpoena, "the court may enter an order that justice requires to protect the person from annoyance, embarrassment, oppression, or undue burden or cost[.]" *Id.* It is reasonable to believe that it could be oppressive or place an undue burden on a young child to testify in a CINA proceeding related to that child; we will not presume that the circuit court quashed the subpoenas on any grounds other than those listed in the Rule as the record does not support such a conclusion.

Additionally, all witnesses, including children, are presumed competent. Md. Rule 5-601. A court has discretion to conduct *voir dire* of a witness to determine competency if a substantial question regarding competency is raised; however, merely alleging that a child's young age makes him or her incompetent to testify is not sufficient to raise such a question. *See Perry v. State*, 381 Md. 138, 152, 157 (2004) (holding that a substantial question as to competency is not raised "where the objecting party states that a child is seven years old and baldly asserts that the child lacks the ability to understand the difference between truth and fiction"). The allegations in the motions to quash are the type of bald assertions that did not raise a substantial question as to competency referenced in *Perry*.

Even if Father was correct that the allegations in the motions to quash raised a substantial question as to competency, the circuit court did not conduct an inquiry into either child's competency; nor did the court determine that the children were incompetent witnesses. Father's counsel acknowledged during his closing statement that "[t]he [c]ourt has not made a finding about [Jc.F.'s] ability to tell the truth or any finding that would in any way reflect his reliability as a witness." Nor did the court make such a finding regarding Jx.F. Quashing a subpoena and excluding a witness as incompetent are distinct discretionary powers of the circuit court; here, the court quashed the subpoenas, but did not make any determination that would rebut the presumptive competence of the children as witnesses. Hence, the circuit court did not err in admitting the exhibits over Father's objections.

We note that any error in admitting exhibits containing secondary hearsay statements from the children would be harmless because Father was not prejudiced by their admission. *See In re Yve S.*, 373 Md. 551, 617–18 (2003) (noting that, in reviewing the impact of improperly admitted evidence, appellate courts examine the probability of prejudice under the circumstances of the case). The children's statements documented in Exhibits 19, 20, and 22 recounted a time in which they were left home alone and their aunt, S.W., arrived to care for them. The circuit court's finding of neglect was based primarily on the conditions of the home and Jc.F.'s unaddressed mental health needs, not on its finding that the children had been left unattended. To the extent that the circuit court found credible evidence that the children had been left unattended on at least one occasion, such

a finding was also supported by other evidence in the record to include T.C.'s statements to Jolley.

B. The circuit court did not err in admitting out-of-court statements in testimony.

i. Party Contentions

Father contends that three instances of alleged testimonial hearsay recounting statements made by the children should have been excluded because a child's hearsay statement is not admissible against their parent under the party-opponent exception. He contends that he was prejudiced by the admission of the statements. Specifically, Father contends that evidence of the children being left unattended were admitted only pursuant to hearsay.

Regarding that which Father contends is testimonial hearsay, the Department counters that all three statements were not offered for their truth, but to explain the basis of the Department's actions. Further, the Department contends that any error was harmless, because the challenged statements contain information that either came into evidence through other means or were not relied on by the court in rendering findings.

ii. Analysis

Hearsay is defined as an out-of-court statement offered in evidence to prove the truth of the matter asserted; therefore, out-of-court statements not offered for the truth do not qualify as hearsay and need not be excluded under the rule. *See* Md. Rule 5-801(c). A hearsay objection raises two threshold questions: "'(1) whether the declaration at issue is a "statement," and (2) whether it is offered for the truth of the matter asserted.'" *State v. Young*, 462 Md. 159, 170 (2018) (quoting *Stoddard v. State*, 389 Md. 681, 688–89 (2005)).

"[A] statement that is offered for a purpose other than to prove its truth is not hearsay at all." *Esposito v. State*, 264 Md. App. 54, 81 (2024) (quoting *Hardison v. State*, 118 Md. App. 225, 234 (1997)). An out-of-court statement is offered for its truth if it would have no probative value unless the declarant was sincere and stated accurate facts. *Id.* An out-of-court statement is not considered hearsay if it was offered not for its truth, "but simply to establish that the statement was made[.]" *Young*, 462 Md. at 170 (quoting *Lunsford v. Bd. of Educ. of Prince George's Cnty.*, 280 Md. 665, 670 (1977)).

Father contends that the children's out-of-court statements described in Valerio's and Jolley's testimony were inadmissible hearsay under *In re Michael G.*, 107 Md. App. 257 (1995) because the party-opponent exception to the hearsay rule does not apply where a child's statement is offered against their parent. We need not reach Father's contention because we hold that the challenged testimony was not hearsay. Each statement was offered not for its truth, but to explain the course of the Department's investigation.

During Valerio's testimony at the adjudicatory hearing, the following colloquy took place:

> [The Department]: Showing you what's been marked as Petitioner's Exhibit 4, and ask if you can identify what that is.
>
> [Valerio]: This is the intake worksheet for the April 2024 referral.
>
> [The Department]: And generally what were the concerns that precipitated that referral?
>
> [Valerio]: The concerns were regarding the conditions of the home. [Jc.F.] was making some statements about --

> [Father]: Objection.
>
> [The court]: Overruled. I know your objection is it's hearsay, but I'm going to overrule. Go ahead.
>
> [Valerio]: Okay. [Jc.F.] was making statements that he wanted -- that he wanted to die, that the house was in bad condition. There was -- that his father wanted to kill him. He ended up being emergency petitioned to TidalHealth.

Petitioner's Exhibit 4, the Department's intake form for the alternative response to the April referral, was then moved into evidence. The context of this exchange makes clear that Jc.F.'s statement was not offered for its truth. Jc.F.'s statement was that the "house was in bad condition," that he "wanted to die," and that Jc.F. believed that Father "wanted to kill [Jc.F.]." The fact being established by eliciting the statement was that Jc.F. made a statement which prompted the Department to initiate an alternative response to neglect, i.e. why the Department took the action that it took. The Department's question elicited information which explained the reason behind the initiation of the alternative response. Valerio's testimony recounting Jc.F.'s statement was responsive to the question—it explained why the Department had concerns of possible neglect. The probative value of the statement therefore was not its truth, but the fact that Jc.F. made a statement which raised concerns. Regardless of whether Jc.F.'s statement was "sincere" or "factually accurate," the statement has the probative value of explaining the Department's response. *See Esposito*, 264 Md. App. at 81. The statement is thus not hearsay because it was not offered for its truth.

During Jolley's testimony, the following colloquy took place:

> [The Department]: I'm showing you what's been marked as Petitioner's Exhibit 19, and ask if you can identify what that is.
>
> [Jolley]: Yes. So this is the contact note of my conversation with [Jx.F.] and an administrator at the school.
>
> [The Department]: Based on your conversations with [Jx.F.], did you have any concerns for him?
>
> [Jolley]: I did. He did acknowledge that there was a time that he was left unattended.
>
> [Father]: Objection.
>
> [The court]: Overruled. Just tell us your concerns. You can answer.
>
> [Jolley]: Okay. Just the fact that he was left unattended.

Petitioner's Exhibit 19 was then moved into evidence.

> Shortly thereafter, the following colloquy took place:
>
> [The Department]: And based on your communications with [Jc.F.], did you have any concerns for him?
>
> [Jolley]: Yes. So he also did acknowledge that they were left unattended as well.
>
> [Father]: Objection.
>
> [The court]: Overruled.

The Department then asked Jolley to identify Petitioner's Exhibit 20, which was a Contact Note summarizing Jolley's conversation with Jc.F. The Department moved Petitioner's Exhibit 20 into evidence and the Court did so.

Both lines of questioning concerned Jolley's investigation into possible neglect following the August referral. The children's out-of-court statements were that they were "left unattended" by Father. The fact being established by the statements was that the children made statements which generated "concerns" during the course of Jolley's investigation. Regardless of whether the children were "sincere" in making the statements, their comments would raise concerns for Jolley and the Department. A child making such a statement is concerning and it would reasonably prompt a CPS investigator in Jolley's position to investigate further. If the statement was later revealed to be untrue, the falsity of the statement would not change the fact that when it was made, it prompted Jolley to investigate further. The probative value is thus the fact that the children made these statements to Jolley and the effect the statements had on Jolley's investigation. *See Young*, 462 Md. at 170 (holding that an out-of-court statement is not hearsay if it was offered merely to show that the statement was made). If these statements were insincere or inaccurate, they would none the less retain probative value. *See Esposito*, 264 Md. App. at 81. Therefore, the statements Jolley recounted are not hearsay because they were not offered for their truth. The circuit court did not err.

Even if admission of these statements was error, any error was harmless because the statements are cumulative of other evidence in the record. *See Gross v. State*, 481 Md. 233, 237 (2022) (noting the "longstanding approach of considering the cumulative nature of an erroneously admitted piece of evidence when conducting harmless error analysis"). Jc.F.'s statements recounted in Valerio's testimony also appear in Petitioner's Exhibit 4, as well as Petitioner's Exhibit 13 (Jc.F.'s medical records), both of which were admitted at the

hearing and are not subject to this appeal. The statements recounted by Jolley appear in Petitioner's Exhibits 19 and 20, which, as we have explained *supra*, were not inadmissible hearsay. Additionally, as discussed above, the court's primary grounds for the finding of neglect were the conditions of the home and Jc.F.'s mental health needs. The statements recounted by Jolley do not underly these grounds. Jc.F.'s statement to Valerio is an insubstantial part of a substantial record documenting Jc.F.'s mental health struggles, which included records and testimony. We are satisfied that the admission of the children's out-of-court statements did not prejudice Father.

JUDGMENT OF THE CIRCUIT COURT FOR SOMERSET COUNTY AFFIRMED. COSTS TO BE PAID BY FATHER.