

Circuit Court for Baltimore City  
Case No. 818075002

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2529

September Term, 2018

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IN RE: J.J.

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Meredith,  
Graeff,  
Reed,

JJ.

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Opinion by Reed, J.

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Filed: July 8, 2019

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

J.J. was born on March 11, 2018, and she suffered from severe neonatal drug withdrawal. On March 19, 2018, the Baltimore City Department of Social Services (hereinafter “the Department”) filed a Child In Need of Assistance (“CINA”) petition along with an Emergency Request for Shelter Care of the infant, J.J. As a result, J.J. was placed in the shelter care of a relative. On June 18, 2018, the juvenile court held an adjudicatory hearing before a magistrate judge. Mr. J., J.J.’s father, (hereinafter “Father”), did not appear for the hearing and did not file exceptions to the Magistrate Judge’s Report and Recommendations. Subsequently, the juvenile court scheduled a separate disposition hearing for September 28, 2018. Prior to hearing, the Department filed an Emergency Motion to Authorize Removal of Child and New Placement motion to authorize J.J.’s removal from Father’s custody. On September 24, 2018, the juvenile court held a hearing on the Department’s motion. The juvenile court approved the Department’s motion and removed J.J. from Father’s custody.

On September 28, 2018, the juvenile court found that the facts alleged by the Department in its CINA petition had been proven by a preponderance of the evidence and found that J.J. was a CINA and committed her to the Department. It is from this decision that Father files this timely appeal. In doing so, Father presents the following questions for our review, which we have rephrased for clarity<sup>1</sup>:

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<sup>1</sup> Father presents the following questions:

1. Whether the lower court surpassed the statutory limitation established by § 3-815 of the Courts and Judicial Proceedings Article, which allows for a shelter care order to continue for a maximum of sixty (60) days?

- I. Did the juvenile court have the authority to continue the shelter care order to protect J.J.’s safety and welfare?
- II. Did the juvenile court err by entering an order to limit Mother’s contact with J.J.?
- III. Did the juvenile court err when it found that J.J. was a CINA?

For the foregoing reasons, we answer the first question affirmatively and the next two negatively and affirm the decision of the juvenile court.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### ***Background History of Mother’s Substance Abuse***

Ms. D. (hereinafter “Mother”) began using opiates at the age of 18. In March 2018, when Mother was 30 years-old she gave birth to J.J. Mother tested positive for cocaine and opiates when J.J. was born. Although Mother admitted that she ingested one heroin pill and smoked marijuana every week during her pregnancy, Mother denied using cocaine

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2. A. Whether the restrictions placed upon Father by Order of the Court of July 24, 2018, as part of the Order of Shelter to Father were void *ab initio* since there were no grounds to order that the Child be sheltered and no disposition had occurred.  
  
B. Whether any failure by Father to comply with the overreaching and unconstitutional restrictions placed upon him by the Order of July 24, 2018 could provide any basis of the lower court’s CINA Order of September 28, 2018 for any breach of said restrictions.
  3. Whether a child may be found to be a child in need of assistance without a finding, or even evidence introduced, of abuse or neglect as to both parents, and without a finding that both parents cannot or will not adequately care for the child.

and opiates when she was pregnant with J.J. Mother entered a substance abuse program only two days before she delivered J.J. She only remained in the program for two months after J.J.'s birth.

In addition to Mother's substance abuse, she also suffers from bipolar disorder. Mother has received inpatient psychiatric hospital treatment for her bipolar disorder. She also suffers from anxiety and depression.

***Mother and Father's Relationship Prior to J.J.'s Birth***

Mother and Father had known each other for six years at the time of J.J.'s birth. Mother and Father gave conflicting testimony on whether they lived together during Mother's pregnancy with J.J. She stated that he lived with her during that last four months of her pregnancy. However, Father testified that he was not living with Mother during her pregnancy. He also denied having any knowledge of Mother's substance abuse before or during her pregnancy. Father stated that he only learned about Mother's substance abuse at a family intervention arranged by the Department to discuss where J.J. would live after she was discharged from the hospital.

***Father's Agreement to J.J.'s Placement***

Prior to placing J.J., the Department held a "family involvement" meeting with Mother and Father. In addition, the Department assigned Brittany Jenkins, as an investigative caseworker in this matter. Ms. Jenkins asked Father for his address to do a home health assessment. However, Ms. Jenkins did not hear from Father until the family involvement meeting. Father was given the option to have J.J. live with him but he suggested that J.J. live with J.J.'s maternal aunt, Ms. F. Father also would not guarantee

that he would not live with Mother while she received treatment for her substance abuse and mental health issues.

***Juvenile Court Authorizes Shelter Care Placement for J.J.***

On March 19, 2018, the Department filed a CINA petition along with an Emergency Request for Shelter Care of the infant, J.J. The juvenile court authorized J.J.'s placement in shelter care, giving the Department temporary care and custody of J.J. Mother and Father attended the hearing and agreed to J.J.'s placement in shelter care. On April 19, 2018, the court rescheduled the adjudicatory hearing but continued the shelter care order. Both parents attended the April 19<sup>th</sup> hearing and agreed to the disposition that the Department would place J.J. with Ms. F., J.J.'s maternal aunt, once Ms. F. completed the necessary training. In addition, the juvenile court permitted Father to have unsupervised visits with J.J. at J.J.'s paternal aunt's home. The case was set for an Adjudicatory contested hearing on June 18, 2018.

***Father's Compliance With Visitation Order***

Subsequently, the Department assigned Paige Eyler, a permanency caseworker to the matter. Ms. Eyler conducted a home assessment of the home of J.J.'s paternal aunt, Ms. C. The home passed inspection and Ms. Eyler scheduled day visits for Father with J.J. on May 25, 2018 and May 31, 2018. Ms. Eyler then arranged for Father to have an overnight visit with J.J. at Ms. C's home. When Ms. Eyler went to pick up J.J. from Ms. C.'s home Father was not there. Although J.J. was with Ms. C. when Ms. Eyler arrived, Ms. C. advised Ms. Eyler that neither J.J. nor Father had spent the night at her home and that Father was not living with Ms. C. Ms. Eyler spoke with Father later that day. He

informed Ms. Eyler that he did not return with J.J. until 2:30 a.m. and that he had fallen asleep with J.J. on his couch and had not put her in or set up the portable crib that the Department had provided. As a result of Father's violation, Ms. Eyler did not schedule additional home visits but arranged for weekly supervised visits between Father and J.J.

***Juvenile Court Places J.J. With Father & Prohibits Mother from Having Unsupervised Visits***

At the hearing on June 18, 2018, the juvenile court's order stated that "Father has not prevent [sic] Mother from abusing illicit substances while pregnant and did not take appropriate steps to prevent the neglectful situation." The juvenile court also found that Father did not have independent housing. Although Mother did not attend the June 18<sup>th</sup> she filed exceptions to the juvenile court's recommendations and proposed order. On July 24, 2018, the juvenile court held an exceptions hearing. Father testified that he was not in a relationship with Mother during her pregnancy and did not know that Mother had a substance abuse issue. Father claimed that his permanent address was his sister's, Ms. C, and his mother's, Randallstown address but stated that during the work week he stayed with his aunt, J.J.'s paternal great aunt, in Baltimore City. Father also assured the juvenile court that J.J.'s paternal grandmother would care for her at the Randallstown home while he was at work.

At the end of the hearing, the juvenile court sustained the following facts set forth in the CINA petition. The juvenile court also found that Mother had tested positive for codeine, morphine, methadone, and cocaine at the time of J.J.'s birth, had a ten-year history with child protective services concerning substance abuse and inadequate housing, and was

not caring for her three other children.

The juvenile court ordered that J.J. be placed in the custody of Father with specific limitations. The juvenile court ordered that Father “arrange and oversee all visits between Mother and [J.J.]” and that “THERE SHALL BE NO OVERNIGHT VISITS BETWEEN MOTHER AND [J.J.]” The juvenile court also ordered that when Father was at work, J.J. would be in the care of her paternal grandmother and aunt. The juvenile court also ordered that Mother address her mental health issues and her substance abuse. Lastly, the juvenile court set the disposition hearing for August 29, 2018.

On August 29, 2018, Father appeared for the disposition hearing, but Mother did not. As a result, the juvenile court rescheduled the disposition hearing for September 28, 2018.

***Father’s Violation of Court Order***

In mid-September 2018, the Department had to assign another caseworker, Ms. Mitchum, because the prior caseworker had taken an extended leave. Ms. Mitchum made four home visits to Mother’s home. On Ms. Mitchum’s first visit, Father answered the door at Mother’s home. Ms. Mitchum later learned that Father did not live at the Randallstown home and that he never left Mother’s home. When Ms. Mitchum went to Mother’s home for the fourth time, Father was at the home but J.J. and Mother were not. Father later admitted that he allowed unsupervised visits between Mother and J.J. and that he had spent the night at Mother’s home. Father claimed that he no longer lived at the Randallstown address because the gas and electric service had been turned off.

On September 21, 2018, the Department removed J.J. from Father. On September

24, 2018, the Department filed an Emergency Motion to Authorize Removal of Child and New Placement motion to authorize J.J.’s removal from Father’s custody. On September 24, 2018, a hearing was held on the Department’s motion. Father attended the hearing and Mother did not. At the hearing, the parties agreed to proceed by way of proffer. The juvenile court recognized that the matter was scheduled for a disposition hearing in four days before the same judge who heard the adjudication hearing. The juvenile court found that Father permitted Mother to have unsupervised contact with J.J. and that the juvenile court continued J.J.’s temporary commitment to the Department. The juvenile court ordered that the parties appear in court on September 28, 2018. Despite Father signing a summons for the September 28, 2018 court date, Father did not appear for the disposition on that date.

***The Juvenile Court Awarding Custody to the Department***

On September 28, 2018, Mother also did not appear for the disposition hearing. It was also confirmed at the hearing that Father moved back in with Mother. However, Father’s attorney argued that Father had provided care for J.J. although it was “outside of the strict compliance with the court[’]s order.” The juvenile court having sustained the facts in the CINA petition found J.J. to be a CINA and awarded her custody to the Department. Father filed this appeal.

**STANDARD OF REVIEW**

When reviewing termination of parental rights cases, “Maryland appellate courts apply three different but interrelated standards of review.” *In Re Adoption/Guardianship of Cadence B.*, 471 Md. 146, 155 (2010). “When the appellate court scrutinizes factual



findings, the clearly erroneous standard ... applies. [Secondly,] if it appears that the [juvenile court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [juvenile court's] decision should be disturbed only if there has been a clear abuse of discretion.” *In Re Yve S.*, 373 Md. 551, 586 (2003).

In this case, Father argues that the juvenile court’s ultimate decision rather than its fact finding should be the subject of the appeal. Therefore, we must determine whether the juvenile court abused its discretion. Using an abuse of discretion standard this Court must be mindful that:

Questions within the discretion of the trial court are much better decided by the trial judges than by appellate courts, and the decisions of such judges should only be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred. Therefore, to be reversed the decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.

*In Re Yve S.*, 373 Md. at 583-584.

## **DISCUSSION**

### **A. Analysis**

#### ***i. Shelter Care Order***

Father alleges that the juvenile court erred by keeping J.J. in shelter care “well past the 60-day maximum statutory period.” The Department contends that Father’s appeal of the shelter care orders has been rendered moot by the completion of the CINA adjudicatory

hearing. Moreover, the Department contends that this issue is not preserved for review. In the alternative, the Department argues that the juvenile court properly exercised its broad discretion. Specifically, the Department argues that the juvenile court did not err in restricting Mother's access to J.J. and requiring that Father provide J.J. with proper shelter.

***Mootness & Preservation***

In *Adkins v. State*, 324 Md. 641 (1991), the Court of Appeals set forth the test for mootness. The Court of Appeals stated the following: “the test of mootness is whether, when it is before the court, a case presents a controversy between the parties for which, by way of resolution, the court can fashion an effective remedy.” *Adkins v. State*, 324 Md. 641, 646 (1991).

On March 19, 2018, the juvenile court authorized J.J.'s placement in shelter care, giving the Department temporary care and custody of her. In addition, Mother and Father attended the hearing and agreed to J.J.'s placement in shelter care. The juvenile court also made a determination that Father was not a placement resource at that time and that Mother was unable to care for J.J. On April 19, 2018, the court continued the shelter care order and both parents were present. The juvenile court also permitted Father to have unsupervised visits with J.J. at J.J.'s paternal aunt's home. Moreover, the juvenile court sustained most of the facts set forth in the CINA petition and found that Father did not have independent housing. At the July 24, 2018, hearing, neither parent objected to the continuing shelter care order. The juvenile court set the disposition hearing for August 29, 2018 and Father did not raise an objection to the continuing shelter care order. The court rescheduled the disposition hearing for September 28, 2018, and Father again did not raise

an objection to the continuing shelter care order. Despite Father signing a summons for the September 28, 2018 court date Father did not appear. At the September 28<sup>th</sup> hearing the juvenile court found J.J. to be a CINA and placed J.J. in the permanent care of the Department.

We agree with the Department that this issue is moot. Specifically, we find that there is no remedy that this Court could provide Father because the shelter care orders are no longer in effect. The shelter care orders allowed J.J. to be placed in the Department's *temporary* care. The juvenile court finding J.J. to be a CINA placed J.J. in the *permanent* care of the Department. Thus, Father cannot challenge the shelter care order because it's no longer in effect. Moreover, Father did not preserve this issue for review. As noted above, Father had many chances to raise an objection to the shelter orders but he failed to do so. On March 19, 2018, and April 19, 2018, Father consented to J.J.'s placement in shelter care with the Department. However, during the May 17, 2018, hearing Father requested a modification of the shelter care order but Father did not file exceptions to the proposed order expanding Father's contact with J.J. to unsupervised visits. Moreover, Father did not file exceptions to the juvenile court's proposed findings and recommendations that J.J. be found a CINA. Lastly, Father did not appear in court on September 28, 2018, when the court found J.J. to be a CINA.

Accordingly, we hold that Father's contention of the validity of the shelter care order is moot and is also not preserved for appellate review because Father failed to raise below whether the juvenile court had statutory authority to extend the shelter care order.

***Statutory Standard – Shelter Care Orders***

We find that even if Father’s argument was not moot or preserved for appellate review, his argument must still fail. Maryland Code, Courts and Judicial Proceedings §3-815(c) prescribes as follows:

**Continuation of shelter care**

(c)(1) Whenever a child is not returned to the child’s parent, guardian, or custodian, the local department shall immediately file a petition to authorize continued shelter care.

(2)(i) The court shall hold a shelter care hearing on the petition before disposition to determine whether the temporary placement of the child outside of the home is warranted.

(ii) Unless extended on good cause shown, a shelter care hearing shall be held not later than the next day on which the circuit court is in session.

(3) If the child’s parents, guardian, custodian, or relatives can be located, reasonable notice, oral or written, stating the time, place, and purpose of the shelter care hearing shall be given.

(4) A court may not order shelter care for more than 30 days except that shelter care *may* be extended for up to an additional 30 days if the court finds after a hearing held as part of an adjudication that continued shelter care is needed to provide for the safety of the child.

(5) Unless good cause is shown, a court shall give priority to the child’s relatives over nonrelatives when ordering shelter care for a child.

Maryland Code, Courts and Judicial Proceedings §3-815(c) (emphasis added). Father maintains that the juvenile court erred by continuing the shelter care order beyond the 60-day timeframe. However, this argument is flawed because the statutory provision does not require strict compliance. The statute clearly states:

A court may not order shelter care for more than 30 days except that shelter care *may* be extended for up to an additional 30 days if the court finds after a hearing held as part of an adjudication that continued shelter care is needed to provide for the safety of the child.

Maryland Code, Courts and Judicial Proceedings §3-815(c)(4) (emphasis added).

Here, the record indicates that when J.J. was born Mother tested positive for cocaine and opiates. Mother and Father also gave conflicting testimony as to Father's knowledge of Mother's drug addiction and if Father was living with Mother during Mother's pregnancy with J.J. When the Department gave Father the option to have J.J. live with him he advised Brittaney Jenkins, the caseworker, that it would be best for J.J. to live with J.J.'s maternal aunt, Ms. F. On March 19, 2018, and April 19, 2018, both parents consented to the shelter care order giving the Department temporary care of J.J. During this time, the juvenile court initially permitted Father to have unsupervised visits with J.J. at J.J.'s paternal aunt's home, Ms. C. However, when the Department executed a home inspection, they discovered that Father did not spend the night with J.J. at Ms. C's home, which was against the terms of the visitation order. Moreover, on June 18, 2018, the juvenile court found that Father did not have independent housing, Mother had a history with substance abuse, and had a ten-year history with child protective services. Lastly, the juvenile court found that Father did not prevent Mother from her drug addiction while she was pregnant and ordered that J.J. be placed in the custody of Father with specific limitations. The juvenile court stated that "Father has not prevented Mother from abusing illicit substances while pregnant and did not take appropriate steps to prevent the neglectful situation." Lastly, one of the limitations the juvenile court imposed was that there should not be

overnight visits between Mother and J.J. However, the Department found that Father was still living with Mother and allowing unsupervised visits between J.J. and Mother.

Accordingly, the juvenile court exercised proper discretion when deciding to extend the shelter care order for J.J.'s safety. Father knew the terms of the restricted visitation order. However, Father did not comply with the terms of the order.

*ii. Limiting Father's Custody of J.J. in the Shelter Care Order*

Father maintains that the evidence to support the shelter care order in not allowing J.J. to live with her father were outside of the juvenile court's authority and were a violation of Father's constitutional rights. Specifically, Father argues that the Department was incorrect in asserting that Father was living with Mother, Father knew about Mother's substance abuse, and that she was using illicit drugs during her pregnancy. Father further contends that "it is an unconstitutional violation of a parent's liberty rights to prohibit one parent from living with or spending nights with" an unfit parent. Lastly, Father argues that "the State's overstepping is also evident in the queries of the Judge at the July 24, 2018 Adjudication Hearing." Father alleges that "the judge's pointed questions reflect an inherent judgment and unfair bias against Father."

*Evidence Supporting the Shelter Care Order*

As we noted above, Father's appeal of the shelter care orders has been rendered moot by the completion of the CINA hearing. It follows that Father's argument of the sufficiency of the evidence to support the shelter care order is also moot. Furthermore, this issue was not preserved for appellate review. Specifically, Father failed to raise this issue with the juvenile court. Father raises this issue for the first time in his brief. In *Evans v.*

*State*, 174 Md. App. 549, 557 (2007) we explained: “Maryland appellate courts have consistently held that they will not review issues not raised or decided at the trial level. *See Taylor v. State*, 381 Md. 602, 612 (2004) (citing Md. Rule 8–131(a)).”

Even though Father’s argument is moot, we find that Father’s contention that there was insufficient evidence for the initial shelter care order and the continuation of the shelter care order to restrict his visits with J.J. holds no merit. The initial shelter care order was put in place because when J.J. was born Mother tested positive for cocaine and opiates. Moreover, when the Department held a family involvement meeting Father was given the option to have J.J. live with him but he suggested that J.J. live with J.J.’s maternal aunt. Finally, Father and Mother consented to the initial shelter care order that was entered on March 19, 2018. It follows that there was sufficient evidence on the record to support the initial shelter care order because Mother tested positive for illicit drugs and Father and Mother consented to the initial shelter care order.

Furthermore, the juvenile court had sufficient evidence to continue the shelter care order. Specifically, when Paige Eyler, the permanency caseworker, arranged for the Father to have an overnight visit with J.J. at J.J.’s paternal aunt’s, Ms. C’s, home Father was not there when Eyler came to pick J.J. up from Ms. C’s home. Eyler later discovered from Ms. C. that neither J.J. nor Father had spent the night at her home and that Father did not return to Ms. C’s home with J.J. until 2:30 a.m. Additionally, Father told Eyler that he had fallen asleep with J.J. on his couch and had not put her in or set up the portable crib that the Department had provided. As a result, Eyler did not schedule additional home visits but arranged weekly supervised visits between Father and J.J. Subsequently, at the June 18,

2018, hearing the juvenile court sustained the following facts set forth in the Department's petition:

1. [J.J.] was born on March 11, 2018, at the Johns Hopkins Hospital (JHH). Mother tested positive for codeine, morphine, methadone and cocaine at the time of [J.J.'s] birth. [J.J.] tested positive for opiates and cocaine. [J.J.] experienced withdrawal symptoms requiring extended hospitalization.
2. Mother began to work with the CAP program three days prior to [J.J.'s] birth, on March 9, 2018. Mother was involved in their outpatient program and now reports receiving substance abuse treatment.
3. Mother has a history of mental health illness and has been diagnosed with bi-polar disorder.
4. Mother has three other children who are not in her care. The other children have been placed with various relatives through private arrangements. Mother has a CPS history since 2008 for substance abuse and inadequate housing. She was indicted for neglect in February 2011.
5. [J.J.'s] Father does not have independent housing and stays with Mother much of the time.
6. The [Department] held a Family Involvement Meeting and [Father] did not disagree with the relative [Ms. F.] caring for [J.J.].



7. Father has not prevent[ed] Mother from abusing illicit substances while pregnant and did not take appropriate steps to prevent the neglectful situation.

Subsequently, at the July 24, 2018 hearing, the juvenile court ordered that J.J. be placed in the custody of her Father, that Father arrange and oversee all visits between Mother and J.J., and that “THERE SHALL BE NO OVERNIGHT VISITS BETWEEN MOTHER AND [J.J.]” Father violated the shelter care order by not overseeing all visits between Mother and J.J. and allowing overnight visits between Mother and J.J. Finally, Maryland Code, Courts and Judicial Proceedings, § 3-821 prescribes as follows:

**Conduct subject to powers of the court**

- (a) The court, on its own motion or on application of a party, may issue an appropriate *order directing, restraining, or otherwise controlling the conduct of a person who is properly before the court, if the court finds that the conduct:*
  - (1) Is or may be detrimental or harmful to a child over whom the court has jurisdiction;
  - (2) Will tend to defeat the execution of an order or disposition made or to be made under this subtitle; or
  - (3) Will assist in the rehabilitation of or is necessary for the welfare of the child.

Maryland Code, Courts and Judicial Proceedings, § 3-821 (emphasis added). This statute gives the court authority to continue the shelter care order if the juvenile court is protecting the safety and welfare of the child. There was no error by the court.

Accordingly, we hold that Father’s argument that there was insufficient evidence to support the shelter care order is moot and not preserved for appellate review. Father’s

argument must fail because the record shows that the juvenile court had sufficient evidence to support the initiation and continuation of the shelter order.

***Father’s Constitutional Argument***

Father argues before this Court that “it is an unconstitutional violation of a parent’s liberty rights to prohibit one parent from living with or spending nights with” an unfit parent. Father’s argument is not preserved for appellate review because Father raised this issue for the first time on appeal. Father’s attorney failed to make an objection at the hearings contesting Father’s constitutional rights. Father, for the first time raised his constitutional concerns in this appeal. We hold that Father’s constitutional argument is not preserved for appellate review.

Even if Father did preserve his constitutional argument for appellate review his argument must still fail. Father concedes that Mother neglected J.J. and the juvenile court found that Father was aware of Mother’s drug abuse during her pregnancy. Father argues in his brief the following:

It is an unconstitutional violation of a parent’s liberty rights to prohibit one parent from living with or spending nights with another parent where, even though the unfit parent may not be fit to have custody or primary care of the child, that parent may not be fit to have custody or primary care of the child, that parent does not present a danger to the child [sic]. [J.J] has not suffered any abuse or neglect in the presence of Mother (other than in utero), and therefore Father should not have been proscribed from having child around Mother, or being around Mother himself [sic].

Father is correct that parents have a fundamental right under the United States Constitution to raise their children as they choose. In fact, we stated the following:

It is axiomatic that parents have the fundamental constitutional right under the Fourteenth Amendment to raise their children as they choose, without

excessive interference from the State. We explained those rights in *Wolinski v. Browneller*, 115 Md. App. 285 (1997), which was favorably quoted by the Court of Appeals in *In Re Yve S.*, 373 Md. 551, 566–67 (2003). We stated in *Wolinski*:

Beginning with *Meyer v. Nebraska*, 262 U.S. 390 (1923) and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), the Supreme Court, in a variety of contexts, has recognized that freedom of personal choice in matters of marriage, family life, and the upbringing of children is a liberty interest protected by the Fourteenth Amendment. See *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996) (termination of parental rights).

Within the narrower context of the parent-child relationship, the Supreme Court has deemed the right to rear a child “essential,” *id.*, and encompassed within a parent’s “basic civil rights.” *Skinner v. Oklahoma*, 316 U.S. 535 (1942). Maryland has consistently echoed the Supreme Court, declaring a parent’s liberty interest in raising a child a fundamental one that cannot be taken away unless clearly justified. *In re Adoption/Guardianship No. 10941*, 335 Md. 99, (1994); *In re Adoption/Guardianship Nos. CAA 92–10852 & CAA 92–10853*, 103 Md. App. 1, 12 (11994) (This right is in the nature of a liberty interest that has long been recognized and protected under the state and federal constitutions.”).

*In Re Nathaniel A.*, 160 Md. App. 581, 593-95. However, this Court has also stated:

The Supreme Court has emphasized, however, that “rights of parenthood are [not] beyond limitation,” *Prince v. Com. of Mass.*, 321 U.S. 158, 166 (1944) at 166 and that the “state has a wide range of power for limiting parental freedom and authority in things affecting a child’s welfare ...”. *Id.* at 167. Thus, a parent’s right to direct his or her child’s upbringing is not absolute. Rather, Due Process analysis requires the delicate balancing of all of the competing interests involved in the litigation. *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972) (balancing individual religious freedom and parental autonomy against the State’s interest in preparing citizens to be self-reliant participants in society). In the context of most family law disputes over children, the State’s interest is to protect the child’s best interests as *parens patriae*—a derivation of the State’s interest in protecting the health, safety, and welfare of its citizenry. See, e.g., *Santosky v. Kramer*, 455 U.S. 745 , 766 (1982) ; Judith L. Shandling, Note, *The Constitutional Constraints on Grandparents’ Visitation Statutes*, 86 COLUM. L.REV. 118, 129 (1986) (“The state’s power to intervene ... is derived from its *parens patriae* power, which allows the state to act when the welfare of an individual who lacks the capacity to protect her own best interest ... is at stake.”). 115 Md. App. at

297–301 (some internal citations omitted). *See In re Adoption/Guardianship Nos. J9610436 and J9711031*, 368 Md. 666, 796 A.2d 778 (2002).

*In Re Nathaniel A.*, 160 Md. App. at 593-95.

Maryland Code, Courts and Judicial Proceedings, § 3-801(f) defines a CINA as the following:

**Child in need of assistance**

(f) “Child in need of assistance” means a child who requires court intervention because:

- (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and
- (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.

Maryland Code, Courts and Judicial Proceedings, § 3-801(f). “An allegation that [a child is a] CINA must be proven by a preponderance of the evidence.” *In Re Nathaniel A.*, 160 Md. App. at 593-94. As noted above, when J.J. was born Father advised the Department it would be best for the child to stay with her maternal aunt. Moreover, the juvenile court committed no error in restricting Mother’s access to the minor child because the record shows that Mother abused opiates and cocaine during her pregnancy and as a result, J.J. was born with severe neonatal drug withdrawal.

Specifically, during the July 24, 2018, hearing Mother admitted that she tested positive for marijuana, cocaine and fentanyl on June 1, 2018. Mother also did not provide any documentation demonstrating that she was attending drug treatment. The juvenile court acted well within its duty in protecting the child by ordering that J.J. have supervised visits with Mother and that no overnight visits were allowed between Mother and J.J. Moreover, Father violated the juvenile court’s order by allowing an unsupervised visit between J.J.

and Mother. The record also shows that Father agreed to the order restricting his visits with J.J. The record further shows that at the September 28, 2018, disposition hearing it was confirmed that Father moved back in with Mother. It follows that Father knew about Mother's propensity to use drugs, Father allowed an unsupervised visit between Mother and J.J., and Father made the decision to move back in with Mother, jeopardizing the safety of J.J. This Court concedes that a parent does have a fundamental right under the United States Constitution to raise their children as they choose. However, that right is not absolute. The State has a legitimate interest in protecting the welfare and safety of a child.

Accordingly, we hold that Father's constitutional argument is not preserved for appellate review because Father raised this issue for the first time on appeal. However, Father's argument must still fail because the record shows that the State had a legitimate interest in protecting the that welfare and safety of J.J.

***Mother's Testimony At The July 24, 2018, Hearing***

Father argues that "the State's overstepping is also evident in the queries of the judge at the July 24, 2018 Adjudication Hearing." Father alleges that "the judge's pointed questions reflect an inherent judgment and unfair bias against Father." Father's argument is not preserved for appellate review because Father raised this issue for the first time on appeal.

Even though Father's argument is not preserved for appellate review, his argument has no merit. The juvenile court's inquiries were legitimate to find the best placement for J.J. As noted above, at the June 18, 2018, hearing the juvenile court found that Father was a not placement resource at the time. It follows that, the juvenile court committed no error

in asking Mother if Father was employed, who would be taking care of J.J. while Father was at work, and how long Mother and Father dated. The juvenile court's inquiries were valid to determine the best placement for J.J. It was important for the juvenile court to know how long the parties were involved with one another to determine if Father had knowledge of Mother's substance abuse problem. It was also important for the juvenile court to know if Father was employed to provide for J.J. and whose care J.J. would be in when Father was at work. The juvenile court's inquiries were not unfair or biased towards Father.

Accordingly, we hold that Father's argument that the juvenile court's queries to Mother were unfair or biased towards him is not preserved for appellate review. However, even if Father's argument was preserved for appellate review, the juvenile court's inquiries were legitimate to find the proper placement for J.J.

*iii. CINA*

Father argues that "any failure of Father to comply with restrictions placed on him... does not constitute a ground" for a CINA finding. Father maintains that the shelter care order did not follow statutory guidelines and the restrictions in the order were unconstitutional. As such, the juvenile court had no basis for a CINA finding. Lastly, Father alleges that there was insufficient evidence to justify a CINA adjudication as it pertains to his parental fitness.

***Juvenile Court's Compliance With The Statutory Guidelines Of The Shelter Court Order***

Father's argument that the juvenile court extending the shelter care order beyond the 60-day statutory period must fail because it is moot and not preserved for appellate

review. Father’s contention is not preserved for appellate review because Father is presenting this issue for the first time on appeal. Father’s attorney failed to make an objection at the hearings contesting the juvenile court extending the shelter care order.

Even if Father contested the juvenile court extending the shelter care order beyond the statutory period, Maryland Code, Courts and Judicial Proceedings, § 3-815 (4) states the following: “[a] court may not order shelter care for more than 30 days except that shelter care may be extended for up to an additional 30 days if the court finds after a hearing held as part of an adjudication that continued shelter care is needed to provide for the safety of the child.” Maryland Code, Courts and Judicial Proceedings, § 3-815 (4). However, as we stated previously, pursuant to Maryland Code, Courts and Judicial Proceedings, § 3-821 (a) “the court, on its own motion or on application of a party, may issue an appropriate *order directing, restraining, or otherwise controlling the conduct of a person who is properly before the court.*” The juvenile court can exercise this power if it makes a finding that the conduct may be harmful to the child or is necessary for the welfare of the child. Maryland Code, Courts and Judicial Proceedings, § 3-821 (a) (1), (2). Here, the juvenile court committed no error in extending the shelter care order beyond the 60-day statutory period because the court did make findings of conduct that were harmful to J.J. As stated previously, J.J. was born with severe neonatal drug withdrawal because of Mother’s use of illicit drugs during her pregnancy and Father neglected to protect the safety and welfare of J.J.

Accordingly, we hold that Father’s argument that the juvenile court did not follow the statutory guidelines is moot and not preserved for judgment. In the alternative, Father’s

argument must still fail because the juvenile court committed no error in continuing the shelter care order because it was protecting the safety and welfare of J.J.

***CINA Finding***

Lastly, Father argues that “any failure of Father to comply with restrictions placed on him... does not constitute a ground” for a CINA finding. Father maintains that the shelter care order did not follow statutory guidelines and the restrictions in the order were unconstitutional. As such, the juvenile court had no basis for a CINA finding. Lastly, Father alleges that there was insufficient evidence to justify a CINA adjudication as it pertains to his parental fitness.

As we previously stated, the juvenile court committed no error in extending the 60-day statutory period of the shelter care order and the shelter care order was not unconstitutional. Father’s arguments that any failure of him to comply with the shelter care order does not constitute a ground for a CINA finding and that there was insufficient evidence to justify a CINA adjudication has no merit. As noted above, Maryland Code, Courts and Judicial Proceedings, § 3-801(f) defines a CINA as the following:

**Child in need of assistance**

(f) “Child in need of assistance” means a child who requires court intervention because:

- (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and
- (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.

Maryland Code, Courts and Judicial Proceedings, § 3-801(f). Father’s argument that there was insufficient evidence for a CINA finding must fail because as noted above, the record



shows that Mother abused opiates and cocaine during her pregnancy and as a result, J.J. was born with severe neonatal drug withdrawal. As a result, the Department gave Father the option to take custody of J.J. but he declined to do so and suggested that J.J. be placed in the care of her maternal aunt. The juvenile court later found that Father knew about Mother's propensity to use drugs and neglected to stop Mother from using drugs during her pregnancy. Even with this finding, the juvenile court allowed Father to have visits with J.J. if Father did not allow unsupervised visits and overnight visits between Mother and J.J. However, Father violated the juvenile court's order. Moreover, Father and Mother did not appear for the CINA hearing on September 28, 2018. The juvenile court acted well within its duty in protecting the safety and welfare of the child. It follows that the juvenile court had sufficient grounds and evidence to find J.J. as a CINA.

Accordingly, we find that the juvenile court did not err in finding that J.J. is a CINA and had sufficient evidence to conclude that finding.

We affirm the decision of the juvenile court.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY AFFIRMED;  
COSTS TO BE PAID BY FATHER.**