

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 0925

September Term, 2015

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IN RE: C.E.

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Kehoe,  
Berger,  
Thieme, Raymond G., Jr.  
(Retired, Specially Assigned),

JJ.

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Opinion by Berger, J.

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Filed: December 15, 2015

\*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.

This appeal arises from an order of the Circuit Court for Baltimore City, sitting as a juvenile court, finding respondent C.E.<sup>1</sup> to be a Child in Need of Assistance (“CINA”) and awarding custody to the Baltimore City Department of Social Services (“the Department”) for relative placement.<sup>2</sup> Ms. D., mother of C.E. (“Mother”), appealed the juvenile court’s order. Mr. E., C.E.’s father (“Father”), was also a party to the CINA proceeding below but did not appeal the juvenile court’s CINA determination. On appeal, Mother presents three questions for our review<sup>3</sup>, which we have rephrased as follows:

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<sup>1</sup> Out of respect for the privacy interests of the parties, we shall not refer to them by name.

<sup>2</sup> A “CINA,” or “child in need of assistance,” is “a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” Md. Code (2013 Repl. Vol.), § 3-901(f) of the Courts and Judicial Proceedings Article (“CJP”).

<sup>3</sup> The issues, as presented by Mother, are:

1. Did the trial court fail to question [Mother] as to the decision to proceed without any counsel on February 20, 2015, March 12, 2015, and June 16, 2015 and consequently violate her rights to be represented at a CINA adjudication?
2. Did the trial court fail to provide reasonable assistance to [Mother] in obtaining a disability advocate and court appointed counsel?
3. Did the trial court err in failing to specifically request an explanation or position from [Mother] prior to accepting the stipulations of facts for the child in need of assistance petition?

1. Whether the juvenile court erred by proceeding with the June 16, 2015 adjudication and disposition hearing, at which Mother was unrepresented by counsel.
2. Whether the juvenile court committed reversible error by finding C.E. to be CINA and committing him to the custody of the Department.
3. Whether Mother was denied accommodation under the Americans with Disabilities Act when the juvenile court did not appoint an ADA advocate.

For the reasons set forth below, we find no merit to any of the issues raised by Mother. Accordingly, we shall affirm the judgment of the juvenile court.

### **FACTS AND PROCEEDINGS**

Mother has had a lengthy history of involvement with the Department and with the courts over the past seventeen years. C.E. is the youngest of Mother's six children. We have previously set forth a substantial amount of history regarding Mother and C.E.'s siblings in both reported and unreported opinions.

Mother's oldest child, J., was born on June 19, 1991. The juvenile court found J. to be CINA in 1998. J. grew up in foster care, but Mother's parental rights were not terminated. J. remained in the custody of the Department until he reached twenty-one years of age. Mother's parental rights to her next two children, I., born July 7, 1996, and L., born July 21, 1999, were terminated in 2003. We affirmed the juvenile court's termination of Mother's parental rights in an unreported opinion. *In re: Adoption/Guardianship of India S. and Linda B.*, No. 2032, Sept. Term 2003 (November 28, 2004).

Mother’s fourth and fifth children, M., born July 11, 2007, and J., born September 21, 2002, were found CINA in July 2012. Mother’s parental rights to M. and J. were terminated following a contested hearing in 2014. This court affirmed the juvenile court’s termination of Mother’s parental rights in an unreported opinion. *In re: Adoption/Guardianship of Malachi D. and Joy D.*, No. 2307, Sept. Term 2014 (Aug. 13, 2015), *cert. denied*, \_\_\_\_\_ Md. \_\_\_\_, Sept. Term 2015, Pet. Docket No. 330, (Oct. 19, 2015).

C.E. was born prematurely on May 25, 2014. He was initially cared for in the neonatal intensive care unit at Johns Hopkins Hospital. On June 5, 2014, he was discharged from Johns Hopkins and transferred to Mount Washington Pediatric Hospital.

On July 11, 2014, the Department filed a CINA Petition and Request for Shelter Care of C.E. based upon allegations that Mother had untreated mental health conditions that rendered her unable to care for C.E. An emergency shelter care hearing was held on July 11, 2014 before a juvenile master.<sup>4</sup> The juvenile court granted the Department’s request for shelter care and awarded temporary care and custody of C.E. to the Department. Both Mother and Father appeared with appointed counsel at the shelter care hearing. Mother was represented by an associate of Karl-Henri Gauvin, Esq.<sup>5</sup> The court scheduled an

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<sup>4</sup> Effective March 15, 2015, the title “Master for Juvenile Causes” was changed to “Family Magistrate.” Md. Rule 1-501.

<sup>5</sup> Mr. Gauvin represented Mother during the CINA and TPR proceedings for two of her older children, J. and M.

adjudication hearing for September 4, 2014 and instructed the parties to stipulate as to facts which were not in dispute.<sup>6</sup>

Father filed a request for immediate review of the master's shelter care order. The immediate review hearing was held before a juvenile court judge on July 23, 2014. Mother did not appear at the immediate review hearing but was represented at the hearing by Mr. Gauvin. Mother participated via telephone. The juvenile court continued the shelter care order and again advised the parties to stipulate which facts were not in dispute.

Mother was not present at the adjudication hearing scheduled for September 4, 2014 because she was hospitalized.<sup>7</sup> Mother was represented at the hearing by an associate of Mr. Gauvin. Because the parties had been unable to reach an agreement, the court scheduled the case for a contested adjudication on October 10, 2014. The juvenile court ordered that all parties were required to submit stipulations of fact to the court:

Counsel are hereby ORDERED to submit stipulations and or highlighted portions of the Petition which are actually disputed (noted that the Court is able, in its discretion and with argument heard, to take judicial notice of Court Orders in this case and in previous CINA cases involving the same parties or party, with

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<sup>6</sup> A CINA proceeding involves two separate determinations. “The juvenile court initially conducts an adjudicatory hearing to determine if the allegations in the petition are true.” *In re Michael W.*, 89 Md. App. 612, 618 (1991). “If the allegations in the petition are sustained, the court conducts a disposition hearing. The court then determines whether the child needs the court's assistance and, if so, the nature of the assistance.” *Id.*

<sup>7</sup> The juvenile court's order reflects that Mother was not present due to a hospitalization, but the medical records from Johns Hopkins Hospital indicate that Mother did not arrive at the hospital until 12:37 p.m., after the hearing had already concluded.

the consent of others or possible application of estoppel doctrines).

Stipulations or individually submitted highlighted copies of the Petition herein showing disputed facts shall be filed with a courtesy copy to Part 12 chambers and served on all parties not later than Friday, September 19, 2014 - THE DEADLINE REACHED AND ORDERED BY AGREEMENT OF ALL PARTIES' COUNSEL TODAY PRESENT. FAILURE TO SO COMPLY SHALL BE DEEMED AN ADMISSION BY THE NON-COMPLIANT PARTY, ABSENT A SHOWING OF EXTRAORDINARY CIRCUMSTANCES FOR THE NON-COMPLIANCE.

The Department filed a motion on September 5, 2014, requesting that the juvenile court take judicial notice of various facts alleged in the CINA petition. The various facts of which the Department sought to have the court take judicial notice related to the CINA and TPR cases for Mother's older children. On September 19, 2014, the child's counsel filed a response to the Department's motion and, on September 25, 2015, filed a further request for stipulations to adjudicatory facts. The juvenile court sustained the proposed adjudicatory facts on September 26, 2014.

At this point in time, Mother was still represented by Mr. Gauvin. The sustained facts set forth Mother's extensive mental health history, which "interferes with [Mother's] ability to provide consistently ordinary and proper care for the respondent." The court found that Mother had multiple previous mental health diagnoses, including paranoia, adjustment disorder, major depression, bipolar affective disorder, and borderline personality disorder. Mother was "not amenable to treatment" and had expressed a belief that there is "no such

thing as mental illness.” The court found that Mother had stated that C.E.’s sibling, J., was a “demon” with “a dangerous demonic influence” on another sibling, M. The court found that Mother stated that J. required professional exorcists, a psychic spiritual advisor, a polygraph expert, and a voodoo witch doctor. Mother was not receiving mental health care or taking medication at the time the facts were sustained.

The sustained facts also set forth the history of CINA findings for Mother’s older children as well as the termination of parental rights for I., L., J., and M. The court found that Mother had received numerous services and referrals from the Department, but that no services had prevented Mother from mistreating C.E.’s siblings. The court found that C.E.’s sibling, J., had stated that she heard sexual activity between Mother and Father. The court further found that Mother stated that Father had expressed an interest in “pimping out” C.E.’s sister, J. Mother further reported to the Department that she had been assaulted by Father on March 11, 2013. The Department provided a referral for the House of Ruth, but had no verification that Mother participated in any House of Ruth Program.

Neither Mother nor Father appeared for the scheduled October 10, 2014 contested adjudicatory hearing. At that hearing, Mr. Gauvin advised the court that Mother had filed a grievance against him. The juvenile court permitted Mr. Gauvin to strike his appearance after providing Mother with five days’ notice. The court commented that there may be a later need to assess whether Mother’s complaint was made for “dilatory purposes” rather than good faith. The juvenile court further commented that, in its view, Mr. Gauvin had

competently represented Mother, explaining: “Let me just say this on the record, because I think it’s true and because I think it’s fair to say -- that in the proceedings before me involving [Mother], my assessment and observation is that you have been professional, zealous, [and] endlessly patient on behalf of your client.” The court reset the hearing for November 14, 2014, in order to allow time for a new attorney to be appointed for Mother.

At the November 14, 2014 hearing, Vanita Taylor, chief attorney for the CINA division of the Office of the Public Defender (“OPD”), advised the court that the OPD had encountered difficulty in locating an attorney to represent Mother. Ms. Taylor explained that the OPD was “not able to find anyone from the Baltimore City panel that would accept the case.”<sup>8</sup> Ms. Taylor advised, however, that Nickola Sybblis had agreed to represent Mother if the hearing could be rescheduled to a different date.<sup>9</sup> The juvenile court agreed to postpone the hearing and set a new date of December 9, 2014. Ms. Sybblis entered her appearance on November 21, 2014. After entering her appearance, Ms. Sybblis filed motions on Mother’s behalf which sought the recusal of two juvenile court judges, Judge

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<sup>8</sup> The OPD was required to appoint a panel attorney rather than an OPD attorney because Father was represented by an OPD attorney and the OPD had represented the other fathers of Mother’s children.

<sup>9</sup> The OPD had previously identified another panel attorney to represent Mother, Linda Koban, but her appearance was stricken because she had previously served as a juvenile master and had heard cases involving Mother’s older children when she was a master.



Kershaw and Judge Hargadon. Another motion sought permission for Mother to participate in the adjudicatory hearing via telephone.

On December 9, 2014, the court heard and denied Mother’s motion for recusal with respect to Judge Hargadon and reset the adjudicatory and disposition hearings for February 20, 2015. On February 18, Ms. Sybblis filed a motion to strike her appearance. On February 20, 2015, before hearing argument on Ms. Sybblis’s motion to strike, the court denied Mother’s motion to participate via telephone, finding that Mother had failed to file a supporting affidavit with regard to the motion to participate by telephone. The court found that the allegations raised by Mother in her motion to participate via telephone were “unsupported,” explaining that Mother had “no documentation for that which she claimed to be either PTSD, or somebody claims to be either PTSD or legal abuse syndrome.”<sup>10</sup>

The court then heard argument on Ms. Sybblis’s motion to strike her appearance. Ms. Sybblis explained that she had made an effort to work with Mother, including offering to meet at Mother’s home rather than in an office setting. During the month of January, however, the relationship between Mother and Ms. Sybblis deteriorated. Mother forwarded emails from Ms. Sybblis to many different people, including the Department, C.E.’s attorney, and other people unknown to Ms. Sybblis. Ms. Sybblis explained that Mother had agreed to participate in a family involvement meeting at the Department, but later refused

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<sup>10</sup> The term PTSD refers to the mental health condition of post-traumatic stress disorder.

to participate and denied that she had ever agreed to participate in the family involvement meeting. Furthermore, Mother had called Ms. Sybblis a liar and had indicated that she did not trust Ms. Sybblis. Due to these circumstances, Ms. Sybblis did not believe that she could effectively represent Mother. After ensuring that Mother received proper notice about having another attorney represent her, the juvenile court granted Ms. Sybblis's motion to strike. The court reset the adjudication and disposition for March 12, 2015.

On February 27, 2015, the OPD filed a motion requesting that the court appoint an attorney for Mother and that the court relieve the OPD of its obligation to provide an attorney for Mother. The juvenile court heard argument on the OPD's motion on March 12, 2015. Ms. Taylor argued that the OPD had been unable to locate any attorney willing to take Mother's case due to Mother's history with prior attorneys and the grievances Mother had filed against other attorneys. Ms. Taylor explained that she had contacted fifteen lawyers who she believed could handle Mother's case and all declined. Ms. Taylor explained to the court that, due to the complexity of the case, she could not assign the case to one of the less experienced attorneys.

The juvenile court denied the OPD's motion and ordered the OPD to find counsel for Mother. The court, however, explained to Mother that it was important that she cooperate with the attorney provided for her. The court explained that "this is a very serious matter" and that with Mother's "history that [she] had on previous proceedings of the same subject matter, it will behoove [Mother] to consult with whatever attorney is found and to let that

attorney do his or her business because the attorneys are considered to be, considered to have expertise in these fields.” The juvenile court told Mother, “So once an attorney is found for you, do your best to try to consult with that person so when the next time that we come before this [c]ourt, although all these attorneys are ready to go to trial today, the next time you come before this [c]ourt, this [c]ourt is going to proceed with this case.” The court reset the adjudication and disposition hearing for June 16, 2015.

The OPD ultimately located another attorney, David Wanger, who entered his appearance for Mother on April 17, 2015. Again, Mother failed to cooperate with her attorney, and on May 11, 2015, Mr. Wanger filed a motion to strike his appearance.<sup>11</sup> The juvenile court heard argument on Mr. Wanger’s motion to strike on June 16, 2015. Mr. Wanger advised the court that Mother claimed that Mr. Wanger abused her and that Mother indicated he was “incompetent, ignorant, [and] that [he] had lied to her and to the court.” Mr. Wanger explained that Mother “refused to have any contact with [him]” and had continued to share confidential information. For these reasons, Mr. Wanger explained that he believed it would be impossible to effectively represent Mother.

Mother responded that Mr. Wanger had “physically attacked [her] health” and had “conducted an OPD interrogation for two hours straight.” Mother argued to the court that the attorneys who had been provided to her “don’t know nothing about disability law, they

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<sup>11</sup> Prior to filing his motion to strike with the court, Mr. Wanger had mailed a letter for Mother on April 29, 2015, advising her of his intention to file a motion to withdraw. Mr. Wanger also mailed Mother a copy of the motion on May 5, 2015.

don't know nothing about constitutional law. They just a typical, . . . a traditional family law lawyer." The court responded that if Mother had cooperated with the attorneys, "maybe they would have researched [the disability and constitutional law] issues." The court granted Mr. Wanger's motion to strike. Thereafter, the court continued with the hearing, with Mother unrepresented by counsel.

The court considered two motions which had been filed by Mother. Mother had filed a motion to have the Chief Attorney of the OPD, Vanita Taylor, appointed to represent her and to have an ADA advocate appointed. The court denied both motions. With respect to the motion to have an ADA advocate appointed, the court commented, "I don't even know what authority I have to appoint an ADA advocate, that's denied."

Having already sustained the facts in the CINA petition on September 26, 2014, the hearing proceeded on the issues relating to the disposition. The evidence established that C.E. had been residing with maternal relatives since his discharge from Mount Washington Pediatric Hospital in July 2014 and that C.E. was doing well in his placement. The Department's caseworker made various referrals for mental health services for Mother. Mother told the caseworker that she only wanted to participate in therapy over the telephone or at her home. The Department contact at least twelve providers but was unable to locate a provider who was willing to come to Mother's home.

The caseworker also discussed domestic violence counseling with Mother. Mother agreed to call the House of Ruth but again wanted services to be provided in her home. The

House of Ruth advised Mother that she would need to come to their offices for counseling. Mother suggested an organization called Turn Around, Inc., which provides in-home services, but Turn Around, Inc. informed the Department's caseworker that they could not treat Mother due to her borderline personality disorder. The Department's caseworker further expressed concern about whether in-home services would be a realistic possibility for Mother, due to Mother's history. In the past, Mother had blocked the door for a period of time and refused to let service providers leave. Mother also chased service providers' cars in the parking lot. The Department's caseworker further testified about providing visits for both Mother and Father with C.E., scheduling a family involvement meeting, making a housing referral for Father,<sup>12</sup> and providing bus tokens.

The juvenile court concluded that the Department had made reasonable efforts with regard to reunification. The court found that the Department had "made several efforts in this case," including trying to maintain contact with the parents, facilitating visitation, scheduling a family involvement meeting, and making referrals for various services. The court found that, based upon its own observations, Mother "ha[d] more than a modicum of intelligence with regard to the manner in which she has composed and conducted herself today in these matters." The court found that Mother had demonstrated

a dictatorial attitude with regard to the required procedures and processes that [are] required by the Department of Social

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<sup>12</sup> Father resides in senior housing. Children are not permitted to reside in Father's apartment.

Services. Processes of intervention that just may not be available in the manner that she wants them to be available, doctors coming out to see her, instead of her presenting herself to the doctors, being one.

The juvenile court further found that Mother “gets agitated sometimes” and “has not made herself available for further mental health treatment or management of her mental health issues.” The court commented that there was “a history of mother’s mental health issues that has presented a barrier in this case with regard to” Mother’s other children, “and very probably this child today, young Mr. [C.E.]” The juvenile court found that it had “no documentation that [M]other has gone through a proper mental health regimen that would serve the return of the child to her today.” For all of these reasons, the juvenile court concluded that “there’s an inability at this present time for the [M]other to care for the child and the child would be at harm” if returned to Mother. The court further commented that the harm “would be substantial.”<sup>13</sup>

This appeal followed.

### **STANDARD OF REVIEW**

In child custody, CINA, and termination of parental rights cases, this court utilizes three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). The Court of Appeals described the three interrelated standards as follows:

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<sup>13</sup> The court explained its reasoning differently with respect to Father. The primary reason the juvenile court found that C.E. could not return to Father’s home was because Father’s housing would only permit C.E. to visit for a period of 14 days. Father did not appeal the juvenile court’s order.

We point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131 (c)] applies. [Second,] if it appears that the [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 [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

*Id.* at 586. In our review, we give “due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses.” *Id.* at 584. We recognize that “it is within the sound discretion of the [trial court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion. Such broad discretion is vested in the [trial court] because only [the trial judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; he is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.” *Id.* at 585-86.

## DISCUSSION

### I.

Mother’s first assertion of error by the juvenile court is that the court erred by failing to question Mother about whether she was in agreement with proceeding without counsel on July 16, 2015. Mother also raises related issues, arguing that the court improperly granted

Mr. Wanger’s motion to strike without considering whether the withdrawal of Mr. Wanger would cause undue delay, prejudice, or injustice. As we shall explain, and as is evident from the facts set forth above, the juvenile court and the OPD made exhaustive efforts to ensure that Mother was provided with an attorney at the adjudication and disposition hearing. We shall hold that the juvenile court did not abuse its discretion when it moved forward with the hearings on July 16, 2015.

It is well established that “[a] key purpose of the CINA law is to ‘achieve a timely, permanent placement for the child consistent with the child’s best interests[.]’” *In re Ashley S.*, 431 Md. 678, 712 (2013) (quoting Md. Code, (2006, 2013 Repl. Vol.), § 3-802(a)(7) of the Courts and Judicial Proceedings Article (“CJP”)). Consistent with this purpose, the CINA statute and the Maryland Rules set forth precise time requirements and deadlines for various stages of a CINA proceeding. Maryland Rule 11-114(a)(1) provides that “[a]n adjudicatory hearing shall be held within sixty days after the juvenile petition is served.” The disposition is required to be held either at the time of the adjudication, or, upon a finding of good cause for a delayed disposition hearing, within thirty days of the adjudication. CJP § 3-829(a)(3) (“If the court delays a disposition hearing, it shall be held no later than 30 days after the conclusion of the adjudicatory hearing unless good cause is shown.”). The intent of the statute is, ideally, to resolve the initial phases of a CINA proceeding within ninety days of the initial filing of the petition. Indeed, the Maryland Rules as well as the relevant statute provide that a shelter care order cannot be in affect for over thirty days. CJP § 3-815(c)(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.”); Md. Rule 11-112(b)(2) (“Continued . . . shelter care pending the adjudicatory . . . hearing may not be ordered for a period of more than thirty days.”).

In the present case, the petition was served on July 11, 2014. Ideally, the disposition would have been completed by October 9, ninety days after the filing of the petition. The actual disposition occurred 341 days after C.E. entered shelter care. By this point, Mother had been appointed three different attorneys, all of whom were unable to establish an effective attorney-client relationship with Mother for the reasons discussed *supra*. Mother’s profound lack of cooperation with her attorneys had led to the exceptionally unusual circumstance of the OPD filing a motion requesting to be relieved of its obligation to provide an attorney for Mother. Despite the fact that the OPD had gone to great lengths to locate an attorney for Mother but had been unable to do so, on March 12, 2015, the juvenile court denied the OPD’s motion and ordered the OPD to find an attorney for Mother. After denying the OPD’s motion, the juvenile court emphasized to Mother the importance of her cooperation with appointed counsel, explaining that “this is a very serious matter.” The court told Mother to “do [her] best to try to consult” with her attorney and informed Mother that “the next time” the parties appeared in court, the court “is going to proceed with this case.”

We have explained that “the strict waiver of counsel requirements embodied in Rule 11–106(b) do not apply to a parent’s waiver of his or her statutory right to counsel in a CINA case.” *In re Alijah Q.*, 195 Md. App. 491, 518 (2010). We explained further, differentiating between a constitutional and statutory right to counsel:

We are mindful that a statutory right, such as [a parent’s right to counsel in a CINA proceeding], “while deserving of protection, is not necessarily the equivalent of a constitutional right.” *In the Matter of the Welfare of: G.L.H.*, 614 N.W.2d 718, 722 (Minn.), *cert. denied sub nom. Jackson v. Ramsey County*, 531 U.S. 967, 121 S. Ct. 403, 148 L.Ed.2d 311 (2000). Nevertheless, in order to effectuate and safeguard the statutory right to counsel in CINA cases, certain minimal protections must govern the waiver of counsel, even if the waiver need not satisfy Rule 11–106(b)(1) or constitutional standards of a voluntary, knowing, and intelligent waiver. *See Bearden v. Ark. Dep’t of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397, 402 (2001) (noting the distinction between a statutory right and a due process right to counsel, the latter of which requires a “voluntary, knowing, and intelligent waiver” (citation omitted)); *cf. In re Adoption/Guardianship of Chaden M.*, 189 Md. App. 411, 417, 984 A.2d 420 (2009) (holding that the statutory right to assistance of counsel in a termination of parental rights case includes the right to effective assistance of counsel), *cert. granted*, 415 Md. 40, 997 A.2d 791 (2010).

*Id.* at 519-20. Indeed, the statutory right to counsel, though important and deserving of protection, is less strictly guarded than the constitutional right to counsel.

This case does not involve a parent who elected to waive her right to counsel, but rather, a parent whose conduct rendered her relationships with appointed counsel unsustainable. To be sure, Mother has a fundamental interest in raising her child, and is entitled to due process of law before being deprived of that right. *In re Mark M.*, 365 Md.

687, 705 (2001). The parent’s right, however, “must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect.” *In re Adoption of Ta’Niya C.*, 417 Md. 90, 103 (2010) (internal quotation omitted). One of the potential harms against which the State attempts to protect children is the detrimental effects of long-term foster care. *In re Ashley S.*, 431 Md. 678, 718 (2013) (“[A]n important goal of the CINA law is to limit the time children spend in foster care because of the detrimental effects on their well-being.”). The Court of Appeals has explained:

For children in foster care, . . . the court must consider whether the individual child’s health and safety is being compromised by the long term effects of foster care. Federal and state governments have recognized that long periods of foster care may harm the very children whom the foster care system is designed to protect. They have undertaken reasonable steps to prevent childhoods spent in “foster care drift” -- the legal, emotional, and physical limbo of temporary housing with temporary care givers. *In re Adoption/Guardianship of Victor A.*, 157 Md. App. 412, 427–28, 852 A.2d 976, 985 (2004); *see also In re Abigail C.*, 138 Md. App. 570, 584, 772 A.2d 1277, 1286 (2001) (explaining that the General Assembly revised the adoption and guardianship laws “to speed up the guardianship and adoption process so that children no longer would be consigned to foster care limbo for years.”).

*In re Adoption of Cadence B.*, 417 Md. 146, 164 (2010).

In the present case, C.E. had remained in shelter care -- an inherently temporary arrangement -- for nearly a year by the time of the June 16, 2015 hearing. In our view, neither the statutory right to counsel nor the principles of due process require that an initial

CINA adjudication and disposition hearing be postponed indefinitely while new counsel is provided time and time again to a parent. Such a requirement would fail to protect the interests of the respondent child. There is no indication from the record that any attorney would have been able to successfully represent Mother, given Mother's lack of cooperation with appointed counsel. Furthermore, the juvenile court and OPD went to extraordinary lengths in their attempts to provide counsel to Mother before ultimately proceeding with the June 16, 2015 hearing. Accordingly, under the circumstances, we hold that the juvenile court did not err by proceeding with the adjudicatory and disposition hearing when Mother was unrepresented by counsel.<sup>14</sup>

## II.

We next turn our attention to the juvenile court's substantive CINA determination. Mother asserts that the juvenile court erred by accepting stipulations of fact as a basis for the CINA determination without allowing Mother to offer her position on the proposed facts. As we shall explain, the juvenile court properly sustained the facts alleged in the

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<sup>14</sup> Although irrelevant to the determination of the issue raised on appeal because we hold that the juvenile court was correct to proceed with the adjudication and disposition hearing although Mother was unrepresented by counsel, we note that Mother was represented by counsel at the time that the facts alleged in the Department's CINA petition were approved by the court. Adjudicatory facts were proposed to and accepted by the court when Mother remained represented by Mr. Gauvin. The proposed facts were accepted by the juvenile court on September 26, 2014, and Mr. Gauvin's appearance was not stricken until October 10, 2014.

Department’s petition. Accordingly, we shall affirm the juvenile court’s CINA determination and commitment of C.E. to the Department’s custody.

A parent’s track record with previous children is an important predictive factor when determining whether a child will be at risk of harm in a parent’s care. *In re Andrew A.*, 149 Md. App. 412, 422 (2003) (“[T]he CINA petitioner has a right -- and indeed a duty -- to look at the track record, the past, of [the mother] in order to predict what her future treatment of the child may be.”) (internal quotation and citation omitted). *See also In re Priscilla B.*, 214 Md. App. 600, 626 (2013) (“[W]e need not and will not wait for abuse to occur and a child to suffer concomitant injury before we can find neglect: The purpose of [the CINA statute] is to protect children -- not wait for their injury.”) (internal quotation and citation omitted).

It is well established that a trial court may take judicial notice of proceedings in its jurisdiction at any stage of a proceeding. Md. Rule 5-201(f) (“Judicial notice may be taken at any stage of the proceeding.”). “[W]hen a trial judge takes judicial notice of an original court record from the circuit court wherein he or she presides, authenticity of the record is established.” *Irby v. State*, 66 Md. App. 580, 587 (1986). We have commented specifically on the propriety of a juvenile court taking judicial notice of prior CINA and termination of parental rights proceedings:

It is well settled that trial courts are permitted to take judicial notice of prior abuse and neglect adjudications . . . This Court has upheld findings of abuse and neglect predicated upon evidence indicating potential harm to the child . . . [I]f the Court were to accept Father's argument that judicial notice of prior

terminations may only be taken during the dispositional phase, the best interest of the children involved would not be served.

*In re Nathaniel A.*, 160 Md. App. 581, 600 (2005) (quoting *In the Interest of D.T.*, 677 N.W.2d 694, 697-99 (S.D. 2003)).

Indeed, in the present appeal, Mother does not challenge the propriety of the juvenile court taking judicial notice of adjudicative facts. Rather, Mother claims that the juvenile court abused its discretion at the adjudication hearing when it failed to ask her position about the allegations in the CINA petition.

First, we observe that the adjudicatory facts were proposed to and accepted by the court on September 26, 2014, when Mother remained represented by Mr. Gauvin. If Mother had any issues with the proposed facts, Mr. Gauvin could have raised those issues with the juvenile court. By the time the June 16, 2015 hearing occurred (the point at which Mother claims the court erred by failing to ask her position on the requested stipulations), the adjudicatory facts had already been accepted by the court. Furthermore, Mother points to no authority in support of her position that the court had an obligation to ask Mother her position on the judicially noticed facts.<sup>15</sup>

Second, even if we were to assume *arguendo* that the juvenile court erred by failing to ask Mother what her position was on the propriety of the court's taking judicial notice of

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<sup>15</sup> Pursuant to Md. Rule 5-201(e), “[u]pon timely request, a party is entitled to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.” Mother made no such timely request to be heard on the issue.

the prior cases involving Mother’s older children, any alleged error would be harmless. “It is well settled in Maryland that a judgment in a civil case will not be reversed in the absence of a showing of error and prejudice to the appealing party.” *In re Ashley E.*, 158 Md. App. 144, 164 (2004) *aff’d*, 387 Md. 260 (2005). “[P]rejudice means that it is likely that the outcome of the case was negatively affected by the court’s error.” *Id.* In the present case, there is no indication that the outcome of the case would have been affected in any way had the juvenile court asked Mother what her position was on the proposed adjudicatory facts. The judicially noticed facts were based upon prior adjudications involving Mother’s older children. Such facts are plainly subject to judicial notice. *See Nathaniel A.*, *supra*, 160 Md. App. at 600. Accordingly, we are unpersuaded by Mother’s contentions.

The court records of the prior proceedings involving Mother’s older children formed a proper basis for the allegations in the CINA petition. As discussed *supra*, the sustained facts detailed Mother’s extensive mental health history which had repeatedly interfered with her ability to provide proper care for her children. Furthermore, the sustained facts set forth the history of CINA findings for Mother’s other children, as well as the Department’s unsuccessful attempts to work toward reunification between Mother and her five older children.

Having sustained the facts alleged in the CINA petition, the juvenile court properly proceeded to the disposition hearing. Mother was provided with the opportunity to explain to the court how she had addressed the issues that had led to the removal of her other children

and the termination of her parental rights with respect to four of her other children. Based upon the evidence presented, the juvenile court reasonably concluded that Mother’s mental health continued to affect her ability to parent. The court found that Mother had “not made herself available for further mental health treatment or management of her mental health issues” and that it had “no documentation that [M]other has gone through a proper mental health regimen that would serve the return of the child to her today.” For these reasons, the juvenile court concluded that Mother was currently unable to care for C.E. and that C.E. “would be at harm” if returned to Mother. The juvenile court’s findings were supported by the evidence presented and the court’s CINA determination was supported by the law. Accordingly, we hold that the trial court did not err nor abuse its discretion when it found C.E. to be CINA and committed him to the custody of the Department.

### III.

The final issue raised on appeal is that the juvenile court erred by declining to appoint a disability advocate for Mother. We are unpersuaded.

Mother stated on multiple occasions before the juvenile court that she wished to have an “ADA advocate” appointed on her behalf.<sup>16</sup> Mother at no point made clear what the role of an ADA advocate might be or what type of person might fill that role. If Mother sought

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<sup>16</sup> “ADA” is a reference to the Americans with Disabilities Act. 42 U.S.C. § 12132 (“[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”).



the appointment of a non-attorney to be present in court as her ADA advocate, that non-attorney would not be permitted to act as Mother’s legal advocate in court. *See* Md. Code (1989, 2010 Repl. Vol.), § 10-601(a) of the Business Occupations and Professions Article (“Except as otherwise provided by law, a person may not practice, attempt to practice, or offer to practice law in the State unless admitted to the Bar.”). Indeed, Mother points to no sources which support any authority on the part of the court to appoint an ADA advocate, and Mother submitted to the juvenile court no evidence of a disability which would require the appointment of such an advocate. Mother filed no formal ADA request seeking a specific accommodation as the result of a disability.<sup>17</sup> Furthermore, Mother was not denied access to the court or prevented from participating in the CINA proceeding.

Furthermore, even if the juvenile court had somehow violated the ADA by failing to supply Mother with some sort of disability advocate, reversal is not an appropriate remedy for an alleged ADA violation. *Green v. North Arundel Hosp. Ass’n, Inc.*, 366 Md. 597, 618 (2001) (“[W]hether or not the exclusion of [the plaintiff] constituted a violation of the ADA, reversal of the judgments is not an acceptable or even available remedy.”). Accordingly, we

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<sup>17</sup> Mother did file a request to participate via telephone, which was denied by the circuit court. Mother does not raise this issue on appeal.

reject Mother's contention that reversal is warranted based upon an alleged violation of the ADA.

**JUDGMENTS OF THE CIRCUIT COURT FOR  
BALTIMORE CITY AFFIRMED. COSTS TO BE  
PAID BY APPELLANT.**