

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2460

September Term, 2016

IN RE: Y.D.

Graeff,
Friedman,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: October 30, 2017

*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.

Appellant, Mr. D. appeals from the order of Circuit Court for Prince George's County finding his daughter, Y.D., appellee, a child in need of assistance ("CINA")¹ and committing her to the custody of Prince George's County Department of Social Services (the "Department" or "DSS"), also an appellee. Mr. D., presents three questions for our review, which we have rephrased as follows:

1. Did the circuit court err in finding Y.D. to be a CINA?
2. Did the court err in failing to make required findings of facts as to the circumstances that caused the need for removal of the child from the father's home?
3. Did the circuit court err in denying Mr. D. to unsupervised visitation?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Y.D. is the child of Mr. D. and Ms. G.² On April 4, 2016, the Department became involved with Y.D. after Ms. G. contacted the Department and requested that it call law enforcement officials to assist with an ongoing domestic dispute between herself and Mr. D. occurring at their residence. That day, the Department took custody of Y.D., removing her from the home occupied by Mr. D. and Ms. G., which led to the CINA determination and this appeal.

¹ Md. Code (2016 Supp.) § 3-801(f) of the Courts and Judicial Proceedings ("CJP") defines a "child in need of assistance ("CINA")" as "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."

² The mother, Ms. G., is not a party to this appeal.

Ms. G. also has an older child, A.S., who lived with the couple until September 2015. At that point, based on a complaint, the Department investigated the disciplinary methods carried out against A.S., including allegations that Ms. G. beat A.S. with a belt in response to his behavior in school, that Mr. D. hit A.S. with a shoe, and that both parents required A.S. to “stand against a wall” for periods of time either standing on one foot or with both legs bent and arms extended forward, including one instance where he was required to stand naked.³ When A.S. reported the discipline to school officials, they indicated that he was “shaking all over” from fear that he would get in trouble at home. Officials examined A.S. and discovered old and new scars and bruises on his body; he was also interviewed by Child Protective Services (“CPS”). A.S. subsequently was placed into the custody of the Department, and he remains under its care.⁴

As a result of the investigation, the family was referred to the Department’s “Family Strengthening Program” and parenting classes. Mr. D. initially agreed to complete the program and classes, but he later refused, indicating that “he did not feel the need to participate.” Officials from the Department explained the purpose of the program and classes, and it worked to accommodate Mr. D.’s schedule after he expressed a willingness

³ Mr. D. admitted to using a shoe to discipline A.S., describing A.S. as a “bully” for burning his little nephew with a lamp.

⁴ The circuit court took judicial notice of the A.S. CINA case. *See In re Nathaniel A.*, 160 Md. App. 581, 598 (court may take judicial notice of prior CINA proceedings involving siblings), *cert. denied*, 386 Md. 181 (2005).

to participate if the services were tailored to his schedule. Mr. D. still refused to complete the classes.

Allegations of Domestic Violence

Mr. D. and Ms. G. have a history of domestic abuse against one another. Police were called to the residence on numerous occasions, at least eight times in 2015 and approximately five times in 2016. Mr. D. testified that Ms. G. would go crazy and break household items during their disputes, and she also assaulted him, including one time when she slapped him while Y.D. was in his arms. Mr. D. often would video record and narrate the aftermath of those altercations, including showing the reaction of the children, Y.D. and A.S. The videos depicted broken or turned over furniture and household items, which Mr. D. attributed to Ms. G.

On February 28, 2016, Ms. G. filed for a Petition for an Interim Protective Order against Mr. D., alleging that, on February 9, 2016, Mr. D. hit her, mentally abused her, and accused her of cheating. Ms. G. wrote in the petition's addendum: "I sleep in fear and wake up in fear." An Interim Protective Order was granted, but a request for a final protective order ultimately was denied.

On March 28, 2016, Mr. D. filed a petition for a Temporary Protective Order ("TPO") against Ms. G., alleging that she "hit, pushed and scratched" him on multiple occasions. He alleged that Ms. G. had access to and owned knives, she possibly had access to a gun through an ex-boyfriend, and she had threatened to kill him, all of which made him fear for the safety of his daughter. Mr. D's petition was granted that same day, and

the order provided that Ms. G. was not to have any violent or unlawful contact with Mr. D. or Y.D., and she was prohibited from entering the residence. A final protective order hearing was scheduled for April 11, 2016, and the allegations of abuse were forwarded to the Department for further investigation. .

On March 31, 2016, Mr. D. was contacted by Mary Payton, an investigator with CPS, to schedule an interview regarding the allegations set forth in the March 28, 2016, TPO against Ms. G. Mr. D. informed Ms. Payton that Ms. G. was still residing with him and Y.D. Ms. Payton advised Mr. D. that, based on the order, Ms. G. was not permitted to reside in the house. Mr. D. agreed to meet with Ms. Payton on April 4, 2016.

On the morning of April 4, 2016, Ms. G. contacted Ms. Payton and left a message requesting that the Department return her phone call. Ms. G. contacted the Department again that afternoon, requesting that the Department contact law enforcement as she and Mr. D. were engaged in a heated argument, which Ms. Payton could hear. Department officials contacted police and were told that law enforcement had been out to the home earlier that day. Ms. G. told Ms. Payton that Mr. D. “threatened to kill her and . . . the baby,” and she was afraid for her and her child’s life. Ms. G. alleged that Mr. D. “had been using drugs and that he been using them more than ever.”

Ms. Payton, and her co-worker, Shanay Anderson, went to the residence. Ms. Payton described Ms. G. as “visibly upset” and shaken by the events, and Y.D. was “tense and whining,” as if she was “aware something was going on.” Ms. Payton informed Mr. D. that the Department was going to take “limited custody” of Y.D. because he was in

violation of the protective order based on Ms. G. still residing with him and Y.D. The police also tried to explain to Mr. D. that, because the protective order was based on allegations that Ms. G. was a threat to him and Y.D. due to her presence in the household, he was in violation of the order.

Following the April 4, 2016, removal of Y.D., both parties subsequently filed complaints against one another for prior allegations of assault. On April 11, 2016, Mr. D. filed assault charges against Ms. G., alleging that, on February 9, 2016, following a verbal disagreement, she “charged at [him]” with a knife in an attempt to stab him, but she was intercepted by his mother, who happened to be in the home. On April 26, 2016, Ms. G. filed a statement of charges against Mr. D., alleging that Mr. D. pushed and hit her and tried to push her out of the car.

Shelter Care Hearing

At the April 5, 2016, shelter care hearing, the court granted shelter care to the Department pending an adjudicatory hearing. The court concluded that it was “contrary to the child’s welfare to remain in the home of her parents” due to the parents’ past incidences of domestic violence and the CINA adjudication of A.S. The court granted Mr. D. liberal and supervised visitation, to be arranged by the Department, and for those visits to occur separately from any visits by Ms. G. An adjudication hearing was scheduled for May 2, 2016.

Adjudicatory Hearings

The adjudication hearing involving Y.D. began on May 2, 2016, and concluded on August 25, 2016.⁵ Ms. Payton and Ms. Anderson testified regarding the Department's prior history of involvement with the family and the events occurring on April 4, 2016. Exhibits detailing the history of domestic violence were entered into evidence, including multiple videos recorded and provided by Mr. D. allegedly depicting Ms. G.'s actions of turning over household furniture.

Mr. D. testified that on April 4, 2016, he and Ms. G. had a disagreement about who could claim Y.D. on their taxes. He stated that each time they had a disagreement, Ms. G. "escalates" the situation, including on April 4, 2016, when she called Ms. Payton. He then testified to various assaults by Ms. G., including one time where she assaulted him by scratching him and threatening to kill him. Another time, she threatened to kill him by getting a knife and attempting to stab him, but she was thwarted by his mother, who Ms. G. assaulted as well. Mr. D. described Ms. G. as a violent person, and he testified about events he perceived as Ms. G.'s negligence toward Y.D., including an accident where Y.D. was in the car with Ms. G. and Ms. G. refused to go to the hospital.

When asked about disciplining A.S. with a shoe, Mr. D. acknowledged that he did so in response to A.S. burning his baby nephew with a lamp. Mr. D. stated: "I don't like bullies, so it's one thing that I was trying to take out of [A.S.]"

⁵ The circuit court stated in its order that Mr. D., "waived his right to counsel and chose to represent himself as of the June 20, 2016 hearing."

Mr. D. also testified regarding the multiple videos he recorded on his phone, which were played for the court. One video, taken in 2015, depicted the conclusion of an argument between Ms. G. and Mr. D., and it showed Y.D. crying. Mr. D. stated that he brought her downstairs. The video showed broken household furniture, which Mr. D. alleged was caused by Ms. G. A second video from 2015 allegedly was taken after Ms. G. assaulted him and broke their computer's printer; he stated that both children, A.S. and Y.D., were present.

A third video was recorded several days before Mr. D. filed the March 28, 2016, protective order. Mr. D. testified that he went upstairs to get Y.D. because she was awakened by their disagreement, and he placed Y.D. on the floor to begin filming the items Ms. G. knocked to the floor.

Ms. G. testified to abuse by Mr. D. She acknowledged that she had pulled a knife on Mr. D., but she said it was after Mr. D. used profane language in front of her and Y.D. and told her that she was worth less than "one dollar." Ms. G. could not recall how many times the police were called to the house, although she did recall a 2015 incident when A.S. threatened to kill himself, and the school sent the police to their house. Ms. G. had concerns for Y.D.'s safety if she were to remain in the home with Mr. D. because of physical abuse. She had not, however, witnessed any physical abuse to Y.D. by Mr. D.

On August 25, 2016, at the conclusion of the evidentiary hearing, the magistrate went over the CINA petition line by line with the parties and sustained the following findings:

On April 4th, 2016, limited custody was issued based on a domestic violence protective order between the parents of the child removed.

At 2:25 p.m. on April 4th, 2016 a call came into the Department of Social Services, DSS Social Worker [Ms. Payton] from [Ms. G.] asking that she call the police. The DSS worker could hear a great deal of commotion and noise in the background and complied and called the police, which were dispatched to the home. The police indicated to the worker that they have had several calls to that home in reference to domestic violence. The DSS worker went to the home that same day and removed the minor child.

On March 28, 2016 the husband/father of the child filed an ex parte petition against the wife/mother of the minor stating that the mother pushed the minor child and also stated while he was asleep in their bedroom, she barged in asking that he rub her stomach. Once he declined, he stated that she began screaming and hitting him. . . . The father further testified that the mother is violent and destroys and breaks things in the home when she is upset. He provided video clips of the home being in disarray. The father testified that the home was in disarray as a result of the mother breaking and destroying property.

. . . The mother had filed an earlier petition on February 16th, 2016 for domestic violence against the father that was dismissed in District Court where the current ex parte order has been filed. . . . The mother testified that the father is violent towards her. He has grabbed her hair, spit on her, calls her derogatory names all in front of the children. She further testified that the father demands sex from her.

The father indicated that his wife has access to knives and alleges that she also has a gun. He remained in the household after receiving the protective order because he thought the sheriffs were going to come to the home and make the mother leave the home. . . .[T]he [D]epartment worker had scheduled to come to the family home to discuss the protective order after being informed by the District Court of such order. However, the worker received the call from the mother earlier that day requesting the worker to call the police.

. . . [P]aragraph two, DSS worker testified that there has been numerous cases and a long history of domestic violence within the family.

Paragraph three. The mother was pregnant when this petition was filed. The mother has another child [A.S.] that has been in the care and

custody of DSS since 2015. The child was removed and found CINA due to physical abuse by the mother and stepfather, who is the father of the child at hand.

Paragraph four. A [Family Emergency Meeting] was held before the shelter care hearing on April 5th, 2016. The father testified that he was not given the time of the [Family Emergency Meeting], and was not present. Services have been provided to this family over the years that include, but not limited to, parenting classes, bill/rent payment, referral to family preservation and schedule meetings at the Department and the school.

Mr. D. filed an exception to the magistrate's proposed findings prior to the dispositional hearing on September 2, 2016.

Exceptions and Disposition Hearings

On November 3, 2016, the court held an exceptions hearing. The parties agreed to proceed on the evidence presented to the magistrate, with additional testimony provided by Mr. D. relating to what he perceived as prejudicial treatment and "injustice" against him by the Department. Mr. D. also testified on cross-examination about the domestic violence between him and Ms. G. He stated that there were times when Ms. G. placed Y.D. in danger, including when he "would have [Y.D.] in my hand and she would still punch me in my face."

The court then questioned Mr. D. regarding the care and custody of Y.D. after the issuance of the temporary protective order, and the following occurred:

THE COURT: Well you left the child with the mom. If the police served her with an order, what was going to happen with the child while you were at work?

[MR. D.]: I never thought about that?

THE COURT: You didn't?

[MR. D.]: No. I never thought about it like that.

THE COURT: Well you had an order –

[MR. D.]: Yes.

THE COURT: asking the mom be removed from the house?

[MR. D.]: Yes, sir.

THE COURT: Asking her to have no contact with the child?

[MR. D.]: Yes, sir.

THE COURT: But you left the child with the mom?

[MR. D.]: Yes sir.

THE COURT: And you were waiting for the police to serve the mom?

[MR. D.]: Yes, sir.

THE COURT: To make her leave the house?

[MR. D.]: Yeah that would have happened eventually, yes.

THE COURT: So if the police came to the house while it was only the mom and the child in the home, what was going to happen to the child when the mom was forced to leave the home?

[MR. D.]: I believe the police would contact Social Service and they would take the kid and I would be informed and I would go and get my kid.

THE COURT: Okay. If you believed the child's safety was at risk, why would you leave the child with the mom in the first place?

[MR. D.]: I didn't believe the child's safety was at risk at the time.

At the conclusion of the exceptions hearing, the court incorporated the magistrate's findings from the CINA adjudication, found that "it's contrary to the child's best interest that she remain in the home," and ordered that Y.D. remain in the Department's care and custody.

Disposition Hearing

On December 5, 2016, the circuit court held the disposition hearing. The Department requested that the court find Y.D. to be a CINA based on the allegations sustained at the previous hearing. Noting the numerous instances of domestic violence between the parties, a lot of which occurred in front of Y.D., as well as the Department's custody of A.S., the Department asked the court to find that it was contrary to Y.D.'s welfare to remain in the parent's home and that she remain in the Department's custody. The Department also recommended that both parents have liberal and supervised visitation, complete anger management and parenting classes, and receive a psychological evaluation. With respect to Mr. D., the Department also requested that he participate in a substance abuse evaluation.

Counsel for Y.D. adopted the Department's recommendations. Additionally, he noted that Y.D. had "medical and developmental issues" that went to parenting, and he recommended that both parents educate themselves with regard to those issues, as well as engage themselves with Y.D.'s medical and developmental service providers.⁶

The court then permitted the parents to respond to the Department's recommendations. The court asked Mr. D. where he thought Y.D. should be at that point, and the following occurred:

[MR. D.]: She should still stay with the Department's care.

THE COURT: I'm sorry?

[MR. D.]: She should still be under the Department's care

THE COURT: She should remain in the Department's care?

[MR. D.]: Yes.

THE COURT: Okay.

[MR. D.]: If not on my care, but me, personally, I would say that ... she fine at the Department until I bring this to a civil case so I can show exactly what the Department has been doing so far.

THE COURT: So you agree with that?

[MR. D.]: Yes.

⁶ After Y.D. was placed into the care of the Department, her left kidney stopped functioning. The Department learned that Y.D. was diagnosed with a kidney condition at birth, and her pediatrician had recommended treatments, which she never received. The Department also discovered that Y.D. was developmentally delayed; at 23 months old, Y.D. had the language, fine motor control, and cognitive abilities of an 8 to 11 month old child.

THE COURT: Okay.

[MR. D.]: And she could stay at the Department for now.

THE COURT: But I'm saying, you think the child would be better with non-relatives than these people who are related to her?

[MR. D.]: No, the child would be better with me.

THE COURT: You just said that you weren't opposed to the child staying [in] the care of the - -

[MR. D.]: No, I'm unopposed to that, but it would be better I'd want her to be in my care.

Mr. D. then proceeded to argue that the Department was lying and playing favoritism. When the court advised Mr. D. not to reargue the issue from the prior hearing, Mr. D. stated: "My daughter, the only recommendation I have right now that my daughter stays in the Department's care and they take good care of her. Because she's been affected, she's had infection in all her senses."⁷

At the conclusion of disposition hearing, the court adjudicated Y.D. to be a CINA, and it stated that she would remain in the care and custody of the Department. The court granted both parents supervised access, and it required both parents to participate in an anger management class with a domestic violence component, as well as receive support with regard to parental communication. Both parents were to undergo a substance abuse

⁷ Mr. D. stated that his daughter had suffered ear infections, pink eye, and breathing problems from her nose.

assessment and receive recommended treatment. The court also ordered Mr. D. to undergo a psychological assessment.

The court further stated that “returning the child to either parent would be contrary to the best interest of the minor child.” In response to a question from Mr. D. about whether the court considered his prior testimony, the court stated: “I considered everything.”

The court next addressed the need for a permanency planning review, and it found that the plan was reunification with either parent.⁸ The disposition and permanency planning orders were issued on January 4, 2017. On January 26, 2017, appellant noted this appeal.

Motion to Dismiss

Y.D. moves to dismiss this appeal on two grounds. First, Y.D. contends that Mr. D. waived his contentions, or failed to preserve them, because he advised the circuit court that he agreed that Y.D. should stay in the Department’s care. Second, Y.D. contends that this appeal is moot because, subsequent to the January 4, 2017, order at issue on appeal, the court held a permanency plan hearing and issued another order finding that Y.D. continued to be a CINA, that custody remain with the Department, and that Mr. D. have supervised visitation. Y.D. argues that, because Mr. D. did not appeal from the subsequent order,

⁸ Under CJP § 3-816.2(a)(1), the court is required to conduct a review hearing “within 6 months after the filing of the first petition . . . and at least every 6 months thereafter.”

which will remain in effect regardless of the outcome of this appeal, the issues before this Court are moot. We are not persuaded.

Initially, although the failure to preserve an issue may preclude a party from prevailing on appeal, Y.D. cites no case, nor are we aware of any, that this is a basis to dismiss the appeal. With respect to the second claim, Mr. D. could not have appealed the subsequent order because it did not change the situation to his detriment. *See In re Billy W.*, 386 Md. 675, 691-92 (2005) (“[t]o be appealable, court orders arising from the permanency plan review hearing must operate to either deprive [the parent] of the care and custody of [their child] or change the terms of care and custody” of the child to the parent’s detriment). Accordingly, this appeal is not moot, and we deny the motion to dismiss the appeal.

DISCUSSION

Turning to the merits of the appeal, we note that CINA proceedings are governed by statute. The Court of Appeals recently set forth the statutory framework as follows:

A local social services department can file a petition to remove a child from a home to protect a child “from serious immediate danger.” Md. Code (1973, 2013 Repl. Vol.), CJP § 3-815(b). The department must then seek an immediate court authorization to continue emergency shelter care placement of the child. *Id.* § 3-815(c). The parties have a right to an attorney “at every stage” of any CINA proceeding. *Id.* § 3-813(a). To justify continuing emergency shelter care of a child, the court must determine that returning the child to the child’s home “is contrary to the safety and welfare of the child”; and removal “is necessary due to an alleged emergency situation and in order to provide for the safety of the child”; or “[r]easonable efforts were made but were unsuccessful in preventing or eliminating the need for removal of the child from the home.” *Id.* § 3-815(d). The court must also decide whether the

Department has made reasonable efforts to assist in returning the child to the home, or the reasonableness of the absence of such efforts. *Id.* § 3-815(e)(3).

After the emergency shelter care hearing, the juvenile court must hold an adjudication hearing. The rules of evidence apply and the juvenile court must decide “whether the allegations in the petition . . . are true.” *Id.* §§ 3-801(c); 3-817. The court must find: (1) that the child is abused, neglected, has a developmental disability, or a mental disorder, and (2) the child’s parent, guardian, or custodian is unable or unwilling to provided appropriate care and attention to the child and the child’s needs. *Id.* § 3-801(f). If the court makes this finding, it then holds a disposition hearing. *Id.* § 3-819(a); see also Maryland Rule 11-115(a). At this hearing, the court will determine whether a child requires assistance, and if the court makes such a determination, it will then decide the intervention necessary “to protect the child’s health, safety, and well-being.” CJP § 3-801(m). If the child is not a CINA, the court must dismiss the case. *Id.* § 3-819(b)(1)(i)(4).

In re C.E., ___ Md. ___, No. 2, Sept. Term, 2017, slip op. at 8-9 (filed Oct. 20, 2017).

Here, Mr. D. contends that the circuit court erred in (1) finding Y.D. to be a CINA, (2) depriving him of custody, and (3) denying him unsupervised visitation. In reviewing the circuit court’s rulings in this regard, we apply the following standard of review:

“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 Shirley B., 419 Md. 1, 18 (2011) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

In assessing whether the court’s ultimate decision is an abuse of discretion, we are mindful that

[q]uestions 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. In sum, 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 583-84 (citations and quotations omitted).

Id. at 19.

I.

CINA FINDING

Mr. D. contends that the circuit court erred in finding Y.D. to be a CINA. A CINA is defined as “a child who requires 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.” Md. Code (2016 Supp.) § 3-801(f) of the Courts and Judicial Proceedings (“CJP”).

Mr. D. argues that the court made no findings of fact to support the conclusion that Y.D. was neglected or that he was unable to provide proper care and attention to Y.D. He concedes that “[i]t might be argued that the legal conclusion of neglect was based the premise that the domestic disturbances between the parents placed the child at substantial risk of harm to her health or welfare, or to a mental injury.” He argues, however, that this assertion “does not withstand scrutiny,” stating that the court did not “probe the underlying merit” of the Department’s testimony regarding a long history of domestic violence, which Mr. D. characterizes as a “bald assertion based on second-hand information.” With respect to the second element, Mr. D. argues that the circuit court made “no assessment” whether

he “could ‘give proper care and attention to the child and the child’s needs’ given that he has been living on his own in an environment where there is no substantial risk of further domestic disturbance causing harm or mental injury to the child.”

The Department argues that the circuit court properly exercised its discretion in finding determined Y.D. to be a CINA. It asserts that the unchallenged adjudicatory findings supported the circuit court’s determination that Y.D. was neglected and her parents were “unable or unwilling to give proper care and attention” to her needs. The Department points to “evidence demonstrating Mr. D.’s pattern of engaging in violence toward Ms. G., his failure to protect Y.D. from Ms. G.’s own violence toward him, and his physical abuse of A.S., all of which placed Y.D. in harm or at substantial risk of harm.” It notes that Mr. D. already had been violent to Y.D.’s older brother, and he had threatened to kill Y.D.

Counsel for Y.D. similarly argues that the circuit court’s CINA finding was not erroneous. He asserts that “[t]he copious evidence of neglect and domestic violence raises concerns about Mr. D.’s temperament, violent tendencies, and inability to prioritize the welfare of his child above his own,” and regardless of Mr. D.’s current separation from Ms. G., those concerns have not been resolved. Counsel for Y.D. also contends that Mr. D. waived his argument regarding the CINA finding because he agreed below that Y.D. should remain in the Department’s care and custody.

We address first the preservation issue. Mr. D. argues that he did not waive the issue, stating that he clearly communicated to the court that he sought to have custody of

his daughter and that she only “remain in the Department’s care if he was not allowed” custody.

As counsel for Y.D. notes, and as we have set forth *supra*, Mr. D. did, at several points during the disposition hearing, state that he agreed that Y.D. should remain in the custody of the Department. He indicated, however, that he wanted Y.D. to be placed with him, but if that was not going to happen, which he seemed to recognize would not, he wanted her to remain with the Department, as opposed to being placed with relatives. Although Mr. D., who appeared in court unrepresented, could have been more clear, we will not construe his statements as a waiver of his claim on appeal. Thus, we turn to the merits of the issue.

Proper Adjudication

As discussed, the circuit court found that Y.D. was a CINA based on neglect.

Neglect is defined as follows:

“Neglect” means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or individual who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:

- (1) That the child’s health or welfare is harmed or placed at substantial risk of harm; or
- (2) That the child has suffered mental injury or been placed at substantial risk of mental injury.

CJP § 3-801(s).

There was ample evidence to support the court’s finding that Y.D. was neglected, including evidence of multiple incidents of domestic violence between Mr. D. and Ms. G., some of which Y.D. witnessed. Exposure to such violence was detrimental to Y.D., both

because of the psychological harm to children who witness violence against family members, as well as the concern that such violence will be directed against the child. *See In re Adoption No. 12612 in the Circuit Court for Montgomery Cnty, Md.*, 353 Md. 209, 237 (1999)(noting statistical evidence demonstrating concern). Indeed, here, Y.D.’s older brother had been taken from Mr. D. and Ms. G. based on physical abuse, and Mr. D. had threatened to kill Y.D. *See In re William B.*, 73 Md. App. 68, 77 (1987) (inability of parent to care for the well-being of one child is often demonstrative of their inability to take care of another child); *see also In Re Priscilla B.*, 214 Md. App. 600, 626 (2013) (because CINA statute is protective in nature, courts need not gamble with a child’s future and wait for an injury to occur before a finding neglect). The circuit court did not abuse its discretion in finding Y.D. to be a CINA.⁹

II.

Removal from Home

Mr. D. next contends that the circuit court failed to provide proper findings of fact to support its decision to remove Y.D. from his home. He asserts that this failure deprives

⁹ Although the circuit court did not set forth in great detail the basis of its findings, this Court has stated that “not every step in a [judge’s] thought process needs to be explicitly spelled out.” *In re Beverly B.*, 72 Md. App. 433, 442 (1987) (quoting *Zorich v. Zorich*, 63 Md. App. 710, 717 (1985)).

this Court of the basis for the circuit court’s action, and it leaves him in the dark about “what steps he needs to take to regain custody.”

The Department and counsel for Y.D. contend that the circuit court properly exercised its discretion to commit Y.D. to the custody of the Department, noting that the court properly ruled on the evidence that Y.D. was repeatedly subjected to domestic violence and that A.S. had been removed from the home.

Following a CINA disposition, the court must determine custody and is required to “[c]ommit the child on terms of the court considers appropriate.” The court has broad discretion in dispositional matters, and it may remove a child from his or her parent’s custody if there is evidence to support a “fear that some great harm might befall the child if he or she remains in the custody of the natural parents.” *In Re Priscilla B.*, 214 Md. App. at 622.

Here, the court made a specific finding that it was contrary to the welfare of the child to remain in the home. This finding was supported by the evidence that Y.D. was repeatedly subjected to domestic violence, that Y.D.’s brother, A.S., previously had been removed from the home, and Mr. D.’s continued “aggressive” behavior displayed toward others. The circuit court did not abuse its discretion in continuing Y.D.’s custody placement in foster care.

III.

Supervised Visitation

Mr. D. contends that the circuit court erred in denying him unsupervised visits with Y.D. He asserts that the court provided “no explanation for the visitation arrangement,” that there was no evidence that he “cannot spend time safely and productively with his child without” supervision, and “there is no way that [he] can maintain a relationship with his child under these circumstances.”

The Department contends that the court did not abuse its discretion in ordering liberal, supervised visits between Mr. D. and Y.D. It asserts that the court’s decision “was sound, appropriate, and founded on significant evidence regarding the likelihood of further neglect by the father.” The Department asserts that Mr. D. “makes no showing that any other alternative arrangement could have so assured Y.D.’s safety and well-being while providing him any additional time.”

Counsel for Y.D. argues that this contention is not preserved for review because Mr. D. did not raise this issue at the disposition hearing. In any event, he contends that the contention is without merit, asserting, *inter alia*, that the evidence that Mr. D. physically abused Ms. G. in front of Y.D., that Y.D.’s brother was removed from the home, and that Mr. D. left Y.D. with Ms. G. after he said he feared for Y.D.’s safety with her, supported the court’s decision to make Mr. D’s visitation with Y.D. supervised.

Initially, we agree that the issue is not preserved for review. Mr. D. acknowledged below that the Department was seeking to continue the order for supervised visitation for

him and Ms. G., and he never objected or otherwise argued that he should have unsupervised visitation with Y.D. Under these circumstances, the contention is not properly preserved for this Court. *See White v. State*, 324 Md. 626, 640 (1991) (argument not made before the circuit court is not properly before an appellate court).

Even if the issue were preserved, we would find it to be without merit. A decision regarding visitation is a matter within the circuit court's discretion, which we review for an abuse of discretion. *In re Mark M.*, 365 Md. 687, 704 (2001). In reviewing a decision regarding visitation, "the best interest of the child may take precedence over the parent's liberty interest." *Id.* at 705-06 (quoting *Boswell v. Boswell*, 352 Md. 204, 218-19 (1998)).

Here, the court did not abuse its discretion in ordering supervised visitation. In addition to the testimony regarding the domestic violence between Mr. D. and Ms. G., which the court found to be credible, there was evidence that Mr. D. did not prioritize Y.D.'s safety. The evidence indicated that Mr. D. left Y.D. with Ms. G. after he stated he feared for Y.D.'s safety because of Ms. G.'s actions toward the child, and he brought Y.D. into the discord between himself and Ms. G., rather than protecting her from exposure to their conflict. Accordingly, the circuit court did not abuse its discretion in ordering supervised visitation for Mr. D.

MOTION TO DISMISS DENIED.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**