Circuit Court for Baltimore County
Case No. C-03-JV-22-000658

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 327

September Term, 2023

IN RE: A.B.

Wells, C.J.
Nazarian,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: January 2, 2024

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

A.B. ("Father") appeals an order of the Circuit Court for Baltimore County, sitting as a juvenile court, declaring his ten-year-old daughter, A.B., a child in need of assistance; committing the child to the continuing care and custody of the Baltimore County Department of Social Services; and suspending visitation between he and his daughter.[1] Father raises the following three questions on appeal, which we have slightly rephrased for clarity:[2]

> I. Did the juvenile court err in admitting into evidence two out-of-court statements by A.B. under the tender years statute, Md. Code Ann., Crim. Proc. ("CP") § 11-304?
>
> II. Did the juvenile court err in finding A.B. a CINA?
>
> III. Did the juvenile court err in suspending visitation between Father and A.B.?

Finding no error, we shall affirm.

FACTS AND LEGAL PROCEEDINGS

On September 13, 2022, the Baltimore County Department of Social Services (the "Department") removed nine-year-old A.B. from Father's care and placed her in shelter

[1] Because both child and Father have the same initials, for clarity we shall refer to the child as "A.B." and her father, the appellant, as "Father."

[2] The questions as posed by Father are:

> 1. Did [the] court err in admitting A.B.'s statements?
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> 2. Did the court err in finding A.B. to be in need of assistance because the evidence was insufficient to show that she was abused and neglected and that [Father] was unwilling or unable to care for her?
>
> 3. Did the court commit error when it denied [Father] visitation or any form of contact with A.B.?

care. It did so based on concerns of physical abuse related to inappropriate and excessive discipline by Father, and his failure to meet her mental health and educational needs. The next day, the Department filed a child in need of assistance ("CINA") petition and a shelter care hearing was held.[3] The court granted the Department's request for continued shelter care and ordered A.B. to be placed in the custody of the Department with both Father and Mother to have liberal, supervised visitation.

Upon entering shelter care, A.B. was placed in treatment foster care. When medically examined, she was found to have untreated ringworm, a dead toenail that required removal, and very poor vision that required immediate prescription glasses. A dental appointment indicated "severe" plaque build-up.

On January 31 and April 17, 2023, the court held adjudicatory hearings. Father, the Department, and A.B., were present and represented by counsel at those hearings. Mother, who lived in New Jersey, was not present but was represented at both hearings. Two social workers assigned to the case, Carmita Vogel and Sharonda Saunders, testified for the Department. Both were accepted by the court as experts in the areas of general social work, child welfare, and the risk and safety assessment of juveniles in the context of neglect and abuse investigations. Father and Alexis H., Father's adult daughter and A.B.'s half-sister, testified on Father's behalf.

Ms. Vogel testified that she went to A.B.'s elementary school on June 6, 2022 and spoke with A.B., her third-grade teacher, and her school counselor. When she and A.B.

[3] *See* Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 3-801(f), (g) (defining a CINA).

spoke, A.B. said that she lived with Father and that Mother lived in New Jersey. According to A.B., Mother used to live with her and Father but left after Father tried to run Mother over with a car. A.B. said that she was present when the car incident happened. A.B. related that Father "beats her a lot . . . [and he] yells and screams at her a lot" and that he did little during the day except, "watch TV, smoke weed, . . . and drink out of a bottle." She said that she "missed her Mother very, very much . . . [and] she wanted to see her Mother more . . . but she wasn't allowed to because her dad wouldn't allow her to see her mom." A.B. admitted that she had "some troubles in school" and that she "yell[ed]" and "scream[ed]" sometimes because "people made her angry." She stated that she did not want to live with Father anymore because she was afraid of him; she wanted to live with Mother where she would not be beaten.

Ms. Vogel testified that, at the beginning of the interview, A.B. was "very attentive[,]" made "excellent eye contact[,]" and had "no trouble speaking or answering any questions." But when they began talking about Father, she became "upset" and "sad," with a marked increase in her motor activity. According to Ms. Vogel, A.B. became "fidget[y,]" and got up from where they were talking several times and retrieved items out of the counselor's baskets and played with them. Ms. Vogel testified that A.B.'s lack of a specific timeline or dates regarding Father's actions was developmentally appropriate for her age. On the other hand, A.B. was consistent throughout the interview about Father's abuse and consistent with what she had told her teacher, guidance counselor, and peers. She never recanted or changed any of the facts that she reported and was "very clear" in recounting her home life.

On cross-examination, Ms. Vogel stated that the Department was unable to find a police report regarding the car incident involving Mother. She further stated that she did not see any bruises on A.B. and neither had the guidance counselor nor the teacher. But, because A.B. is a "fairly dark-skinned," African American child and bruising is a "time limited event[,]" seeing bruises on such children can be difficult.

Ms. Saunders testified that, on September 13, 2022, she went to A.B.'s school and spoke with A.B.'s guidance counselor and A.B. According to Ms. Saunders, when she first received A.B.'s case, she was told to only go to the school, not Father's home. That was because, in May 2022, another social worker, who had gone there to do a risk of harm assessment because of a report that Father had threatened to strangle A.B., was told by Father that he did not like her because she was Caucasian and he "threaten[ed to put] his dog on her."

Ms. Saunders testified that, at the beginning of the interview, A.B. was "very calm" and "very polite." A.B. later disclosed that she was afraid to go home. She told Ms. Saunders that Father "punches" her "all the time[,]" and is "very mean" and "very angry[.]" A.B. described an incident when Father "punched her in the chest" because she did not take her mask off when she got off the school bus. She stated that when she gets in trouble at school, she gets a "whoopin[']" when she gets home.

During the interview, a school staff member interrupted to say that Father had been called because A.B. had "pushed" two teachers earlier in the day, and when he was asked to pick up A.B. from school, he refused. According to the staff, that was common when A.B. was sick at or suspended from school and he was asked to take her home**.** When the

staff member left, A.B. began "shaking" and "pacing back and forth" and was "very anxious and nervous[.]" She repeatedly told Ms. Saunders that she was afraid to go home and said, "I'm going to get a whooping, he's going to beat me." A.B. asked Ms. Saunders to take her home with her. Ms. Saunders called her supervisor, and A.B. was removed from Father's care that evening. The Department filed for shelter care the next day.

Ms. Saunders testified that A.B. did not act confused about any facts she related during the interview, did not contradict herself, and "repeats the same story to this day." According to Ms. Saunders, A.B. repeats the same allegations about Father to the foster care case worker, her foster care parent, and the school staff. Based on A.B.'s age and developmental delays, Ms. Saunders was not concerned about A.B.'s use of the word "always" when describing events and not specifying a date as to when beatings occurred.

Ms. Saunders initially thought Alexis H. could foster A.B. However, the foster care parent advised Ms. Saunders that Alexis and Father together had called A.B. the day after the shelter care hearing and, during that call, they were "yelling and screaming" at A.B. to "stop lying and [to] change her statement." When Ms. Saunders spoke to Alexis about the call, Alexis explained that she had not been yelling and screaming but "trying to calm her Father down[.]" Alexis admitted, however, that she had told A.B. to "stop lying[.]"

Ms. Saunders testified that before coming into shelter care there were concerns about A.B.'s school performance, both academically and behaviorally.[4] A.B. had

[4] A.B. also had behavioral issues on the school bus. In September 2021, she was cited for "fighting" on the bus, not staying in her bus seat, and "yelling" at other students and adults. She had been suspended from the bus for "fighting" with other students and

"tantrums" in class, exhibited physical aggression toward teachers and peers, and was unable to concentrate or complete assignments. As a result, A.B. averaged missing ninety minutes of instructional time per day because she was disruptive.

The school had recommended intervention by way of an individualized educational plan ("IEP"), but Father refused to participate in or sign the consent forms to begin the IEP process. He did not attend the first scheduled IEP meeting in November 2022, and, when it was rescheduled for the following week, he again did not attend. He did, however, give permission for the meeting to proceed in his absence. He agreed to sign the IEP after he reviewed it, but he never signed it. Father explained to Ms. Saunders that "the school is trying to do psychological experiments on [A.B.], and he will not allow it." He also told Ms. Saunders that "there is nothing wrong with [A.B.]" but acknowledged that A.B. was declining educationally.

Ms. Saunders testified that A.B.'s failure to learn was affecting her "growth and quality of life." A.B. is now doing better in school, but is "still losing a lot of instruction due to her . . . inability to concentrate, focus and . . . manage her impulses." According to Ms. Saunders, the day before the hearing, she had received an email that A.B. had pushed a teacher.

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telling them that the bus driver, who is Caucasian, will "kill the black students[.]" Later she was suspended from the bus for repeatedly placing her arms out the window when told not to and entering the driver area and grabbing the microphone and steering wheel. In November and December, A.B. received four warning referrals for failing to stay seated and yelling on the bus. She also received referrals in May and June, 2022, for walking in the aisle when the bus was in motion, screaming at the bus driver, and for grabbing the microphone. The school offered counseling services for A.B., but Father never followed up.

Although initially told that Mother was deceased, the Department learned that Mother was alive and living in New Jersey. After learning that Mother's number had been blocked on A.B.'s cell phone, Ms. Saunders unblocked the number and Mother and A.B. now talk regularly. When Ms. Saunders first contacted Mother in September 2022, Mother was living in shelter care in New Jersey, but now has her own apartment where she lives with her infant daughter. Mother is in a substance abuse treatment program and involved in child protective services in New Jersey because she had tested positive for cocaine during her pregnancy but not during delivery. Since her infant daughter was released from the hospital in May 2022, Mother has been "clean." Mother told the Department that she and Father's relationship began with and was based on mutual cocaine use. According to Mother, Father attempted to run her over with his car.

Ms. Saunders testified that Mother's interactions with the Department have been positive. She had not threatened anyone, is easy to communicate with, is interested in taking care of A.B., and wants A.B. to live with her. Mother visited A.B. for Thanksgiving and Christmas, staying until New Year's. Mother is scheduled to visit again in February. According to Ms. Saunders, the Department has no concerns with Mother's housing or her ability or willingness to take care of A.B. Its only concern with Mother having custody of A.B. was the absence of a historic relationship between them.

On the other hand, whenever Ms. Saunders speaks to Father, "he yells, he screams, he's very aggressive." She explained that, much like A.B., he is "kind of histrionic" and "talks about the same things over and over." Ms. Saunders related that Father has threatened A.B.'s foster mother, telling her that he knows where she lives and is going to

"send someone" to her home. Because the foster mother was "very" scared, she filed a police report. In 2019, Father threatened "to blow up the school[,]" resulting in criminal charges that were later dismissed. Ms. Saunders testified that the Department offered Father mental health, parenting classes, and grief counseling services, but he has not participated in any of those services.

Father testified that he loves A.B. and wants her to be returned to him. He stated that he was incarcerated for a parole violation when A.B. was born. He was charged with eluding a police officer, when he did not stop his car when told to stop after causing a "couple of accidents[.]" He was released when A.B. was about six months old. He then took physical custody of her because of Mother's substance abuse. He and A.B. moved to Maryland about five years ago.

Father testified that he has never punched or hit A.B. but admitted that he does sometimes scream and yell at her. He testified to saying, "I'll spank your butt[,]" but that he has never done it. As to A.B.'s allegation that he did little during the day, he testified that he wakes up with A.B., gets her ready for school, walks her to the bus stop, and walks home with her at the end of the school day. He is an "acute diabetic[,]" has not drank alcohol for at least twenty years, and he explained that the bottle A.B. described contains sparkling water. Denying trying to run over Mother during one of her visits to Maryland, he offered a different version of what happened. He testified that he had pulled his car next to Mother who "was running away like she always do[es] on [A.B.]" to ask her if she wanted a ride to the bus stop. He added that A.B. was in school when it happened and did not witness the incident.

Father was aware of A.B.'s "behavioral issues" but stated that she does not have such issues at home. He did not enroll her in therapy because "[s]he didn't need none." When asked if he was aware of the kind of trouble A.B. was getting into at school, he responded that A.B. is "very quiet, humble and stuff like that, but she is not going to be bullied by anybody in school." He testified that the school guidance counselor was a "bully," and when A.B. was "dragged" out of class for some interaction with another student, the other student was unfairly allowed to stay in the class. He admitted that he did not engage in the IEP process because he had been excluded "from everything. I haven't had a chance to—I haven't had an opportunity to talk about my Daughter meeting with anybody. You just took me right out of the picture." In addition, he "didn't understand the process." And the only time he did not pick up A.B. from school when directed to do so was the day she was removed from his care.

Father admitted that the Department has offered him grief counseling, parenting classes, and anger management classes, but he has not engaged in those services because he did not know the Department's "agenda." He denied threatening A.B.'s foster mother, testifying that he told her, "I'm sending something to her house for" A.B.'s birthday. He denied making threats to any social worker.

During Father's direct examination, his attorney repeatedly directed him to answer her questions, and, at one point, she asked him to "calm down." The court also redirected Father during questioning because he was unresponsive and to answer the questions posed and not to narrate.

Alexis H. testified that A.B was her sister, and before A.B. was removed from their Father's care, A.B. called her every other day and they saw each other a couple of times a month, mostly on the weekends. In 2019, she took care of A.B. for a couple of months when their Father was incarcerated. According to Alexis, Father "[b]arely" disciplined A.B., and she has never seen Father "touch" A.B. She acknowledged, however, that she has never lived with Father.

At the conclusion of the adjudication hearing, the court, finding the testimony of Ms. Saunders, Ms. Vogel, and Alexis H. credible, sustained nine out of the ten allegations raised by the Department about Father's physical abuse of A.B., his failure to meet A.B.'s mental health and education needs, and Mother's substance abuse history. More particularly, the court found: that Father had punched A.B. and had screamed at and threatened to beat her; that A.B. was emotionally dysregulated at school; that she was at times volatile and had assaulted school staff and her peers; that Father had refused to engage in the IEP process or to begin counseling for A.B.; that Father refused to take A.B. home when she was sick or suspended from school; that Father had charges filed against him for threatening the school and the staff; that Father had threatened Mother; that Father threatened a social worker with physical violence; that, when she was removed from Father's care, A.B. had an untreated case of ringworm and needed a dead toenail removed; and that Mother has a history of substance abuse.

At the dispositional hearing, Ms. Saunders testified that since A.B. had been placed with her foster mother, she was "doing well" and her behavior in school had "drastically

improved[,]" but she admitted that A.B. still has "some aggressive issues" that caused her to be suspended from school a couple of times.

Ms. Saunders testified that Father initially refused to participate in the offered ninety-minute weekly supervised visits because the visits were not long enough, but that supervised visits had occurred between October and November 2022. The Department, however, had significant concerns due to inappropriate interactions by Father during those visits. Specifically, Father had told A.B. that her foster parents were "going to beat her up[,]" and he repeatedly told A.B to change her story about the abuse. A.B. refused to visit with Father after November 23 when Father whispered to A.B. "to stop lying." Due to A.B.'s fear of Father and her threats of self-harm following their last visit, the court, on January 9, 2023, amended Father's visitation order, to supervised visitation at the "discretion of [A.B.] and as therapeutically recommended." Following the January hearing, A.B. disclosed at school that she was afraid of Father and would kill herself if she had to visit with him. A.B.'s therapist, with whom she has been meeting with since November 2022, did not currently recommend visitations with Father.

Ms. Saunders related that, since coming into foster care, A.B. has disclosed further instances of abuse by Father when she lived with him that included threatening her, grabbing her crotch area, and watching pornography in front of her. Ms. Saunders testified that when she initially spoke to Father, he told her that "[A.B.] don't have a mother[.]"

Ms. Saunders related that Mother has told her that Father was "very aggressive towards her[,]" but when the car incident happened, a witness offered to call the police for

her to pursue charges, but she had declined to do so. Mother also told her that, when Father gets frustrated with her, he tells her that he will "cut her out of" A.B.'s life.

Based on the sustained allegations, the juvenile court, at the conclusion of the dispositional hearing, ruled that A.B. was a CINA. The court awarded custody of A.B. to the Department and ordered no contact between A.B. and Father due to A.B's "extreme fragile [mental] health" and the risk of "self[-]harm if forced to see" Father. The court nonetheless scheduled an expedited review hearing to review A.B.'s mental health with the hope of reinitiating visitation with Father. Both Father and Mother were ordered, among other things, to cooperate with the Department, including signing release forms for educational, medical, and mental health services and allowing scheduled and unscheduled home visits. In addition, Father was also to complete parenting classes and a mental health evaluation and to enroll in anger management classes.

Father appealed the juvenile court's order. We shall provide additional facts below to address the questions presented on appeal.

STANDARD OF REVIEW

Maryland appellate courts utilize three different but interrelated standards when reviewing CINA proceedings.

> In CINA cases, factual findings by the juvenile court are reviewed for clear error. An erroneous legal determination by the juvenile court will require further proceedings in the trial court unless the error is deemed to be harmless. The final conclusion of the juvenile court, when based on proper factual findings and correct legal principles, will stand unless the decision is a clear abuse of discretion.

In re Ashley S., 431 Md. 678, 704 (2013) (citing *In re Yve S.,* 373 Md. 551, 586 (2003)). "[I]f there is competent or material evidence in the record to support the court's conclusion[,]" the juvenile court has not committed clear error. *Goss v. C.A.N. Wildlife Tr., Inc.*, 157 Md. App. 447, 455-56 (2004) (quotation marks and citation omitted). An abuse of discretion occurs when "no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *In re Yve S.*, 373 Md. at 583 (quotation marks and citation omitted).

DISCUSSION

I.

Pursuant to CP § 11-304, the Department, at the adjudicatory hearing, sought to introduce A.B.'s out-of-court statements to Ms. Vogel and Ms. Saunders. Under that provision, the court examined A.B. at an in camera hearing that was recorded to determine if her statements were trustworthy. Those present at the examination were A.B., her attorney, the judge, and court personnel. Father's counsel had objected "to our not being allowed to be present. I understand that it's main[ly] discretionary per the statute." After reviewing the statute, the court stated: "I don't think it's discretionary" but that the statute did not permit Father's attorney to be present during the hearing.

During the recorded hearing, A.B. stated that she was ten years old, in the fourth grade; she described some of her favorite things at school. She told the judge about meeting with two social workers and discussing with them her home life, although she could not recall Ms. Vogel's name. She described telling them about Father "threatening" her;

"whooping" and "beating" her; "cursing" and saying "really inappropriate and terrible things" to her; and trying "to run over my Mother with his car[.]"

Following the court's examination, the court gave the parties and their attorneys a detailed summary of the court's questions to A.B. and her responses, as well as describing her demeanor. Each of the parties' attorneys then presented arguments regarding the trustworthiness of A.B.'s statements. Over a total of seven pages of typed transcript, the court analyzed each of the thirteen factors set forth in CP § 11-304 to be considered when determining trustworthiness of a statement. It concluded that A.B.'s statements to the two social workers were trustworthy and admissible. At the adjudicatory hearing, both Ms. Vogel and Ms. Saunders testified as to statements A.B. made regarding Father's physical abuse.

Father argues on appeal that the juvenile court committed reversible error in admitting A.B.'s out-of-court statements. First, he argues that the juvenile court erroneously ruled that the statute did not allow for the presence of his attorney during its interview of A.B., and, if the court had the discretion to exclude Father's attorney under the statute, that it abused its discretion in doing so. Second, Father argues that admitting the two out-of-court statements was error because the statements were not trustworthy. The Department responds that the court committed no error.

A. Law

When construing the terms of a statute, "we typically begin with the normal, plain meaning of the language of the statute." *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 421 (2016) (quotation marks and citation omitted). When the language is unambiguous

and consistent with its apparent purpose, we apply it as written. *In re R.S.*, 242 Md. App. 338, 357 (2019). "We neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute, and we do not construe a statute with forced or subtle interpretations that limit or extend its application." *Lockshin v. Semsker*, 412 Md. 257, 275 (2010) (quotation marks and citations omitted); *see also Wheeler v. State*, 281 Md. 593, 596 (1977) ("[W]e must confine ourselves to the statute as written, and may not attempt, under the guise of construction, to supply omissions or remedy possible defects in the statute.").

CP § 11-304, titled "**Out of court statements of certain child victims**", is informally called the "tender years statute," and states conditions under which a court may admit a child's out-of-court statement to prove the truth of the matter asserted in certain proceedings.[5] *See State v. Snowden*, 385 Md. 64, 85 (2005). Specifically, the statement must be made by a child victim who (1) is less than thirteen years of age, and (2) is the alleged victim or a child alleged to need assistance in a case concerning abuse or neglect in a juvenile court proceeding. CP § 11-304(b). The person to whom the child made the statement must be "acting lawfully in the course of [his or her] profession when the statement was made[.]" The stated professions include a social worker. CP § 11-304(c). The statement may be admitted in a CINA case, regardless of whether the child testifies, "if the statement is not admissible under any other hearsay exception[.]" CP § 11-304(d)(2)(i)(1). If the child does not testify, the statement is admissible "only if there is

[5] The statute authorizes the admission of out-of-court statements made by a child victim in a juvenile court or criminal proceeding.

corroborative evidence that the alleged offender had the opportunity to commit the alleged abuse or neglect." CP § 11-304(d)(2)(ii). Additionally, the statement must have "particularized guarantees of trustworthiness" with the statute listing thirteen factors that the court "shall" but is not limited to considering. CP § 11-304(e)(2).

Relevant to appellant's first argument, the statute provides that in determining admissibility of a statement, a juvenile court "shall" make a finding on the record as to the trustworthiness of the statement and determine whether the statement is admissible. CP § 11-304(f). In making that determination, the court "shall examine the child victim or witness in a proceeding in the judge's chambers, the courtroom, or another suitable location that the public may not attend[.]" CP § 11-304(g)(1). The statute specifically provides who may be present during the hearing:

> (2) Except as provided in paragraph (3) of this subsection, any defendant or child respondent, attorney for a defendant or child respondent, and the prosecuting attorney *may be present* when the court hears testimony on whether to admit into evidence the out of court statement of a child victim or witness under this section.
>
> (3) When the court examines the child victim or witness as paragraph (1) of this subsection requires:
>
> > (i) one attorney for each defendant or child respondent, one attorney for the child victim or witness, and one prosecuting attorney *may be present* at the examination; and
> >
> > (ii) the court *may not allow* a defendant or child respondent to be present at the examination.

CP § 11-304(g) (emphasis added). A "child respondent" is defined as a person who is alleged to have or has committed a delinquent act.[6] CP § 11-101(b). A "prosecuting attorney" is defined as a State's Attorney or State's Attorney's designee, the Attorney General or Attorney General's designee, or the State Prosecutor, or State Prosecutor's designee. CP § 11-101(e).

Under the plain language of the statute, a defendant, child respondent, their attorneys', and the prosecuting attorney may be present *when the court hears testimony on whether to admit* the statement. *See* CP § 11-304(g)(2). However, *when the court examines the child victim or witness*, the statute specifically states that the court may not allow a defendant or child respondent to be present but may allow: (1) one attorney for a defendant or child respondent, (2) one attorney for the child victim or witness, and (3) one prosecuting attorney. *See* CP § 11-304(g)(3). Father's attorney did not fall squarely within any of the designated categories. The attorney did not represent a child respondent, a child victim or witness, was not the prosecuting attorney and did not represent a "defendant," as Father was not a "defendant" for the simple reason that this was a CINA proceeding, not a criminal proceeding. *See In re Blessen H.*, 163 Md. App. 1, 15 (2005) (recognizing that criminal trials, probation revocation hearings, and juvenile delinquency proceedings are "punitive and carry incarceration as a direct consequence" and that, in contrast, CINA actions "are non-punitive, civil actions"), *aff'd*, 392 Md. 684 (2006).

[6] In 2001, the Maryland General Assembly added the term "child respondent" each time the statute referenced a "defendant" to reflect that the title applies to juvenile delinquency matters "as well as criminal court." *See* 2001 Md. Laws, ch. 10, Revisor's Note.

Father does not argue that he or his attorney fit into any of the above categories or that the statute is unconstitutional. He simply asserts, without argument or support, that the juvenile court "erred by finding that the statute did not allow for [Father's] counsel to be present at" the proceeding. Based on the plain language of the statute, we are not persuaded. *See Rosemann v. Salsbury, Clements, Bekman, Marder & Adkins*, *LLC*, 412 Md. 308, 327 (2010) ("We cannot judicially place in the statute language which is not there in order to avoid a harsh result [and e]ven where we have determined that an omission from a statute was inadvertent, we have declined to supply words to reach a desired result" and noting that "to supply omissions transcends the judicial function [for i]f the situation brought to light by this case is an oversight, it is a matter for the Legislature to correct." (cleaned up)).

Father also argues that, to the extent excluding his counsel was discretionary, the court abused its discretion. First, he argues that his attorney's presence would not have traumatized A.B. because her attorney and other court personnel were present. Second, the exclusion undermined the attorney's, and, by extension, Father's, ability to assess A.B.'s demeanor and to have A.B.'s verbatim answers to the court's questions. Again, we are not persuaded.

"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) (citing *Muthukumarana v. Montgomery Cnty.*, 370 Md. 447, 477 n.20 (2002)), *aff'd*, 387 Md. 260 (2005). Prejudice in this context means "that it is likely that the outcome of the case was negatively affected by the court's error." *Id.*

On this record, we are not persuaded by Father's argument that the exclusion of his counsel "undermined [his] ability to assess A.B.'s demeanor and hear verbatim her answers to the court's questions – crucial factors in what would encompass the court's determination on whether to admit her statements." The record reflects that Father has claimed throughout that A.B. (and nearly everyone else involved in this case) is lying about him and has tried to get her to stop doing so. Here, the court, not Father, was the fact finder to whom A.B.'s demeanor and answers were most important, not an explanation of the prejudice to him. The court provided a detailed account of the questions asked, the answers given, and its assessment of A.B.'s demeanor. Moreover, the court did not permit the Department's attorney or Mother's attorney to be present. In short, we perceive neither error nor an abuse of discretion but even if there were, Father has not demonstrated that his attorney's absence when the court interviewed A.B. in any way "negatively affected" the outcome in this case.

B. Were A.B.'s statements admissible because they possessed particularized guarantees of trustworthiness?

Father does not argue that the juvenile court failed to address each of the thirteen statutory factors regarding trustworthiness. He argues instead that the court should have weighed the factors differently and reached a different conclusion, *i.e.*, that A.B.'s statements were not trustworthy. More specifically, he asserts that A.B.'s statements were untrustworthy because: (1) there was no corroboration, physical or otherwise, of A.B.'s claim that she was "being beaten" at home; (2) A.B. gave no timeline nor any detail regarding her allegations, other than stating that it occurred "always" and "all the time";

(3) A.B. was inaccurate about other events she testified to, specifically, that she was present when Father attempted to run over Mother when in fact she was at school, and that her Mother and infant sister lived with her and Father at some point when in fact the infant was still in the hospital; and (4) citing *Prince George's Cnty. Dep't of Soc. Servs. v. Taharaka*, 254 Md. App. 155 (2022), the court minimized A.B.'s desire to live with Mother as a possible reason to fabricate abuse by Father. As he sees it, the juvenile court should have but failed to determine whether A.B. understood what it meant to tell the truth or to lie.

Contrary to Father's argument, the court considered all of the evidence, including the evidence (or the lack of evidence) related above by Father but came to a different, yet reasonable conclusion. *See Omayaka v. Omayaka*, 417 Md. 643, 659 (2011) (A juvenile court is "entitled to accept—or reject—*all*, *part*, or *none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence."). The juvenile court's ruling that A.B.'s statements were trustworthy was not clearly erroneous merely because permissible but different inferences "might have been drawn from the evidence by another trier of the facts." *Id.* (quotation marks and citation omitted).

In *Taharaka*, cited by Father, we found under the particular circumstances of that case that an administrative law judge's conclusion that a desire to live with a different parent was a motive for the child to fabricate allegations of sexual abuse was reasonable. But in doing so, however, we did not suggest that another court must reach the same conclusion when a child desires to live with a noncustodial parent. *See Taharaka*, 254 Md. App. at 174 (finding that "[a]lthough we might not have counted it as the ALJ did, we

perceive the ALJ's analysis here to be reasonable"). We also reject Father's argument that the court erred when it failed to test A.B.'s "truth competency." In *In re J.J.*, 456 Md. 428, 450 (2017), *cert. denied*, 139 S. Ct. 310 (2018), the Supreme Court of Maryland held that the "plain language of [CP § 11-304] does not require a juvenile court to find that a child is truth competent before admitting that child's statement under the statute[.]" There was sufficient evidence in this case to support the juvenile court's conclusion that A.B.'s out-of-court statements to Ms. Vogel and Ms. Saunders of Father's physical abuse possessed particularized guarantees of trustworthiness to be *admissible* under the tender years exception to the hearsay rule.

II.

Father argues that the juvenile court erred in finding A.B. a CINA because the evidence was insufficient to show A.B. was abused or neglected, and that he was unwilling or unable to care for her. The Department responds that the juvenile court properly found that A.B. had been abused or neglected, and Father was unable or unwilling to meet her needs.

To find a child a CINA, a court must find by a preponderance of the evidence that "(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." CJP §§ 3-801(f), 3-817. "Abuse" is defined to include "[p]hysical or mental injury of a child under circumstances that indicate that the child's health or welfare is harmed or is at substantial risk of being harmed by . . . [a] parent[.]" CJP § 3-801(b)(2)(i). "Neglect" is defined as

the "leaving of a child unattended or other failure to give proper care and attention to a child" such that the child's "health or welfare is harmed or placed at substantial risk of harm[.]" CJP § 3-801(s)(1)(i). "[A] court does not need to wait until a child suffers physical or mental injury prior to determining that neglect occurred." *Doe v. Allegany Cnty. Dep't of Soc. Servs.,* 205 Md. App. 47, 58 (2012).

In making a CINA determination, a juvenile court conducts two hearings: an adjudicatory hearing and a disposition hearing. CJP §§ 3-817, 3-819. At an adjudicatory hearing, where the rules of evidence apply, the court must "determine whether the allegations in the petition, other than the allegation that the child requires the court's intervention, are true." CJP § 3-801(c). At the disposition hearing, the court determines whether the child meets both prongs of the CINA definition and the intervention necessary "to protect the child's health, safety, and well-being." CJP § 3-801(f), (m)(2).

As to Father's argument that the juvenile court erred in finding that he physically harmed A.B. because there was no evidence of harm other than A.B.'s statements, Father cherry-picks evidence from the adjudicatory hearing, such as Alexis's testimony that she had never seen Father abuse A.B. and testimony that no one at school reported seeing bruises or marks on A.B. As to Father's argument that the juvenile court erred in finding that he neglected A.B., he contends that A.B. did not have any mental health needs prior to her coming into shelter care and that he was unaware of and did not understand the IEP process. As to his argument that the juvenile court erred in finding that he was unwilling or unable to care for A.B., he contends that he is willing to care for her, as evidenced by his testimony that he wants her returned to him, and he is able to care for her, as evidenced

by his "outright deni[al of] the wrongdoing A.B. has accused him of[.]" In other words, he was not required to show any change in his behavior because he has always been and is a "competent" and "able caretaker[.]"

Here, there was sufficient evidence of Father's conduct and inaction to show both that he physically abused and neglected A.B. The juvenile court found A.B.'s statements of physical abuse credible. *See In re Priscilla B.*, 214 Md. App. 600, 632 (2013) (acknowledging that factual determinations are "a simple question of whom the court cho[oses] to believe, and the court was free to believe either party"). There was also sufficient evidence that Father was neglectful of A.B.'s mental health and educational needs. For example, Father refused to allow implementation of an IEP plan for A.B. despite evidence that she was assaulting school personnel and peers. He denied her emotional dysregulation and her disruptive behavior was causing her to miss at least ninety minutes of instruction time every day. Additionally, there was sufficient evidence before the juvenile court that Father was unwilling or unable to provide proper care and attention to A.B. He refused to engage in any services provided to him by the Department and failed to engage in any services for A.B. He also engaged in such inappropriate behavior during supervised visitations that A.B. became so fearful that she contemplated suicide if forced to live with Father again. In short, there was competent evidence to support the juvenile court's ruling that A.B. was a CINA.

III.

Lastly, Father argues that the juvenile court erred when it suspended visitation between A.B. and himself. The Department argues that the juvenile court did not abuse its

discretion in suspending visits between Father and A.B. as it would not be in A.B.'s best interest to have contact.

Visitation is "an important, natural and legal right" of a parent, but it "is not an absolute right[.]" *North v. North*, 102 Md. App. 1, 12 (1994) (quotation marks and citations omitted). Consistent with the Maryland Supreme Court's decision in *In re Yve S.*, 373 Md. at 587, once a court has declared a child a CINA, the court is "constrained by [Md. Code Ann., Family Law ("FL")] § 9-101 in its custody determination[,]" and whether there will be visitation. *In re X.R.*, 254 Md. App. 608, 633-34 (2022). Specifically, the juvenile court must "determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party." FL § 9-101(a). In the absence of being able to make that determination, the court "shall deny custody or visitation[,]" or it may approve some supervised visitation "that assures the safety and the physiological, psychological, and emotional well-being of the child." FL § 9-101(b). "The burden is on the parent previously having been found to have abused or neglected his or her child to adduce evidence and persuade the court to make the requisite finding under § 9-101(b)." *In re Yve S.*, 373 Md. at 587. In other words, a juvenile court's visitation determination must be in the best interest of the child, and visitation may be restricted or denied when the child's health or welfare is threatened. *In re J.J.*, 231 Md. App. 304, 347 (2016), *aff'd*, 456 Md. 428 (2017). *See also Boswell v. Boswell*, 352 Md. 204, 221 (1998) ("[V]isitation generally is awarded to non-custodial parents not for their gratification or enjoyment, but to fulfill the needs of the child, [and] when the child's health or welfare is at stake visitation may be restricted or even denied.").

Here, the juvenile court found that the reason A.B. entered the Department's care remains the same. Father has been unwilling to work with the Department in any way to make any changes. Moreover, A.B. expressed ideation of suicide if she was placed with Father. At the time of the disposition hearing, A.B.'s therapist recommended no contact between A.B. and Father due to the risk of harm to A.B., but the therapist was talking with Father to determine the appropriateness of his communication with A.B. in therapy.

At the disposition hearing, the Department argued that visitation should be suspended until A.B.'s therapist recommends visitation. A.B.'s attorney argued that there be no contact until further therapeutic interventions for A.B. Father's attorney advised that Father is "becoming engaged" and "talking to the therapist[.]" The juvenile court ordered a suspension of visitation due to the child's "extreme fragile health" and statements of "self[-]harm if forced to see . . . Father." Nevertheless, it ordered an expedited review hearing report by the Department to assess the child's mental health status to determine if visitations could be resumed. The court stated: "I'm very cognizant of the best interest of [A.B.] and here I find that there is an immediate threat of harm or risk of harm based upon what [A.B.] is saying, that she would harm herself, and . . . I'm also very cognizant of [Father's] constitutional rights, and for those reasons" the court ordered a review hearing within thirty to forty-five days.

Father argues that any concerns that the court had about Father's visitation with A.B. "could have been assuaged by clear but less restrictive orders than the . . . most restrictive option—total denial of any contact between a parent and his child." We,

however, are persuaded that the juvenile court did not err or abuse its discretion in suspending visitation between Father and A.B. at this time.

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