Circuit Court for Baltimore County
Case No.: C-03-JV-22-000345
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UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1315

September Term, 2023

IN RE: K.W. & M.W.

Wells, C.J.,
Beachley,
Woodward, Patrick, L.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: July 11, 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).

Appellants, Ms. P. ("Mother") and Mr. W. ("Father") appeal from an order of the Circuit Court for Baltimore County, sitting as juvenile court, finding their children, K.W. and M.W. (collectively, "the Children"), to be Children in Need of Assistance ("CINA"). Mother presents four questions for our review, which, as stated in her brief, are as follows:

1. Did the court err in finding the [C]hildren to be CINA?
2. Did the court err in finding that the [D]epartment made reasonable efforts to prevent placement of the [C]hildren outside the home?
3. Did the court commit error when it ordered that visits would be in the discretion of the [C]hildren in conjunction with their therapist?
4. Did the court err when it ordered [Mother] to participate in a parenting evaluation?

Father, in a separate brief, presents four issues for our review, which, as stated in his brief, are as follows:

1. Whether [K.W.'s] out of court statements were improperly admitted through third party testimony pursuant to § 11-304 of the Criminal Procedure Article.
2. Whether the Juvenile Court erred in allowing photos to be admitted into evidence during the Adjudication Hearing on January 30, 2023 per Maryland Rule 5-1004.
3. Whether the juvenile court erred in finding that [the Department] had made reasonable efforts to prevent removal of the [C]hildren from the home and throughout the pendency of the matter.
4. Whether the Juvenile Court erred in admitting into evidence at the adjudication phase all court reports from the Respondents' prior closed CINA.

For the following reasons we affirm the judgments of the circuit court.

BACKGROUND

Mother and Father are the parents of K.W., born in 2011, and M.W., born in 2014. Mother and Father first came to the attention of the Baltimore County Department of Social Services (the "Department") in 2012 when K.W. and his older half-sister, H.P., were

removed from the care of Mother and Father after Father put H.P. in a dryer and threatened to throw her off a balcony as punishment. Both children were placed in the care of relatives while Mother and Father worked with the Department to complete parenting services, and they were returned home in 2014.

In February 2017, the Department found that Mother was indicated for physical abuse of H.P. after she pulled H.P.'s hair, threw a remote control at her, and hit her with a belt for not supervising her younger brothers. On March 16, 2017, a video was posted on social media that showed Mother repeatedly hitting H.P. and K.W. and threatening to beat them to death. That same day, H.P. stated in an interview with the Department that she, K.W., and M.W. were hit frequently by Mother and Father. The Department found that, as to all three children, Father was indicated for neglect and Mother was indicated for physical abuse. H.P., K.W., and M.W. were removed from the family home, and the next day the Circuit Court for Baltimore County, sitting as a juvenile court, ordered all three children to be placed in the care of the Department.

After the removal of the Children, Mother was charged with two counts of child abuse in the second degree and two counts of assault in the second degree. H.P. was placed in the care of her maternal aunt, who adopted her with Mother's consent in 2021. The Children were placed in foster care, but after ten days they had to be moved to a different foster care family because K.W. was demonstrating sexualized behaviors and was aggressive with other children. K.W. also was destructive towards objects in the foster home and needed reassurance that he would not be hit as a form of punishment.

Starting in April 2017, K.W. began seeing a therapist, Erica Riley. Ms. Riley found that K.W. was expressing his feelings in ways associated with neglect and physical abuse, including wetting his pants after visiting with Father, nightmares, and physical aggression, as well as sexualized behaviors and language. As for M.W., who was two years old at this time, the Department found that he demonstrated aggression and emotional and physical disturbances, as well as adult-like sexualized behaviors. On June 16, 2017, the Children were removed from their second foster home and were placed in the care of the B family, a foster care resource in Washington County.

On July 20, 2017, Mother pleaded guilty to child abuse in the second degree and received a ten-year suspended sentence and five years of probation. On July 24, 2017, the juvenile court found the Children to be CINA and ordered Mother to have no contact with the Children. Father was allowed to have supervised visits with the Children. In September 2017, the juvenile court ordered the Children to be referred to the Court-Appointed Special Advocate ("CASA") program and suspended all visits between the Children and their parents. Once visits were suspended, the B family noticed a decrease in the Children's negative and sexualized behaviors. In January 2018, K.W. began seeing a new therapist, Kelsey Green, who stated that K.W. was working on processing the significant trauma he experienced by his parents. On February 8, 2018, the juvenile court ordered that there should still be no visits between the Children and their parents until therapeutically indicated. Beginning in March of 2018, the Children also began having regular monthly visits with H.P. The B family noted an increase in K.W.'s sexualized behaviors for several days following visits with H.P.

On June 20, 2018, H.P., who was seven years old, reported past sexual abuse from when she was under the care of Mother and Father. H.P. disclosed that Father made an adult male, who often visited Mother and Father's home, sleep in her room, and the man proceeded to perform oral sexual acts on her. In August 2018, the B family gave notice to the Department to have the Children moved to a new home, although they agreed to remain a placement for the Children until a new placement was identified. The B family expressed concerns regarding the Children's aggressive and sexualized behaviors and that those behaviors worsened after their weekly visits with H.P.

On September 18, 2018, the juvenile court ordered that the Children and their parents engage in reunification therapy and that the Children should visit with H.P. on a weekly basis. Heather Stanley, a reunification therapist, was chosen by the Department to provide reunification therapy for Mother, Father, and the Children, and she conducted several therapy sessions with Mother, Father, and the Children. However, on December 19, 2018, Ms. Stanley provided a letter to the court stating that she would not proceed with services between the Children and their parents because she believed further contact would put the Children at risk of re-traumatization. On January 4, 2019, the court ordered that there should continue to be no visitation between the Children and their parents and a minimum of one visit a week between the Children and H.P. In early 2019, the Department identified a new therapeutic placement for the Children.

On April 3, 2019, the juvenile court approved the Children's move to their new foster home and ordered that there should be no visitation between Mother, Father, and the Children pending a recommendation of visitation from the Children's therapist. On April

5, 2019, the Department moved the Children to their new therapeutic foster home. However, the Children's new placement lasted only three weeks due to the Children's aggressive, manipulative, and sexualized behaviors. Specifically, K.W. exhibited aggressive and sexualized behaviors to a six-year-old child living in the foster home. The B family agreed to continue to be a foster care resource for the Children, and after some time the Children's negative behaviors decreased.

Throughout the rest of 2019 and 2020, the Children lived with the B family and continued to have no visits with Mother and Father. In June 2019, M.W. was found to be inappropriately touching other Children in his daycare. On November 19, 2019, visits between the Children and H.P. were changed to monthly instead of weekly. The Children underwent a psychological evaluation on December 13, 2019, and K.W. was diagnosed with PTSD and ADHD, and M.W. was diagnosed with an unspecified trauma-and-stressor related disorder.

On October 26, 2020, the juvenile court ordered that Mother and Father have liberal and supervised visits with the Children. The visits began on November 13, 2020, and, by April 5, 2021, the Children had completed twenty visits with their parents. During these visits, the Children often became defiant, disruptive, and attention-seeking, which required constant redirection and de-escalation. The Department found that, although the Children enjoyed visiting with their parents, they often became distressed after the visits.

Due to issues with the Children's behavior, the B family asked the Department to remove the Children from their home. Instead of finding a new foster home for the Children, on September 24, 2021 the Children were placed back in the care of Mother and

Father on a trial home visit. Soon after the Children's placement with Mother and Father, K.W. made comments that he wanted to kill himself, threatened M.W. with a knife, and stabbed Mother with a pen while getting ready for school. On November 18, 2021, K.W. threatened to kill himself or M.W. with a knife in the Children's school cafeteria. On February 24, 2022, K.W showed his teacher, Shannon Zeidler, a red mark on his cheek from Mother pushing him into the street at a bus stop. K.W. told Ms. Zeidler that it was okay because there were no cars coming. In early March 2022, the Childrens' teachers and social worker began to share concerns about a change in the Children's behavior, apparently because of their failure to take their medication. On March 17, 2022, the CASA worker met with the Children and found that they both looked dirty and unkempt, especially K.W. Later in March, the Children's school counselor noticed that K.W.'s behavior continued to get worse and become disruptive to K.W.'s class. Nevertheless, the CINA case was closed on April 20, 2022.

On May 17, 2022, K.W. arrived at school with a scratch on his face and dried blood in his nose, and Ms. Zeidler asked him how that happened to him. K.W. told Ms. Zeidler that Father threw a boot at his face because he would not stop talking. The Baltimore County Police came to K.W.'s school later that day to take a report and photograph K.W.'s injuries. On May 18, 2022, Mackenzie Cooke, a social worker for the Department, interviewed K.W. about the incident. K.W. told Ms. Cooke that Father threw a black boot at his eye because he would not stop talking. On the same day, K.W. told Marge Roberts, the school principal, the same version of the events and that Mother was upset that he told people about the incident because he would have to go back to foster care.

Ms. Cooke also interviewed M.W. about the incident. M.W. told Ms. Cooke that Father threw a boot at K.W.'s face. M.W. stated that he was under his bed when he heard K.W. scream and cry, and M.W. went to see what happened. M.W. also told Ms. Cooke that Father gets angry easily because he stopped taking his "anger pills." Finally, M.W. told Ms. Cooke that their parents would hit K.W. and him as a form of discipline.

On May 19, 2022, the Department filed a CINA Petition with Request for Shelter Care in the Circuit Court for Baltimore County, asking that the court find the Children to be CINA and order them removed from the care of Mother and Father. That same day, the court granted the Department's shelter care request and ordered the Children to be placed in the custody of the Department pending disposition. The Children were placed back in the care of the B family. The adjudication hearing was scheduled for June 6, 2022 but, after several postponements, eventually took place over seven days from January 27, 2023 to July 5, 2023. Prior to the hearing, the Department filed an amended petition on September 23, 2022.

At the conclusion of the final day of the hearing, July 5, 2023, the juvenile court sustained the allegations in all but one of the paragraphs of the Department's amended petition. The court also found that it was contrary to the Children's welfare to return to their parents' home because

> [b]oth parents and [C]hildren have ongoing mental health issues which prevent the parents from providing appropriate care at this time. Father physically abused [K.W.] by throwing a boot at his face. Mother has displayed an inability to protect the [C]hildren. There are also concerns of general neglect in the home including but not limited to behaviors toward school personnel, inappropriate statements to the [C]hildren, and poor hygiene. [The Children] were previously in care from 2017 until April 2022

> [], in part due to physical abuse and neglect by the parents. There remain concerns about their ability to provide proper care and attention at this time.

On August 31, 2023, the juvenile court held a disposition hearing at which it found the Children to be CINA and ordered the Children to remain in the care of the Department. In its oral opinion, the court stated as follows:

> This is probably one of the more troublesome cases because there's lots of different angles and different factors and certainly time is one of them. It, through nobody's fault, it did take over a year from the initial removal till we got to adjudication. And there were lots of bumps along the way.
>
> However, we also can't look at this incident in a vacuum. And for two children who are eight and ten, eight and eleven, over half their lives they've been in care. So, what may have, in the scheme of things, not been the most serious of incidents, in their eyes, it was.
>
> **[K.W.], I, I, I believe, I accepted [K.W.'s] vers [sic], statement as to what happened. I also accept the fact that they were told not to tell anybody what goes on in the house. And that's a scary thing for, for, for a child. So, I did find that the, that the incident occurred. And I did find, I did sustain the allegations in the Amended Petition.**
>
> And I did consider the, the prior history of removal. And the prior contacts that they had with their parents in making a determination that, that, that the removal was appropriate. And I looked at it not just from their point of view, and I also look at it from the point of view of the parents and what the parents have gone through and what the, what the boys have gone through.
>
> And I hear what parents' counsel is saying that how do we move towards reunification when there is no contact. But I also hear what the boys are saying. That they're, that they need time to heal, to get past that. And so, we've got to figure out what, where, where that is and what that is.
>
> **But for today's purposes, for the purposes of the Petition, I think adjudicated this Amended CINA Petition of September 23rd, 2022, I do find the facts are sufficient to find the [C]hildren in need of assistance. I do find that [Father] threw the boot at them and caused the injury.**
>
> **I do also find that the [C]hildren are reasonably in fear for, for both, and I do find for both of their parents. Their [F]ather has committed acts of physical abuse. But their [M]other is un, is unable to, to protect from them. Even today when she's saying, well, I'll separate from my husband, she's not validating the [C]hildren's concerns. And I find that concerning.**

She's not saying that she believes [K.W.] Just that she'll do whatever is necessary. But I think the [C]hildren need to be heard. And that's what's in their best interest, and I hear, I find the [C]hildren are just not being heard by their parents.

And I find the parents' distrust of the Department concerning. The Department has no ulterior motive. I don't find the Department has acted in any way that, that would, that, that has an ulterior motive. I think one of the reports I read, the parents said that the Department just wants (inaudible) and that's why the [C]hildren were removed.

I don't find the Department is acting with any ulterior motive. But I, I, but the parents' distrust of the Department has also caused the problems that gave rise to why we're here today.

So, the [C]hildren have, have a number of issues. There have been a number of medical diagnoses, mental health diagnosis, educational diagnosis, of the [C]hildren, that need particular care. The parents have their own mental health diagnosis, that also need attention and care.

And I do think a fitness to parent evaluation is appropriate in order to determine what services are necessary. When I hear the Department say that there are no services, I think that, I take that to mean they haven't been able to identify what services are necessary.

But I think a fitness to parent is the first place to identify what else needs to be done. I don't necessarily know that a parenting aid[e] would solve the problems because the [C]hildren aren't in the home. And I don't think the parents, at this point, need help in parenting. And I agree the parents have made strides in their own personal achievements.

I, I give [Mother] full credit for all that she's accomplished during these periods in obtaining employment, in obtaining a driver's license, in obtaining vehicles. She has, she has acted independently and, and researched and tried to avail herself of programs. Whether they were the right ones or not becomes the issue. Or is she, is she so fixated on the parenting classes and everything else, (inaudible) going by the wayside.

So, I think we need to figure out exactly what needs to be done, because reunification is the goal and reunification needs to be the goal. And, which is one of the reasons why I said at the beginning, I need to hear from, from Ms. Diaz. And I think that's still very important. Because I, I need to know a little more about what's going on in order to determine what context is appropriate.

I don't want these [C]hildren so empowered that they make the determination what, where they should be because you're right, they're not the Judges, I am. It's ultimately my decision as to what's in their best interest. Whether it's a custody case or CINA case, best interest of the [C]hildren do still, does still re, maintain the standard but it's my decision. But I need as much information as I can get.

And I do listen to what the [C]hildren have to say. But it's not their ultimate decision. And the Department can only go so far. So, I want to hear from Ms. Diaz as to what's going on because I think that her input into it is essential in making a determination as to the contact in moving forward.

So, for today's purposes, **I do find the [C]hildren to be in need of assistance. I do find that the, that the incident which occurred on May 9th, May 17th, where a boot was thrown at [K.W.] by [Father]. That the [C]hildren were told not to discuss what occurs in the home and that's what in their mind was going to get them in trouble.**

I don't believe a safety, I don't believe a safety plan would have helped in this incident, in this instance. The [C]hildren had not been home, having re, having been removed some five years earlier, had just been returned home some couple of months earlier after a nine-month trial home visit.

So, I don't find the fact that there was not a trial home visit to be a lack of reasonable efforts. I think the history of this case shows the Department has made reasonable efforts to avoid removal.

I do find that it is contrary to the [C]hildren's welfare and not now possible to return the [C]hildren to the home. The [C]hildren have a, have a number of special issues that need to be addressed. The parents also have issues which need to be addressed.

The [C]hildren have been removed previously for an extended period of time. Had been home for less than a year before being removed again. **I do find the Department has made reasonable efforts. They have tried to offer whatever services were available to them. The parents have chosen not to accept some services.**

I do find that there is no further likelihood of abuse or neglect to the custody and visitation rights granted herein occur. That the [C]hildren should be committed to the custody of the Department of Social Services and the Department of Social Services and Mr. and Mrs. [B.] are granted temporary limited guardianship.

For today's purposes, visitation shall remain as stated in the adjudication Order. I know parents have filed a Motion in regards to that therapeutic, but **therapeutic visits have been offered. The [C]hildren have refused to participate, and I think that's the difference here, for today's purposes.**

I think the Department has, has followed through. It took a while and there were a number of hearings to get us to the point where the therapeutic visits were being offered, but they are being offered. The [C]hildren are refusing to participate.

So, for today's purposes, visitation is liberal and supervised at the Respondent's discretion in consultation with the [C]hildren's therapist. Those visits shall include therapeutic visitation. I understand that the

> **[C]hildren are refusing to attend those visits. That needs to be explored further. But the Department has followed through on the Court's instructions.**
>
> Additionally, the Department shall facilitate the weekly telephone calls between the Respondents and their parents. Again, I find the Department is following through on their obligations. It's the [C]hildren who are refusing to participate in these telephone calls. That doesn't alleviate the requirement that they occur.
>
> The parents shall submit to a fitness to parent study. In regards to a bonding study, given the fact that it has been so long since the [C]hildren have even seen, have had contact with their parents, I, I question what useful information at this juncture a bonding study is going to, is going to provide.

(Emphasis added.)

The parents timely noted their respective appeals of the juvenile court's order. We shall provide additional facts as necessary to the resolution of the questions and issues presented in this appeal.

STANDARD OF REVIEW

The standards of review applied to a juvenile court's findings in a CINA proceeding were recently discussed by this Court in *In re J.R.*:

> There are three distinct but interrelated standards of review applied to a juvenile court's findings in CINA proceedings. The juvenile court's factual findings are reviewed for clear error. Whether the juvenile court erred as a matter of law is determined without deference; if an error is found, we then assess whether the error was harmless or if further proceedings are required to correct the mistake in applying the relevant statute or regulation. Finally, we give deference to the juvenile court's ultimate decision in finding a child in need of assistance, and a decision will be reversed for abuse of discretion only if well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.

246 Md. App. 707, 730–31 (2020) (cleaned up).

In an evidentiary dispute, we review a trial court's ruling on the admissibility of non-hearsay evidence for abuse of discretion. *See Wilder v. State*, 191 Md. App. 319, 335

(2010). For hearsay, however, "the trial court's ultimate determination of whether particular evidence is hearsay or whether it is admissible under a hearsay exception is owed no deference on appeal, but the factual findings underpinning this legal conclusion necessitate a more deferential standard of review." *Gordon v. State*, 431 Md. 527, 538 (2013). Therefore, "the trial court's legal conclusions are reviewed de novo, but the trial court's factual findings will not be disturbed absent clear error[.]" *Id*. (citations omitted).

DISCUSSION

I. QUESTIONS RAISED BY MOTHER'S APPEAL

1. Did the juvenile court err in finding the Children to be CINA?

A. Arguments of Mother

Mother first argues that there was insufficient evidence for the juvenile court to find that Mother abused or neglected the Children. Mother asserts that "there was no indication that the [C]hildren were at harm or substantial risk of harm from [her] after the May 17 incident." According to Mother, there was no basis for the court's finding that the Children feared Mother because they successfully lived with her since September of 2021 and extensively visited with Mother before that. Further, Mother contends that she has been dealing with the same mental health issues throughout her life and that there was no evidence that such issues put the Children at significant risk of harm.

Second, Mother argues that the juvenile court erred when it found that Mother was unable to care for the Children. Mother contends that she addressed any concerns that the court had about her ability to care for the Children by stating that "she would separate from [Father] and work on reunification with the [C]hildren alone." Although the court stated

that Mother did not "validate the concerns of the [C]hildren[,]" Mother argues that she has consistently worked with the Department and has shown that she can keep the Children safe, and thus would be able to care for the Children. Finally, Mother argues that there was insufficient evidence presented to reach the "higher standard of proof [that] is required to remove children from their parent's custody."

B. Analysis

Under Md. Code, Courts & Judicial Proceedings ("CJP") § 3-801(f), a "child in need of assistance" is defined as "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." "The broad policy of the CINA Subtitle is to ensure that juvenile courts (and local departments of social services) exercise authority to protect and advance a child's best interests when court intervention is required." *In re Najasha B.*, 409 Md. 20, 33 (2009).

Under CJP § 3-801(t)(1), 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:
>
> (i) That the child's health or welfare is harmed or placed at substantial risk of harm; or
>
> (ii) That the child has suffered mental injury or been placed at substantial risk of mental injury.

Neglect may exist "without actual harm to the child." *In re Andrew A.*, 149 Md. App. 412, 418 (2003). "Thus, if there are two children involved in a parent's act or omission, but only

one child is harmed, there nevertheless may be neglect of the second child if, depending on the facts, the act or omission created a substantial risk of harm to the second child." *Id.* How a court should view neglect was discussed by this Court in *In re Priscilla B.*:

> It makes sense to think of "neglect" as part of an overarching pattern of conduct. Although neglect might not involve *affirmative* conduct (as physical abuse does, for example), the court assesses neglect by assessing the *inaction* of a parent over time. To the extent that inaction repeats itself, courts can appropriately view that pattern of omission as a predictor of future behavior, active or passive: "[it] has long been established that a parent's past conduct is relevant to a consideration of the parent's future conduct. Reliance upon past behavior as a basis for ascertaining the parent's present and future actions directly serves the purpose of the CINA statute." *In re Adriana T.*, 208 Md. App. 545, 570, 56 A.3d 814 (2012) (citations omitted). Differently put, "[c]ourts should be most reluctant to 'gamble' with an infant's future; there is no way to judge the future conduct of an adult excepting by his or her conduct in the past." *McCabe v. McCabe*, 218 Md. 378, 384, 146 A.2d 768 (1958). And of course, we 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." *In re William B.*, 73 Md. App. 68, 77–78, 533 A.2d 16 (1987).

214 Md. App. 600, 625-26 (2013) (emphasis and alterations in original).

In the instant case, Mother first argues that "there was no indication that the [C]hildren were at harm or substantial risk of harm from [Mother] after the May 17 incident." We disagree and shall explain.

The "overarching pattern of conduct[]" since the Children were removed from Mother's care in 2017 shows that the Children's health or welfare have been at "substantial risk of harm." *Id.* at 625; CJP § 3-801(t)(1)(i). In March 2017, the Children were initially removed from Mother's care because Mother was shown in a video to be repeatedly hitting K.W. and H.P. and threatening to beat them to death. The Department found indicated

physical abuse of H.P. by Mother on February 2, 2017 and indicated physical abuse of all three children by Mother on March 16, 2017.

Outside of the brief period of reunification therapy with the Children in 2018, Mother did not visit with the Children for over three and a half years. The next time the Children were under the care of Mother was in September 2021, when the Children were placed on a trial home visit with Mother and Father. Between September of 2021 and the removal of the Children in May of 2022, the Children's teachers and social workers found that Mother often sent the Children to school dirty and unkempt, particularly K.W. K.W. would sometimes fall asleep at his desk, and Mother did not make sure K.W. took his medication or completed his homework. In addition, K.W. reported to his teacher that Mother pushed him into the street at the bus stop, but that it was okay because there were no cars coming. These incidents, when considered in their totality, point to the conclusion that Mother's "overarching pattern of conduct[]" since the Children were initially removed in 2017 was one of neglect.

At the time of the May 17, 2022 incident, Mother was at home. Instead of properly caring for or protecting the Children, Mother was upset that K.W. told people about the incident. According to M.W., "his parents told him not to talk to people 'about this stuff,' because then the police are called." In addition, the juvenile court found that the Children were reasonably in fear of both parents and that the Children had repeatedly told the Department that they did not want to be returned to the care of their parents. The court also was concerned about Mother's failure to believe K.W. and validate the Children's

concerns. Therefore, we conclude that there was ample evidence supporting the juvenile court's finding of neglect of the Children by Mother.

Mother also argues that the juvenile court erred when it found that Mother was unable to care for the Children. We again disagree.

Despite Mother's claim that she would separate from Father, she never took any steps to actually separate from Father and still lived in the same mobile home with Father as of the disposition hearing on August 31, 2023, a year and four months after the Children had been removed from Mother's care. Even if she had separated from Father, it would not have solved the problem of Mother's own neglect of the Children, as explained in detail above. Mother had taken steps to improve her parenting ability by taking parenting classes, maintaining employment, and attending therapy; but Mother also had shown an unwillingness to make use of additional Department services and an inability to make sure that proper care was provided for the Children. When considering Mother's entire history with the Department, the evidence clearly shows a pattern of Mother's inability to care for the Children, ensure their needs are met, and keep them safe. The evidence supported the juvenile court's finding that the history of her past conduct demonstrated an inability of Mother to care for the Children in the future. *See In re Priscilla B.*, 214 Md. App. at 625-26.

Finally, Mother argues that "a higher standard of proof is required to remove children from their parent's custody." We recently discussed this "higher standard of proof" in *In re X.R.*:

> Mother next asserts that the denial of custody at the dispositional stage of a CINA proceeding must be made by clear and convincing evidence. Mother extrapolates the "clear and convincing" standard from a line of cases stretching back to 1983 that hold that a "more stringent" standard is required in order to deny custody of a child. *See, e.g., In re Jertrude O.*, 56 Md. App. 83, 98, 466 A.2d 885 (1983), *cert. denied*, 298 Md. 309, 469 A.2d 863 (1984); *In re Joseph G.*, 94 Md. App. 343, 350, 617 A.2d 1086 (1993) (holding that "a more stringent standard of proof is required to deny custody" than at the adjudication stage); *In re J.R.*, 246 Md. App. 707, 756, 232 A.3d 324 (2020) (reiterating this Court's holding in *In re Joseph G.* requiring a "more stringent standard" in order to deny custody). Notably, in none of these cases does the court specifically identify what the standard is, only that it must be "more stringent" than at the adjudication phase.
>
> As far as we can discern, in *Jertrude O.* we stated that there was a "more stringent standard" because "one of the express purposes" of the CINA statute is to "conserve and strengthen the child's family ties and to separate a child from [the child's] parents only when necessary for [the child's] welfare[,]" 56 Md. App. at 98, 466 A.2d 885 (quoting CJP § 3-802(a)(3) (as amended in 2001)), as well as the "emphasis upon retention of the family unit" underscored by the Supreme Court in *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). Although *Jertrude O.* did not specify what the standard was, the use of a "more stringent standard" has nonetheless been affirmed in multiple opinions by this Court. *See, e.g., In re R.S.*, 242 Md. App. 338, 374, 215 A.3d 392 (2019) (citing the "more stringent standard of proof" in denying custody at disposition); *In re Damien F.*, 182 Md. App. 546, 568, 958 A.2d 402 (2008) (citing the same).
>
> But we note that the CINA statute does not explicitly call for employment of a heightened standard to deny a parent custody at the dispositional stage. Therefore, we clarify that our prior use of the phrase "more stringent standard" does not connote a new standard of proof, as Mother argues, but refers to the quality of the evidence to be adduced at CINA dispositions. *C.f., United Parcel Service, et al. v. Strothers*, 253 Md.App. 708, 269 A.3d 400 (2022).

254 Md. App. 608, 625-26 (2022).

Regarding the "quality of the evidence" necessary to deny Mother's custody of the Children upon a finding of CINA, Mother fails to articulate why the evidence adduced in the instant case fails to meet the "more stringent standard" for denying her custody of the Children. Mother simply points to Father leaving the home sometime in the future, her managing her mental health in the past, and her agreeing to work with the Department "to build a stronger relationship with [the] [C]hildren." In light of Mother's history of physical abuse and neglect, Mother's neglect regarding the May 17, 2022 incident, and the Children's reasonable fear of Mother and their desire not to return to Mother, we conclude that the evidence was more than sufficient for the juvenile court to find the Children to be CINA and to deny Mother custody of them. Accordingly, the juvenile court did not err or abuse its discretion.

2. Did the juvenile court commit error when it ordered that visits would be in the discretion of the Children in conjunction with their therapist?

A. Facts

During the August 4, 2022 virtual visit, K.W. told Mother that he did not want to visit her and reiterated that view on two subsequent occasions to the Department's social worker assigned to the family. On August 18, 2022, K.W. told his CASA that he did not want to visit or see his parents.

On October 19 and 20, 2022, the juvenile court held a hearing on the issue of placement and visitation. At the conclusion of the hearing, the court ordered that Mother and Father should have liberal and supervised visits with the Children in consultation with their therapist. The visits were to be once a week for one-hour, and the parents were also

allowed one weekly phone call with the Children. The weekly visits would occur unless the therapist opined that the visits were detrimental. The court stated that it did not want to empower the Children to make decisions regarding visitation and that it was not giving its authority to make such decisions to the therapist.

In May 2023, the Department requested that visitation be suspended because the Children had just started therapy with their new therapist, Elizabeth Diaz. A May 2, 2023 psychiatric report for K.W. also recommended that supervised visits and phone calls with Mother and Father be discontinued. In addition, the juvenile court was informed that the Children continued to be destructive in their visits with Mother and Father. On May, 11, 2023, the court granted the Department's motion and suspended the visits, ordering that visitation should be at the discretion of the Children in conjunction with their therapist.

At the end of the adjudication hearing on July 5, 2023, the juvenile court sustained, among others, the allegations contained in Paragraph 12 of the Department's amended petition. Paragraph 12 stated:

> The [Children] have clearly stated to the Department many times that they do not want to be returned to the care of their parents. They feel safe and well cared for in the foster home where they have lived now for 54 of the last 66 months.

The court then ordered that visitation between the Children and Mother be "liberal and supervised as arranged by DSS . . . at the [Children's] discretion and in consultation with the [C]hildren's therapist. The Department will explore therapeutic visitation to begin as soon as possible[.]"[1]

[1] The juvenile court ordered identical visitation between the Children and Father.

At the conclusion of the disposition hearing on August 31, 2023, the juvenile court found that the Children were reasonably in fear of their parents, noting that Father had committed acts of physical abuse and that Mother was unable to protect them. Further, the court found that Mother did not validate the Children's concerns and never said that she believed K.W. about the May 17, 2022 incident. The court decided that the visitation set forth in the Adjudication Order would remain in place. The court observed that, unlike the circumstances existing at the time of the Adjudication Order, therapeutic visits had been offered, but the Children refused to participate. The court stated, "that needs to be explored further." Finally, the court noted that the Department was facilitating weekly telephone calls between the Children and their parents, but the Children were refusing to participate in these calls.

B. Arguments of Mother

Mother argues that the juvenile court erred as a matter of law when it "impermissibly delegated decisions regarding visits to the [C]hildren and their therapist." According to Mother, although the court stated that it was not abdicating decision-making authority regarding visitation to the Children, the court ordered that visitation was to be at the discretion of the Children with the advice of their therapist, Ms. Diaz. Such delegation of authority, Mother asserts, "render[s] meaningless" the court's order that Mother "is entitled to liberal and frequent visits with her [C]hildren[.]" In addition, Mother argues that the court made its decision without ever hearing from Ms. Diaz beyond a letter provided by the Department, and thus the court "had no information regarding how Ms. Diaz was addressing visits with the [C]hildren and what was happening therapeutically so that visits

could begin to occur." Finally, Mother contends that the court's refusal to allow visitation prejudiced Mother's reunification efforts and prevented her from maintaining a positive bond with the Children.

C. Analysis

"Parents have a fundamental right under the Fourteenth Amendment of the United States Constitution to 'make decisions concerning the care, custody, and control of their children.'" *In re C.E.*, 464 Md. 26, 48 (2019) (quoting *Troxel v. Granville*, 530 U.S. 57, 66 (2000)). "A parent's right to visitation is rooted in [this] fundamental constitutional liberty interest[.]" *Brandenburg v. LaBarre*, 193 Md. App. 178, 186 (2010). Generally, "'it would only be in an exceptional case and under extraordinary circumstances that the right of visitation will be denied.'" *In re Mark M.*, 365 Md. 687, 706 (2001) (quoting *Shapiro v. Shapiro*, 54 Md. App. 477, 482 (1983)). A parent's fundamental right, however, is not absolute; in determining visitation during CINA proceedings, "the trial court is required to consider the best interests of the child, and therefore, 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). In the end, visitation is "to fulfill the needs of the child," not the parent. *Boswell v. Boswell*, 352 Md. 204, 221 (1998).

Maryland courts "may not delegate to a non-judicial person decisions regarding child visitation and custody." *Van Schaik v. Van Schaik*, 200 Md. App. 126, 134 (2011). Where, however, supervised visitation has been granted, but the child refuses to participate, this Court has established that "children should not be 'physically forced, kicking and screaming, into their [parents'] presence.'" *In re G.T.*, 250 Md. App. 679, 700 (2021)

(quoting *In re Barry E.*, 107 Md. App. 206, 221 (1995)). Further, COMAR 07.02.11.05(C)(7)(c) requires a local department with responsibility for out-of-home placement to implement a visitation plan that "[d]oes not force a child to participate in visitation but refers the child to a therapist for assistance in resolving the visitation issues[.]"

The instant case is unlike cases involving the denial of visitation unless the child's therapist recommends it, *see In re Mark M.*, 365 Md. at 707, or the grant of visitation expressly conditioned on the therapist's recommendation, *see Shapiro*, 54 Md. App. at 483. Here, the juvenile court granted Mother "liberal and supervised" visitation with the Children and expressly directed the Department to "explore therapeutic visitation to begin as soon as possible[.]"

Yet, the juvenile court received Ms. Diaz's recommendation that the Children should not be required to visit with Mother and Father, as well as the recommendation of Meghan Runey, a care manager at the Jack E. Barr Center for Well-Being, that visits between the Children and their parents be suspended due to K.W.'s post-traumatic stress disorder. Further, the court heard voluminous testimony regarding how the Children did not want to attend visits with Mother and Father and often exhibited extreme negative behaviors after those visits. The juvenile court was required to consider the best interests of the Children, *see In re J.J.*, 231 Md. App. at 347, and the court could not force the Children to visit Mother against their will. *See In re G.T.*, 250 Md. App. at 700; COMAR 07.02.11.05(C)(7)(c). To address the Children's best interests under these circumstances,

the court directed that the actual occurrence of the visitation with Mother be "at the [Children's] discretion and in consultation with the [C]hildren's therapist."

In our view, such action by the juvenile court does not constitute an improper delegation of the court's authority over visitation. First, the Children do not have unfettered discretion to deny visitation, because they are required to participate in therapy where their therapist is directed to assist in resolving the issues underlying their refusal to participate in visitation. *See* COMAR 07.02.11.05(C)(7)(c). Second, the Children's therapist was not given the sole authority to decide on visitation between the Children and Mother. The court ordered only that the therapist be consulted, not that the therapist decide whether visitation would occur or not. *See In re Mark M.*, 365 Md. at 707; *Shapiro*, 54 Md. App. at 483. Moreover, as previously stated, the court directed therapeutic visitation to begin as soon as possible, and for such visitation to occur, the Children's therapist would need to be working with the Children toward that goal. Finally, the court ordered the Department to arrange for the supervised visits between the Children and Mother. For that order to be carried out, the Department was required to continue to offer visitation to the Children. Therefore, we hold that the juvenile court did not improperly delegate its authority regarding visitation to the Children or to the therapist. Accordingly, the court did not err or abuse its discretion in its visitation order regarding Mother and the Children.

3. Did the juvenile court err when it ordered Mother to participate in a parenting evaluation?

A. Facts

At the disposition hearing on August 31, 2023, the juvenile court ordered Mother and Father to submit to a fitness-to-parent evaluation. The court stated:

> So, the [C]hildren have, have a number of issues. There have been a number of medical diagnoses, mental health diagnosis, educational diagnosis, of the [C]hildren, that need particular care. The parents have their own mental health diagnosis, that also need attention and care.
>
> And I do think a fitness to parent evaluation is appropriate in order to determine what services are necessary. When I hear the Department say that there are no services, I think that, I take that to mean they haven't been able to identify what services are necessary.
>
> But I think a fitness to parent is the first place to identify what else needs to be done. I don't necessarily know that a parenting aid[e] would solve the problems because the [C]hildren aren't in the home. And I don't think the parents, at this point, need help in parenting. And I agree the parents have made strides in their own personal achievements.
>
> I, I give [Mother] full credit for all that she's accomplished during these periods in obtaining employment, in obtaining a driver's license, in obtaining vehicles. She has, she has acted independently and, and researched and tried to avail herself of programs. Whether they were the right ones or not becomes the issue. Or is she, is she so fixated on the parenting classes and everything else, (inaudible) going by the wayside.
>
> So, I think we need to figure out exactly what needs to be done, because reunification is the goal and reunification needs to be the goal.

B. Arguments of Mother

Mother argues that the juvenile court abused its discretion when it ordered Mother to participate in "a parental evaluation instead of ordering the [D]epartment to provide the services that [Mother] should complete to reunify with her [C]hildren." Relying on *In re James G.*, 178 Md. App. 543 (2008), Mother argues that "courts should not needlessly order parents to complete tasks that are unrelated to the reasons for government intrusion

or have no basis in the evidence the court received." On that basis, Mother contends that, because the Department "alleged that [Mother's] mental health history affected her ability to parent the [C]hildren[,] . . . any court-ordered parenting evaluation was unrelated to a service that would facilitate the family's reunification when [Mother] was engaged in consistent mental health treatment." Therefore, Mother argues, the court erred when it "ordered an invasive and potentially damaging exam like a parenting evaluation rather than a service such as further parenting classes or a parenting aide when one became available[.]"

C. Analysis

Under CJP § 3-802(a)(4), one of the purposes of the CINA process is to "hold parents of children found to be in need of assistance responsible for remedying the circumstances that required the court's intervention[.]" In addition, a juvenile court "may direct the local department to provide services to a child, the child's family, or the child's caregiver to the extent that the local department is authorized under State law." CJP § 3-802(c)(1). The purpose of such authority is "to protect and advance a child's best interests." CJP § 3-802(c)(2). In order to effectuate that purpose, a court "may order the local department or another qualified agency to make or arrange for a study concerning the child, the child's family, the child's environment, and other matters relevant to the disposition of the case." CJP § 3-816(a).

In the instant case, the juvenile court did not abuse its discretion by ordering Mother to participate in a parenting evaluation. A juvenile court has "broad discretionary powers" to "act as a monitor in order to review, order and enforce the delivery of specific services

and treatment for children who have been adjudicated CINA." *In re Priscilla B.*, 214 Md. App. at 623 (internal quotation marks omitted). After over a decade of involvement with the Department, Mother received numerous services through the Department, but remained unable to provide the proper care for and ensure the safety of the Children. In its broad discretion, the court ordered a parenting evaluation "to figure out exactly what needs to be done[]" to assist Mother in being reunified with the Children. We cannot say that ordering such evaluation was an abuse of discretion.

II. ISSUES RAISED BY FATHER'S APPEAL

1. Whether K.W.'s out of court statements were improperly admitted through third party testimony pursuant to § 11-304 of the Criminal Procedure Article.

A. Facts

Prior to the adjudication hearing, Father moved the juvenile court for a psychological evaluation of K.W.[2] At the hearing, Father objected to the testimony of third parties about K.W.'s statements absent a psychological evaluation. The court denied Father's motion, holding that a psychological evaluation was unnecessary. Following this decision, the court interviewed both K.W. and M.W. and then played back the recording of those interviews in open court. The court found that K.W.'s statements to third parties

[2] Father's motion was titled "Request for Psychiatric Evaluation of [K.W.]" and asked for a "full comprehensive Psychological/Psychiatric Evaluation[.]" At the adjudication hearing, the parties appeared to use the terms "psychiatric" and "psychological" interchangeably, and the juvenile court used the word "psychiatric." In Father's brief, he refers to the requested evaluation as a "psychological evaluation." For the purposes of this opinion, we will be referring to the requested evaluation of K.W. as a "psychological evaluation."

were trustworthy and therefore admissible, after an analysis of the factors required by Criminal Procedure Article ("CP") § 11-304(e)(2).

Ms. Zeidler, K.W.'s fourth grade teacher, testified that when he arrived at school, K.W. told her that Father threw a boot at him and injured K.W.'s face. Ms. Roberts, the principal of K.W.'s school, testified that K.W. told her that Father threw a boot at his face and that his parents were upset at him for telling Ms. Zeidler about the incident. Finally, Ms. Cooke, a Department social worker, testified that K.W. told her that Father told K.W. to stop talking, and, because K.W. did not stop talking, Father threw a boot a his face.

B. Arguments of Father

Father argues that the juvenile court improperly admitted the testimony of third party witnesses who testified "to K.W.'s alleged hearsay statements." Specifically, Father asserts that a psychological evaluation was necessary "to establish K.W.'s competency and reliability" in light of K.W.'s "suicidal and homicidal ideations[.]" Because the juvenile court denied Father's motion for a psychological evaluation, Father concludes that the admission of K.W.'s hearsay statements was legal error.[3]

C. Analysis

Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). "The threshold questions when a hearsay objection is raised

[3] Father also claims that the juvenile court's error was not harmless. We need not address that issue, because we conclude *infra* that the court did not err by admitting K.W.'s out of court statements.

are (1) whether the declaration at issue is a 'statement,' and (2) whether it is offered for the truth of the matter asserted." *Stoddard v. State*, 389 Md. 681, 688–89 (2005). A "statement" is either "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." *Id.* at 689; *see* CP § 11-304(a).

A juvenile court may admit an out of court statement in a CINA proceeding to prove the truth of the matter asserted in the statement made by a child victim who is under 13 years old. CP § 11-304(b)(1)(i). Specifically, in a CINA proceeding:

> (i) . . . an out of court statement by a child victim may come into evidence to prove the truth of the matter asserted in the statement:
>
> 1. if the statement is not admissible under any other hearsay exception; and
> 2. regardless of whether the child victim testifies.
>
> (ii) If the child victim does not testify, the child victim's out of court statement will be admissible only if there is corroborative evidence that the alleged offender had the opportunity to commit the alleged abuse or neglect.

CP § 11-304(d)(2). These statements are only admissible if they were made to, *inter alia*, a social worker, teacher, or school principal. CP § 11-304(c). Finally, a child's out of court statement is admissible "only if the statement has particularized guarantees of trustworthiness." CP § 11-304(e)(1). In order to determine whether a statement has "particularized guarantees of trustworthiness," a juvenile court is required to examine the child in the judge's chambers under CP § 11-304(g)(1) and consider the following factors:

> (i) the child victim's or witness's personal knowledge of the event;
> (ii) the certainty that the statement was made;
> (iii) any apparent motive to fabricate or exhibit partiality by the child victim or witness, including interest, bias, corruption, or coercion;
> (iv) whether the statement was spontaneous or directly responsive to questions;
> (v) the timing of the statement;

> (vi) whether the child victim's or witness's young age makes it unlikely that the child victim or witness fabricated the statement that represents a graphic, detailed account beyond the child victim's or witness's expected knowledge and experience;
> (vii) the appropriateness of the terminology of the statement to the child victim's or witness's age;
> (viii) the nature and duration of the abuse or neglect;
> (ix) the inner consistency and coherence of the statement;
> (x) whether the child victim or witness was suffering pain or distress when making the statement;
> (xi) whether extrinsic evidence exists to show the defendant or child respondent had an opportunity to commit the act complained of in the child victim's or witness's statement;
> (xii) whether the statement was suggested by the use of leading questions; and
> (xiii) the credibility of the person testifying about the statement.

CP § 11-304(e)(2).

Father argues that the juvenile court erred by "ruling that a [psychological] evaluation of K.W. was not necessary for the Court to make a § 11-304 determination." Our Supreme Court, however, stated in *In re J.J.* that "a preliminary competency determination is irrelevant to a juvenile court's admissibility determination. There has been no showing, nor do we conclude, that the statute's existing thirteen-factor trustworthiness test would be enhanced by requiring examination of a non-testifying child's competency." 456 Md. 428, 450–51 (2017). The Court also stated that "nowhere in CP § 11–304 or the legislative history is there support for [the appellant's] argument that truth competency is a prerequisite or relevant to the admission of a child victim's out-of-court statement for the truth of the matter asserted." *Id*. at 452.

In his brief, Father acknowledged that a CP § 11-304 hearing was "not a competency determination," but argued that "K.W.'s mental health and psychological soundness

directly impacts the reliability of K.W.'s statements." Even assuming that the purpose of a psychological evaluation is limited to K.W.'s reliability, and not his competence, there is no language in CP § 11-304 requiring the juvenile court to consider a third party's psychological evaluation of reliability as a part of the court's determination of the trustworthiness of a child victim's statement. The statute places into the hands of the juvenile court the sole responsibility for determining whether a child victim's statement "has particularized guarantees of trustworthiness" and directs the court to consider thirteen factors in making that determination. The juvenile court in the instant case scrupulously followed the requirements of CP § 11-304. Therefore, we conclude that the court did not err in failing to order a psychological evaluation of K.W. and consider the same as a part of its determination of trustworthiness under CP § 11-304(e).

After interviewing the Children, the juvenile court analyzed the trustworthiness of K.W.'s statements in accordance with CP § 11-304(e)(2) as follows:

> As to [CP § 11-304(e)], particularized guarantees of trustworthiness, as I look at the statements, the statements were made contemporaneous with the events to the best of the [C]hildren's recollection. This did occur last year and, as [Counsel for the Children] points out, eight months in the mind of a child is a very long time.
>
> I did not expect their recollection to be on point or to be consistent, which is one of the reasons why I did interview the boys separately. I would have been more concerned if they did speak exactly as, if, if they both spoke exactly as they did. That would cause me concern as to the indicia of, of truthfulness and trustworthiness.
>
> I do think that, that the, that this, the requirements of [CP § 11-304(e)] have been met. I do, that the [C]hildren were present when the events occurred. That's what they were testifying to.
>
> As to [M.W.'s] ability to see what happened, certainly any ruling I have is, would be reviewable if there's an objection. But as to, as to the admissibility of it as far as the truthfulness is concerned, any weight that I give the statement is a whole other issue.

But that each child had personal knowledge of what they saw and what they observed. Their statements, while not exactly the same as it was initially back in May, we are on January 27th, some eight months after the event occurred. And the statements were made at the time the events occurred, not recollection eight months later.

The statements are consistent with their life experiences and the words that they used in May were appropriate. I specifically questioned [K.W.] because he was using words that I was a little concerned about. Specifically, abuse.

There was another word that he used in the course of the interview that I didn't necessarily know was an age-appropriate word. And his response was that [Mr. B] teaches him big words. But those were not the words that were used when he made his statement to Ms. Zeidler or to Ms. Cooke. So, I believe the statements that were made at the time are, were age-appropriate statements.

They pretty much focus on the isolated event. When speaking with, with [M.W.] he, he did, did go back and talk about an earlier event, which occurred some five years ago, which he was very clear to me it was not the same event. They also made comments about their, their parents using some type of physical discipline when they, when they told lies.

But their focus was on primarily the same event. So, I think it was, it was consistent. It was appropriate. They told the statements afterwards and I believe they had already been removed from the testimony, that they were taken from their parents while they were in Ocean City. And the statements were made prior to that point when they were in school and to a social worker.

As far as the leading question, I agree, [Counsel for Mother], we don't have the questions that were asked at this point. And I, I would hear you if at the time of the testimony there was a suggestion that the questions were somehow inappropriate, I would review, I would revisit at that point. But I'm not going to hold my ruling at this point. But I do understand that, that that is an objection you'll have, and you can, I will entertain it at the appropriate time.

And as far as the credibility, that's an issue for the Court and these are professional individuals who are testifying, witnesses for the Department and people in the school system. I would, at this point in time, accept that they are credible witnesses. They are professionals. At least at this stage, I'm accepting that they have no motivation or interest in, in fabricating a statement.

So, for the purposes here, I do accept the credibility of them. If that becomes an issue during testimony, I would revisit that as well. But for the purpose of making the determination under this Motion, I do find the witnesses that are going to be testifying are going to be credible witnesses.

> The hearing was held in, on the record in a Zoom room, which was not open to the public. I identified on the record who was present during the course of the interview. [Counsel for the Children] was present, however, he did not, other than asking if he could ask a question, he did not participate in the actual interview. Everyone else was courthouse staff.
>
> And with that, I believe, the requirements of 11-304 were satisfied. All parties have had an opportunity to, to witness the recording that was made during the interview. And for that reason, I do believe that the statements should come in under 11-304(B), subject to the issues that I suggested I would revisit should they be raised during the cross of the exam, during the course of the testimony of any of the witnesses.

Based on the above analysis and the in chambers examination of the Children, we hold that the juvenile court did not err in determining that K.W.'s statements had particularized guarantees of trustworthiness, including that (1) K.W. had personal knowledge of the incident and was certain that the incident happened, made the statements to a teacher, principal, and social worker within one or two days of the incident, used age-appropriate words, and focused on an isolated event; (2) K.W.'s statements were consistent with his life experiences; and (3) the Children's testimony was generally consistent. Although K.W. stated that his foster parents told him what to say to the court before the interview, such direction did not occur prior to K.W.'s statements to the third parties in May 2022. Finally, it is undisputed that Father was present in the home when the abuse occurred. *See* CP § 11-304(d)(2)(ii). Therefore, we conclude that the juvenile court did not err in admitting K.W.'s out of court statements to Ms. Zeidler, Ms. Roberts, and Ms. Cooke.

2. Whether the juvenile court erred in allowing photos to be admitted into evidence during the Adjudication Hearing on January 30, 2023 per Maryland Rule 5-1004.

A. Facts

At the adjudication hearing on January 30, 2023, during Ms. Cooke's testimony, the Department introduced photographs of K.W.'s injury taken by the Baltimore County Police Department on May 17, 2022. Both Mother and Father objected to the photographs on the grounds that Ms. Cooke could not properly authenticate them because she did not take the photographs, could not identify the type of camera used, and was not present when the photographs were taken. The juvenile court overruled the objections, stating:

> I don't believe [that offering the person who took the photographs] is necessary. I think she, the witness can testify that these photographs fairly and accurately depict the image that she observed. For that reason, I don't believe the photographer is necessary. She's, I don't think authenticating the picture, she's saying that it accurately reflects the child as she saw on the, on the next day. So, I overrule the objection.
>
> .

Ms. Cooke then testified that the photographs were an accurate depiction of how K.W. looked when she met with him on May 18, 2022, and that the injury she saw on K.W. was "very similar" to the one depicted in the photograph.

B. Arguments of Father

Father argues:

> At the time of her testimony, more than one year after allegedly being shown the photographs, it is highly unlikely that Ms. Cooke has an independent visual memory sufficient to be able to ascertain whether the photo accurately depicts what it purports to depict. Rather, Ms. Cooke is just asserting that it is what is [sic] purported to be, not through independent recollection, as is required by Maryland Rule 5-901(a) and caselaw emanating therefrom.
>
> The court's admission of said photographs, admitted as Department's Exhibit 1, constitutes an abuse of discretion. This is not harmless error as,

> other than the child's out of court statements, which were erroneously admitted, as briefed herein above, there is no evidence to sustain the allegations in the Petition.

C. Analysis

Under Maryland Rule 5-901, "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." A photograph can be authenticated through the testimony of a witness with personal knowledge of what is depicted in the photograph. *See Prince v. State*, 255 Md. App. 640, 652 (2022). The witness must testify that "the photograph fairly and accurately represents the scene or object it purports to depict as it existed at the relevant time." *Washington v. State*, 406 Md. 642, 652 (2008) (internal quotation marks omitted). "Authentication of a photograph does not require testimony of the person who took the photograph." *Id.* at 653.

In the instant case, the photographs of K.W. were taken on May 17, 2022, and Ms. Cooke interviewed K.W. on May 18, 2022. Ms. Cooke testified that the photograph was an accurate representation of what K.W. looked like to her on the day that she saw him. For authentication purposes, nothing more is required; Ms. Cooke's personal knowledge was demonstrated by the close temporal proximity of her interview with K.W. and the time the photograph was taken, and by her own observation of that which was depicted in the photographs. Father's argument that the time period of eight months between Ms. Cooke's interview with K.W. and her testimony rendered it "highly unlikely that Ms. Cooke has an independent visual memory sufficient to be able to ascertain whether the photo accurately depicts what it purports to depict[]" is pure conjecture. In addition, Ms. Cooke is not

required to have knowledge of the type of camera used or whether there were alterations made to the photo. *See Washington*, 406 Md. at 653. Thus the juvenile court did not err or abuse its discretion by admitting the photographs of K.W. into evidence.

3. Whether the juvenile court erred in admitting into evidence at the adjudication phase all court reports from the Children's prior closed CINA case.

A. Facts

At the adjudication hearing on January 30, 2023, during the direct examination of Allison Mitchell, a foster care adoption supervisor for the Department, the Department introduced into evidence all of the court reports and court orders from the Children's previous CINA case that was closed in April 2022. Mother and Father objected to the court reports as follows:

> [COUNSEL FOR THE DEPARTMENT]: I am going to ask the witness to identify (inaudible). Can you identify this Department Exhibit 2, it's two hundred and ninety-one pages?
>
> MS. MITCHELL: **Yes, that is all the Court reports and Court Orders from the previous case.**
>
> [COUNSEL FOR THE DEPARTMENT]: Did you review those when you began working this case and did you review (inaudible)?
>
> MS. MITCHELL: I did, yes.
>
> [COUNSEL FOR THE DEPARTMENT]: **Your Honor, I'm asking these be entered into evidence as (inaudible).**
>
> THE COURT: [Counsel for the Children], any objection?
>
> [COUNSEL FOR THE CHILDREN]: No, Your Honor, no objection.
>
> THE COURT: [Counsel for Mother]?
>
> [COUNSEL FOR MOTHER]: Your Honor, I would object to, this is a difficult objection. **I have no objection to the Court Orders, but the reports contain hearsay.** I certainly wasn't the attorney in the last case, so I don't actually know what was litigated and what was not. **So, I would object to the Court reports because of that possibility of containing hearsay.**
>
> THE COURT: [Counsel for Father]?
>
> [COUNSEL FOR FATHER]: **Mine would be the same objection as [Mother's Counsel]** and also, I believe, that the Department has not clarified

> which portions of the Court report[s] were contested, so they should not be accepted. **But the Orders clearly are Court Orders, and I would have no objection to those.**
>
> THE COURT: [Counsel for the Department], any response?
>
> [COUNSEL FOR THE DEPARTMENT]: Your Honor, the Court reports were filed with the Court in the context of a CINA case. The, the Court can certainly give them the weight that the Court deems they deserve. And can filter out any hearsay that the Court deems unreliable.
>
> But I do think that given [the Children] were in care for five years, that these, these Court reports, these Orders, Petitions, are helpful for the Court in determining what has occurred in the past, what services have been offered and how the parents have responded to those services. I, I think it enlightens the Court with respect to the history of child welfare involving these [C]hildren.
>
> THE COURT: **I'm going to overrule the objection. I do believe that they are, that they are admissible.** That the Court can give whatever weight is deemed appropriate and can weed out any of the hearsay or inappropriate portion of the report. But as this case (inaudible) Court system and these reports were accepted into evidence at the time of the CINA hearings, I do believe they are admissible in this hearing and so the objection is overruled.

(Emphasis added.)

B. Arguments of Father

Father argues that "[t]he juvenile court erred as a matter of law in improperly admitting court reports from prior cases, replete with hearsay, at the adjudication phase of these new CINA matters." According to Father, the public records exception to the evidentiary rule against hearsay "is limited to proceedings for which court reports are required by statute." Father further contends that the admission of the court reports was not harmless error because the court relied on those reports in finding that Mother and Father were unable to care for the Children.

C. Analysis

Under Md. Rule 5-803(b)(8)(A), an exception to the general hearsay rule exists for "a memorandum, **report**, record, statement, or data compilation **made by a public agency setting forth**:"

> (i) the activities of the agency;
> (ii) **matters observed pursuant to a duty imposed by law, as to which matters there was a duty to report;**
> (iii) in civil actions and when offered against the State in criminal actions, factual findings resulting from an investigation made pursuant to authority granted by law; or
> (iv) in a final protective order hearing conducted pursuant to Code, Family Law Article, § 4-506, factual findings reported to a court pursuant to Code, Family Law Article, § 4-505, provided that the parties have had a fair opportunity to review the report.

(Emphasis added.)

Under CJP § 3-826(a)(1), "[u]nless the court directs otherwise, a local department shall provide all parties with a written report at least 10 days before any scheduled disposition, permanency planning, or review hearing under § 3-819 or § 3-823 of this subtitle." Similarly, under COMAR 07.02.11.20(B)(2), a local department is required to prepare a written report with its recommendations at least ten days before a permanency planning hearing.

In *In re H.R.*, during H.R.'s contested Termination of Parental Rights hearing, the Department of Social Services moved to admit seven court reports prepared by the department in advance of the permanency plan review hearings in H.R.'s CINA case. 238 Md. App. 374, 402 (2018). The department argued that the reports were appropriate for judicial notice and also were admissible under the public records exception to the rule

against hearsay. *Id.* at 402-03. The juvenile court admitted the court reports over the father's objection. *Id.* at 403. On appeal, this Court discussed Father's arguments and the public records exception to the hearsay rule:

> Father contends the juvenile court erred by admitting the Court Reports under the public records exception to the rule against hearsay because they were "prepared in anticipation of litigation" with "cherry pick[ed] facts from a much larger record for an adversarial proceeding." We disagree. **The Court Reports** document the activities of the Department in furtherance of the children's permanency plans to meet the children's needs. They **were prepared by the Department pursuant to a duty imposed by law. *See* Md. Code (1973, 2013 Repl. Vol.), § 3-826(a)(1) of the Courts & Judicial Proceedings Article (requiring the Department to "provide all parties with a written report at least 10 days before any scheduled disposition, permanency planning, or review hearing . . . ."); COMAR 07.02.11.20 (requiring the Department to "[p]repare a written report setting forth the local department's recommendations; and . . . [p]rovide the report to the court, the child's attorney, and the child's parents or legal guardian" at least ten days before a permanency planning hearing). Thus, the Court Reports were presumptively admissible under Rule 5-803(b)(8)(A) unless Father could show that they were unreliable.**

Id. at 406 (emphasis added) (alterations in original).

In the instant case, Father argues that the court reports from the previous CINA case were inadmissible because the admission of court reports under the public records exception "is limited to proceedings for which court reports are required by statute." However, Father has failed to identify any reports admitted from the previous CINA proceeding that he claims were not required by law. In fact, Father fails to articulate why any of the court reports from the previous CINA case were not required under CJP § 3-826(a)(1) or COMAR 07.02.11.20(B)(2). Indeed, our own review of the record shows that all of the court reports, admitted as "DSS Exhibit 2," were created in anticipation of a CINA

disposition hearing, under CJP § 3-819, or a permanency plan review hearing under CJP § 3-823 and COMAR 07.02.11.20, and thus were required by CJP § 3-826(a)(1).

Because the Department's court reports were created under "a duty imposed by law," the reports are presumptively admissible under Rule 5-803(b)(8)(A) unless Father makes a showing that the reports are unreliable. *See In re H.R.*, 238 Md. App. at 406. Father made no such showing in the juvenile court and makes no such argument in his brief in this Court. Therefore, we hold that the juvenile court did not err in admitting the Department's court reports from the Children's previous CINA case.

III. QUESTION RASIED BY BOTH APPEALS

Did the juvenile court err in finding that the Department made reasonable efforts to prevent placement of the Children outside the home?

A. Facts

In its August 31, 2023 disposition order, the juvenile court found that the following reasonable efforts were made by the Department to "prevent or eliminate the need for removal of the child:"

> A Child Protective Services investigation/risk safety assessment completed; treatment/service providers contacted; records reviewed; relative resources explored; meetings were held, a multitude of supportive services were offered to the family while the [C]hildren were on a trial home visit for the approximately 8 months prior to this removal; attempts made to achieve educational stability; contact maintained with caregiver; home visits conducted; referrals offered to the parents; visitations coordinated and attempted to be scheduled, including therapeutic visitation; monthly bus passes provided to the [F]ather; phone calls monitored and arranged; transportation services offered for visitation; anger management classes paid for; clinical support offered to foster parents regarding [C]hildren's behaviors; and efforts made to communicate efficiently and effectively with the parents[.]

B. Arguments of the Parties

Mother argues that the juvenile court erred when it found that the Department made reasonable efforts to prevent the need to remove the Children from Mother's care. According to Mother, several of the reasonable efforts that the court found were made by the Department, specifically the Department's investigation and risk assessment, were not actually services designed to promote reunification, and the court erred "in considering the services that the [D]epartment put in place related to the prior CINA case as current efforts to prevent the need for continued separation of the family *now*." Although the Department did ask Mother and Father to participate in a collaborative problem-solving course, Mother contends that "a single referral does not constitute a reasonable effort towards a goal of reunification." Finally, Mother asserts that the court's consideration of the Department's scheduling of visits as a reasonable effort was erroneous because "only one visit occurred since May 2023, the [C]hildren had not maintained phone contact with the parents, the [D]epartment opposed family therapy, and [the Department] could not provide [Mother] with a parenting aide[.]"

Father also argues that the juvenile court erred in finding that the Department made reasonable efforts to prevent removal of the Children and reunify Mother, Father, and the Children after removal. Specifically, Father contends that the Department made "no efforts" to prevent removal or provide support or services between the time the Children were removed in May of 2022 through the final disposition in August of 2023. According to Father, the court could not have waived the requirement that the Department provide reasonable efforts to the parents in this case, nor did the Department petition the court for

such a waiver. Father also points to inconsistencies in the testimony of Allison Mitchell, who testified that it was not safe for the Children to return home, but also testified that it was safe enough for the Children to stay at home for two days before removal. In addition, Father argues that the Department failed to provide Mother and Father with the additional resources that they requested, and the Department removed the Children from the family home before K.W. could begin his scheduled therapist appointments. Finally, Father asserts that the court could not rely on the efforts of the Department in the previous CINA case, and that the Department failed to make reasonable efforts "to allow the [C]hildren to be returned to their parents' care."

C. Analysis

"Reasonable efforts" to reunify children with their parents are "efforts that are reasonably likely" to "prevent placement of the child into the local department's custody." CJP §§ 3-801(x), § 3-816.1(b)(1). At both adjudication and disposition hearings in CINA proceedings, a juvenile court is required to determine whether a local department has made such efforts. CJP § 3-816.1(b)(1)-(2). The court is required to "assess the efforts made since the last adjudication of reasonable efforts and may not rely on findings from prior hearings." CJP § 3-816.1(b)(5).

"[T]he obligation to render 'reasonable efforts' [toward reunification] rests on the Department, not the parent[.]" *In re James G.*, 178 Md. App. at 601. The "reasonableness" of the Department's efforts to achieve reunification is determined by a consideration of the particular circumstances of each case. *See In re Shirley B.*, 191 Md. App. 678, 710-11 (2010), *aff'd*, 419 Md. 1 (2011) ("[T]here is no bright line rule to apply to the 'reasonable

efforts' determination; each case must be decided based on its unique circumstances."). Such determination by the juvenile court is a factual finding that is reviewed for clear error. *Id.* at 708. "[T]he unavailability of potential services is a factor to be considered in determining whether 'reasonable efforts' have been made to provide services[,]" which means that "[w]hat constitutes 'reasonable efforts' must be determined in light of the resources available to the Department." *Id.* at 718.

In the instant case, the juvenile court did not err when it found that the Department made reasonable efforts to prevent removal of the Children and to reunify the Children with Mother and Father. The record of this case details the number of services provided by the Department to Mother and Father, including coordinating visits and school meetings, providing transportation for Mother, Father, and the Children to the visits and their other treatment services, paying for anger management classes and parenting classes for both Mother and Father, communicating with Mother and Father on a daily basis, and responding to their concerns. In addition, both Mother and Father resisted communication with the Department and rejected numerous services offered by the Department, including trauma therapy and collaborative problem solving services.

Nevertheless, Mother argues that the Department's referral of Mother and Father to a collaborative problem-solving course was not a reasonable effort because "a single referral is not a reasonable effort towards reunification," relying on *In re James G.* Going a step further, Father argues that "no efforts" at all were made by the Department to reunify the Children and their parents between removal and disposition.

Here, as explained above, the Department provided a number of services to Mother and Father to assist in reunification efforts besides the collaborative problem-solving course. The Department encouraged the Children to attend therapy to overcome their fear of their parents, organized and supervised phone calls between the Children, during which the Children often said they did not wish to speak to their parents, and arranged for therapeutic supervised visitation between Mother and Father separately with the Children. The fact that K.W. had plans to start in-home therapy prior to his removal from Mother and Father's care has no bearing on whether the Department provided adequate services to Mother and Father to constitute "reasonable efforts." Finally, the Department attempted to obtain a parenting aide for the parents but was unable to because of staffing shortages. It is clear that the Department offered a greater number of services to the parents than "a single referral to a vocational resource." *James G.*, 178 Md. App. at 601.

Mother also argues that several of the "reasonable efforts" identified by the juvenile court were duties of the Department and not services designed to promote reunification, particularly the Department's investigation and risk assessment. However, such assessments and investigations are a critical part of determining what services can potentially help a parent in their reunification efforts. *See* COMAR 07.02.07.07(A)(3). Further, even if we take the investigation and risk assessment out of the "reasonable efforts" calculus, it was only one of the many efforts and services that the juvenile court found were made by the Department. We cannot say that the other services provided by the Department, detailed above, were insufficient.

Finally, despite Mother and Father's arguments to the contrary, "reasonable efforts" does not require that the Children actually be returned to the care of Mother and Father at the time of disposition or that visitation between the Children and their parents actually occurs; the broad policy of the CINA statute is to "protect and advance a child's best interests[,]" and a court will not force a child to visit their parents against their will. *In re M.H.*, 252 Md. App. 29, 42 (2021) (internal quotation marks omitted); s*ee In re G.T.*, 250 Md. App. at 700. Thus the fact that the best interests of a child required their continued removal from their parents and that a child refused to undergo visitation with their parents does not preclude a finding that the Department made reasonable efforts to reunify the family. *See In re Najasha B.*, 409 Md. 20, 33-34 (2009). Finally, contrary to Father's argument, the juvenile court did not waive the requirement for reasonable efforts, as the court clearly determined that the reasonable efforts requirement was satisfied. In sum, we hold that the juvenile court did not err in finding that the Department made reasonable efforts to prevent the removal of the Children and to reunify the Children with their parents.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. APPELLANTS TO PAY COSTS.