

Circuit Court for Baltimore County
Case No. C-03-JV-23-000492

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1830

September Term, 2023

IN RE: J.W.

Nazarian,
Reed,
Shaw,

JJ.

Opinion by Nazarian, J.

Filed: June 5, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Father began sexually abusing his daughter, S,¹ when she was four years old. About nine years later, S reported the abuse to her older sister. This revelation caused the Department of Social Services (“DSS”) to intervene and attempt to protect both S and her younger sister, J.W. After a Child In Need of Assistance (“CINA”) hearing, the Circuit Court for Baltimore County determined that S and J were CINAs. The court also ordered that J would have no contact with Father.

Father appeals and argues that the circuit court erred because (1) it did not separate the adjudication and disposition hearings, (2) there was insufficient evidence to find J a CINA, and (3) his visitation rights were improperly terminated. We affirm.

I. BACKGROUND

A. Father Sexually Abused S.

In 2013, when S was four years old, Father called her into his bedroom and said that he wanted to play a game. S asked if he was referring to a video game. He said “[n]o.” Father told S to undress and she complied. The two got on top of his bed and Father tied a sock around S’s eyes. Father then grabbed S, placed her on top of him, and inserted his penis into her vagina. Once the rape was over, Father gave her ice cream and bought her a movie.

When S was seven or eight years old, Father sat her “on his lap and [told her that] if [she] ever wanted to play the game again, [they] could.” S declined because she was

¹ To protect the children’s identities and privacy, we use random initials to refer to them and we have omitted the parents’ names.

uncomfortable. Years later, Father asked twelve-year-old S “[i]f you could have anything you wanted, what [would] you want?” S said she didn’t know, maybe a house or car. Father replied, “[w]ell, what if I could get that for you but we would just have to get more physical with each other.” S went to another room and was completely shocked by what had just happened.

B. The Department of Social Services Intervened.

In May 2022, S told her older sister, L, about the sexual abuse she had experienced throughout the years. L immediately informed their aunt, who took S away from the family home. Once DSS was informed of the abuse, it implemented a safety plan under which S would live temporarily with her aunt.

After the safety plan went into effect, DSS conducted a forensic interview with S. DSS found her credible and found “that she was sexually abused.” Father was arrested and charged with multiple sex crimes. Although Father was incarcerated for some time, “[he] was then let out on his own recognizance under house arrest.” On July 28, 2022, DSS allowed J to stay at home but implemented a Direct Line of Eyesight Supervision safety plan. This meant that Father could not have any contact with J without Mother’s active supervision.

On June 29, 2023, DSS filed an initial CINA petition on behalf of J because it was concerned about Father’s “demonstrated sexualized behaviors” and “[Mother’s] ability to protect [J] considering her continued relationship with the individual accused of sexually abusing her child.”

In light of DSS’s concerns about S and J’s immediate safety, the Department filed a petition seeking shelter care for the girls. The circuit court granted the petition on August 18, 2023.

On September 26, 2023, Father entered an *Alford* plea to charges of fourth-degree sex offense and second-degree assault.

C. The CINA Proceedings.

The juvenile court held a CINA hearing for both S and J on October 20, 2023. At the outset, the parties agreed that S should be declared a CINA, but they disputed whether the same could be said about J. The court took witness testimony and evidence and resolved the adjudication and disposition phases of J’s case. Specifically, the court determined that J had been neglected by her parents and that it would be in her best interest to have no contact with Father. On October 23, 2023, the court entered an Adjudication/Disposition Order that reflected the court’s determination that J was a CINA. In addition, the order provided for liberal and unsupervised visitation with Mother but no contact whatsoever with Father.

Father timely appealed the judgment. We will supply additional facts below as necessary.

II. DISCUSSION

Father raises three issues² on appeal, which we have rephrased: whether Father preserved his ability to challenge the CINA proceedings format and whether the circuit court erred in (1) deciding J was a CINA, and (2) precluding contact with Father.

A. Father’s CINA Hearing Argument Is Unreviewable.

Father contends *first* that the circuit court erred in holding the adjudication and disposition hearings together. Because this issue wasn’t preserved, though, we decline to address it.

In general, our appellate courts “will not decide any other issue unless it plainly

² Father listed his Questions Presented as:

1. Did the court commit error when it conducted the adjudication and disposition hearings without any distinction between the two hearings?
2. Did the court err when it determined J.W. was in need of assistance?
3. Did the court err by suspending all visits between J.W. and Mr. W?

The State listed its Questions Presented as:

1. Did the juvenile court properly conduct proceedings relating to the J.W. petition?
2. Did the juvenile court properly exercise its discretion when it determined J.W. was a CINA and granted the Department limited guardianship over her?
3. Did the court properly exercise its discretion when it suspended Father’s visitation with J.W.?

appears by the record to have been raised in or decided by the trial court.” Md. Rule 8-131(a). Appellate review may be available “if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.” *Id.* But we review unpreserved issues rarely, and only where there is an *extraordinary* situation. *In re J.R.*, 246 Md. App. 707, 754–55 (2020). Additionally, when it comes to the specific issue raised by Father, review of the unpreserved claim may be available when (1) the circuit court didn’t separate the adjudicatory and dispositional hearings, (2) the issue was fully briefed and argued by both parties, and (3) the review would help trial courts in applying Maryland Code (1973, 2020 Repl. Vol.), § 3-819(a) of the Courts and Judicial Proceedings Article (“CJ”). *Id.*

At the close of the adjudication portion of the proceeding, the circuit court explained that it was going to move on to disposition. Father didn’t object:

THE COURT: I also understand, even if only by a few moments, the disposition is a completely separate hearing and—I was taught that way, literally saying, ‘We’re now moving to the disposition, separate phase, and that starts right now.’

[COUNSEL FOR FATHER]: Mm-hmm.

Although Father agreed to, or at least acquiesced in, the proceeding format, he contends now that “the court held one continuous hearing This was error.” At no point does he acknowledge that the issue isn’t preserved or request plain error review. But in any event, this case doesn’t involve extraordinary circumstances or the opportunity to guide the circuit court in some way such that review would be appropriate. *Id.* After all, the circuit court at least knew that the adjudication and disposition hearings had to be held separately and did separate its consideration of the different issues at least by acknowledging the transition on

the record. That said, we reject Father’s contention on the ground that it isn’t preserved and decline to reach the merits.

B. The Circuit Court’s CINA Determination Was Supported By Sufficient Evidence.

Father’s *next* argument is that the circuit court erred in determining J was a CINA. We disagree in light of the evidence provided at trial.

When reviewing a circuit court’s determinations in CINA proceedings, we apply three intertwined standards of review:³

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.

In re X.R., 254 Md. App. 608, 618 (2022) (cleaned up).

A “child in need of assistance” is a child “who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” CJ § 3-801(f)(1)–(2). Thus, the Department must prove *both* some form of abuse or neglect

³ These standards of review also apply to the issue discussed in subsection C.

and that the parent is unable or unwilling to care for the child. As relevant here, neglect is defined as:

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

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

CJ § 3-801(s)(1)–(2). To determine whether a child has been neglected, “a court may and must look at the totality of the circumstances . . . and must find the child a CINA by a preponderance of the evidence.” *In re Priscilla B.*, 214 Md. App. 600, 621 (2013). Importantly, the juvenile court “need not wait until the child suffers some injury before determining that he is neglected. This would be contrary to the purpose of the CINA statute. The purpose of the act is to protect children—not wait to for their injury.” *In re Nathaniel A.*, 160 Md. App. 581, 596 (2005) (quoting *In re William B.*, 73 Md. App. 68, 77–78 (1987)). This proactive approach is critical because a parent’s inability to care appropriately for one child may predict their ability to care for another, and a parent’s prior conduct can be considered a risk to the other child’s safety. *Id.* at 597. Finally, with regards to the “ability to care” prong, this Court has recognized that a possibility that a parent will do nothing to change the child’s potentially harmful environment, situation, or conditions can indicate an inability or unwillingness to care for that child properly. *In re X.R.*, 254 Md. App. at 623–24.

Here, Father argues that there was insufficient evidence to demonstrate that J was a CINA. The record reveals otherwise.

First, the record established that J was neglected. It is undisputed that Father sexually abused S multiple times throughout the years. This abuse eventually led to Father’s conviction for two sex crimes. Despite this abuse, which Father doesn’t dispute, Mother never separated Father from J voluntarily,⁴ even though there was a substantial risk that J could have been abused as well. The only reason Father eventually left the family home is because the court forced him to leave. Keeping J in the same home as Father was enough to find that she was neglected. *See In re Adriana T.*, 208 Md. App. 545, 570 (2012) (“It has long been established that a parent’s past conduct is relevant to a consideration of the parent’s future conduct.”); *In re Nathaniel A.*, 160 Md. App. at 601 (*quoting William B.*, 73 Md. App. at 78) (“The child may be considered ‘neglected’ before actual harm occurs, as long as there is ‘fear of harm’ in the future based on ‘hard evidence’ and not merely a ‘gut reaction.’”).

Second, the record also demonstrates that Mother was unable or unwilling to take proper care of J. When Mother was asked at the hearing whether she believed Father sexually abused S, she responded that “to say I believe that he did this to [S], particularly if I’m in the house and she said that happened, I don’t see how that could happen. But I

⁴ Although we recognize that DSS allowed J to remain in the home with Father under a Direct Line of Eyesight Supervision safety plan, Mother’s doubts about the sexual abuse and sustained relationship with Father raised concerns about her ability to protect J.

don't believe that he's the culprit." Mother expressed this belief consistently to Shirina Cannon, a DSS social worker, multiple times. Ms. Cannon testified at the hearing that Mother's "close proximity and relationship with someone with pedophilic behaviors . . . leads me to believe that that would maybe cloud her judgment." Ms. Cannon explained further that "[b]ecause [Mother] does not believe [S]'s disclosure, I am in fear that if this was to happen to J.W. she would not be a safe person to go to." In light of Father's sexual abuse of S and Mother's belief that Father was not the "culprit," the circuit court determined that Mother was "unwilling and unable to safely care for [J.W.]." We agree. Mother didn't believe Father sexually abused their child, even after his convictions, and continued to allow him to have contact with J. The court didn't err in concluding that Mother's actions failed to exhibit a willingness or ability to protect J adequately, *see In re X.R.*, 254 Md. App. at 623–24, and the evidence was sufficient to support the court's finding that J was a CINA.

C. The Circuit Court Did Not Err In Ordering No Contact Between J And Father.

Finally, Father argues that the court erred in suspending his visitation rights with J. We disagree for many of the same reasons discussed above.

"[O]nce a court has declared a child a CINA, the court is only constrained by [Maryland Code (1984, 2019 Repl. Vol.), § 9-101 of the Family Law Article ("FL")] in its custody determination." *In re X.R.*, 254 Md. App. at 633. Under FL § 9-101, once the court "has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if

custody or visitation rights are granted to the party.” FL § 9-101(a). And “[u]nless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party,” although “the court may approve a supervised visitation arrangement that assures the safety and . . . well-being of the child.” FL § 9-101(b).

After J was determined to be a CINA, the circuit court “found, in accordance with [FL § 9-101], that there is a likelihood of abuse and/or neglect should the child be returned to either parent.” Father claims this was erroneous because suspension of visitation rights is reserved only for “the most extraordinary cases.” But that’s not true—all FL § 9-101(b) requires is some likelihood that the party will abuse or neglect the child in the future. And the record supports the court’s finding that it *was* likely that J would be abused, neglected, or both by her parents. Father sexually abused S and Mother refused to believe that it happened. Ms. Cannon testified that she was concerned about J’s safety because Father’s “pedophilic behaviors” could be directed at her as well and, if that were to happen, that Mother would “not be a safe person to go to.” The record revealed very real concern about J’s wellbeing and we see no error in the court’s decision to order that Father have no contact with J.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.**