

Circuit Court for Montgomery County
Case No. C-15-JV-23-000468

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1980

September Term, 2023

IN RE: J.E.

Graeff,
Friedman,
Beachley,

JJ.

Opinion by Friedman, J.

Filed: July 9, 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 MD. RULE 1-104(a)(2)(B).

In this appeal, we are asked to determine whether the Circuit Court for Montgomery County, sitting as a juvenile court, erred in placing J.E. in the care of J.E., Sr., (“Father”) under an Order of Protective Supervision. For the reasons that follow, we conclude that the juvenile court failed to make the required express determination that J.E. would not be subject to further neglect if placed in Father’s care. MD. CODE, FAMILY LAW (“FL”) § 9-101. We therefore remand the matter to the juvenile court to make such a determination on the record. We otherwise affirm the juvenile court’s order.

BACKGROUND

In June of 2023, appellant T.S. (“Mother”) moved her minor children J.E. (born October 2019) and R.P. (born July 2013) from Texas to Montgomery County, Maryland, without notifying Father or asking his permission, as required by the parents’ custody order.¹ Several months later, on September 25, 2023, police officers responded to a complaint at the Red Roof Inn in Rockville in response to a report of trespassing and failure to pay. Although no one answered when the officers knocked on the door, the latch prevented entrance. After maintenance workers removed the latch, the officers found two naked children, later identified as J.E. and R.P., then aged three and ten respectively, on one of the beds. The officers were concerned for the children’s safety and spoke on the phone with Mother several times. During the calls, Mother told the officers that she was in several different nearby locations, including the hotel’s laundry area and a convenience

¹ J.E., Sr., is not R.P.’s father. Mother did not note an appeal in R.P.’s CINA case, and we mention him only as relevant to J.E.’s case.

store across the street. Although the officers instructed Mother to return and remained at the hotel for more than three hours, she refused to comply. While waiting, the police contacted the Montgomery County Department of Health and Human Services (the “Department”). When the Department social worker responded to the hotel room, it was dirty and in disarray, had a foul odor, and contained a toilet filled nearly to the brim with urine and feces. Because Mother was refusing to return, the Department removed the children and placed them in emergency shelter care. Mother was informed that the Department had taken the children but expressed no interest in seeing them that evening.

The following day, the Department filed an emergency shelter hearing request and a petition for J.E. and R.P. to be found children in need of assistance (“CINA”).² The juvenile court ordered them to remain in interim shelter care, in the temporary care and custody of the Department. On October 2, 2023, the Department amended its CINA petition to add information it had learned about the family’s child welfare background in Texas, stating that: (1) Mother had been investigated for drug use and neglect in 2014; (2) R.P. had been evaluated for sexual abuse following sexualized acting out behavior in 2019; (3) Father had been investigated for neglect and drug use in 2021 after he left J.E. with a woman who also used drugs; (4) Mother was investigated in 2021 for neglect and physical abuse for being overly aggressive in disciplining the children; (5) there were

² A “child in need of assistance” means “a child who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” MD. CODE, COURTS & JUDICIAL PROCEEDINGS (“CJ”) § 3-801(f).

reports of domestic violence between Mother and Father in 2021 and 2022, but Mother refused to cooperate or seek services; (6) in July 2022, a Texas court order established there had been domestic violence between Mother and Father, but Mother was uncooperative in the investigation; (7) in September and December 2022, Mother was investigated for physical abuse of R.P. and J.E., and the Texas authorities expressed concern for her mental health; and (8) in April 2023, Mother had been evicted from her apartment.

That same day the juvenile court held a shelter care hearing at which Mother and Father appeared remotely. The juvenile court granted the Department’s request for shelter care. The court’s written order granted Father supervised virtual weekly visitation with J.E. and granted Mother supervised in-person weekly visitation with J.E. and R.P.

On October 23, 2023, the Department filed a second amended CINA petition, which added more references to the Texas child welfare record after Department social worker Corey Magee had spoken with her Texas counterpart, Jordan Ercolani, a caseworker for the Texas Department of Child & Protective Services. Ms. Ercolani had explained that the Texas Department had a long history with Mother, including an open case that had been ongoing since April 2023. Ms. Ercolani relayed that Mother had been diagnosed with bipolar and stress-related trauma disorder, often skipped court cases, had warrants for her arrest, and that the Texas Department had tried to remove the children but were unable to because Mother had provided a false address. In addition, Ms. Ercolani noted that Mother had made allegations of domestic violence against Father and that at the time Mother left Texas with the children, Father had been attempting to modify the existing visitation order

because Mother was not showing up to transfer J.E. for visits.³ Ms. Ercolani believed removal of the children from Mother’s care would be advisable.

The second amended petition also explained that since the children’s removal in September 2023, Mother had attended only one visit with them—when she could have had four—and missed scheduled meetings with the Department. In addition, Department workers were unable to follow-up with Mother about the missed visits because she had given them an apparently false address. In contrast, Father had traveled to Maryland to see J.E. and had a “very appropriate, productive visit” with the child. Father advised the Department that Mother had falsified a family violence case against him, which was later dismissed. Despite Father’s efforts, however, the Department could not recommend placement of J.E. with him until it sorted out the Texas allegations of domestic violence.

At the adjudication and disposition hearing on October 25, 2023, Ms. Ercolani was qualified by the juvenile court as an expert in the field of child safety and risk and testified remotely from Texas. She informed the juvenile court that she had become involved with R.P. and J.E. in April 2023 and had determined that the family was “very high risk” with regard to the safety of the children, based on Mother’s and Father’s continuing conflict and Mother’s failure to engage with the Texas Department.

In addition to the information that had been included in the second amended petition, Ms. Ercolani further explained that R.P. and J.E. were bonded to each other, but during her visits to their home, the children were often using their electronic devices and

³ The custody order had granted Father unrestricted visitation every other weekend from Thursday through Sunday, and one month during the summer.

she did not see a lot of hands-on parenting by Mother. She acknowledged that all the investigations of Mother were eventually closed without further action, but noted that Mother's failure to maintain a consistent residence made it challenging for the Texas Department to intervene. In fact, at the time that Mother left Texas, Ms. Ercolani had been using a private investigator to try to locate Mother.

Ms. Ercolani believed both parents would benefit from services, such as individual and domestic violence counseling, and that significant progress should be made before the children returned to either parent's home. Ms. Ercolani told the juvenile court that she would have concerns about J.E. being returned to Father's care "if domestic violence were to happen in front of the children again." She recommended that Father enroll in the Texas Batterer Intervention Program, and if he took the program seriously, Ms. Ercolani said she would feel comfortable with J.E.'s return to Father's care because he had been cooperative with the Department and appeared motivated to engage in services.

Corey Magee, the Montgomery County Department social worker, was accepted by the court as an expert in social work and safety and risk. Ms. Magee testified that she had become involved with the family on September 25, 2023, after Mother refused to return to the motel room and the police contacted the Department. Ms. Magee had also called Mother twice and told her that if she did not return to the motel room to reunify with her children, the Department would have to take custody of them and place them in foster care. Although Mother had said she would return, she did not. After she left the motel with the children, R.P. told Ms. Magee that Mother had left the hotel room and hadn't returned and

he didn't know where she had gone. R.P. also said that, in Texas, he had seen Father once choke Mother to the point of unconsciousness.

After the children were placed in foster care, Mother called Ms. Magee and explained that she and the children had fled domestic violence in Texas and that she had been afraid to return to the hotel because of the police presence, because she had outstanding warrants for her arrest and was in hiding from her ex-husband who had strangled her in another state. Despite repeated attempts to have Mother meet with her, Ms. Magee said that Mother did not appear for any appointment until the day before the hearing. Similarly, Mother missed several scheduled meetings with the children and had only visited with them once since their placement in shelter care, and that visit was “awkward, at best.”

In contrast, when Ms. Magee reached out to Father, he responded immediately, had remained cooperative with the Department, and had flown from Texas to visit J.E.

It was Ms. Magee's recommendation that J.E. be placed with Father because the Department would still be able to work with him and refer him to services in Texas if necessary. Ms. Magee did not believe the children would be safe if returned to Mother. Given Mother's various stories about domestic violence in Texas, and her use of different names, phone numbers, and addresses, Ms. Magee was concerned that the children were simply repeating her claims of violence rather than reporting something they had actually witnessed.

Father testified that prior to Mother's move to Maryland, she had limited his visitation with J.E., in violation of their custody order. He said the assault charge Mother had brought against him was false and had been dismissed for lack of evidence. Father

acknowledged that he did violate a protection order by going to Mother’s home to see the children, despite that it had been at her invitation, but he had received probation for that infraction and the probationary period had ended.

Father also addressed an injury J.E. had sustained while in his care in 2022. He said that J.E. had engaged in a temper tantrum as Father unbuckled him from his car seat, causing him to fall out of Father’s truck and break his collar bone. The injury, Father said, was accidental. He was also adamant that the incident R.P. had described of Father choking Mother was “[a]bsolutely untrue” and “never happened.” Father agreed he would cooperate with the Texas Department relating to services and counseling if J.E. were returned to him.

Mother testified that she moved from Texas to Maryland to get away from domestic violence and fighting with Father, as well as from the racism in the south. She described that Father had a history of violence and trying to control her. When she arrived in Maryland, she had been placed at the Red Roof Inn through a domestic violence assistance organization. Mother explained that on September 25, 2023, she had argued with the hotel manager about her bill and then gone to do some laundry when R.P. called to say the police were in their room. She said she had panicked, afraid to go back to the room because she feared the police would arrest her for an outstanding warrant in Texas.

Mother described that during her one visit with the children they were crying because they wanted to be with her. She further stated that if J.E. were to go back to Texas, she believed that he would be in danger and that Father would not permit her to visit with him. In addition, Mother believed that separating her sons, who are “best friends,” would

cause harm to both of them, although she acknowledged that they had been removed from her care and were already in danger of being separated because of her actions.

Mother said she had only visited the children once since their removal because she had been doing her “own investigation” into outstanding arrest warrants in Maryland to fix things so she could get her children back. She asserted that she was in a position to resume custody of the children because she had taken a drug test and procured housing through rental assistance. She said she had no problem accepting services, but she did not like the “tone” of the Department workers either in Texas or Maryland.

At the close of the hearing, the juvenile court sustained all the allegations in the second amended CINA petition by a preponderance of the evidence and adjudicated R.P. and J.E. as CINA due to neglect by both Father and Mother.

At disposition, the juvenile court declared the children CINA. Father argued, over Mother’s objection, that J.E. should be placed in his care in Texas. The juvenile court expressed concerns about that placement and imposed conditions to be met by Father before it would place J.E. with him, including provision of two negative urinalyses, submission to a psychological evaluation and a home study, and participation in the Texas equivalent of the Montgomery County Abuser Intervention Program. The juvenile court scheduled a hearing on November 14, 2023, to determine whether Father had met the conditions. The court also ordered Mother to complete a psychological and substance abuse evaluation, submit to random weekly urinalyses, and participate in parenting education and in the Abused Persons Program.

Several days after the adjudication and disposition hearing, Father filed a memo advising the juvenile court that, at the upcoming November 14, 2023, hearing, he planned to request an Order Controlling Conduct relating to Mother’s behavior. Father explained that he had received a call on his cell phone, with the caller ID indicating it was the Department social worker. When he answered the phone, however, he recognized Mother’s voice saying, “You are going to get shot in the head.” The child’s attorney had also received at least 16 text messages from Texas phone numbers—some of which were a “little threatening”—that were believed to be from Mother using fabricated screen numbers. Father was concerned about “what appears to be a pattern of harassment and threats” by Mother.

The court held an emergency hearing on Father’s request on November 3, 2023. At the hearing, Ms. Magee testified that she, too, had received “a barrage of phone calls and text messages” from various numbers sharing allegations against Father and concerns about separating the children. Moreover, Ms. Magee had learned that Mother had filed for a new protection order against Father in Maryland, alleging that Father had broken J.E.’s collar bone and hit him, harassed her family members, filed false claims, and used sex to gain control over her. Mother acknowledged having sent Ms. Magee approximately 100 text messages but asserted that they all related to her desire to begin the required services.

The juvenile court issued an Order Controlling Conduct, requiring no direct or indirect contact between Mother and Father and permitting Mother only one contact per day with the Department. The court further ordered Mother to provide the Department with a list of people willing to be resources for the children.

In advance of the scheduled November 14, 2023, status hearing, the Department filed a written report. The report detailed that Mother had had three visits scheduled with the children since their CINA adjudication, but the Department had cancelled two of those visits when Mother was late. The one visit that did take place had gone well, and Mother had also undertaken two video calls with the children. Mother had completed a parenting education class. She had been referred for urinalysis and substance abuse evaluation, but the Department had received no results. The Department had also referred Mother to the Abused Persons Program, but she had declined therapy services and only requested legal services for pressing charges.

In contrast, Father had been speaking with J.E. virtually every day until the child's new foster parents' schedule required reduction of conversations to approximately once per week. Father had submitted two negative urinalyses. He had completed a psychological evaluation and registered for a batterer intervention program and was scheduled for a diagnostic evaluation. Finally, Father had submitted to a home evaluation.

The juvenile court held its status hearing on November 14, 2023, to determine if Father had met the court's conditions for placement of J.E. with him. Father travelled to Maryland from Texas to participate. At the hearing, the Department advised the court that it had been notified that there was an open investigation involving Father in Texas, but it had not confirmed the allegations or status of that matter. It suspected, however, that the investigation was nothing more than a continuation of Mother's "campaign of misinformation and distraction and delay." Nonetheless, because of the open case, the Department could not recommend the return of J.E. to Father and the closure of the

Maryland CINA matter at that time, despite the fact that Father had done everything the Department had asked him to do and Mother had done “nothing that she’s supposed to do, other than visit” the children twice, once before the CINA adjudication and once after. The Department reminded the court that it could overrule the Department’s recommendation and voiced “no confidence whatsoever in terms of Mother being a resource for this child.”

The juvenile court declined to change J.E.’s placement, instead scheduling another status hearing for December 1, 2023. Mother requested that the matter not be set for another status hearing but instead for a contested review, as the court had adjudicated J.E. CINA based on neglect by both parents, and it should consider all possibilities for placement. The court agreed to a review hearing.

On November 20, 2023, Father requested an expedited hearing on a change of J.E.’s placement or a modification of visitation. He explained that he had filed the motion after learning that, due to Mother’s attorney’s purported unavailability on December 1, 2023, the scheduled review hearing would likely be continued until late December or January 2024, and he had sought to have the matter resolved earlier so that J.E. could be with him and his daughters for Christmas. In the motion, Father asserted that he had “worked diligently” and had met all the conditions within his control that were required by the juvenile court at the disposition hearing. He further complained that J.E.’s new foster parents had curtailed his visitation with the child after Mother filed what he claimed was a fraudulent petition for protection order. The children and the Department agreed with the request for expedited hearing.

Mother objected to expediting the hearing, contending that only the Department could request an emergency hearing and a change in placement. Mother added that an expedited hearing was not required because Father’s virtual visitation with J.E. had not been curtailed, and J.E. had always spent Christmas with Mother and R.P., not with Father and his daughters. The juvenile court granted Father’s motion and expedited the status hearing to December 8, 2023.

At the expedited hearing, Father repeated his request that J.E. be placed in his custody in time for Christmas, noting that he had “complied with everything the Court has asked him to do,” with the exception of completing the Abused Persons Program. He explained that he had been unable to enroll in such a program through the Texas Department, but he had found a private Battering Intervention & Prevention Program (“BIPP”) that he could register for if the juvenile court approved it. Father had also agreed to make J.E. available for visitation with Mother. If the juvenile court were not inclined to place J.E. with him, Father alternatively sought a modification of visitation, to add more than the one hour per week he had been granted since the last hearing.

The Department joined in Father’s motion to have J.E. placed with him in Texas, stating that J.E. had expressed a desire to be with Father and that it had no safety concerns with Father, who had followed through with services. Moreover, the pending protective order and potential new abuse cases against Father in Maryland, Washington, DC, and Texas had been dismissed. Father was ready, willing, and able to care for J.E. and had a large family support system in Texas, while the only potential relative resource for J.E. in

Maryland was a maternal uncle that he hardly knew. The children’s attorney also endorsed the return of J.E. to Father over leaving him in foster care.

Mother argued that if the juvenile court was going to make a change in custody there should be a full hearing and insisted that the juvenile court did not have the authority to place J.E. with Father, even under an OPS, “because the mother does not agree.” Mother requested a “full hearing regarding any change of custody with the child[,]” especially as she, too, had done everything the Department had asked her to do that was within her power. Mother complained that the Department had been focused only on placing J.E. with Father from the beginning and had never given reunification with Mother due consideration.

The juvenile court responded, “This is not a custody hearing. This is a CINA hearing, and there’s a child who is in foster care, not living with a relative, not living with mom, not living with dad, and the Court can certainly allow the child to live with his father pending his completion of the Abused Persons Program....” The court then expressed a desire to have “someone from the [D]epartment” testify as to Mother’s and Father’s efforts.

As requested by the juvenile court, Tania Downing, the Department’s foster care intake worker assigned to R.P. and J.E., testified that it was she who had prepared the November 13, 2023, report that detailed the progress of each parent in relation to court ordered services. Ms. Downing reiterated that visits between Mother and the children had “for the most part” gone well, but some visits had been cancelled because Mother either did not appear or was too late. Since the date of the report, Ms. Downing had supervised

one other visit, while one visit had been cancelled. She acknowledged there may have been more visits with the newly assigned social worker.

Mother had been scheduled for a psychological evaluation in January 2024, but because Mother believed it was too far into the future, she may have canceled the appointment. Ms. Downing had not received the required weekly urinalyses from Mother. She had received the substance abuse evaluation, which recommended that Mother participate in the Abused Persons Program, but Mother had declined services until the night before the hearing, when Mother “demand[ed]” services because of the upcoming hearing. Mother had completed a parenting program. To Ms. Downing’s knowledge, Mother was not employed, and the Department did not know how she was supporting herself.

Father had “done everything he could do to comply with the Court’s requests” and had undertaken the services the Department requested of him, including a psychological evaluation, which raised no concerns. It was Ms. Downing’s professional opinion that it was in J.E.’s best interest to be placed with Father.

Following Ms. Downing’s testimony, Mother’s attorney asked to call Mother as a witness. The juvenile court, noting that Father had not testified, asked if there was anything else that hadn’t already been presented, and Mother’s attorney responded that “the only thing” was that Mother had attended two other evaluations on her own, that is, not as referred by the Department, and had she known that “this was going to be the crux of today’s hearing,” she would have made sure to have witnesses there to testify as to what

actions Mother had taken to further her cause of having her children returned to her care. The juvenile court denied Mother’s request to testify.⁴

Mother then argued that sending J.E. to Texas with Father would in effect be changing custody, and before the court could do so it first needed to hear Mother’s testimony about visitation, the relationship between the two children, and her concerns. Father responded that at the disposition hearing, the court had put all parties on notice that it sought to place J.E. with Father once he completed several required tasks, and Father had done all those things. Therefore, he concluded, “all of this stuff is irrelevant[.]”

Based on the Department’s recommendation, and the fact that Father had submitted two negative urinalyses, presented a psychological evaluation that raised no concerns, and passed a home evaluation, the juvenile court ordered that J.E. be placed with Father under an OPS. The court required that Father complete and provide verification of completion of the Texas BIPP and continue to participate in therapy. The court granted Mother a minimum of two Zoom visits per week with J.E. for a minimum of 15 minutes each and required her to provide proof of living arrangement and employment.

⁴ The court did, however, admit into evidence four of Mother’s documents regarding the tasks she had completed. The documents included a Texas Department of Family and Protective Services investigation of alleged abuse or neglect, a behavioral health assessment recommending that Mother continue receiving mental health services in the Abused Persons Program, an assessment by an alcohol abuse counseling program that Mother was not a problem drinker or user of illicit drugs, and a certification of Mother’s completion in a parenting program.

Mother noted a timely appeal of the court’s decision permitting J.E. to be moved to Texas.⁵ Mother now argues that the juvenile court (1) erred by transferring J.E. to Father’s custody at an expedited hearing without allowing her to be fully heard, (2) failed to comply with Maryland law because it did not make, and there would have been insufficient evidence to support, a finding that it was safe and in J.E.’s best interests to be placed in father’s care, *see* FL § 9-101, and (3) erred by refusing to expressly address whether Mother’s supervised in-person visitation with J.E. could continue. We shall address each issue in turn.

DISCUSSION

I. STANDARD OF REVIEW

We review CINA proceedings using three inter-related standards. We review the juvenile court’s factual findings for clear error and legal conclusions without deference. *In re Yve S.*, 373 Md. 551, 586 (2003). If the juvenile court’s final conclusion is “based on proper factual findings and correct legal principles, [it] will stand unless the decision is a clear abuse of discretion.” *In re Ashley S.*, 431 Md. 678, 704 (2013) (*citing In re Yve S.*, 373 Md. at 586). We give great respect to the juvenile court’s opportunity to view and

⁵ The record contains a subsequent Department report in anticipation of a February 26, 2024, CINA review hearing. The report details that as of February 16, 2024 Mother had NOT: (1) provided the Department a permanent address; (2) been cooperative with the Department; (3) completed 14 of 23 scheduled visits with J.E.; or (4) made any significant progress toward reunification with R.P. The Department requested that J.E. remain in Father’s care under an OPS, as Father had been compliant with court ordered services. Following a hearing, the juvenile court found that J.E. was safe with Father and continued J.E.’s placement with Father under an OPS.

assess the witnesses’ testimony, and accord great deference to the juvenile court’s determination unless it is arbitrary or clearly wrong. *Cecil Cty. Dep’t of Social Services v. Goodyear*, 263 Md. 611, 622 (1971); *In re Adoption/Guardianship Nos. 2152A, 2153A, 2154A*, 100 Md. App. 262, 270 (1994).

ANALYSIS

I. EXPEDITED HEARING

Mother first contends that the juvenile court erred by violating the CINA statutes, the Maryland Rules, and due process principles, when it transferred custody of J.E. to Father during an expedited hearing without allowing her to be heard fully. Mother acknowledges that the juvenile court was required to make every effort to limit J.E.’s time in foster care and that the court was authorized to place J.E. with Father under an OPS, and that she knew the court was contemplating doing so after the December 2023 hearing. Nonetheless, Mother argues that, in failing to provide “sufficient advance, detailed notice of the case allegations” to permit her to “adequately prepare and present a defense,” receiving one-sided testimony from the Department, and declining to permit her to testify at the expedited hearing, the juvenile court deprived her of due process and the right to be heard. We are not persuaded.

There can be no question that “[a] parent’s interest in raising a child is ... a fundamental right.” *In re Adoption/Guardianship Nos. J9610436 and J9711031*, 368 Md. 666, 671 (2002) (quoting *In re Mark M.*, 365 Md. 687, 705 (2001)). As a result, when “a state seeks to change the parent-child relationship, ‘the due process clause is implicated.’” *In re Maria P.*, 393 Md. 661, 676 (2006) (quoting *Wagner v. Wagner*, 109

Md. App. 1, 25 (1996)). Exactly what “process is due” is determined by the totality of the facts of each case. *In re Adoption No. 6Z980001*, 131 Md. App. 187, 199 (2000).

From the outset of this matter, the only real impediment to the return of J.E. to Father were the allegations of domestic violence between Mother and Father. At the CINA adjudication and disposition hearing on October 25, the juvenile court, concerned about the alleged domestic violence, imposed conditions upon Father before it would place J.E. with him under an OPS. MD. CODE, COURTS & JUDICIAL PROCEEDINGS (“CJ”) § 3-819(b)(1)(iii)(2)(A) (providing that in making a CINA disposition, the juvenile court may commit the child to the custody of a parent under terms it considers appropriate). At that point, Mother was on notice that the juvenile court sought to place J.E. with Father.

The November 14, 2023 hearing was scheduled so that the juvenile court could determine if the conditions had been met. At that hearing, the court heard that Father had met those requirements but that the Department had learned of another open investigation of Father in Texas. The juvenile court elected to hold its placement decision over until December 1, 2023 because, despite suspicions that the new investigation was fabricated by Mother, the Department could not recommend placing J.E. with Father until it was resolved.

Off the record sometime between November 14, 2023, and December 1, 2023, it appears that Mother’s attorney sought to postpone the hearing because of personal reasons that might delay the court’s placement decision until January 2024. Unhappy with the potential delay, Father moved to expedite the hearing. The court granted the request and the hearing was rescheduled to December 8, 2023. At that hearing, the Department, for the

first time, agreed that J.E. should be placed with Father, because he had met all the conditions imposed by the court and the Department had learned that the new investigations had been dismissed.

Mother argued then, as she does now, that a full hearing with witnesses and testimony was required before a change in custody would be permitted. The juvenile court reminded her that it was not a custody hearing, but a CINA hearing, the goal of which was to remove J.E. from the foster care system. After hearing testimony from the Department about Father's success in meeting the requirements for J.E. to be placed with him and Mother's lackluster effort at complying with services, the court declined Mother's request to testify about her attempts at evaluations outside the Department's accepted providers. The sole issue before the juvenile court was whether Father had sufficiently completed its previously imposed conditions so as to permit him to take J.E. back to Texas, and Mother's proposed testimony was not pertinent to that question.

As we have previously noted, prior to the December 8, 2023 hearing, both Mother and Father were on notice that the juvenile court's focus was on Father's completion of the conditions imposed upon him by the court and the resolution of the open cases against him so that J.E. could be removed from foster care. Absent offering evidence that she had completed the tasks assigned to her to the Department's satisfaction, there was little Mother was required to do to prepare, and the purpose of the hearing should not have caught her unaware.

Moreover, because the hearing focused on the parents' efforts since the recent November hearing, the juvenile court acted reasonably and within its discretion in having

only the Department social worker testify about Mother’s and Father’s progress. *See Muhammad v. State*, 177 Md. App. 188, 273-74 (2007) (“To insure that a trial does not stray into distracting and confusing by-ways, broad discretion is entrusted to the trial judge to control the flow of the trial and the reception of evidence.”). Mother was permitted to cross-examine the social worker and to offer exhibits documenting her progress with services into evidence. Nothing Mother could have testified about regarding her own progress, some of which was made outside the Department’s purview and therefore could not be verified or accepted by the Department, would have changed the outcome.

Under the circumstances, we cannot say that Mother was deprived of due process or that the juvenile court abused its discretion by expediting the hearing and declining to permit Mother to testify to matters outside the scope of the hearing.

II. JUVENILE COURT’S COMPLIANCE WITH FL § 9-101 AND EVIDENCE IN SUPPORT OF J.E.’S BEST INTEREST

Mother next claims that the juvenile court erred in failing to make an express finding, as required by FL § 9-101, that there was no likelihood of future abuse or neglect by Father before placing J.E. with him. Mother further contends that the Department and Father did not adduce sufficient evidence to support the court’s conclusion that J.E.’s placement with Father was safe and in his best interest.

The Department concedes error on the part of the juvenile court in failing to make a FL § 9-101 finding on the record and agrees that the matter should be remanded to that court for consideration of that limited issue. The Department does not agree, however, that

the evidence before the juvenile court was insufficient to support a conclusion that placement with Father was in J.E.’s best interest. We will address both questions.

FL § 9-101 embodies a presumption “that a child’s best interest is not served by placing the child in the custody of someone with a history” of child abuse or neglect. *In re Adoption No. 12612 in Circuit Court for Montgomery Cnty.*, 353 Md. 209, 238 (1999). It provides that:

(a) In any custody or visitation proceeding, if 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.

(b) Unless 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, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

Once a juvenile court determines that a child is a CINA, the court is therefore bound by the requirements of FL § 9-101 in awarding custody, and the court must first find that there is not a likelihood of further abuse or neglect. *See In re X.R.*, 254 Md. App. 608, 626-27 (2022). The statute requires a “specific finding” and, thus, an implicit finding does not satisfy that requirement. *In re T. K.*, 480 Md. 122, 159 n.23 (2022).

Here, the juvenile court found that J.E. had been neglected by Mother and Father. As permitted by statute, the court decided to make a custody determination in favor of Father. *See* CJ § 3-819.2. Before doing so, however, the court failed to make an explicit finding that there was no likelihood of further neglect by Father. For that reason, we must

remand this matter for the limited purpose of the court’s consideration and articulation of the FL § 9-101 requirements as applicable to this case.

Mother’s argument that there is insufficient evidence to support a finding by a preponderance of the evidence that placement of J.E. with Father is in J.E.’s best interest is, however, unavailing. The court made clear that it sought to remove J.E. from foster care, and it heard evidence from the Department that it had no concerns about placing J.E. with Father, who had complied with every service required of him. Moreover, the juvenile court’s finding of neglect on Father’s part was based on the alleged history of domestic violence between Father and Mother. The evidence establishing that history was somewhat questionable and was accepted by the juvenile court largely because a Texas court, in its custody order, had determined that it had occurred. And, with Mother seemingly planning on remaining in Maryland and Father remaining in Texas, any concerns of domestic violence between the two were greatly diminished. With Father’s completion of a batterer intervention program, and with nothing else to suggest that Father was not a fit custodian for J.E., if the juvenile court finds that there is no likelihood of further neglect, there is sufficient evidence for the court to also find that it is in J.E.’s best interest to leave the foster care system and return to the care of the one parent who had made a significant effort to effectuate the placement.

III. MOTHER’S IN-PERSON VISITATION

Finally, Mother argues that the juvenile court erred in effectively suspending her in-person visitation with J.E. by placing the child with Father in Texas and declining to include in its custody order that she be permitted to continue supervised visits if she

traveled to Texas. In Mother’s view, although the court did not outright deny her request to include in-person visitation in its order, the court’s decision not to address the issue unless and until Mother planned to travel to Texas imposed an “added burden” of filing an amended motion before she could obtain in-person visitation in Texas.

As Mother acknowledges in her brief, “[d]ecisions concerning visitation generally are within the sound discretion of the [juvenile] court” and are reviewed for an abuse of discretion. *In re Billy W.*, 387 Md. 405, 447 (2005).

The juvenile court changed Mother’s once in-person and once virtual weekly supervised visitation to two virtual visits per week upon J.E.’s move to Texas. Mother requested in-person visits if she were able to get to Texas. The Department responded that “that should be something that’s filed with the Court.” The court agreed that once Mother purchased a plane ticket, the court would have sufficient time to fashion a ruling on in-person visitation in Texas. When Mother again pressed for permission for in-person visitation, the court responded, “We’re going to cross that bridge when we come to it.” The court’s written order following the hearing provided Mother a minimum of two virtual visitations per week but did not mention in-person visitation.

The juvenile court did not, as Mother suggests, “end her in-person visitation with J.E.” Instead, the court elected not to fashion a visitation order based on Mother’s entirely hypothetical presence in Texas. Mother did not provide the court with any dates on which she planned to be in Texas, and the court was not required to put in its order that Mother would be permitted in-person visitation in Texas on some future date, especially as the Department had not yet been successful in engaging the Texas Department to set up

services or supervised visitation, and Mother had already exhibited a lack of cooperation with the Montgomery County Department.

It was not unreasonable for the juvenile court to delay a decision on in-person visitation unless and until Mother had concrete plans to go to Texas and filed a request with the court. Then, the Department would be able to respond with its recommendation given Mother's progress at that particular time.

In addition, we note that in the approximately six months since the expedited hearing, there is nothing in the record to indicate that Mother has filed a motion or petition with the juvenile court indicating a plan to travel to Texas and asking the court to permit in-person visitation. Therefore, with the benefit of hindsight, we cannot say the juvenile court erred or abused its discretion in postponing a decision on Mother's in-person visitation until it became relevant.

**CASE REMANDED TO THE
CIRCUIT COURT FOR
MONTGOMERY COUNTY,
SITTING AS A JUVENILE COURT,
TO MAKE FURTHER FINDINGS ON
THE RECORD IN ACCORDANCE
WITH THIS OPINION; JUVENILE
COURT'S ORDER OTHERWISE
AFFIRMED; COSTS TO BE PAID 2/3
BY APPELLANT AND 1/3 BY
APPELLEE.**