

Circuit Court for Baltimore County
Case No.: C-03-JV-23-001074

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 2391

September Term, 2023

IN RE: S.T.

Berger,
Albright,
Kenney, James A., III.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: October 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).

The Baltimore County Department of Social Services (the “Department”) filed a petition with the Circuit Court for Baltimore County, sitting as a juvenile court, alleging that then twelve-year-old S.T. was a child in need of assistance (“CINA”) based on allegations that her mother, C.P. (“Mother”), appellant, had abused and neglected S.T. and S.T.’s then seventeen-year-old brother, J.C. On November 8, 2023, the court authorized shelter care for both children.¹ Following a hearing held on January 30, 2024, the court sustained certain facts in the petition that the parties had stipulated to and found that Mother had abused and neglected the children; determined that S.T. was not a CINA because her father, A.T. (“Father”), appellee, was able and willing to provide care to S.T.; and awarded Father, who resides in Texas, custody of S.T. Mother appeals the decision and raises three questions for our consideration which we consolidate and rephrase as follows: Did the court err in closing the CINA case and awarding custody of S.T. to Father?² For the reasons to be discussed, we answer “no” and accordingly shall affirm the judgment of the court.

¹ The Department filed a separate petition for S.T.’s brother, J.C., who would turn eighteen years old in June 2024. At the adjudicatory and disposition hearings held on January 30, 2024, Mother “acquiesc[ed] . . . that she [was] not in a position right now today to care for the children.” Although J.C.’s father participated in the CINA proceeding, he too was unable to care for J.C. as he was then incarcerated. The court ultimately determined J.C. a CINA and continued his commitment to the Department. This appeal relates to S.T. only. Any information regarding J.C. is provided for context.

² Mother phrased her questions presented as follows:

- 1) Did the trial court erroneously close the CINA case when Mother presented evidence that Father had a history of violence toward mother and child, Father had no substantial contacts or relationship with child and the Department did not fully investigate [F]ather’s criminal history, employment, and home adult occupants[?]

(continued...)

BACKGROUND

CINA Petition & Adjudicatory Proceeding

The Department filed CINA petitions on November 9, 2023 which resulted in the court granting its request for shelter care for S.T. and J.C., who were placed with their grandparents (Mother’s mother and stepfather). The court then held adjudication and disposition hearings on January 30, 2024. At the outset of the adjudicatory proceeding, the five attorneys representing the respective parties³ stipulated to certain facts set forth in the Department’s CINA petition. Mother joined in that stipulation, with the caveat that “while she would agree that the children’s statement, which make up a large portion of this petition are what the child would say were they called to testify, she absolutely denies that those things are accurate.” Specifically, Mother proffered that she would deny, among other things alleged in the petition, that she physically abused either child, left them without adequate food, and that she would have S.T. provide urine which Mother would submit with her own urinalysis tests. “[W]ith those proffers,” Mother, was “not objecting to the [c]ourt sustaining the petition.” Mother also acknowledged that she had lost her job and

2) Did the Department’s failure to investigate Father’s history and home warrant the [c]ourt’s further intervention to ensure the paramount interests of the safety of a child before sending the child out of state[?]

3) Was there [ins]ufficient evidence to find that S.T. was not a child in need of assistance and to award custody under the statute?

³ The Department, Mother, S.T.’s Father, J.C.’s Father, and the children were all represented by counsel.

her housing and was currently living with her aunt, who could not accommodate the children.

The parties stipulated to the allegations set forth in the following paragraphs of the CINA petition related to S.T. In the petition, S.T. is referred to as “Respondent,” Mother as “Ms. P[.],” and Father as “A.T.” or “Mr. T.”

1. On November 8, 2023, the 12-year old Respondent and her 17-year-old brother to the [sic] Baltimore County Department of Social Services due to concerns of abuse and significant neglect related to parental substance use and lack of appropriate care for the Respondent and her brother.

2. On September 29, 2023, the Department received a report alleging neglect of the Respondent and her sibling. It was reported that the Respondent had a visible bruise on her left pointer finger and that she reported that her mother only comes home once a week to tend to her and her 17-year-old brother. The Respondent reported that her mother “beats her weekly,” usually in the middle of the week. The Respondent reported that the bruise on her finger was caused by her mother throwing a container lid at her which cut her knuckle. The Respondent further reported that her mother abuses substances like Percocet and that she “favors things with needles.” The Respondent reported that her mother sometimes leaves for up to two weeks at a time leaving her and her brother alone. The Respondent also reported that the family does not live in district for her current school and that her mother is late picking her up from school, sometimes making her wait until 8pm.

3. On October 2, 2023, this writer [a social worker] attempted to complete an initial face-to-face interview with the Respondent at her school, Stemmers Run Middle School, but was informed that she was absent. This writer confirmed the family’s address as [redacted], Essex, MD, but was informed that the family is reportedly not living there and is instead living at [redacted], Middle River, MD. This writer then attempted to complete an initial face-to-face interview with the Respondent and her mother at the address listed for the family, [redacted], Essex, MD, but received no response and left a notification letter. This writer was then able to complete a successful initial face-to-face interview with Ms. P[.] and the Respondent at the [Middle River] address.

4. Upon arrival to this address, this writer knocked several times before hearing someone shouting “Hello?” from a window above. This writer

observed a woman with dark hair sticking her head out of the window who identified herself as [C.P.] This writer identified myself, the purpose of my visit, and asked if I could speak to Ms. P[.], to which she responded “No,” and closed the window. After a short time, Ms. P[.] then opened the door of the home and immediately stated the Respondent lied about her injury and that she has had problems with the Respondent telling lies. Ms. P[.] then called the Respondent downstairs so this writer could see her and again repeated that the Respondent was lying. Ms. P[.] then repeatedly said “Tell her” to the Respondent until the Respondent stated that she lied. This writer inquired if the Respondent has participated in therapy to help address the reported behavioral concerns, to which Ms. P[.] stated that the Respondent does not need therapy. This writer provided Ms. P[.] with my contact information and a brochure regarding the process of CPS investigations and stated that I would be in touch.

5. On October 2, 2023, this writer completed an initial face-to-face interview with the Respondent’s 17-year-old brother at Kenwood High School. The Respondent’s brother stated that the Respondent lied about the cut on her finger being caused by their mother but that everything else is the truth. He stated that their mother is using drugs and that she is always with “random guys.” He stated that he and the Respondent found a bag of different pills in their mother’s room that they believed to be Percocet and what may be heroin. This writer asked about the weekly beatings the Respondent reported, her brother stated that that is “definitely happening” and that there have been times when Ms. P[.] has dragged the Respondent around by her hair. The Respondent’s brother stated that he knows when his mother is on drugs because of her eyes, that she “rages,” and that the slightest things set her off. He stated that he cannot tell when their mother is not on drugs and that when she is not on drugs, she tries to discipline him and the Respondent and that it “gets out of hand.” He stated that there was an incident wherein Ms. P[.] punched him in the mouth for not giving her his phone password. The Respondent’s brother stated that Ms. P[.] has threatened to hit the Respondent for speaking to CPS in the past. He stated that Ms. P[.] has offered him drugs in the past, but that he is not interested, and that she has the Respondent pee in cups for her when she must do drug tests for work.

6. On October 19, 2023, this writer completed a face-to-face interview with the Respondent at Stemmers Run Middle School to ask about the concerns without Ms. P[.] present. The Respondent stated that her mother is a pathological liar and “twists” what she tells people. The Respondent stated that her mother uses her pee for drug tests and that she uses “needles, pills, and coke.” The Respondent stated that her mother was home the night before, but that prior to that she had not been home for 5 days. The Respondent stated

that she has panic attacks and that her mother is not supportive and often says things like she wishes she never had the Respondent and that the Respondent should go kill herself. The Respondent stated that her mother takes her brother's money to pay bills. The Respondent stated that most of the food in their home is expired or her mother tells them not to eat it.

7. The Respondent also stated that her mother has bipolar disorder and that she believes she is beginning to show signs of the disorder, but that her mother refuses to take her to a psychiatrist. The Respondent stated that she takes medicine for ADHD, but she never takes it because she never has enough due to her mother selling it. The Respondent stated that she is always late for school because her mother cannot wake up in the morning or, once she is awake, continues to fall asleep. The Respondent stated that she asks her mother to take her to school and that her mother refuses to and tells her to walk. The Respondent stated that her mother has gotten mad at her for talking to her biological father and that she slammed her head into things and told the Respondent to hang herself. The Respondent stated that her mother refuses to put her in therapy because “they will just shove pills down her throat” and that she wants to be in therapy, but her mother will not let her.

8. On November 6, 2023, this writer called Ms. P[.] in an attempt to schedule a follow-up visit with her to discuss the concerns for her children and to determine if she would submit to a drug test. Ms. P[.] presented as combative, refusing to meet with this writer, refusing to take a drug test, refusing to provide the information for her children's pediatrician, and instructing this worker to close my case. This writer attempted to explain my need to fully assess and address the concerns, but Ms. P[.] stated that she knew her rights and would not provide this writer with any information.

9. [redacted]

10. On November 8, 2023, this writer conducted a follow-up face-to-face visit with the Respondent at Stemmers Run Middle School. The Respondent stated that things at home are “not so good” and that while her mother was “hardly home” before, now she is never home. The Respondent stated that her mother “can't function without doing pills or smoking.” She stated that she took her medicine on Monday, but that there was only one pill and her mother said she needed to refill her medication. The Respondent stated that she later found several pill bottles in her mother's room with her (the Respondent's) name on them as well as a full bottle of her ADHD medicine. The Respondent stated that after this worker attempted to speak with her mother on November 6th, her mother became upset and said that the Respondent would need to take the drug test for her and that CPS can take

her, but they cannot take her brother. The Respondent expressed that she may have an eating disorder, but that her mother says she is doing it for attention and will not take her to a psychiatrist.

11. On November 8, 2023, this writer conducted a follow-up face-to-face visit with the Respondent's 17-year-old brother at Kenwood High School. The Respondent stated that life at home has been "the same as usual." He stated that his mother came home last night, but that she was arguing with her boyfriend and not interested in talking to him about his senior interview. The Respondent's brother stated that after this writer's attempted phone call with Ms. P[.] on November 6th, she told the Respondent "They can take you." He stated that Ms. P[.] told the Respondent she would have to take the drug test for her. He stated that Ms. P[.] coached the Respondent on what to say to this writer, that she has a good mom and that she does not have to speak.

12. On November 8, 2023, this writer called Ms. P[.] in an attempt to safety plan the Respondent and her 17-year-old brother to the care of their maternal grandparents until all of the concerns for the children had been assessed and addressed. Ms. P[.] refused to safety plan the Respondent and her brother to the care of their maternal grandparents resulting in this writer issuing shelter paperwork. This writer provided Ms. P[.] the shelter authorization form and information for the Office of the Public Defender via text message. Ms. P[.] then called this writer and stated that there were no legal grounds for the removal of her children and that she would come to the Respondent's schools and pick them up.

13. On November 8, 2023, this writer attempted to remove the Respondent from Stemmers Run Middle School to her grandparents' home prior to Ms. P[.]'s arrival to the school. When the Respondent was told that her mother was coming to the school, she began to cry and hyperventilate. This writer assured her that she would still be going with her grandparents and that if the police needed to be contacted for support, we would do that. The Respondent asked "Are you going to let her near me?" and expressed concern that her mother would hit her. Ms. P[.] continually called the Respondent's brother and was heard to be screaming at him over the phone, telling him to tell someone that she does not use drugs and would not take a drug test. This writer heard Ms. P[.] yell "I swear to God J[C.]"

14. [redacted]

15. On November 8, 2023, this writer contacted the Respondent's father, [A.T.], to notify him that the Respondent and her brother were sheltered to the Department. Mr. T[.]'s response to this writer was "Thank God." Mr. T[.]

stated that Ms. P[.] has not allowed him to contact the Respondent, but that he has continued to financially support his daughter. . . .

16. Ms. P[.] has history with the Department including a service case referred to the Department from Dallas, Texas due to domestic violence concerns for Ms. P[.] and her then-boyfriend, [A.T.] Ms. P[.] was also involved in an Alternative Response case from March 2023 to May 2023 for allegations that Ms. P[.] hit the Respondent in the face with a belt and banged her head on the floor causing a tooth to fall out. Ms. P[.] allegedly told the Respondent she would be better off dead and should shoot herself. There were additional concerns for Ms. P[.] using pills. Per case notes from the Alternative Response, Ms. P[.] would not cooperate with allowing the Department to address the concerns received for the children and would not provide information for their pediatrician nor any other information regarding her children.

The court sustained the findings, noting that the evidence was presented by stipulation and proffer and “no objection being heard[.]” The court concluded that “continuation of the children in the children’s home is contrary to their welfare[,]” finding, among other things, that “Mother’s uncontrolled and untreated substance abuse has left her unwilling and/or unable to safely and appropriately care” for the children.

Disposition Proceeding

Section 3-819(e) of the Courts & Judicial Proceedings (“CJP”) Article of the Maryland Code addresses disposition proceedings where, as here, allegations in a CINA petition are sustained against only one parent and the other parent expresses a willingness and ability to care for the child. The statute provides:

If the allegations in the [CINA] petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child, the court may not find that the child is a child in need of assistance, but, before dismissing the case, the court may award custody to the other parent.

Here, the allegations in the CINA petition were leveled and sustained against Mother only and Father expressed his desire for custody of S.T.⁴ Mother opposed Father having custody of S.T., preferring instead that the court declare her a CINA.

The Department informed the court that it was not opposed to the court granting custody to Father and closing S.T.’s CINA case. The Department did acknowledge, however, that, although it “does not have any problems with” him, based on Mother’s allegations that she was the victim of domestic violence when living with Father nearly ten years ago, the Department was not in a position to present any evidence regarding whether Father “is a fit and proper person” for custody. The Department related that its “several attempts to get records from Texas” were unavailing. The only thing it had learned was that, in 2013, “there was a call about domestic violence between” Father and Mother when they resided together in Texas, but because the parties had failed to cooperate “the Department in Texas made no findings.”

Father, recognizing that it was his burden to establish that he was able and willing to care for S.T., then testified. He related that he and Mother lived together in Texas prior to S.T.’s birth and thereafter off and on for the first three or four years of S.T.’s life. During those years when not living with Father, Mother resided in Maryland. According to Father, Mother “did this back and forth thing about four or five times.”

Father admitted that there had been a domestic violence incident between him and Mother, but he claimed it did not involve either S.T. or J.C. and neither child had been

⁴ Mother and Father never married and there was never any court involvement regarding custody or child support.

removed from their home. Although Father claimed that he was the victim in the incident and the one who had called the police, he acknowledged that he had ultimately pleaded guilty to a “misdemeanor” (entering the plea in order to move on with his life) and was placed on probation. Other than that, Father related that he had no criminal record. Although it had not been requested of him to date, Father stated that he was “100 percent” willing to subject himself to fingerprinting and a background check.

After Mother left Texas for Maryland for the last time in 2015 or 2016, Father strived to maintain a relationship with S.T. When S.T. turned five years old, Father drove to Maryland to celebrate her birthday and submitted a photograph of that occasion. But after Mother learned that he was in a relationship with the woman he ultimately married, Father claimed that Mother thwarted his attempts to communicate with S.T. Because Mother would often move without giving Father her address, Father typically did not know where S.T. was living. Nonetheless, despite no court order requiring him to do so, Father regularly sent Mother money to support S.T.

When Father married in 2019, he asked Mother’s permission for S.T. to attend the wedding. Mother refused, claiming she did not want to send the child to Texas alone. When Father offered to fly S.T. and Mother to Texas and pay for a hotel room, Mother still refused.

Father testified that, upon learning of the CINA petition, he moved to a larger home in hopes of obtaining custody of S.T. and he absolutely desired S.T. residing with him. Father currently lives in a three-bedroom, two-bathroom house in Denton, Texas with his

wife and his eleven-year-old stepson. Father’s wife shares custody of her son with the son’s father. Father, appearing remotely, gave the court and the parties a visual tour of his home.

Father has worked as a utility locator with United States Infrastructure Company since November 2021, and earned approximately \$64,720 in 2023.⁵ He is subject to random drug testing every quarter as part of his employment and has not failed any drug tests. He also has a degree in “automotive mechanic work” from the Universal Technical Institute and on weekends does occasional side work fixing the vehicles of friends and neighbors.

Father lives less than an hour’s drive from his grandparents and, although his mother resides in Oklahoma, she visits Father’s grandparents nearly every weekend. Father has a close relationship with both his mother and his grandmother, visiting with them frequently, as well as with his large extended family who reside nearby. Father and his wife also have close ties with the wife’s family, including wife’s father and siblings and their families.

Father claimed to be actively involved with his stepson and treats him as his own child. He does not have much of a relationship with his stepson’s father, but their interactions are cordial and there have been no problems with co-parenting the stepson. When asked whether there had been any “police involvement” or “history of domestic violence arrests” between him and his wife, Father responded in the negative. Father also replied “no” when asked if he or his wife had ever been arrested in regard to any incidents involving his stepson.

⁵ Father testified that his employer is “fast tracking” to make him a supervisor and he expects to receive a raise upon that happening.

Upon learning of the CINA petition, Father related that he was “distraught” as he had no knowledge that Mother was abusing or neglecting S.T. and J.C. Although Father related that Mother had occasionally “shown some violent tendencies” in the past, he never thought she would harm the children.

After the Department contacted him about the CINA petition, Father related that he has “cooperated every step of the way with them.” He moved to a larger home in order to have a bedroom for S.T. in the event he was awarded custody, and he also researched resources local to him that could provide S.T. with therapy. Father and S.T. text each other daily, and he described their current relationship as “great[.]”

As noted, Mother opposed the court awarding custody of S.T. to Father, preferring instead that the court declare her a CINA and continue her commitment to the Department. Mother testified that she met Father after moving to Texas in 2009 and they were “really good friends[.]” but the relationship changed after she became pregnant with S.T. She testified that Father subjected her to physical abuse, and claimed that Father was the aggressor in the incident that ultimately led to Father pleading guilty to the misdemeanor charge. Mother also testified that, when S.T. was about three months old, she had obtained a protective order against Father directing him to stay away from her and the children. Although she asserted that she had “documents at the house from CPS [Child Protective Services]” to substantiate her claims, she had not shown them to her attorney, she did not bring them to court, and she could not provide any citation numbers because “that’s things that were years ago” and they were “in a safe locked away.”

Mother denied that she ever refused Father’s request to speak with S.T. and claimed that she had given him S.T.’s cell phone number. Mother admitted that Father had mentioned that he wanted S.T. to attend his wedding, but claimed that Father told her he “wasn’t sure how it was going to work[,]” and he never raised the subject again.

Mother related that she “tried so hard” to get Father to “be a father” and regularly sent him photographs of S.T. She opposed Father being awarded custody of S.T. because “S.T. doesn’t know him” and “he knows nothing about his daughter.”

Mother denied that S.T. had any serious mental health issues, claiming instead that S.T. had “behavior problems” and is an “attention seeker . . . because of her lack of her relationship with her father. Due to him.”

Mother’s position was that her children were lying about the neglect and abuse they reported to the Department, claiming that her mother and stepfather, with whom the children were sheltered, were “brain washing” and “bribing” the children. When asked whether she was currently participating in substance abuse treatment, mental health treatment, anger management, or parenting classes, Mother responded no. She asserted that she does not “need any of that.”

A report of the Department dated November 27, 2023 was also admitted into evidence. This report related that S.T. and J.C. were then living with their maternal grandparents and doing well in their care and were regularly attending school.⁶ An initial health assessment revealed that S.T. had “mental health issues including depression and

⁶ S.T. had been late for school nineteen times that school year.

suicidal ideation.” J.C. was assessed with “moderately severe depression and suicidal ideation” and had reported several attempts to kill himself “and that his mother encouraged him to kill himself on multiple occasions.”

Closing Statements

In closing statements, Father’s counsel argued that it was in S.T.’s best interest that Father be awarded custody. The attorney representing S.T. also argued that the evidence elicited at the hearing “lean[s] definitely and heavily in the direction of [Father] being definitely a fit parent and definitely the proper custodial parent for S.T.” S.T.’s counsel pointed out that Father is gainfully employed; there were no allegations that he engages in substance abuse and there was testimonial evidence that he passes random drug tests administered quarterly by his employer; he had contributed financially to S.T.’s care over the years; he had moved to a new house in order to accommodate S.T.; he had identified a mental health provider for S.T.; and is supported by extended family members and friends. S.T.’s counsel concluded that “it’s pretty clear from [Father’s] testimony that he is committed to S.T.’s care . . . and nothing that has been said has raised any kind of safety concern for S.T. in [Father’s] care.” Moreover, counsel related that S.T. “wants to go with dad. She has fostered a relationship with dad. And these are her express wishes.” In sum, S.T.’s counsel informed the court that “[w]hat we believe is in the best interest of the child is also what the child is expressly saying that she wants for herself in an exercise of her considered judgment.”

While acknowledging that the Department’s efforts to learn more about the alleged Child Protective Services referral that had been made nearly a decade ago in Texas had

“not been fruitful[,]” counsel for the Department informed the court that nothing elicited in the hearing “raised any concerns” for him or the two social workers assigned to the case who had sat through the proceeding. Counsel further related that the Department had “nothing to indicate that [Father] is not willing and able to care for S.T.”

Mother’s counsel asked the court find S.T. a CINA and to find that Father is “either unable or unwilling to provide proper care and attention.” As grounds, counsel referred to Mother’s testimony that Father had abused her in the past and asserted that the Department had failed to properly investigate Father. Counsel further asserted that it would be in S.T.’s best interests to first “build a better relationship with her father” before granting him custody. In short, Mother requested that the court “commit S.T. to the custody of the Department and not close the [CINA] case at this point.”

Court’s Ruling

After a recess, the court announced its decision regarding S.T. The court first stated that it was guided by what “is in the best interest of the child.”

The court discussed Father, finding that he had “taken positive, deliberate steps in an effort to obtain custody of S.T.” after learning of the CINA petition, including moving to a new home and researching schools in his district and mental health resources for S.T. The court found that Father has a stable job, as well as mechanic skills. The court acknowledged Father’s decade old conviction following the domestic violence incident with Mother, for which he was placed on probation, and found that Father did not “minimize that.” There was no evidence, the court noted, that Father has any substance

abuse problem, and it found that he demonstrated “that he has a safety net around him of family and friends” to support him.

In discussing Mother, the court noted that the sustained facts in the CINA petition “are highly troubling.” The court found Mother’s testimony “difficult to follow at times” and that it was “inconsistent.” The court also took into consideration Mother’s “housing instability and job instability[.]”

The court noted that, although neither child testified, it had observed their “nonverbal conduct” in court, “[h]ow they interacted with each other[.]” with Father (who appeared via ZOOM), and with their attorney throughout the hours long hearing that day. The judge related that, although he was observing the children, the children were not looking at him or aware he was observing them. The court observed their smiles and their “head nods, either affirmatively or negatively based upon what the testimony was at that very moment[.]” Although the children’s reactions were not “driving” the court’s decision, the judge noted that it was a factor that bolstered his decision.

Based on the evidence before it, the court concluded that Father “is most willing and capable” of caring for S.T. and that there was no need to find her a CINA. In its written disposition order, the court noted that it had found Father “is available and is able and willing and a fit and proper parent to care for the child[.]” The court awarded Father custody of S.T. and granted Mother “liberal and supervised” visitation rights, and also telephone contact with S.T. at S.T.’s discretion. Accordingly, the court dismissed the CINA case and terminated its jurisdiction.

STANDARD OF REVIEW

On appeal, CINA determinations are reviewed utilizing three interrelated standards of review. *In re T.K.*, 480 Md. 122, 143 (2022). “Factual findings by the juvenile court are reviewed for clear error.” *Id.* “Matters of law are reviewed without deference to the juvenile court.” *Id.* “Ultimate conclusions of law and fact, when based upon sound legal principles and factual findings that are not clearly erroneous, are reviewed under an abuse of discretion standard.” *Id.* (cleaned up). “[A]n abuse of discretion exists where no reasonable person would take the view adopted by the [juvenile] court, or when the court acts without reference to any guiding rules or principles.” *In re Andre J.*, 223 Md. App. 305, 323 (2015) (cleaned up).

DISCUSSION

Mother challenges the court’s award of custody to Father and argues that there was insufficient evidence before the court to find that Father was “willing and able to provide for S.T.” In essence, Mother maintains that the court could not have awarded custody to Father without an investigation by the Texas Department of Social Services given Mother’s allegations of domestic violence when she and Father resided together in Texas. Mother asserts that S.T. should have been declared a CINA and the case should have been kept open pending “background checks of all family members” and verification of Father’s employment. In other words, she argues that Father “did not meet his burden of persuasion or production of his fitness and ability to provide a safe and nurturing home to S.T.” Although Mother relies on her own testimony to challenge Father’s fitness, she claims that

the court erred in basing its custody award on Father’s “own self-serving” and uncorroborated testimony of his “fitness and ability” to care for S.T.

Father urges this Court to affirm the judgment, as does S.T.’s counsel. Father maintains that his testimony “provided substantial evidence of his parental fitness, as well as his commitment and dedication to S.T.’s care.” He also asserts that he “testified to, and took accountability for, his choices in 2014” regarding the domestic violence incident and had related that he pleaded guilty to a misdemeanor charge so that he could move on with his life. Moreover, Father asserts that “[a]ll allegations and concerns regarding [him] were presented by Mother, whose credibility is severely lacking.” And Father maintains that the court properly awarded him custody after determining what was in S.T.’s best interests.

As noted, the relevant statute at issue here is CJP § 3-819(e), which provides:

If the allegations in the [CINA] petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child, the court may not find that the child is a child in need of assistance, but, before dismissing the case, the court may award custody to the other parent.

In applying this statute to the case before us, we turn to the Maryland Supreme Court’s decision in *In re T.K.*, *supra*, for guidance.

The Supreme Court stated that, in order to exercise its discretion under CJP § 3-819(e), “the first prerequisite” is that the juvenile court, following an adjudicatory hearing, “sustained allegations in the [CINA] petition that are sufficient to support determinations that: (1) the child has been abused or neglected; and (2) one of the child’s parents is unable or unwilling to provide proper care for the child.” *In re T.K.*, 480 Md. at 147. The first prerequisite was met in this case, as the court sustained the allegations in the CINA petition

that (1) Mother had abused and/or neglected S.T. and found that (2) Mother was unable to provide proper care for her children. Mother does not challenge these findings on appeal.

The “second prerequisite to a juvenile court’s authority to award custody under § 3-819(e)[,]” the Supreme Court stated, is ““another parent available who is able and willing to care for the child.”” *Id.* at 149. This “requires a finding that the parent to whom the court is considering awarding custody—the ‘other parent,’ in the language of the statute—is available, willing, and able to provide proper care.” *Id.* The burden of proving that the prerequisites are satisfied is on the proponent of the transfer of custody. *Id.* In other words, here, Father had the burden of proving, by a preponderance of the evidence, *id.* at 153, that he is available, willing, and able to provide S.T. with proper care.

If these prerequisites are satisfied, “the court then must decide whether to exercise [its] discretion” under § 3-819(e) and award custody to the other parent based on the best interest of the child. *Id.* at 150. “Thus, a juvenile court should exercise its discretion to award custody of a child to the parent who it finds available, willing, and able to provide care only if it determines that doing so is in the best interest of the child.” *Id.* at 151.

The first question we must address is whether, as Mother alleges, the juvenile court erred in finding that Father is able and willing to provide care to S.T. As noted, Mother’s position is that, without a background investigation of Father and information from the Texas Department of Social Services about a decade old referral, the court could not conclude that Father is a “fit” person to care for S.T.

We do not agree. The Supreme Court has made clear that the burden is on the parent seeking custody to establish that he (or she) is “available, willing, and able to provide

proper care” to the child. There is no requirement that the parent be perfect or have an unblemished record. *See, e.g., id.* at 158 (observing that “the bare fact that a parent has been indicated for an instance of neglect does not, by itself, automatically disqualify that parent from maintaining custody”). *See also In re Yve S.*, 373 Md. 551, 566 (2003) (“[A] parent’s liberty interest in raising a child [is] a fundamental one that cannot be taken away unless clearly justified.” (cleaned up)). Moreover, one of the purposes of the CINA statute is “[t]o 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[.]” CJP § 3-802(a)(3).

In our view, there were sufficient facts before the juvenile court to support its conclusion that Father was willing and able to properly care for S.T. First, Father was present for the hearing and expressed a keen desire to care for S.T. Second, Father testified that he had moved to a larger home so that S.T. could have her own bedroom. And third, Father testified that he is gainfully employed, would enroll S.T. in the local middle school, had a large and supportive family and friend network, and had researched mental health resources should S.T. reside with him. In short, we are persuaded that the court did not err in finding that Father is “available, willing, and able to provide proper care” for his daughter.

That finding, however, does not end the analysis because only upon its determination that doing so would be in S.T.’s best interest could the court exercise its discretion to award custody of S.T. to Father. In making the best interest determination, what the Supreme Court stated in *In re T.K.* is instructive:

[S]uch a hearing need not look identical to a best interest custody hearing of the type that would ordinarily occur in a family law case, nor must an overburdened juvenile court hold an evidentiary hearing when all the evidence that is relevant and material is already in the record. The sustained findings that the juvenile court must necessarily already have made in a CINA adjudicatory proceeding to satisfy the first prerequisite to the exercise of discretion under § 3-819(e) will, in many cases, likely obviate the need to consider evidence relating to many of the factors that would otherwise be relevant to a custody determination. As a result, although consideration of the factors listed in *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1978), and *Taylor v. Taylor*, 306 Md. 290 (1986), will often be helpful to a juvenile court considering a § 3-819(e) best interest analysis, the juvenile court should exercise its discretion in determining which factors and what evidence may be relevant to the best interest determination it must make in each individual case.

480 Md. at 153-54.

Here, Mother has not challenged the court’s findings that she had abused and neglected S.T. and that she was presently unable to care for her. Although the court did not review on the record all the *Sanders/Taylor* factors a court may consider when making a custody ruling, the court, in announcing its decision in this case articulated that its was guided by what “is in the best interest of the child” in reaching that decision.⁷ As mentioned, the court noted that Father had moved to a larger home with a bedroom dedicated for S.T.; Father had researched the schools in his district and explored mental health resources for S.T.; Father was gainfully employed; Father had a “safety net around him of family and friends”; and there was no evidence of Father having any substance

⁷ Moreover, given that Mother was not seeking custody, but merely opposing the grant of custody to Father, many of the *Sanders* and *Taylor* factors a court considers when making a custody determination involving two parents were not applicable here.

abuse issues. The court was also aware that Father had been married for five years and assists in the care of his stepson.

The court did consider Father’s conviction following a domestic violence incident with Mother. Noting that Father “did not minimize that” incident and finding it an “important” factor, it also “weigh[ed] the fact that it [happened] a decade ago.” In making a custody determination, a court should consider “the totality of the situation in the alternative environments’ and avoid focusing on or weighing any single factor to the exclusion of all others.” *Jose v. Jose*, 237 Md. App. 588, 600 (2018) (quoting *Best v. Best*, 93 Md. App. 644, 656 (1992)). In discussing Father, the court noted that he had “taken positive, deliberate steps in an effort to obtain custody of S.T.[.]” and, after reviewing the evidence before it, concluded that Father “is most willing and capable” of care for his daughter.

We are not persuaded that the court erred or abused its discretion, as Mother asserts, by not delaying a custody decision pending a background check of Father. Again, the court took into consideration the decade old conviction. The court found Mother’s testimony, which included several instances of alleged abuse against her by Father, to be “inconsistent” and “difficult to follow at times.” The court also heard Father’s testimony regarding the same instance and his testimony of no instances of domestic violence with his wife, to whom he has been married five years, or his stepson. In short, it appears that the court found Father more credible than Mother. That court, unlike an appellate court, had the opportunity to both hear the testimony and observe the parties. For that reason, we

decline “to second-guess the trial judge’s assessment of a witness’s credibility” in this case. *Gizzo v. Gerstman*, 245 Md. App. 168, 203 (2020).

Although Father resided in Texas and had not visited with S.T. in a number of years, he was not a stranger to her. The court heard evidence that Father had voluntarily sent Mother child support over the years and made attempts to communicate with S.T., which were often thwarted by Mother. Both Father and Mother testified that Father had made efforts to include S.T. in his 2019 wedding celebration. And Father testified that, since the filing of the CINA petition several months prior, he and S.T. communicate daily. And the court was aware that S.T. desired to reside with Father.

The court also took into consideration its observations of the children throughout the proceeding in court, taking note of their non-verbal behavior and how they interacted with each other, with Father, and with their attorney. The court clarified that its decision was “based on all of the evidence[,]” and its personal observations of the children were not “driving” its ruling, but served to “bolster[.]” its “ultimate decision.”

In sum, we are persuaded that the court’s finding that Father is willing and able to provide proper care for S.T. was supported by the evidence before it and that the court based its decision to grant custody to Father on what it determined to be in S.T.’s best interests. That the court exercised its discretion to award custody to Father was not, in our view, an abuse of its discretion.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY, SITTING AS
A JUVENILE COURT, AFFIRMED. COSTS
TO BE PAID BY MOTHER.**