

RECENT MARYLAND APPELLATE DECISIONS

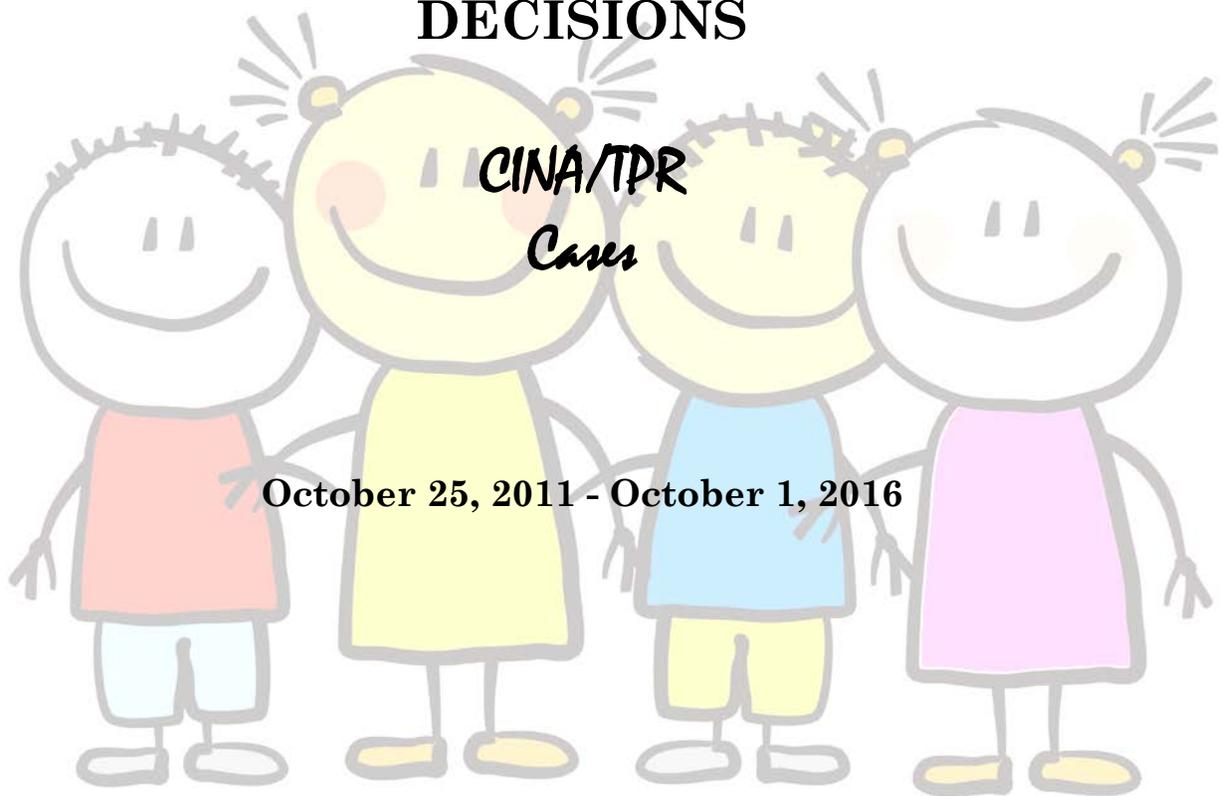


Table of Contents

<i>In re: Adoption/Guardianship of L.B. and I.L.</i>	4
<i>In re: Adoption/Guardianship of Dustin R.</i>	5
<i>In re: A.N., B.N. and V.N.</i>	10
<i>In re: Adoption of Scott W.V.</i>	12
<i>In re: Dany G.</i>	13
<i>In re: Andre J.</i>	15
<i>In re: Katerine L. & Alex F.</i>	17
<i>In re: Guardianship of Zealand W.</i>	19
<i>In re: Adoption of Quintline B.</i>	23
<i>In re: Adoption of K'amora K.</i>	24
<i>In re: Adoption of Jasmine D.</i>	26
<i>In re: Victoria C.</i>	28
<i>In Re: Joy D.</i>	30
<i>In re: Priscilla B.</i>	32
<i>In re: Ryan W.</i>	34
<i>In re: Adoption of Jayden G.</i>	37
<i>In re Ashley S. & Caitlyn S.</i>	41
<i>In re: Adoption of Sean M.</i>	45
<i>In re: Malichi W.</i>	46
<i>In re: Adriana T.</i>	48

In re: Victoria C. 50
In re: Ryan W. 52
In re: Chaden M. 54

TERMINATION OF PARENTAL RIGHTS – STANDING TO CHALLENGE
GUARDIANSHIP

***In re: Adoption/Guardianship of L.B. and I.L., ___ Md. App. ___ (2016)
No. 2816, Sept. Term 2015, filed September 1, 2016.***

Facts: On February 3, 2016, the Circuit Court for Harford County granted the Harford County Department of Social Services’ petitions for guardianship of L.B. and I.L., terminating the parental rights of the children’s mother and granting guardianship to the Department. On February 9, 2016, the court issued a written order, reiterating its findings that the mother was an unfit parent and that extraordinary circumstances existed such that it was in the child’s best interest that the mother’s parental rights be terminated. On appeal, the mother challenged both the termination of her parental rights and the court’s decision to grant guardianship to the Department and not to family members.

Held: Affirmed. It is clear that, once an order terminating parental rights becomes final, the parent has no standing to challenge future matters regarding the child. In the situation where a parent challenges the termination of parental rights on appeal, however, we hold that the parent retains standing to raise on appeal “any portion of the process terminating her rights,” including the child’s placement with the Department. Once the termination of parental rights is affirmed on appeal, however, the order becomes final, and the parent no longer has standing to challenge decisions relating to the child, including the circuit court’s order regarding placement of the child. Accordingly, because we affirmed the order terminating the mother’s parental rights, she no longer has standing to contest the court’s decision regarding guardianship.

APPEALABILITY – INTERLOCUTORY ORDER – JURISDICTION – STATUTORY AUTHORITY – MD. CODE ANN., FAM. LAW (1984, 2012 REPL. VOL.) § 5-328(a) – MD. CODE ANN., FAM. LAW (1984, 2012 REPL. VOL.) § 5-324(b)(1)(ii)(7)(B) – MD. CODE ANN., FAM. LAW (1984, 2012 REPL. VOL.) § 5-324(b)(1)(ii)(8) – SEPARATION OF POWERS – ARTICLE 8 OF MARYLAND DECLARATION OF RIGHTS

In re: Adoption/Guardianship of Dustin R., 445 Md. 536 (2015)

Facts: On December 16, 1992, Dustin R. (“Dustin”), Petitioner, was born. In February 1995, Dustin entered foster care and the juvenile court terminated Dustin’s biological parents’ parental rights and granted guardianship to the Anne Arundel County Department of Social Services (“DSS”) with the right to consent to adoption or long-term care short of adoption. On March 28, 1995, DSS placed Dustin in a treatment foster care home with Jacqueline and Darrell P. (“Mrs. P.” and “Mr. P.,” respectively), where he has lived since that date.

Dustin is medically fragile and has special needs. Dustin has, among other conditions, an intellectual disability, severe seizure disorder, cortical visual impairment, gastro-esophageal reflux, scoliosis, osteoporosis, ischemic encephalopathy, global orthopedic impairments, cerebral palsy, and an Unidentified Long Chain Fatty Acid Syndrome with a Mitochondrial Disease (a metabolic disorder). Dustin has a tracheostomy, full glottal closure, a colostomy, and a gastrostomy tube for feeding. The Department of Health and Mental Hygiene (“DHMH”), Respondent, administers the Maryland Medical Assistance Program (“Medicaid”), which has paid Dustin’s medical expenses in foster care.

As Dustin grew older, his condition worsened, and in 2005, after an emergency hearing, the Circuit Court for Anne Arundel County, sitting as a juvenile court (“the juvenile court”), ordered DSS to secure round-the-clock (twenty-four hours per day, seven days per week) nursing services for Dustin. In 2006, DSS contracted with MedSource Community Services, Inc. to provide those nursing services. Since that time, Dustin has had a rotating team of eight registered nurses providing round-the-clock services.

As early as 2010, Dustin began to seek the provision of services for himself after age twenty-one. In June 2011, Dustin filed an amended petition for co-commitment to DHMH and DSS, requesting that the juvenile court require DHMH and DSS to “present a written plan to provide for the care of Dustin [] in the [] home [of Mr. and Mrs. P.], including 24 hour skilled nursing care, upon turning” twenty-one years old. Eventually, in April 2013, DHMH consented to cocommitment, and the juvenile court ordered DHMH to “continue the planning process for the transition of [Dustin] from foster care under the guardianship of [DSS] to the guardianship of his 22 current foster parents or other appropriate persons[.]” On multiple occasions, Dustin requested that the juvenile court order DHMH to fund and provide to him after his twenty-first birthday the same services

that he was then receiving. DHMH consistently opposed those requests on the grounds that such requests exceeded the juvenile court's authority.

Mr. and Mrs. P. decided to seek guardianship of Dustin so that he could remain in their home; on July 26, 2013, Mr. and Mrs. P. submitted through Dustin's resource coordinator a proposed service funding plan, in which they proposed to continue Dustin's budget as is. DHMH responded to the proposed service funding plan, stating that certain services provided to Dustin were "covered waiver services[,] " including Dustin's nursing, medical equipment and supplies, medications, and other medical care, but that other services requested in the proposed service funding plan were not covered, and thus were denied.

On August 26 and 27, 2013, and September 27, 2013, the juvenile court conducted an annual guardianship review hearing. At the conclusion of the hearing, the juvenile court orally ruled that DHMH's plan was clinically inadequate. The juvenile court made factual findings and then addressed a two-page document that Dustin submitted entitled "Proposed Findings and Order."

The juvenile court signed the Proposed Findings and Order, which stated, in pertinent part: "ORDER that DHMH develop and approve a written plan that ensures that Dustin will continue to receive all of the services and supports [that] he is currently receiving[,] including[,] but not limited to[,] all services that will ensure that Dustin will receive 24/7, one-on-one skilled nursing care provided by registered nurses [who] have been fully oriented to his care needs and have demonstrated competence in all of the tasks on the Skills Checklist developed by the supervising nurse." At the bottom of the Proposed Findings and Order, the juvenile court judge signed on the signature line that had been provided and announced: "The order is signed." After the guardianship review hearing, the clerk of the juvenile court made a docket entry stating the "Proposed Finding and order" was filed on September 30, 2013.

On October 24, 2013, DHMH noted an appeal to the Court of Special Appeals. On December 2, 2013, the juvenile court conducted another guardianship review hearing, and signed an order dated December 2, 2013, crossing out the word "Proposed," so the title read "PROPOSED ORDER"; the order, as amended and signed by the juvenile court judge ordered relief nearly identical to that ordered in the September 27, 2013 order.

On appeal, although neither DHMH nor Dustin raised any issue as to the appealability of the juvenile court's September 27, 2013 order, in an unreported opinion dated December 22, 2014, a three-judge panel of the Court of Special Appeals dismissed DHMH's appeal on its own initiative, a majority holding that the September 27, 2013 order was not a final, appealable order; accordingly, the Court of Special Appeals did not reach the merits. Notably, the Honorable Andrea M. Leahy dissented, stating that the juvenile court signed the proposed order, consistent with its oral rulings on the record, and that the

juvenile court and the parties intended the signed proposed order to be a final, appealable order.

Dustin filed a petition for a writ of *certiorari* and DHMH filed an answer and cross-petition for a writ of *certiorari*. The Court of Appeals granted the petition and denied the cross-petition.

Held: Reversed. The Court of Appeals held that the Court of Special Appeals erred in dismissing DHMH's appeal because the juvenile court's September 27, 2013 order was immediately appealable at a minimum as an interlocutory order granting injunctive relief. The record demonstrated that the juvenile court ordered DHMH to develop, approve, and implement a plan to provide ongoing services to Dustin. As such, the order granted injunctive relief because it was a writ framed according to the circumstances of the case commanding action which the juvenile court regarded as essential to justice.

The Court of Appeals determined that the order was, indeed, an order because by signing the "proposed" order, the juvenile court made the "proposed" order into an actual order, and clearly intended the order as a binding command to the parties. The Court of Appeals stated that the juvenile court did not strike out the word "Proposed" in the title, or otherwise alter the prefatory language (*i.e.*, "Dustin [] requests" and "Dustin requests"), was not dispositive of whether the order is, in fact, an order. The Court of Appeals concluded that, here, the juvenile court signed an order setting forth the relief requested by Dustin, and both parties understood the order to be the juvenile court's command or decree.

The Court of Appeals held that the juvenile court had jurisdiction and the statutory authority to order DHMH to develop and approve a written plan of clinically appropriate services in the least restrictive setting that ensured that Dustin would continue to receive services, where Dustin was not yet twenty-one years old when the juvenile court issued its order and where such services were required to protect Dustin's health and welfare, and where the juvenile court's order served to bridge the gap in services as Dustin transitioned from his juvenile guardianship case to adult guardianship care and the final outcome (meaning judicial review, including the appellate process) of any Medicaid fair hearing proceedings.

The Court of Appeals determined that, by its plain language Md. Code Ann., Fam. Law (1984, 2012 Repl. Vol.) ("FL") § 5-328(a) provides that, in cases where the local department is a child's guardian, the juvenile court "retains jurisdiction[] until the child attains 18 years of age[,] but that it "may continue jurisdiction until the child attains 21 years of age." (Paragraph break omitted). In other words, although the juvenile court's jurisdiction ordinarily ends once a child turns eighteen years old, the juvenile court's jurisdiction "may" extend until the child turns twenty-one years old. Under FL § 5-328(a)(2), if the juvenile court exercises its discretion to extend its jurisdiction in a guardianship proceeding past a child's eighteenth birthday, the juvenile court is not

thereafter divested of jurisdiction in that guardianship proceeding until the child turns twenty-one years old. Thus, the juvenile court has the authority to act, even if a child is twenty years and three hundred and sixty-four days old.

The Court of Appeals determined that the juvenile court in the instant case had jurisdiction to issue both the September 27, 2013 order and the December 2, 2013 order because Dustin was twenty years old at the time those orders were issued; indeed, Dustin did not turn twenty-one years old until December 16, 2013. FL § 5-328(a)(2)'s plain language leads to the conclusion that the juvenile court's jurisdiction continues until a child turns twenty-one, not that the juvenile court's order is no longer effective when a child reaches age twenty-one.

The Court of Appeals determined that, by its plain language, FL § 5-324(b)(1)(ii)(7)(B) provides that, prior to termination of the guardianship case (*i.e.*, before the juvenile court is divested of jurisdiction), the juvenile court must order a party to provide any service or take any other action to obtain any ongoing care needed to protect the health of a child with disabilities after he or she turns twenty-one years old. In other words, FL § 5-324(b)(1)(ii)(7)(B)'s purpose is to ensure that services are provided for, if needed, *i.e.*, that care is in place before a child turns twenty-one years old, so that there is no gap in care between the end of the juvenile guardianship case and transition into the adult guardianship system. In short, FL § 5-324(b)(1)(ii)(7)(B) unambiguously provides that, while a juvenile court has jurisdiction in a guardianship case (*i.e.*, before a child turns twenty-one years old, assuming the juvenile court has exercised its discretion to extend its jurisdiction pursuant to FL § 3-528(a)(2)), the juvenile court is required, consistent with the best interests of a child with a disability, to direct the provision of any service or the taking of any action necessary for the child's health and welfare, including services to obtain ongoing care that may be needed after the guardianship case ends.

The Court of Appeals held that, here, the juvenile court acted in accordance with the express authority conferred on it by FL § 5-324(b)(1)(ii)(7)(B). In the September 27, 2013 order, the juvenile court directed DHMH to take action to ensure that Dustin continued receiving ongoing services necessary for his health and well-being. As discussed above, because Dustin was twenty years old at the time, the juvenile court had jurisdiction over the guardianship case. And, as Dustin is disabled, FL § 5-324(b)(1)(ii)(7)(B) directed the juvenile court to take action before Dustin turned twenty-one years old to obtain the ongoing care that Dustin would need after the guardianship case ended on his twenty-first birthday.

The Court of Appeals concluded that, by its plain language, FL § 5-324(b)(1)(ii)(8) authorizes the juvenile court to order DHMH to submit a plan of clinically appropriate services in the least restrictive setting for a child who is co-committed to DHMH. The Court of Appeals held that that is exactly what occurred here. Dustin was already co-committed to DHMH as of April 2013, and the juvenile court ordered DHMH to develop

and approve a plan of clinically appropriate services—including “24/7, one-on-one skilled nursing care provided by registered nurses”—to serve Dustin in the P. home, which the juvenile court determined to be the least restrictive setting. Indeed, given the juvenile court’s factual findings—which DHMH has not challenged in this Court—the Court of Appeals had no difficulty in concluding that the juvenile court was correct in ordering DHMH to develop and provide a plan for the minimum level of clinically appropriate services necessary for Dustin in the P. home. FL § 5-324(b)(1)(ii)(8) is unambiguous, and the juvenile court adhered to it in this case.

The Court of Appeals also held that, in addition to having both jurisdiction and statutory authority to issue the September 27, 2013 order and the December 2, 2013 order, the juvenile court had authority to act in accord with Dustin’s best interests pursuant to its common law *parens patriae* authority.

The Court of Appeals held that, although the juvenile court had statutory authority under FL §§ 5-324(b)(1)(ii)(7)(B) and (8) to act as it did, that statute serves to provide a bridge in services as a child transitions from the juvenile guardianship system and into the adult guardianship system. The juvenile court may order services pursuant to FL §§ 5-324(b)(1)(ii)(7)(B) and (8) to bridge the gap as Dustin transitions from a juvenile guardianship to an adult guardianship and obtains services through the adult guardianship system. The services ordered by the juvenile court cannot and do not continue necessarily until Dustin’s demise. Rather, services ordered by the juvenile court to bridge the gap continue only until such time as the child transitions into an adult guardianship and his or her guardian(s) seeks authorization for the provision of the same or substantially similar services as those ordered by the juvenile court through the Medicaid fair hearing process.

The Court of Appeals held that the juvenile court did not violate the separation of powers. The Court of Appeals concluded that FL §§ 5-328(a)(2), 5-324(b)(1)(ii)(7)(B), and 5-324(b)(1)(ii)(8) expressly authorized and empowered the juvenile court to act as it did. The Court of Appeals determined that the issue is not whether the juvenile court improperly exercised judicial power to the detriment of the executive branch, but instead the issue is one of statutory interpretation, *i.e.*, whether the General Assembly delegated the authority to the juvenile court to act as it did in this case. The Court of Appeals stated that, absent any argument by DHMH that the statutes at issue are unconstitutional or that the General Assembly improperly delegated authority to the juvenile court, it discerned no basis on which to conclude that the juvenile court violated the separation of powers in the instant case, where it acted according to express statutory authority.

FAMILY LAW – CHILD IN NEED OF ASSISTANCE – CHANGE OF PERMANENCY PLAN – USE OF POLYGRAPH TEST RESULTS IN PERMANENCY HEARING

In re: A.N., B.N., and V.N., 226 Md. App. 283 (2015)

Facts: Two of the children in this case, two-month-old twin boys A.N. and B.N., were found to have multiple fractures in various stages of healing. The preliminary assessment by doctors at Howard County Hospital and Johns Hopkins Hospital was that the injuries were consistent with abuse. The Howard County Department of Social Services immediately removed all three children from the physical care and legal custody of their parents and placed them in shelter care. In subsequent CINA hearings, all three children were found CINA and placed in the custody of their paternal grandmother.

Throughout the next year, the parents willingly participated in various treatment and evaluation programs, and Department reports indicated that the parents were “appropriate with the children during visits.” Psychological evaluators concluded that neither parent presented risk or danger to the children. As late as August 28, 2014, the Department and the court-appointed special advocate recommended beginning a monitored transition to custody with the parents. However, the parents have consistently maintained that they did not cause the children’s injuries and that they have no idea how the children were so severely injured.

On April 7, 2015, the juvenile court held a permanency planning and review hearing and received a Department report, which recommended that the permanency plan for all three children be changed to a sole plan of custody and guardianship with paternal relatives. The Department’s recommendation changed away from reunification with parents, in part, because of the results of an October 9, 2014, polygraph examination that indicated that Mother was not being truthful. After testimony about the polygraph was elicited during the hearing, the Court concluded that it could consider the polygraph results, and, noting that “[b]oth parents deny causing the injuries and continue to be a ‘united force’ in their denial,” the Court found that reunification with Father and Mother was not in the best interest of the children. The juvenile court then modified the children’s permanency plan to remove the goal of reunification. The parents appealed the detrimental change in the permanency plan, arguing that the court was not permitted to consider the polygraph evidence.

Held: Vacated and Remanded. The Court of Special Appeals reiterated that, because “[i]t is well-settled in Maryland that the results of a polygraph test are inadmissible,” and even “mere references to the fact that a test was taken . . . may be grounds for reversal if results can be inferred from the circumstances or if the references are prejudicial,” *Murphy v. State*, 105 Md. App. 303, 309-10 (1995) (citations omitted), the juvenile court erred in considering Mother’s polygraph results. The Court determined that, under the facts of this case, that consideration was prejudicial, and the court erred in changing the CINA permanency plan based, in part, on consideration of that inadmissible evidence.

The Court of Special Appeals recognized that a polygraph examination is an important investigative tool, widely used by the Department and law enforcement agencies, and did not discourage its appropriate investigative use. However, the Court noted that there is a distinction between appropriate investigative use for Department or Agency purposes and use as evidence in a court proceeding. The Court of Special Appeals also acknowledged the heightened responsibility of the juvenile court in child abuse cases; however, it determined that “[t]o countenance the admission of inherently unreliable evidence, such as a polygraph test, would set a dangerous precedent, especially in cases like this, where a child has been abused and there is no direct evidence identifying the abuser, or the circumstances surrounding the occurrence of abuse.” The Court observed that “where critical portions of the narrative are unavailable for the court’s analysis (who committed the abuse and the surrounding circumstances), unreliable polygraph evidence should not substitute for what is missing—especially given that an abuser may be able to manipulate the test.” Therefore, due to the juvenile court’s improper reliance on the polygraph examination in reaching its decision, the Court of Special Appeals vacated the orders changing the children’s permanency plan and remanded.

FAMILY LAW - ADOPTIONS - CONFIDENTIALITY OF IDENTITY OF BIRTH PARENTS - DISCOVERABLE INFORMATION.

In re: Adoption of Scott W.V., 225 Md. App. 428 (2015)

Facts: Appellant was adopted as an infant in 1958, and his adoptive parents are now deceased. Appellant sought information about his birth father that had been redacted from the original adoption case file. The circuit court denied appellant's request for such information, ruling that there was no "non-identifying information" in the case file that could be released to appellant under the Family Law Article.

Held: The Court of Special Appeals neither affirmed nor reversed the judgment of the circuit court. The Court remanded the case for further proceedings.

The Court of Special Appeals explained that in the case of an adoption, access to information in the court records is limited, but the adoptee may nevertheless be entitled to certain information regarding the birth parents as provided in Maryland Code (1984, 2006 Repl. Vol.), Family Law Article ("FL"), § 5-3A-40. That statute provides that, without any showing of need, the adoptee is entitled to information from the adoption records, but is not entitled to "identifying information" from the files. For purposes of FL § 5-3A-40, "identifying information" is defined as follows in FL § 5-3A-01(d): "'Identifying information' means information that reveals the identity or location of an individual." Identifying information that is protected from disclosure is not limited to information that immediately reveals an individual's identity, but also includes information that could reasonably lead to the discovery of the identity of the protected individual. The Court, however, could not determine whether the trial court had applied the proper definition of "identifying information" in reaching its ruling. Accordingly, the Court directed the trial court, on remand, to "specifically address each of the redactions that appellant identified and either make the redacted information available or explain why the redacted information constitutes identifying information which must be withheld." *Id.* at 451.

FAMILY LAW – IMMIGRATION – SPECIAL IMMIGRANT JUVENILE

In re: Dany G., 223 Md. App. 707 (2015)

Facts: Following guardianship proceedings, the Circuit Court for Montgomery County refused to enter two of the requested Special Immigrant Juvenile predicate order findings requested by Charlene M. (the guardian) that reunification with the child’s parents was not viable due to neglect and that it is not in the child’s best interest to return to his parent’s country of nationality.

The SIJ status predicate order must contain five findings:

- (1) The juvenile is under the age of 21 and is unmarried; 8 C.F.R. § 204.11(c)(1) -(2);
- (2) The juvenile is dependent on the court or has been placed under the custody of an agency or an individual appointed by the court; 8 C.F.R. § 204.11(c)(3);
- (3) The “juvenile court” has jurisdiction under state law to make judicial determinations about the custody and care of juveniles; 8 U.S.C.A. § 1101(a)(27)(J)(i); 8 C.F.R. § 204.11(a), (c) [amended by the Trafficking Victims Protection Reauthorization Act (“TVPRA”) 2008];
- (4) That reunification with one or both of the juvenile’s parents is not viable due to abuse, neglect, or abandonment or a similar basis under state law; 8 U.S.C.A. § 1101(a)(27)(J) [amended by TVPRA 2008]; and
- (5) It is not in the “best interest” of the juvenile to be returned to his parents’ previous country of nationality or country of last habitual residence within the meaning of 8 U.S.C.A. § 1101(a)(27)(J)(ii); 8 C.F.R. § 204.11(a), (d)(2)(iii) [amended by TVPRA 2008].

Here, the circuit court declined to make the finding that reunification was not viable due to neglect and that it is not in the child’s best interest to be returned to his parents’ country of nationality. Charlene M. appealed to the Court of Special Appeals, which reversed and remanded.

Held: Reversed and remanded. The Court of Special Appeals noted that under federal regulations, a juvenile court, under 8 U.S.C.A. § 1101(a)(27)(J) as amended by the TVPRA 2008, must determine whether the child has been abused, neglected, or abandoned

as defined and applied by state law without regard to where the child lived at the time the events occurred. The Court concluded that because the circuit court had not applied the full Maryland definition of “neglect” that the circuit court committed legal error.

The Court also found that the circuit court abused its discretion by applying the wrong standard to determine whether it is in the child’s best interest to not return to Guatemala. In the context of SIJ status predicate orders, the question is whether it is in the child’s best interest to remain in his current situation or whether it is in his best interest to return to conditions which may include abuse, neglect, or abandonment.

The case was reversed and remanded to the circuit court for appropriate proceedings.

CHILDREN IN NEED OF ASSISTANCE – CHANGES IN PERMANENCY PLAN
APPEALS FROM ORDERS NOT FINAL – ORDER AFFECTING CARE AND
CUSTODY OF CHILD

In re: Andre J., 223 Md. App. 305 (2015)

Facts: In 2003, when Andre was eight years old, the Circuit Court for Montgomery County, sitting as juvenile court, adjudicated Andre and his four siblings as children in need of assistance. The court found that the children had been neglected by their mother and that she was unable to give proper care and attention to the needs of her children. Andre, who has been diagnosed with moderate intellectual disability, was committed to the Montgomery County Department of Health and Human Services and placed in specialized foster care.

In 2012, when Andre was 17 years old, the court established a permanency plan of reunification with Andre's mother. At that time, the goal of all parties was to reunite Andre with his mother in Washington, D.C., before Andre would transition out of the foster system on his 21st birthday. Andre's mother, who also has special needs, was incapable of attending to her son's needs without substantial outside support. Andre, however, would be ineligible to receive the necessary support services from the disability agency in Washington until after he could establish full-time residency, a process that would take over 120 days. Visitation with Andre's mother was inconsistent because she often was extremely late for scheduled visits, cancelled at the last minute or after the visit was scheduled to begin, or did not show up at all. Andre became extremely upset after unsupervised visits with his mother, and then he refused to participate in any visits at her Washington home.

At a permanency plan review hearing in 2014, a few weeks before Andre's 20th birthday, the court determined that it was in Andre's best interest to change his permanency plan to another planned permanent living arrangement (APPLA). The court co-committed Andre to Maryland's Developmental Disabilities Administration, so Andre could transition from foster care into an appropriate adult male group home when he turned 21. The order also substantially reduced the mother's visitation.

Andre's mother appealed from the juvenile court's order. The Department moved to dismiss the appeal.

Held: Motion to dismiss denied; order affirmed. Even though the mother's child was over 18 years of age, the mother was not prohibited from appealing the order that changed her child's permanency plan from reunification to APPLA and that reduced the mother's visitation rights.

Under Md. Code (1974, 2013 Repl. Vol.), § 12-303(3)(x) of the Courts and Judicial Proceedings Article (“CJP”), a parent may appeal from an interlocutory order depriving the parent of the care and custody of the parent’s child, or changing the terms of such an order. A court order arising from a permanency plan review hearing is immediately appealable under CJP § 12-303(3)(x) if the order operates either to deprive a parent of the care and custody of the parent’s children or to change the terms of the parent’s care and custody of the children to the parent’s detriment. The appellate jurisdiction conferred by this statute is not limited to orders involving minor children.

In the instant case, antecedent orders from the juvenile court gave the mother certain rights related to the care and custody of her adult child. By eliminating the goal of reunification, the juvenile court’s order extinguished the mother’s justifiable expectation that she would be reunited with her adult child. The order also transferred custody to an agency that would pursue an adult guardianship for her child, and it drastically reduced the mother’s visitation rights. The mother could appeal from the interlocutory order, because the order changed the terms of the child’s care and custody to her detriment.

Although the mother was entitled to immediate appellate review, the juvenile court did not abuse its discretion in determining that it was in the child’s best interest to change the permanency plan. It was not improper for the juvenile court to give some consideration to views on placement articulated by the 19-year-old male with moderate intellectual disability. The record was sufficient for the court to conclude that child’s preference not to relocate to Washington was rational.

In any event, the overriding factor that properly guided the court’s determination was the child’s ability to be safe and healthy in the parent’s home. The court did not err in concluding that there was no likelihood that the child could be safe and healthy in the mother’s home within the time that he would remain under the court’s jurisdiction. The court’s decision was further informed by its finding that the child’s emotional ties to his mother had been weakened in part by his mother’s inconsistent participation in visitation. Under these circumstances, the court had discretion to change the child’s permanency plan to another planned permanent living arrangement suited to his special needs and circumstances.

CHILD IN NEED OF ASSISTANCE - REVIEWABLE DECISION > PATERNITY
FINAL JUDGMENT

The order of the circuit court denying the request for genetic parentage testing was not a final appealable order, and the appeal must be dismissed.

CHILD IN NEED OF ASSISTANCE – REVIEWABLE DECISION – PATERNITY
NECESSITY FOR FURTHER ACTION

Further action in the case was pending by virtue of the statutory mandates applicable to CINA cases. The court may revisit the issue of genetic testing at any review hearing.

CHILD IN NEED OF ASSISTANCE – REVIEWABLE DECISION – PATERNITY
INTERLOCUTORY DECISIONS

In a CINA case an order of the court denying a request for genetic testing is not a final judgment, but rather is an interlocutory order, ordinarily not appealable unless it falls within one of the statutory exceptions set forth in CJP § 12-303.

CHILD IN NEED OF ASSISTANCE – REVIEWABLE DECISION – PATERNITY
INTERLOCUTORY DECISIONS

The order denying Appellant’s request for genetic testing did not change the antecedent custody order, nor did it *adversely* affect Appellant’s right to the care and custody of the children. Therefore, it does not fall within the CJP § 12-303(3)(x) exception allowing an interlocutory appeal.

CHILD IN NEED OF ASSISTANCE – REVIEWABLE DECISION – PATERNITY
COLLATERAL ORDER

The circuit court order denying the request for genetic testing did not conclusively determine the issue of paternity and does not meet the strict requirements of the collateral order doctrine.

In re Katerine L. and Alex F., 220 Md. App. 426 (2014)

Facts: Appellant, Mr. B., and Appellee, Ms. B. (“Mother”), were married on August 30, 2000. Although the couple parted ways soon thereafter, neither party sought a divorce prior to the current controversy. In the years since they were married, Mother has given birth to five children; four of those during the time the couple was estranged. Nonetheless, based on the “marital presumption” in Maryland Code (1974, 2001 Repl. Vol.), Estates and Trusts Article (“ET”) § 1–206, Mr. B. remains the legal father of the children born during his marriage. Mr. B. has had no contact or relationship with the

children; however, when Appellee, the Montgomery County Department of Health and Human Services (“the Department”), began Child in Need of Assistance (“CINA”) proceedings involving the four youngest children, Mr. B. was notified as a party. The Circuit Court for Montgomery County, sitting as the juvenile court, issued an order denying the Department's request for genetic testing to disestablish paternity in regards to minor children Katerine L. and Alex F. following a best interests hearing conducted on October 4, 2013. At a review hearing held on February 21, 2014, Mr. B. requested that the court revisit its earlier decision denying genetic testing in order to divest himself of legal paternity of Katerine L. and Alex F. The court denied Mr. B.'s request.

Held: Appeal dismissed. The circuit court's denial of Mr. B.'s request for genetic testing does not conclusively determine the question of parentage for Katerine L. and Alex F. As noted above, Mr. B. may raise the issue again at any of the statutorily mandated review hearings. At that time, if the court determines that genetic testing for the determination of paternity is in the best interests of the children, then it may order such testing pursuant to FL § 51005(a). At each CINA hearing, the court is required to inquire into the identity and address of each parent of the child and, “[i]f appropriate, refer the parents to the appropriate support enforcement agency to establish paternity and support.” CJP § 3–822(a). Thus, the collateral order doctrine is unavailable as a means to appeal the court's order in this case.

Because the order denying Appellant's request for genetic testing to determine paternity in the underlying CINA proceedings was not a final judgment, does not fall within one of the statutory exceptions set forth in CJP § 12–303 permitting certain interlocutory appeals, and does not meet the strict requirements of the collateral order doctrine, the order is not reviewable by this Court.

FAMILY LAW – INFANTS

Infants: A circuit court has no authority to terminate a paternal relationship other than through a decree of adoption or guardianship under Title 5, Subtitle 3 of the Family Law Article.

FAMILY LAW – GUARDIAN AND WARD

Guardian and Ward: A circuit court judge is not authorized under section 13-702 of the Estates and Trusts Article to appoint a third party as a temporary or permanent guardian of the person of a minor child if: 1) one or more of the minor's parents is living; and 2) the living parent(s) do not consent to the appointment.

In Re: Guardianship of Zealand W. and Sophia W., 220 Md. App. 66 (2014)

Facts: This guardianship case involved Zealand W. (born September 9, 2000) and Zealand's sister, Sophia W. (born January 11, 2003). Susan W. is the mother of Zealand and Sophia. On September 20, 2012, David W., the father of Zealand and Sophia, died in Montgomery County, Maryland. Five days after David W's death, his first cousin, Conway Tattersall, filed a guardianship action in Montgomery County. Mr. Tattersall alleged that Susan W. was unfit to be the guardian of her children and that the Circuit Court for Montgomery County had a right to appoint a guardian of the person of both Zealand and Sophia pursuant to Md. Code (2011 Repl. Vol.), Estates & Trusts Article, section 13-702(a) which provides, in relevant part:

(a) *General Rule* - If neither parent is serving as guardian of the person and no testamentary appointment has been made, on petition by any person interested in the welfare of the minor, and after notice and hearing, the court may appoint a guardian of the person of an unmarried minor.

Mr. Tattersall contended that section 13-702(a) allowed the court to appoint a guardian because neither parent was serving as guardian of the children and no testamentary appointment had been made. Susan W. contended that section 13-702(a) did not grant the circuit court "subject matter" jurisdiction to appoint a guardian of the person of her minor children because, after the death of David W., she, as a matter of law, was serving as the guardian of the person of the children. In support of her position, Susan W. primarily relied upon the case of *In re: Adoption/Guardianship Tracy K.*, 434 Md. 198 (2013).

Mr. Tattersall also alleged that Susan W. was not "an appropriate person to have custody" or to care for her children because (1) she lives with her parents in West Virginia; (2) she has had "long periods of unemployment in the past;" (3) she has a "lengthy history

of serious neglect of the minor children;” and (4) she “has a long-standing history of alcoholism and bulimia.”

Over Susan W.’s protest, the circuit court appointed a married couple, who were friends of the children’s father, to be temporary co-guardians of the person of Zealand W. and Sophia W. About two-and-one-half months later, the court appointed Mr. Tattersall, who, at that time, was temporarily living in Rockville, Maryland, as the substitute temporary guardian of the person of the minor children. The order provided that the children’s maternal grandparents would be given certain visitation rights with their grandchildren, but that Susan W. would be granted no rights of visitation, although she was allowed to have telephone contact with the children twice weekly.

On January 16, 2013, the court appointed Darrin Wolfe and his wife, Hilary Wolfe, who resided in Durham, North Carolina, as temporary co-guardians of the minor children. That order was consented to by the maternal grandparents and all other parties except for Susan W.

On July 19, 2013, Susan W., represented by new counsel, filed a motion to dismiss the case based on (1) failure to state a claim upon which relief can be granted, and (2) lack of subject matter jurisdiction.

In a memorandum in support of the motion to dismiss, Susan W.’s counsel maintained that in the subject case the answer to the question of whether the court had the right to appoint a guardian of the person of a minor child under section 13-702 of the Estates and Trusts Article depended on whether, at the time of the appointment, “neither parent is serving as guardian.” Counsel for movant contended that Susan W. was serving as guardian of her children. Her counsel relied, *inter alia*, on an interpretation of section 13-702 of the Estates & Trusts Article by the Attorney General of Maryland, 77 OP. Atty. Gen. 41, 44 (March 20, 1992).

Counsel for Susan W. further pointed out that Md. Code (2012 Repl. Vol.), Family Law Article (“FL”) § 5-203(a)(2)(i) provides that a parent becomes “the sole natural guardian of the minor child if the other parent . . . dies.”

Mr. Tattersall, by counsel, and the Best Interest Attorney, filed oppositions to the motion to dismiss. Both Mr. Tattersall and the Best Interest Attorney argued that section 13-702(a) of the Estates & Trusts Article, did give the court subject matter jurisdiction in this case. They argued as follows:

Here, although only one parent is deceased[,] for at least the past six years the surviving parent, Susan [W], has repeatedly been denied custody of her children and has only been granted supervised visits with her children. She therefore has not been *responsible for* or acted

as the caretaker for her children without supervision for six years. Under these extreme facts, the statutory requirement that “neither parent is serving as guardian of the person” is met, and therefore the Court has the authority to grant guardianship in this matter.

The circuit court, on September 25, 2013, denied Susan W.’s July 19, 2013 motion to dismiss. Susan W. filed an interlocutory appeal from, *inter alia*, an order holding her in contempt for failure to obey certain orders concerning payment of an expert appointed by the court.

Held: Vacated and remanded. Judgments vacated; case remanded to the Circuit Court for Montgomery County, Maryland.

Section 13-702 of the Estates & Trusts Article, allows the court to appoint a guardian of the person of a minor “[i]f neither parent is serving as guardian of the person and no testamentary appointment has been made” Here, no testamentary appointment was made - nor could a valid appointment have been made by David W. because Susan W. was alive at the time of his death.

Section 5-203(b) of the Family Law Article (“FL”) provides: “The parents of a minor child, as defined in Article 1, § 24 of this Code: (1) are jointly and severally responsible for the child’s support, care, nurture, welfare and education; and (2) have the same powers and duties in relation to the child.”

FL, section 5-203(a) reads as follows:

(a) *Natural guardianship.* – (1) The parents are the joint natural guardians of their minor child.

(2) A parent is the sole natural guardian of the minor child if the other parent;

(i) dies;

(ii) abandons the family; or

(iii) is incapable of acting as a parent.

(Emphasis supplied).

The Court of Special Appeals held that it was clear from the language used in FL, section 5-203 that Susan W. was, as of the date David W. died: 1) responsible for her children; and 2) their natural guardian.

Susan W.'s rights as a parent have never been terminated pursuant to title 5, subtitle 3 of the Family Law Article. Under such circumstances, section 13-702 of the Estates & Trusts Article gave the court no authority to appoint a guardian of the person of Susan W.'s children.

The court noted that if, at the time of David W.'s death, Mr. Tattersall, or anyone else, had grounds to believe that Susan W. was not a fit person to have custody of her children, the matter should have been brought to the attention of the Department of Health & Human Services for Montgomery County, so that that Department could attempt to prove, pursuant to FL, section 5- 301 *et seq.*, that Susan W.'s parental rights should be terminated and that the Department should be appointed the children's guardian.

The court also concluded that the circuit court was not authorized, under section 13-702 of the Estates & Trusts Article to appoint a third party as a temporary or permanent guardian of the person of either Zealand or Sophia when (1) the children's mother is alive; (2) mother's parental rights have never been terminated; and (3) no testamentary appointment has been made.

Finally, the court ruled that because the circuit court did not have the authority to appoint a guardian under section 13-702 of the Estates and Trusts Article, the circuit court erred when it: (1) ordered Susan W. to pay a third party \$5,000 to make a determination as to whether someone, other than Susan W., should be the guardian of the children; and (2) holding Susan W. in contempt for failing to make the \$5,000 payment.

TERMINATION OF PARENTAL RIGHTS – CHILD IN NEED OF ASSISTANCE (CINA) –PERMANENCY PLANS

In re: Adoption/Guardianship of Quintline B. and Shellariece B., 219 Md. App. 187 (2014), cert. denied, 441 Md. 218 (2015)

Facts: The Circuit Court for Montgomery County, sitting as a juvenile court, terminated the parental rights (TPR) of Quintline B. Sr. (father) to his children, Quintline B. Jr. and Shellariece B. At the time of the TPR hearing, the permanency plan in the children’s Child In Need of Assistance (CINA) case was reunification with father. Prior to the Montgomery County Department of Health and Human Services’ initiation of the TPR proceeding, it had moved to change the permanency plan to adoption by a non-relative in the CINA case, and was denied. Father contended that the juvenile court had infringed his due process rights by terminating his parental rights prior to a change of permanency plan in the CINA case, which he could have appealed, had it been changed.

Held: Affirmed. The existence of a permanency plan of adoption by a non-relative in a CINA case is not necessarily a condition precedent to the initiation of TPR proceedings. It is within a juvenile court’s sound discretion to consider or refuse to consider a TPR petition where the permanency plan in the associated CINA case remains reunification. It is not a violation of a parent’s rights to due process for a court to consider a TPR petition where the permanency plan in the associated CINA case remains reunification.

CHILD CUSTODY – TERMINATION OF PARENTAL RIGHTS – EXCEPTIONAL CIRCUMSTANCES

In re K'Amora K., 218 Md. App. 287 (2014)

Facts: DSS took custody of Child only six days after her birth because Mother would not administer physician-recommended medication to Child (Child was born HIV-positive, and the medication would have reduced her risk of contracting HIV from in utero exposure to almost nothing), and because her behavior at the hospital was erratic, and led hospital staff to have concerns about Child's safety. Over the next two years, Child lived with the same foster family and thrived there. Mother had sixty-one scheduled visits with Child, but missed twenty-seven. When she did visit with Child, the visits were generally not positive and those who watched the two together saw no bond form between Mother and Child—Mother even told one social worker that she was not Child's real mother. This social worker was familiar with Mother because she had worked with Mother and her other children: Mother's oldest daughter had been removed from her care, and two other children were in the custody of their fathers, as Mother had never demonstrated she could capably care for either of them. Mother declined to attend recommended mental-health treatment, as she was of the opinion that she did not need it. She also made unsupported accusations of abuse against the foster family.

The trial court determined that under Md. Code (1984, 2006 Repl. Vol.), § 5-323(b) of the Family Law Article ("FL"), "exceptional circumstances" existed that justified terminating Mother's parental rights. It examined the factors under FL § 5-323(d), pointing out that Mother had been uncooperative since day one after Child's birth, she missed nearly half her visits with Child and failed to bond with her when she did attend, she had a poor track record with her other children, and Child was flourishing after two years with her foster family. Mother appealed.

Held: Under FL § 5-323(b), the trial court is not required to find both unfitness of a parent and exceptional circumstances to justify terminating a parent's rights by statute. It may base such a finding on exceptional circumstances only, and the trial court should look among other factors to the parent's behavior and character, and whether the parent's failure to establish a bond with the child might mean that severance of the relationship would not be detrimental to the child, but would help the child achieve permanency with a foster family.

Where Mother had refused to administer physician-recommended medication to her daughter at birth, and the Child was removed from her care six days later, trial court did not err in finding that "exceptional circumstances" justified terminating Mother's parental rights even without a concomitant finding of unfitness. Exceptional circumstances included Mother's total failure to bond with Child over the course of her first two years of life, Mother's refusal to acknowledge or get help for diagnosed mental health issues, Mother's

history with the Department of Social Services based on her care of her three older children, and the Child's having developed a strong bond in a happy, loving relationship with a foster family whom she had lived with since she was six days old.

FAMILY LAW – TERMINATION OF PARENTAL RIGHTS – JUVENILE COURT REQUIRED TO FIND PARENTAL UNFITNESS OR EXCEPTIONAL CIRCUMSTANCES, NOT BOTH.

In Re: Adoption/Guardianship of Jasmine D., 217 Md. App. 718 (2014)

Facts: Jasmine D. (“Jasmine”) is the daughter of appellant, Stephanie N. (“Ms. N.”), and an unknown father. Jasmine was three years old when she first entered foster care, and spent over five of her eleven years of life in foster care as a result of Ms. N.’s alcoholism. Jasmine’s most recent placement in foster care began on November 4, 2009, and continues to the present. On December 2, 2009, Jasmine was adjudicated CINA and placed in the care and custody of appellee, the Howard County Department of Social Services (the “Department”).

The event that prompted Jasmine’s entry into foster care in 2009 occurred when Ms. N. arrived at Jasmine’s elementary school demanding that Jasmine be removed from her class. Ms. N. was intoxicated and had visible injuries on her face that she admitted were the result of a domestic dispute that day with her live-in boyfriend. Ms. N.’s emotions vacillated from crying hysterically to being belligerent with the police officers who had been called by school personnel. When Ms. N. refused to enter a safety plan for Jasmine, Jasmine was removed from Ms. N.’s care.

Over the next three years, the Department engaged in extensive efforts for reunification of Ms. N. with Jasmine, all to no avail. In early 2010, Ms. N. was diagnosed with mood disorder and alcohol dependence. Ms. N., however, refused to acknowledge her alcohol dependence, stating on many occasions that she did not drink. Ms. N. was directed by the Department and the juvenile court, among other things, to complete substance abuse treatment and to submit to random drug and alcohol testing. From July 2010 to October 2012, Ms. N. tested positive for alcohol nine times and refused to take a random test approximately thirty times. The Department also arranged for Ms. N. to enter inpatient treatment for alcohol dependence four times, but Ms. N. refused each offer, stating again that she did not drink. Ms. N. also had a history of calling the Department and threatening to commit suicide.

During the same three-year period, the Department offered Ms. N. supervised visitation with Jasmine once a week for two hours. Ms. N. missed forty-five of those scheduled visits. At one point, the juvenile court ordered that Ms. N.’s supervised visitation with Jasmine be suspended until Ms. N. entered into inpatient treatment for alcohol dependency. Ms. N. never entered inpatient treatment.

On December 6, 2012, the juvenile court ordered a change in Jasmine’s permanency plan from reunification to adoption. Later that month the juvenile court again suspended Ms. N.’s supervised visitation with Jasmine until Ms. N. provided documentation that she

was receiving mental health treatment. No such documentation was ever submitted, and thus Ms. N. has not seen Jasmine since December of 2012.

On March 13, 2013, the Department filed a TPR petition in the juvenile court. Ms. N. filed an objection, stating that “I am a very good mother and I don’t drink.” The TPR trial was conducted on August 28 and 29, 2013. Jasmine, through counsel, supported the termination of Ms. N.’s parental rights. Ms. N. was not present on either day of the trial. As the end of the trial, the juvenile court rendered an oral opinion. The court determined by clear and convincing evidence that Ms. N. was unfit to remain in a parental relationship with Jasmine, discussed in detail each factor under Section 5-323(d) of the Family Law Article (“FL”), and concluded that, based on all of the facts of the case, Ms. N.’s parental rights should be terminated. Ms. N. appealed.

Held: Affirmed. Ms. N. did not challenge the juvenile court’s factual findings or analysis of the statutory factors under FL §5-323(d). Instead, Ms. N. argued primarily that the evidence did not support a finding of exceptional circumstances that would make the continuation of the parental relationship detrimental to Jasmine’s best interests. The Court rejected this argument, observing that the juvenile court did not determine that exceptional circumstances existed; rather, it concluded that Ms. N. was an unfit parent. The Court explained that under the language of FL §5-323(b), before parental rights can be terminated, the juvenile court must find by clear and convincing evidence that either the parent is unfit to remain in a parental relationship with the child, or exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the child’s best interests.

The Court also held that, when a juvenile court finds parental unfitness, there is no need for an express finding that “the continuation of the parental relationship [would be] detrimental to the best interests of the child,” because the continuation of the parental relationship is, by definition, detrimental to the child’s best interests where the parent “is unfit to remain in a parental relationship with the child.” See F.L. §5-323(b). Thus Ms. N.’s arguments regarding exceptional circumstances were beside the point.

FAMILY LAW – SIBLING VISITATION – FINDING OF PARENTAL UNFITNESS OR EXCEPTIONAL CIRCUMSTANCES MUST PRECEDE BEST INTERESTS INQUIRY

In re: Victoria C., 437 Md. 567 (2014)

Facts: Victoria C. was declared a Child in Need of Assistance after her father, George C., would not permit her to return to the home that he shared with his wife, Kieran C., and their two children, Lance and Evan, Victoria’s half-siblings. During a review hearing, Victoria sought visitation with Lance and Evan, which George and Kieran C. opposed, and the master assigned the case recommended visitation, concluding that “exceptional circumstances” existed, because otherwise Victoria C. would suffer a “substantial deleterious effect.” George and Kieran C. filed exceptions to the master’s recommendation, which the Circuit Court denied. The Circuit Court agreed that exceptional circumstances existed based upon: Kieran C.’s testimony that Lance remembered Victoria, from which the judge inferred Lance desired visitation, its absence from which the judge inferred that Lance was harmed; that Victoria sought visitation shortly after returning to Maryland from Texas; that the benefits of visitation to Victoria would be great and the disruption to the lives of Lance and Evan would be minimal; that Victoria had a genuine desire to visit with her siblings; and that Victoria was in the situation as a result of George C.’s actions. The Court of Special Appeals reversed, applying the Court of Appeals’s decision in *Koshko v. Haining*, 398 Md. 404, 921 A.2d 171 (2007), which held that before a court may grant a “third-party” visitation with a minor child, contrary to her parent’s wishes, the third party must be making a *prima facie* showing of parental unfitness or exceptional circumstances demonstrating a substantial deleterious effect on the child who is the subject of the visitation petition. The intermediate appellate court then concluded that the trial judge erred in finding exceptional circumstances, because of his focus on the harm to Victoria C., rather than Lance and Evan.

Held: The Court of Appeals affirmed in part and vacated in part the judgment of the Court of Special Appeals. The Court began by raising the issue, sua sponte, of whether the Circuit Court sitting as a Juvenile Court had jurisdiction to order sibling visitation. The Circuit Court Judge had determined that no statutory basis existed to order visitation, and moreover, the statute upon which Victoria C. relied, Section 5–525.2 of the Family Law Article, permitting siblings “separated due to a foster care or adoptive placement” to seek visitation with each other, was only applicable to siblings who are in out-of-home placements, which Lance and Evan were not. The Court of Appeals, therefore, determined that, on remand, after briefing and argument by the parties, the Circuit Court must first determine whether it has jurisdiction to order visitation.

Addressing the merits, the Court of Appeals determined that that the tenets of *Koshko* were applicable, rejecting Victoria C.’s argument that her CINA and sibling status rendered her without, rather than within, a “third-party” designation. After analyzing its

prior third-party custody and visitation cases, the Court of Appeals determined that a “third party” is a person not a parent, and accordingly, a sibling, whether full, half or CINA, remains a third party. The Court opined, moreover, that, as to Kieran C., Victoria stands in a similar relationship to Lance and Evan as the grandparents seeking visitation did to the minors in Koshko.

After determining that Koshko was applicable, the Court of Appeals held that the Circuit Court Judge erred by focusing on the harm to Victoria instead of Lance and Evan. Instead of directing the Circuit Court to enter an order denying visitation, as the Court of Special Appeals had, the Court of Appeals remanded the case to the Circuit Court to determine: (1) whether jurisdiction exists to order sibling visitation and (2) if there is a substantial deleterious effect on Lance and Evan from a lack of visitation.

CJP § 3-812(d) – REUNIFICATION – WAIVER OF REASONABLE EFFORTS REQUIREMENT

In Re: Joy D., 216 Md. App. 58 (2014)

Facts: Crystal D. appealed from an order of the Circuit Court for Baltimore City, sitting as a juvenile court, granting the motion of the Baltimore City Department of Social Services (“BCDSS”) to waive its obligation to continue to make reasonable efforts to reunify her with her daughter, Joy D.

Ms. D., who was diagnosed with borderline personality disorder and displayed erratic behavior with explosive anger, had a long history with BCDSS and the court system, involving each of her five children: Joshua, born June 19, 1991; India, born July 7, 1996; Linda, born July 21, 1999; Malachi, born June 11, 2007; and, Joy, born September 21, 2002. In 1998, Ms. D. consented to the removal of Joshua and India from her custody, and the children were placed with their maternal grandparents. Joshua was never reunified with Ms. D. In 2003, Ms. D.’s parental rights with respect to India and Linda were terminated after a contested hearing.

Joy subsequently was found to be a CINA, and in May 2013, Ms. D. became unwilling to continue to work with social workers. Subsequently, BCDSS filed a motion to waive the requirement that it continue to make reasonable efforts to reunify Joy and with Ms. D. The motion was made pursuant to Md. Code (2013 Repl. Vol.) § 3-812 of the Courts & Judicial Proceedings Article (“CJP”), which provides that, if the court finds by clear and convincing evidence that certain circumstances exist, including that the parent has involuntarily lost parental rights of a sibling of a child, the court shall waive the requirement that reasonable efforts be made to reunify the child with the child’s parent or guardian.

The motion noted that Joy had been out of Ms. D.’s care continuously since June of 2011, Ms. D. had a long history of not being able to provide for her children, and on November 6, 2003, the court had involuntarily terminated her parental rights to Linda and India. BCDSS asserted that it had not sought a waiver previously because it was attempting to give Ms. D. another opportunity to address the reasons for Joy’s placement in BCDSS’s care, and in deference to the court’s decision to continue a plan of reunification. Ms. D., however, had demonstrated repeatedly that she had no understanding of her untreatable condition. BCDSS asserted that, in addition to the authority provided by statute, it was in the children’s best interest that efforts for reunification cease, noting that Ms. D.’s condition had not improved since 1998. Accordingly, BCDSS requested that the court waive the requirement that it make reasonable efforts at reunification, and it requested a permanency planning hearing, and the court granted the motion.

On appeal, Ms. D. asserted that, despite the mandatory language of CJP § 3-812, the court was required to exercise discretion before granting the motion. she further asserted that if the statute was mandatory, it violated her fundamental constitutional right to raise her children free from undue and unwarranted interference on the part of the State.

Held: Affirmed. When a local department requests the court to waive its obligation to continue reunification efforts, pursuant to CJP § 3-812(d), and the court finds, by clear and convincing evidence, that one of the statutory waiver conditions exists, including that the parent involuntarily lost parental rights to a sibling child, the court is required to grant the motion. The constitutional claim was not preserved for review.

CHILD CUSTODY – NEGLECT – CHILD CUSTODY – EVIDENCE

In Re: Priscilla B., 214 Md. App. 601 (2013)

Facts: Six-year-old Priscilla B. lived with her parents in a trailer in Berlin, Maryland that was badly in need of repair. She was removed from the home in September 2012 based not only on its condition, but also on her reported weight loss, her parents' neglect of her medical needs, domestic violence in the home, and Father's alcohol abuse. The Worcester County Department of Social Services ("DSS") had been involved with the family before, as Priscilla tested positive for the presence of cocaine at her birth in 2006 and therefore was a CINA for the first year of life, and she had been declared a CINA again and removed from the home in October 2010 after her parents had continuing problems with domestic violence, substance abuse, and housing.

The DSS investigator who came to the home in September 2012 saw an unsafe environment, with holes in the floor inside an unkempt trailer, a kitchen with a dirty refrigerator and clutter all about, and a mattress on the floor for Priscilla to sleep on that Father (who remained argumentative and hostile throughout the worker's visit) insisted was "comfortable." The investigator arranged for Priscilla to stay with her maternal grandmother ("Grandmother") and Carol P. and her family, friends of Grandmother who had kept Priscilla in the past. Mother and Father were to undergo substance abuse counseling and couples counseling, and undertake to repair the home.

At a hearing before a master, Father continued to deny vehemently that his home had ever been unsafe for Priscilla and that he had any substance abuse problems. Grandmother testified that Priscilla's parents fought most of the time. Carol P. testified to how differently Priscilla behaved when she returned from a visit with her parents (ill-at-ease, dirty, nervous) as opposed to when she had been staying at Carol P.'s home (calm, clean, knowing what was expected of her, happy). The master recommended that Priscilla be removed from the home based on its condition, the parents' failure to tend to her medical needs, and their turbulent history and continuing problems with domestic violence and substance abuse. She noted not only that the couple had appeared before her in the past in criminal and traffic proceedings (which she specifically did not rely on here), but also (and this was important to her recommendation) that the allegations in the present CINA proceeding were the same as those in the prior one.

The parents sought circuit court review and submitted their exceptions with a redacted version of the hearing that had taken place before the master. The circuit court clarified that it did not consider hearsay evidence from the hearing, but that it was aware of the prior CINA proceeding that reflected many of the same allegations against the parents, and it determined that Priscilla did not feel safe in her home. The court noted the continuing presence of DSS and the substance abuse and domestic violence issues (which persisted even after the prior CINA proceeding had come to a close, with one incident the

summer before the September 2012 investigation in which Mother called Carol P., hiding behind a trailer after she and Father had an argument, and asked Carol P. to take care of Priscilla if anything happened to her). He also stressed Priscilla's much-improved appearance, demeanor and overall attitude when staying with Carol P. and her family. Based on the totality of the circumstances the court denied the exceptions and found neglect on the part of the parents. Father appealed.

Held: Affirmed. The Court of Special Appeals noted that poverty “does not render parents unfit or children unsafe.” It also pointed out, though, that neglect can be harder to prove than affirmative abuse, because it is more passive, and that a court must look at the totality of the circumstances to determine whether, by a preponderance of the evidence, a child is a CINA. The Court stressed the “broad discretionary powers” of the juvenile court, and the supporting role played by masters when they provide the first level of review in a CINA proceeding. The master's findings of fact (unlike the circuit court's discretionary disposition based on those facts) are reviewed under a “clearly erroneous” standard.

Proof of neglect can exist without actual harm to a child, and the Court of Special Appeals held that a court could (and should) consider prior history of neglect, as a pattern of inaction can be indicative of neglect. Here, the circuit court was careful to distinguish inadmissible information about prior records of, for example, Father's criminal history—which it did not consider—from admissible and relevant information about the parents' history with DSS. It also properly viewed Father's denial of his problem with alcohol as a credibility issue, and not just a question of prior conduct. (The Court of Special Appeals also noted the practical consideration that, at least in the county where this case took place, there was only one master who had in fact overseen the prior CINA case, and could not be expected to forget about its existence.) The circuit court also properly relied on testimony from Grandmother and Carol P. about continuing problems of domestic violence and substance abuse that unquestionably bore on whether Priscilla should remain with her parents.

The Court of Special Appeals concluded that the circuit court properly examined the totality of the circumstances—based on the condition of the home, Priscilla's improvement upon going to live with Carol P. and her family (and the anxiety that returned each time she visited her parents), medical neglect, and the parents' cycle of alcohol abuse and domestic violence—to find neglect and keep Priscilla in Carol P.'s and Grandmother's shared custody.

FAMILY LAW – JUVENILE COURT JURISDICTION – CHILDREN IN NEED OF ASSISTANCE (CINA) – RESOURCES OF CINA – FEDERAL OLD-AGE AND SURVIVOR’S DISABILITY INSURANCE (OASDI) BENEFITS

FAMILY LAW – CHILDREN IN NEED OF ASSISTANCE – DUE PROCESS – NOTICE OF APPLICATION TO BE REPRESENTATIVE PAYEE FOR CINA’S OASDI BENEFITS AND AMOUNT OF BENEFITS RECEIVED

In Re Ryan W., 434 Md. 577 (2013)

Facts: On 4 June 2002, after he and his siblings had been removed from their parents’ custody, Ryan W. was found to be a Child In Need of Assistance (“CINA”) by the Circuit Court for Baltimore City, sitting as the juvenile court, and committed to the custody of the Baltimore City Department of Social Services (“the Department”). Ryan was nine years old at the time. Over the next several years, Ryan was placed in group homes, therapeutic homes, and non-relative foster homes. The Department paid the cost of his care.

Ryan’s mother died in August 2006, and his father died in November 2008. In November 2009, without notifying Ryan or his CINA counsel, the Department applied to the Social Security Administration (“SSA”) to seek appointment as Ryan’s representative payee for federal Old-Age and Survivor’s Disability Insurance (“OASDI”) benefits, to which he was entitled based on his deceased parents’ earnings over the years. The application was approved shortly thereafter. The Commissioner of Social Security notified Ryan’s legal guardian (the Department) as prescribed by the Social Security Act and regulations.

Between November 2009, when the first OASDI benefit payment was certified to the Department on Ryan’s behalf as his representative payee, until February 2011, when Ryan turned 18 years old, the Department received a total of \$31,693.50 in OASDI benefit payments from the SSA. The Department used the money to reimburse itself partially for the costs it incurred in providing Ryan’s care.

Ryan, through counsel, filed, on 5 April 2011, a “motion to control conduct” in the juvenile court, alleging that the Department violated its statutory and fiduciary duties by allocating the OASDI benefit payments toward reimbursement for the current cost of care. He argued further that the lack of notice to Ryan or his CINA counsel that the Department applied for and received his OASDI benefit payments on his behalf as his representative payee violated due process. The juvenile court agreed, and ordered that the Department conserve all OASDI benefits it had received on Ryan’s behalf in a constructive trust. On appeal, the Court of Special Appeals reversed, in a reported opinion (*In Re Ryan W.*, 207 Md. App. 698, 56 A.3d 250 (2012)), the juvenile court’s decision, holding that the juvenile court lacked authority under Maryland law to direct a local department of social services, acting as representative payee for a foster child in its care, to conserve OASDI benefits for

the beneficiary's future use. The Court of Special Appeals also ordered, upon reconsideration of its initial opinion, the Department to reimburse Ryan in the amount of \$660, representing an amount in excess of the cost of care for a particular month. The intermediate appellate court rejected Ryan W.'s due process-notice argument and declined (as moot) to decide the Department's sovereign immunity defense.

The Court of Appeals granted both parties' petitions for writs of certiorari to consider the following questions presented:

1. Did COSA err in holding that a local department of social services has plenary authority to apply for and use a foster child's OASDI benefits without seeking an express grant of authority from the juvenile court to exercise control over the benefits and without providing the foster child with notice and the opportunity to be heard?
2. Did the COSA err in rejecting the juvenile court's exercise of its authority in determining that a total of \$31,693.50 was to be conserved in Ryan's best interests?
3. Did the COSA err in upholding state practice and regulations that require automatic, non-discretionary application of all of a foster child's OASDI benefits and that are inconsistent with federal regulations requiring the proper exercise of discretion as a representative payee?
4. Did the COSA err in directing the juvenile court, on remand, to revise its monetary award against the State by requiring the Department to deposit funds into a foster child's trust account because, as the COSA had already concluded, the juvenile court lacks jurisdiction to enter such an order and because such an order is barred by the doctrine of sovereign immunity?

Held: Affirmed in part and reversed in part. The Court of Appeals agreed with the Court of Special Appeals's holding that the juvenile court lacks jurisdiction to direct the allocation of a child beneficiary's OASDI benefits by a duly appointed representative payee. Because the Social Security Act and regulations provide a remedy for a representative payee's misuse of OASDI benefits, the Court ruled that beneficiaries who seek a different allocation of OASDI benefits by their representative payees should pursue those claims within the federal administrative process, which is subject to further judicial review in the federal courts. The Court reversed, however, the COSA decision to the extent that it ordered any money to be reimbursed to Ryan.

Disagreeing with the COSA, the Court also held that a local department of social services must notify a child and/or his or her CINA counsel upon applying for appointment as representative payee for the child's OASDI benefits. The Department should notify also the child and/or his or her CINA counsel upon receipt of OASDI benefit payments. Notice is required to comport with due process; without notifying a child and/or his or her CINA counsel that an appointment has been sought or that benefits have been received, the child may be unaware that there was any conduct for which the child may seek a remedy in the federal venues.

FAMILY LAW – STAY OF TERMINATION OF PARENTAL RIGHTS (“TPR”) PROCEEDINGS PENDING A PERMANENCY PLAN APPEAL – Whether to stay TPR proceedings pending appeal of the change in the child’s permanency plan from reunification with a parent to adoption by a non-relative in the Child in Need of Assistance (“CINA”) case is within the juvenile court’s discretion. In exercising that discretion, the juvenile court must be guided by the child’s best interests.

FAMILY LAW – TERMINATION OF PARENTAL RIGHTS – ATTACHMENT TO FOSTER PARENTS – As part of the child’s best interests analysis, the juvenile court did not abuse its discretion when it took into consideration the child’s attachment to his foster parents, who have expressed the desire to adopt him. Family Law Article § 5-323(d)(4) expressly requires courts to consider the child’s “emotional ties with and feelings toward the child’s parents, the child’s siblings, and others who may affect the child’s best interests significantly.”

In Re: Adoption/Guardianship of Jayden G., 433 Md. 50 (2013)

Facts: Over four years ago, on February 17, 2009, a sixteen-month-old boy, Jayden G., and his two older siblings, Daeshawn and Victoria, were removed from their mother’s custody and found to be Children in Need of Assistance (“CINA”). Daeshawn and Victoria were placed in one foster home, and Jayden was placed in another.

For twenty-seven months, the children’s permanency plans were reunification with the mother. Although during that time the mother made some efforts to adjust her situation, she was never able to address the very issues that led to the CINA findings. These included domestic violence by the children’s father, mental health issues, unemployment, and housing.

When it became clear that reunification with the mother was not likely, the Montgomery County Department of Health and Human Services (the “Department”) recommended, and the juvenile court ordered, a plan of adoption by a non-relative for Jayden and limited guardianship over Daeshawn and Victoria to the children’s paternal grandmother. The reason for the different plans was that the children had very different circumstances: Daeshawn and Victoria changed foster care placements twice, but Jayden stayed with the same foster family the entire time, and that family was willing to adopt him.

The mother timely appealed Jayden’s plan change to the Court of Special Appeals, arguing that the juvenile court abused its discretion in changing his permanency plan to adoption by a non-relative, when it could have placed him with his grandmother. But while the appeal was pending, in accordance with Section 3-823(g) of the Courts and Judicial Proceedings Article (“CJP”), the Department filed a TPR petition. The mother filed a motion to stay the TPR case, but the juvenile court denied it.

On December 21, 2011, the juvenile court terminated the mother's parental rights, and she appealed.

The mother's appeal of Jayden's permanency plan change was not resolved until one month after her parental rights were terminated. The Court of Special Appeals vacated the juvenile court's order and remanded the case for a determination of which permanency plan was in Jayden's best interest.

The TPR case proceeded on a parallel appellate track, and the Court of Special Appeals affirmed the termination of the mother's parental rights. The mother filed a petition for writ of certiorari in the Court of Appeals asking the Court to decide whether the termination of her parental rights, while the appeal of the permanency plan change was pending, was proper. She also challenged the TPR court's consideration of Jayden's attachment to his foster care providers.

Held: Affirmed. The mother advocated for a blanket rule, requiring automatic stays of TPR proceedings pending appeal of a permanency plan change. She based that argument on *In re Damon M.*, 362 Md. 429, 765 A.2d 624 (2001) and *In re Karl H.*, 394 Md. 402, 906 A.2d 898 (2006), in which we recognized a parent's right to immediately appeal a change of the permanency plan from reunification with a parent to adoption by a non-relative. She also relied on our holding in *In re Emileigh F.*, 355 Md. 198, 733 A.2d 1103 (1999), according to which, a trial court may not enter an order that would frustrate a pending appeal in that case.

In contrast, the Department argued that a juvenile court must not stay TPR proceedings pending appeal because under Section 5-319(a) of the Family Law Article, TPR petitions are to be adjudicated within 180 days of filing.

The Court rejected both arguments. It explained that, although the parent has a right to appeal the plan change, that right does not foreclose or forestall the pursuit of other, overlapping statutory processes. It must coexist with the statutory provisions encouraging expediency in the resolution of TPR cases and the child's paramount need for permanency, which underlies our CINA and TPR statutes. *Karl H.* itself recognized this as, in that case, the parental rights were terminated while the appeal of the permanency plan was pending.

The Court also distinguished this case from *Emileigh*, agreeing with the Department that there is a difference "between prohibited action that frustrates a party's right to appeal and a juvenile court's permitted action, in a child's best interests, that has the incidental effect of rendering an appeal moot." The Court pointed out that, because there is a specific statutory provision that requires the juvenile court to act on a TPR petition, the juvenile court's ruling in this case may not reasonably be considered a "prohibited action." Furthermore, unlike in *Emileigh*, in which the juvenile court closed the very case that was being reviewed by the Court, in this case, there are two different cases. The CINA and the

TPR cases are governed by different statutes, serve different purposes, depend on different factors, require different standards of proof, and follow different case tracks.

The Court was also unpersuaded by the Department's argument that the 180-day provision in Section 5-319(a) of Family Law ("FL") Article leaves juvenile courts no choice but to deny motions to stay TPR proceedings. The Court explained that the term "shall" in the statute is directory in nature and pointed out that, even without stays of TPR proceedings pending appeals, TPR cases are rarely resolved within 180 days.

Having rejected, on the one hand, the mother's argument that the juvenile court had to stay the TPR proceedings and, on the other hand, the Department's argument that the court was required to deny the motion, the Court of Appeals concluded that the decision was within the juvenile court's discretion. In exercising the discretion in ruling on the motion to stay in the context of a TPR proceeding, the court's paramount consideration is the child's best interests. *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 112, 8 A.3d 745, 758 (2010).

A critical factor in this analysis is the desire for permanency in the child's life. Indeed, Maryland's CINA and TPR statutory framework requires that "[e]very reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement." CJP § 3-823(h)(3). When reunification with a parent is not an option, the adoption of the child is viewed – in terms of permanency – as the next best thing. *In re Adoption/Guardianship* No. 10941, 335 Md. 99, 120, 642 A.2d 201, 212 (1994).

But, unless the natural parent gives consent, there can be no adoption (and no permanency) until the natural parent's rights to the child are terminated. *Id.* It is at that time that "the circuit court has authority to grant the department's petition for guardianship," enabling the Department to consent to adoption. *Id.* Thus, in the event that reunification with the natural parent is not possible, the termination of parental rights serves as the segue to permanency.

A stay of TPR proceedings pending the appeal of a permanency plan would inevitably cause a delay. Nevertheless, in some instances, a stay would not be in accordance with the child's best interest. Agreeing with Jayden that "[t]he best interests of the child demand flexibility," the Court held that whether a stay would be in a child's best interest depends on a given case.

With regard to Jayden, the Court reasoned that, in the twenty-seven months that he was in foster care, the mother and the grandmother had their chance to give him permanency but neither provided any tangible hope of doing so. Considering the length of time the appellate process takes, the juvenile court did not abuse its discretion in not making Jayden wait another year or more before achieving permanency.

Next, the Court went on to consider the mother's argument that the court improperly took into account "Jayden's prospect of being adopted by, as well as the quality of care being provided by, his current care providers." But against the backdrop of the juvenile court's methodical analysis of the FL§ 5-323(d) factors, the mother's contentions fell flat. Acknowledging that a comparison of the mother to Jayden's foster parents (his potential adoptive parents), as if they were on equal footing, indeed, would not have been proper, the Court held that was not what the juvenile court did in this case.

FL§ 5-323(d)(4) requires courts to consider the child's "emotional ties" and "feelings" toward individuals "who may affect the child's best interests significantly," and the child's adjustment to community, home, placement and school. Thus, the juvenile court was required to consider Jayden's emotional attachment to his foster parents and the impact terminating parental rights would likely have on his well-being. And, that was what the court did when it found that Jayden was strongly attached to his foster parents and sister, that he adjusted well in the foster family community, that a severance of the relationship with the Mother would not have a detrimental effect on Jayden, but that it would allow him to achieve permanency. Thus, there was no error

JUVENILE CAUSES – CHILDREN IN NEED OF ASSISTANCE – CHANGES IN PERMANENCY PLAN – APPELLATE REVIEW

JUVENILE CAUSES – CHILDREN IN NEED OF ASSISTANCE – CHANGES IN PERMANENCY PLAN – CONSIDERATION OF INFORMATION RELATED TO TIME THE CHILD SPENT IN FOSTER CARE UNDER A PREVIOUS ORDER REVERSED ON APPEAL

In re Ashley S. & Caitlyn S., 431 Md. 678 (2013)

Facts: Upon a petition by the county department of social services, sisters Ashley S. and Caitlyn S. were found by the juvenile court to be children in need of assistance (“CINA”) and placed in foster care. Nearly a year later, in an appeal by the girls’ mother, the Court of Special Appeals held that the juvenile court had not made sufficient factual findings to determine that Caitlyn was a CINA or to place both girls in foster care. Based on the facts underlying the prior petition as well as events occurring in the previous year while the girls were in foster care, the department immediately filed a new CINA petition for Caitlyn and again requested out-of-home placement for both girls. For a second time, the juvenile court found Caitlyn to be a CINA and ordered that the girls remain in foster care. That decision was not appealed.

The juvenile court initially set the girls’ “permanency plans” – the presumed final placement that the court and government agencies work to achieve – as eventual reunification with the mother. However, at a review hearing six months later, the juvenile court changed these plans to adoption. This decision was based on the court’s findings that the mother had not completed previous court-ordered tasks; missed scheduled visits with the girls and did not interact appropriately with them; and was likely homeless. The court also noted that the girls were doing well in foster care, having made progress academically and generally benefitted from the emotional and psychological stability of their placement. These findings were partially based on the more than seven months in which the girls had been placed in foster care under the order that had later been reversed on appeal.

The mother appealed the change in permanency plan, arguing that it was improper for the juvenile court to have considered the events that occurred during this period. While the appeal was pending, the juvenile court changed Caitlyn’s permanency plan from adoption to reunification with her father, who had appeared in the case for the first time. The department contended that, as to Caitlyn, the appeal was moot, because her permanency plan was no longer adoption.

Held: The Court first found that the appeal as to Caitlyn was not moot. Because the mother’s parental rights would be negatively impacted, she would have been able to appeal both a change in permanency plan from reunification with her to either adoption or reunification with the father. It would be a perverse result if the sequential changes in plans

from adoption to reunification with the father precluded her ability to appeal either. The Court therefore held that a parent's interlocutory appeal of a change in permanency plan from reunification with that parent to adoption does not become moot when the court later alters the plan to reunification with the other parent.

The Court also found that the juvenile court, in contemplating a change in the girls' permanency plan, did not err in considering the events that occurred during the time in which they were placed out of the home under an order that was later reversed. In analyzing the statutory factors for selecting a plan, a juvenile court is to assess the reality of the children's circumstances and parent's past actions in order to decide what is in the children's best interests. Because the time spent by the children in foster care and their progress in that placement are not dispositive factors in the analysis, a parent who fulfills court-ordered requirements and fully addresses the court's concerns – even if done so under an order that is later reversed – will not typically be prejudiced by the juvenile court's consideration of information from this period.

FAMILY LAW – INDEPENDENT ADOPTION – CONSENT OF NATURAL PARENT –TERMINATION OF RIGHTS – UNTIMELY OBJECTION – DUE PROCESS PUTATIVE FATHER WHO, AFTER RECEIVING PROPER NOTICE, FAILED TO FILE TIMELY A NOTICE OF OBJECTION TO THE INDEPENDENT ADOPTION OF HIS SON BY STEPFATHER WAS CONSIDERED TO HAVE CONSENTED IRREVOCABLY TO THE ADOPTION BY OPERATION OF LAW. THE PERTINENT STATUTORY SCHEME FOR NOTICE AND OPPORTUNITY TO OBJECT IS FUNDAMENTALLY FAIR AND DOES NOT DEPRIVE THE PUTATIVE FATHER OF ANY DUE PROCESS RIGHT TO PARTICIPATE IN RAISING HIS SON.

In Re Adoption of Sean M., 204 Md. App. 724 (2012), aff'd, 430 Md. 695 (2013)

Facts: Moira M. (“Mother”) and William H. engaged in a romantic relationship from April to November of 2008. They were not married. Sean M. (“Sean”) was born to Mother on 16 June 2009. Moira M. became engaged to Jeffrey Craig K. (“Stepfather”) in November of 2009. Since that time, she and Sean lived with Stepfather in Queen Anne’s County. Mother and Stepfather married on 16 October 2011.

On 14 July 2009, Mother filed a Complaint against William H. in the Circuit Court for Anne Arundel County, asserting that William H. is the natural father of Sean (although Sean’s birth certificate does not identify a father) and seeking sole legal and physical custody. In his Answer, William H. denied that he was the natural father of Sean and stated that he had no objection to Mother having custody. On 14 January 2010, the suit was dismissed by agreement of the parties.

On 30 March 2011, Stepfather filed a Petition for Stepparent Adoption of a Minor and Change of Name (“Petition”) in the Circuit Court for Queen Anne’s County, stating his intention to continue to reside with Sean’s mother, and that no natural father of Sean has been identified. The Petition stated also that, even if William H. was the natural father of Sean, he has “abandoned his parental rights” as to Sean because William H.: (1) denied that he was the natural father of the minor child during the earlier custody proceeding in the Circuit Court for Anne Arundel County; (2) has not “exercised any parental rights since the minor child’s birth;” and, (3) has not attempted to support and maintain Sean since his birth.

The Circuit Court issued a show cause order and form notice of objection to William H. (himself an attorney admitted in Maryland at the time), who was served properly by personal service on 29 April 2011. The required deadline for William H. to file with the Circuit Court for Queen Anne’s County any objection to Stepfather’s petition for adoption of Sean was 31 May 2011.

The Circuit Court received William H.'s written objection on Wednesday, 1 June 2011, one day after the expiration of the thirty-day deadline.

Stepfather filed a Motion to Strike Late Notice of Objection, requesting that the adoption proceed as an uncontested matter. Judge J. Frederick Price granted Stepfather's motion, noting that William H. did not allege any disability or any other circumstance to excuse the requirement, pursuant to Maryland Rule 9-107(b)(1), of filing a notice of objection to an adoption within thirty days after the show cause order is served. William H. filed a Motion to Alter and Amend Judgment on 18 August 2011, and, a week later, an Emergency Motion to Stay Adoption Proceeding. The court denied both motions. William H. appealed the denial of the orders to the Court of Special Appeals.

On 27 April 2012, a panel of the intermediate appellate court affirmed, in a reported opinion, the Circuit Court's grant of Stepfather's Motion to Strike William H.'s untimely objection. The court held that the time period established in Md. Rule 9-107(b)(1) applied equally to guardianships as well as adoptions, and that it rendered the late filing of a notice of objection to an adoption as an irrevocable consent to termination of the pertinent parent's rights, *In re: Adoption of Sean M.*, 204 Md. App. 724, 742, 42 A.3d 722, 732 (2012). The intermediate appellate court held also that this statutory scheme did not offend any due process right of William H. *Id.* at 749, 42 A.3d at 737. The Court of Appeals granted William H.'s petition for Writ of Certiorari, *In re: Adoption of Sean M.*, 427 Md. 606, 50 A.3d 605 (2012), to consider (1) whether a putative parent's failure to file a timely objection to a proposed independent adoption, as directed in a show cause order, constitutes an irrevocable consent to the adoption; and, (2) whether the statutory scheme resulting in an irrevocable deemed consent to an independent adoption offends the due process rights of the putative parent.

Held: Affirmed. The Court determined first that the failure of William H. to file timely a notice of objection to the proposed independent adoption constituted an irrevocable consent to the adoption. The analysis began with a comparison of the independent adoption statutory and regulatory provisions with the guardianship statutory scheme, which applies a similar thirty-day objection period. In guardianship proceedings, any late-filed objection results in an irrevocable consent to the guardianship petition. The Court held that, because the statutory schema of guardianship and adoption procedures are sufficiently similar in their plain language and legislative intent as to the effect of a late-filed notice of objection, an untimely objection acts as an irrevocable consent in either a guardianship or an adoption proceeding.

Second, the Court held that, based on the multi-factor test of *Matthews v. Eldridge*, 424 U.S. 319 (1976), the procedures established in the independent adoption statutory and rule-based provisions provide fair notice to a parent or putative parent that his or her right to participate in raising his child will terminate by requiring that (1) the parent receives notice that an adoption petition is filed and (2) the parent is made aware clearly that the

court may enter an order for adoption only if each of the adoptee's parents consents by writing or by failure to file a notice of objection within the thirty-day statutory time period. The Court determined that, because William H. offered no excuse for his late-filed objection and did not contend that the pertinent statutory and regulatory provisions were unclear, the independent adoption statutory scheme provided fundamentally fair procedures that did not deprive William H. of due process.

FAMILY LAW – ADOPTION – PROCEDURES – INTERVENTION - FAMILY LAW
– ADOPTION – FINALITY

In Re: Malichi W., 209 Md. App. 84 (2012)

Facts: Kris Golden was the maternal cousin of eight-year-old Malichi W. The juvenile court terminated the parental rights of Malichi’s biological parents on August 10, 2010. Malichi’s biological mother consented to the termination on the condition that Malichi be adopted by Ms. W., who was Malichi’s pre-adoptive foster mother, and who had custody of the child since June 6, 2006. Malichi’s biological father did not object, and thus he consented by operation of law. On March 9, 2011, the Baltimore City Department of Social Services (the “Department”), the child’s appointed guardian, consented to Malichi’s adoption by Ms. W. Ms. W. then petitioned the court to adopt Malichi on March 24, 2011.

On April 8, appellant Kris Golden filed a motion in Malichi’s adoption proceedings captioned “Motion to Intervene and Appeal.” She wanted to be considered as an adoptive parent for Malichi. The juvenile court denied the motion on April 12, stating that it lacked good cause. On May 31, 2011, Golden filed a second motion with the same caption as her first. On June 1, 2011, the juvenile court granted Ms. W’s petition for adoption of Malichi. The court then denied Golden’s motion on June 10, 2011, finding that there was a lack of good cause and that the issue was moot because “the child was adopted on 6/1/11.” Golden filed an appeal.

Held: Affirmed Under FL §5-345(a), any adult may petition a juvenile court for an adoption of the child post-TPR. However, the petitioner must include in his or her filing all written consents required by FL §5-350(a). Here, because Yolanda W. filed the consent of Malichi’s guardian, the Maryland Department of Social Services, Golden could not petition for adoption. This fact posed an insurmountable barrier to the relief sought by Golden – consideration as an adoptive parent.

Even assuming that Golden’s goal was to overturn Ms. W.’s adoption of Malichi, no mechanism exists for her intervention in a post-TPR adoption. The Court examined Title 5, Subtitle 3 of the Family Law Article of the Md. Code (1984, 2006 Repl. Vol.), Title 3, Subtitle 8 of the Courts and Judicial Proceedings Article of the Md. Code (1977, 2006 Repl. Vol.), Title 9 and Title 11 of the Maryland Rules, and Maryland Rule 2-214. None of these rules confer upon a non-parental, non-custodial relative the right to intervene in an adoption proceeding after the termination of parental rights.

In fact, Md. Rule 11-122(b) allows non-parental intervention at the discretion of the juvenile court, but only for “dispositional purpose.” According to the corresponding statute, a “dispositional hearing” is one that determines whether a child is in need of assistance and, if so, the nature of the court’s intervention to protect the child’s health,

safety, and well-being. The specificity and exclusivity of Rule 11-122(b) create the negative implication that no right of intervention exists beyond the dispositional stage – here, an adoption following termination of parental rights. The rationale for such a construction is readily apparent, as there is a need to surround the final adoption decree with a high degree of certainty, and anything which would undermine public confidence in adoption proceedings must be read by the courts in the gravest light.

With a review of the potentially applicable law, the Court of Special Appeals found no statute or rule that would allowed Golden’s intervention in the adoption after termination of parental rights. Thus, Golden had no right to intervene in the adoption.

EVIDENCE – TELEPHONE TESTIMONY – EXPERT & LAY WITNESSES –
OPINION TESTIMONY – FAMILY LAW – PARENTAL DUTIES & RIGHTS –
TERMINATION OF PARENTAL RIGHTS – INVOLUNTARY TERMINATION

In Re: Adriana T., 208 Md. App. 545 (2012)

Facts: In November 2009, the Prince George’s County Department of Social Services (“Department”) filed a Child In Need of Assistance (“CINA”) Petition for minor child, Adriana T., alleging that Adriana T.’s mother, Monet T. (“Mother”), was a risk to herself and to others, and recommended that she not be left alone with Adriana T. While in labor, Mother attempted to leave the hospital, despite her physician’s medical advice. She was involuntarily committed to the hospital’s mental unit, and Adriana T. was placed in the temporary care and custody of the Department. The Circuit Court for Prince George’s County, sitting as a juvenile court, determined that Adriana T. was a CINA and could be placed with a relative.

Several years earlier, in December 2001, Mother suffered from a psychiatric episode and believed that her mother, Mary T. (“Grandmother”) was complicit in a conspiracy against her. Mother fired two shots at Grandmother, but Grandmother survived. Mother was arrested and charged, but found not criminally responsible, and committed to Clifton T. Perkins Hospital Center.

In May 2010, the Department placed Adriana T. with Grandmother in North Carolina. During this time, a social worker, Ms. Joyce Trott, visited Grandmother’s residence once a month, monitored Adriana T.’s care, and provided reports to the Department. In October 2010, the Department filed a Petition for Guardianship with Right to Consent to Adoption. Although Adriana T.’s father, Detuan J., consented to the petition, Mother noted her objection. In April 2011, the court determined that the matter was a contested guardianship, and ordered a hearing on the merits.

In June 2011, Adriana T.’s counsel, pursuant to Md. Rule 2-513, filed a motion to take Ms. Trott’s testimony by telephone. Mother opposed, arguing that (1) the motion was not timely and deprived her of the opportunity to cross-examine the witness, resulting in substantial prejudice; and (2) the court could not assess the witness’ demeanor and credibility. The trial court granted Adriana T.’s motion. Additionally, over Mother’s objections of relevancy, the court permitted Grandmother to testify regarding her medical recovery from the gunshot wounds that Mother inflicted. In April 2012, the court ordered that Mother’s parental rights be terminated pursuant to § 5-323(d) of the Family Law Article.

Ruling: Affirmed. The Court of Special Appeals held that there was good cause to allow the motion to be filed because Adriana T. lacked funds to finance Ms. Trott’s travel and hotel expenses. Mother received notice of the content of Ms. Trott’s status reports and

accordingly, was aware of what she would communicate through her testimony. Concerning Mother's inability to contact Ms. Trott, the Court willingly assessed the lack of the required contents of Md. Rule 2-513, and determined that Adriana's failure to include the contents were immaterial. Ms. Trott was a disinterested party, who testified to Adriana's general welfare during her placement with Grandmother, and thereby, Ms. Trott's demeanor and credibility were not likely to be critical to the outcome of the proceedings, to the extent that her physical presence was required. Mother's ability to effectively cross-examine was not stifled because Ms. Trott testified by telephone. Mother had a full and fair opportunity to cross-examine, but chose to limit that examination to one question. We concluded that the trial court did not abuse its discretion in permitting the telephone testimony.

Regarding Grandmother's testimony concerning her recovery, we held that it was relevant to the termination of parental rights proceeding because Grandmother's recuperation demonstrated the extent of the damage caused by Mother's violent conduct. Grandmother's testimony also denoted her ability to care for Adriana T., despite the shooting incident, Mother's inability to raise Adriana T., and the potential peril Mother posed to Adriana T.'s health and well-being. As a result of the plausibility of Mother's future violent conduct, the court did not err in admitting the testimony.

FAMILY LAW – CHILD CUSTODY – VISITATION – THIRD PARTIES –
EXCEPTIONAL CIRCUMSTANCES ANALYSIS

In Re: Victoria C., 437 Md. 567 (2014)

Facts: Victoria C. was born on August 25, 1993. After Victoria's mother died, her father, George, married Kieran, Victoria's stepmother, in 2005. George and Kieran have two sons, age five and three. Victoria lived with father from birth until March 2009, when she was sent to live with a maternal aunt in Texas. Victoria went to live with her aunt after an abuse allegation against George was sustained. Victoria remained in Texas with her aunt for a period of one year and then returned to Maryland in March 2010. Upon Victoria's return from Texas, George did not allow Victoria to return home and Victoria was taken into the care and custody of the Carroll County Department of Social Services. Victoria was adjudicated to be a child in need of assistance ("CINA").

As an ancillary action to the CINA proceeding, Victoria sought visitation with her two minor siblings, which George and Kieran opposed. A hearing was held before a Master. Victoria testified that she wanted visitation with her brothers. George and Kieran both testified that they opposed visitation because of the poor relationship between Victoria and George. Kieran expressed concern that, if visitation were permitted, the hostility between Victoria and George would adversely affect the relationships between George and his sons as well as between Kieran and her sons. Victoria's social worker recommended against visitation, as did a therapist who had worked with Victoria and George.

The Master recommended visitation, finding that Victoria had proved exceptional circumstances as required by Maryland law. George and Kieran filed timely exceptions. Before the exceptions hearing, Victoria turned eighteen years old and terminated Department of Social Services custody. The circuit court denied George and Kieran's exceptions. This appeal followed.

Ruling: Reversed. Case remanded for entry of an order denying Victoria's petition for visitation. The Court of Special Appeals held that when a third party, including an adult sibling, seeks visitation with a minor child, the third party must satisfy the standard articulated in *Koshko v. Haining*, 398 Md. 404 (2007). Parents possess a constitutionally protected fundamental right to direct and control the upbringing of their children. In order to safeguard the parent's liberty interest, *Koshko* requires a threshold showing of either parental unfitness or exceptional circumstances indicating that the lack of third-party visitation has a significant deleterious effect upon the children who are the subject of the petition.

Exceptional circumstances are evaluated on a case-by-case basis. In the context of third-party visitation cases, the Court of Special Appeals has focused on the ability of the party seeking visitation to show future detriment upon the minor children if visitation is

not permitted. A finding of future detriment must be based on solid evidence in the record; harm to a minor child will not be presumed. Harm suffered by an adult as the result of a denial of visitation with minor children is not a consideration in the exceptional circumstances analysis. The focus instead must be on whether a minor child is harmed by the absence of visitation.

The Court of Special Appeals determined that the circuit court had improperly applied *Koshko* in assessing Victoria's visitation petition. There was no evidence in the record of any harm to the minor children due to the lack of visitation with Victoria. Rather, there was testimony indicating potential harm to the minor children from visitation. The circuit court improperly considered harm to Victoria due to the denial of visitation. Victoria is an adult and harm suffered by adults as the result of a denial of visitation should not be considered. Accordingly, the Court reversed the circuit court and remanded for entry of an order denying visitation.

SOCIAL SECURITY ACT -- OLD AGE, SURVIVOR, AND DISABILITY INSURANCE (OASDI) BENEFITS -- USE BY DEPARTMENT OF SOCIAL SERVICES FOR SELF-REIMBURSEMENT OF OASDI BENEFITS TO CHILD DECLARED CHILD IN NEED OF ASSISTANCE BY JUVENILE COURT -- ALLEGATIONS OF BREACH OF FIDUCIARY DUTY, VIOLATIONS OF RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW UNDER FEDERAL CONSTITUTION AND MARYLAND DECLARATION OF RIGHTS -- JURISDICTION JUVENILE COURT -- COMAR REGULATIONS REGARDING OASDI BENEFITS.

***In Re Ryan W.*, 434 Md. 577 (2013)**

Facts: In 2002, when he was 9 years old, Ryan W., the appellee, was declared by the Circuit Court for Baltimore City, sitting as a Juvenile Court, to be a Child in Need of Assistance. He was committed to the care and custody of the Baltimore City Department of Social Services (“the Department”), the appellant. Ryan was placed in foster care, living primarily in therapeutic and non-therapeutic group homes. After Ryan’s mother died, he became eligible for Old Age, Survivor, and Disability Insurance (“OASDI”) benefits under Title II of the Social Security Act. After his father died, Ryan became eligible for additional benefits. In 2009, when Ryan was 16 years old, the Department applied to the Social Security Administration (“SSA”) to be named the representative payee to receive Ryan’s OASDI benefits. The SSA granted the Department’s request. Ryan was not informed, nor was his CINA counsel. The Department received two lump-sum retroactive benefits payments and began receiving \$771 per month in current benefit payments. It used all of the monies it received, a total of \$31,693.30, to reimburse itself for the cost of Ryan’s care.

Subsequently, after the Department was no longer receiving OASDI benefits on Ryan’s behalf, he filed a “motion to control conduct” in his CINA case, asking the Juvenile Court to order the Department to conserve any OASDI benefits received on his behalf for his use upon his transition out of foster care. He argued that the Department violated his state and federal constitutional rights to due process and equal protection in applying for benefits without notice to him or his counsel and by using his benefits for self-reimbursement; and that this practice also violated state and federal law.

The Juvenile Court ruled in Ryan’s favor, finding that the Department had breached fiduciary duties owing to Ryan and had violated his equal protection and due process rights. It declared two Maryland regulations permitting the self-reimbursement practice *ultra vires* and held that the Department had not acted in Ryan’s best interests when it used his OASDI benefits for self-reimbursement, rather than conserving the benefits for his future use. The Juvenile Court ordered the Department to return to Ryan the entire \$31,693.30 in benefits it had received on his behalf.

The Department noted an appeal. It conceded that a portion of the OASDI benefits received on Ryan's behalf as lump-sum, retroactive payments – a little over \$8,000 – had to be refunded to him because it only could be applied to cover the cost of Ryan's care for the month prior to its receipt. Otherwise, it took the position that its practice of using OASDI benefits received on behalf of a foster child to self-reimburse complied with federal and state law and that the Juvenile Court lacked jurisdiction to order it to repay the full amount of Ryan's OASDI benefits and to declare Maryland regulations *ultra vires*.

Ruling: Judgment reversed. Under the SSA regulations, the Department was entitled to apply for and receive OASDI benefits for Ryan without informing him or his counsel. Its obligation to conserve benefits for future use was only with respect to benefits over the amount of the cost of his current maintenance and the amount of Ryan's monthly OASDI benefits was far less than the cost of his current maintenance. There was no equal protection violation because the Department's practice did not create two classes of foster children. Moreover, the Juvenile Court has limited jurisdiction that does not include broad equitable powers, such as it exercised in its ruling in this case; nor did it have the power to declare two Maryland regulations, which previously had been approved, *ultra vires*. Ryan was entitled to a refund of approximately \$8,100, as conceded, but the ruling of the Juvenile Court was otherwise reversed.

FAMILY LAW – TERMINATION OF PARENTAL RIGHTS – RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL – DISABILITY ALLEGATION

In Re Adoption/Guardianship of Chaden M., 422 Md. 498 (2011)

Facts: The Baltimore City Department of Social Services (“DSS”) filed a petition for guardianship of minor child, Chaden M. DSS alleged in the petition that Chaden M.’s mother, April C., may have had a disability that made her “incapable of consenting to [DSS’s] Petition for Guardianship or of participating in the proceeding for Guardianship.” The nature of the alleged disability was mental health. DSS requested that an attorney be appointed for April C. Attorney Smith entered her appearance two days after DSS filed the petition. Neither April C. nor Attorney Smith on April C.’s behalf filed a notice of objection to the petition within the 30-day period after April C. was served, as provided by Maryland law. After expiration of the time period within which April C. could have objected, DSS withdrew its allegation that April C. was disabled. Attorney Smith then filed an untimely notice of objection, which DSS moved to strike. The juvenile court held a disability determination hearing and found that April C. was not disabled. The juvenile court then granted DSS’s motion to strike April C.’s untimely objection. The failure to file a timely objection resulted in April C. being deemed to have consented to the petition for guardianship. The matter then proceeded on an uncontested basis and the juvenile court granted DSS’s petition, which had the effect of terminating April C.’s parental rights.

April C. appealed to the Court of Special Appeals and asserted that she had been denied effective assistance of counsel. That court held that April C. had a right to effective assistance of counsel and, pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984), April C. was denied that right and entitled to file a belated notice of objection on remand. DSS then petitioned the Court of Appeals for a writ of certiorari.

Ruling: Affirmed. The Court of Appeals held that April C. had a right to counsel rooted in Maryland Code (1999, 2006 Repl. Vol.), § 5-307(a) of the Family Law Article as well as Maryland Rule 9-105(b) because DSS had alleged that she was disabled. The right continued at least until the juvenile court made a disability determination. The right to counsel includes the right to effective assistance of counsel. Attorney Smith, who entered her appearance on behalf of April C., rendered ineffective assistance. She assumed that DSS agreed April C. was disabled and the court would ultimately find that April C. was disabled. Based on those unfounded assumptions, Attorney Smith failed to file a timely notice of objection to preserve April C.’s right to contest the petition for guardianship in the event that DSS withdrew its allegation of disability or the juvenile court found that April C. was not disabled. The conclusion that Attorney Smith rendered ineffective assistance of counsel was based on her clear and admitted failure to file the notice of objection after she entered her appearance. The Court of Appeals, therefore, did not need to address the applicability of a *Strickland* analysis, as the intermediate court had done. April C. is entitled to file a belated notice of objection on remand.

18th Annual CANDO Federal & State Child Welfare Updates

HONORABLE THERESA M. ADAMS

CIRCUIT COURT FOR FREDERICK COUNTY

Another Planned Permanent Living Arrangement (APPLA)

Ultimate goals: Assist in creating normalcy for youth in foster care

Another Planned Permanent Living Arrangement (APPLA)

Ultimate goals: increase the speed with which permanency for foster youth is achieved

Another Planned Permanent Living Arrangement (APPLA)

Ultimate goals: reduce number of foster youth who age out with having achieved permanency

Another Planned Permanent Living Arrangement (APPLA)

Sec. 112 “Purpose Clause” - Limits to children age 16 or older the option, in an initial permanency hearing, of placement in planned permanent living. Prescribes documentation and determination requirements for such an option.

Another Planned Permanent Living Arrangement (APPLA)

Section 3-823(e) - At a permanency planning hearing, the court shall determine the child's permanency plan consistent with the best interests of the child ... in descending order of priority:

Another Planned Permanent Living Arrangement (APPLA)

1. Reunification with the parent or guardian;
2. Placement with a relative for adoption custody and guardianship under §3-819.2 of this subtitle;

Another Planned Permanent Living Arrangement (APPLA)

3. Adoption by a nonrelative;
4. Custody and guardianship by a nonrelative under §3-819.2 of this subtitle; or

Another Planned Permanent Living Arrangement (APPLA)

Last and fifth choice:

5. “FOR A CHILD WHO HAS ATTAINED THE AGE OF 16 YEARS AT THE TIME OF THE PERMANENCY PLANNING HEARING, ANOTHER” planned permanent living arrangement.

Another Planned Permanent Living Arrangement (APPLA)

- Effective as of October 1, 2016

Another Planned Permanent Living Arrangement (APPLA)

Why amend to age 16?

Promoting Permanency - The state must prove extensive but unsuccessful efforts to find permanent placements.

Sexual Abuse – Definition

An Act that involves sexual molestation or sexual exploitation of a child by:

- (i) A parent or other individual who has permanent or temporary care, custody, or responsibility for supervision of the child;
- (ii) A household or family member; OR
- (iii) **Any individual involved in the sex trafficking of a child.**

Sex Trafficking – Definition

The recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

Comprehensive Addiction and Recovery Act of 2016 (CARA)

Expands educational efforts to prevent the abuse of methamphetamines, opioids, and heroin, and to promote treatment and recovery

Comprehensive Addiction and Recovery Act of 2016 (CARA)

Shifts resources toward identifying and treating incarcerated people who are suffering from addiction by collaborating with criminal-justice stakeholders and providing evidence-based treatment.

Comprehensive Addiction and Recovery Act of 2016 (CARA)

Prohibits the Department of Education from including questions about an applicants conviction for possession or sale of illegal drugs on the FAFSA financial aid form.

Disability Definition

1. “Disability” means:

(i) – A physical or mental impairment that substantially limits one or more of an individual’s major life activities;

(ii) – A record of having such an impairment; OR

(iii) – Being regarded as having such an impairment.

2. “Disability” shall be construed in accordance with the ADA Amendments Act of 2008.

Disability Definition Changes

CJ 3-819 – Disposition/CINA

- Disability of a parent is relevant only if it **affects** their ability to provide proper care and attention to the child

Disability Definition Changes

CJ 3-819.2 Care and Custody

- Disability of potential guardian is relevant only if disability affects the best interest of the child

Disability Definition Changes

FL 9-107 – Custody and Visitation

- Disability is relevant only if disability affects the best interest of the child

Disability Definition Changes

FL 5-338 – Adoption without TPR

- Department may not withhold consent based solely on adoptive parent(s)' disability

Disability Definition Changes

FL 5-350 – Adoption after TPR

- Guardian may not withhold consent based solely on adoptive parent(s)' disability

Disability Definition Changes

FL 5-3A-35 – Private Agency Adoption
- Agency may not withhold consent based solely on prospective adoptive parent(s)' disability

Disability Definition Changes

FL 5-3B-19 – Independent Adoption
- Court may not withhold consent
based solely on petitioner/ adoptive
parent(s)' disability

Disability Definition Changes

FL 5-525 – Foster Care

- NO removal based solely on
disability