Circuit Court for Baltimore County
Case No. C-03-JV-19-000876
Case No. C-03-JV-19-000877
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CHILD ACCESS

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 26

September Term, 2024

IN RE K.B., M.B., AND L.R.

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

JJ.

Opinion by Albright, J.

Filed: November 7, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

The Circuit Court for Baltimore County, sitting as a juvenile court, adjudicated L.R., M.B., and K.B. ("the children")[1] in need of assistance ("CINA") after ten-year-old L.R. suffered severe burns[2] at home and did not receive necessary medical treatment for two-and-a-half months. In the home at the time were Ms. M. (the children's mother) and Mr. B. (the father of M.B. and K.B.). The children were then committed to the Department of Social Services ("DSS" or "the Department"), where they remained, while the Department fulfilled its statutory obligation to make reasonable efforts toward reunifying them with Ms. M.

More than four years after the burns, and as a result of them, Ms. M. and Mr. B. were convicted of first-degree child abuse of L.R., resulting in severe physical injury. Mr. B. was convicted by way of a jury verdict, while Ms. M. pled guilty. For these convictions, Mr. B. and Ms. M. received prison sentences. Following Ms. M.'s guilty plea, the Department moved for waiver of its reasonable-efforts obligation and eventually recommended that the children's permanency plans be changed away from reunification with Ms. M. The juvenile court granted the Department's waiver motion ("waiver") and

[1] M.B., K.B., and L.R. have a teenage sibling (or half sibling), F.S., who is also committed to the Department. F.S.'s case is not before us.

[2] L.R. was found to have "extensive intentional [second-] and [third-] degree burns of at least 25% of her body" and "permanent scarring and disfigurement" resulting from lack of medical care.

changed the children's permanency plans as the Department recommended. Ms. M. then noted this timely appeal.[3]

Here, Ms. M. presents multiple questions for our review,[4] which we have consolidated as follows:

1. Did the juvenile court violate Ms. M.'s constitutional rights when it waived DSS's obligation to provide reasonable efforts to reunify her with M.B., K.B., and L.R. solely on the basis that she pled guilty to first-degree child abuse of L.R.?

2. Did the court err or abuse its discretion when it changed M.B.'s. K.B.'s, and L.R.'s permanency plans away from reunification with Ms. M.?

[3] Mr. B. and L.R.'s father, Mr. S., did not note appeals.

[4] As stated in Ms. M.'s brief, her questions are:

1. Did the court violate mother's constitutional rights when it waived DSS's obligation to provide reasonable efforts to reunify her with her children solely on the basis that she pled guilty to first-degree child abuse?

2. Did the court err when it changed all children's permanency plans away from reunification with mother?

    a. Did the court make inadequate findings in support of changing the plans?

    b. Did the court impermissibly treat the CJP § 3-812(b) reasonable-efforts waiver as compelling plan changes?

    c. Did insufficient evidence support changing the plans?

    d. Should the court have allowed mother to make a childcare plan while she remained incarcerated in furtherance of reunification or, at least, have directed DSS to vet mother's fiancé as a potential permanent placement?

Preliminarily, the Department moves to dismiss Ms. M.'s challenge to the constitutionality of the waiver, i.e., Ms. M.'s first question, arguing that the waiver is neither a final judgment nor the kind of order that warrants an interlocutory appeal. The children do not move to dismiss this portion of Ms. M.'s appeal but offer the same argument, i.e., that the waiver is not appealable, as a basis for denying Ms. M.'s constitutional challenge.

We disagree with the Department and the children that the waiver is not appealable. Nonetheless, we decline to reach Ms. M.'s first question because the constitutional challenge Ms. M. raises to the waiver is not preserved. On Ms. M.'s second question, we answer "no" and affirm the judgment of the juvenile court.

FACTUAL AND PROCEDURAL BACKGROUND

The children came to the Department's attention on September 4, 2019, when it received a report that L.R., a then-ten-year-old who has autism and is non-verbal, had "profound burns" on her chest and back. At the time, L.R. lived with her mother, Ms. M., her stepfather, Mr. B., and her half siblings, M.B. and K.B. Ms. M. and Mr. B each blamed the other for causing L.R.'s injuries. But both admitted L.R. had not received medical care for her injuries in the two-and-a-half months after she sustained them. L.R.'s father, Mr. S., had visited L.R. in late August 2019, saw her burns, but did not seek any medical care for her. As a consequence, the Department removed L.R., M.B., and K.B. from the home and petitioned that they be sheltered and adjudicated children in need of assistance.

In February 2020, the children's cases came before the juvenile court for adjudication and disposition on the Department's amended CINA petitions. By that time, Mr. B. and Ms. M. had been indicted for first-degree child abuse of L.R., resulting in severe physical injury, among other charges, and were being held pretrial. Before the juvenile court, Ms. M. neither admitted nor denied the alleged facts but agreed that the Department could prove them. The juvenile court then sustained the allegations and, moving to disposition, found all three children to be in need of assistance.

> Respondent [L.R.] is autistic and non-verbal; she sustained extensive intentional [second-] and [third-] degree burns of at least 25% of her body when she received a severe hot water burn in June of 2019. No medical care was sought for her until CPS became involved in September[] 2019. The burns and lack of treatment have resulted in permanent scarring and disfigurement. [Ms. M.], mother of the Respondents, blames [Mr. B.], father of [M.B.] and [K.B.], for causing the injuries and [Mr. B.] claims [L.R.] was in the care of [Ms. M.] when the injury occurred. Neither sought medical attention for her. [Mr. S.]. father of [F.S. and L.R.], claims he became aware of the injuries in late August, but thought that she had received medical treatment. He is transient and unable to care for the children. Both [Mr. B.] and [Ms. M.] have been indicted on first[-]degree child abuse charges and are incarcerated.

The juvenile court also committed the children to the care and custody (and limited guardianship) of the Department.[5] The court did not permit Ms. M. to visit the children, but indicated it would reconsider the matter after Ms. M's release.

[5] These dispositional orders, including that the children be found to be in need of assistance, mirrored what the Department had recommended. Ms. M. agreed with the Department's recommendations.

Thereafter, and while Ms. M.'s and Mr. B's criminal cases were pending, Ms. M. made some progress toward reunification. In July 2020, she was released from pretrial incarceration on bail. Thereafter, she maintained contact with the Department, had visits with the children, attended school meetings, completed parenting classes, and engaged in mental health services.

On May 26, 2023, the Department moved for waiver of its obligation to provide further reasonable efforts toward the children's reunification with Ms. M.[6] This followed Ms. M.'s January 2023 guilty plea to first-degree child abuse of L.R., resulting in severe physical injury. Relying on Sections 3-812(b)(2) and (d) of Maryland's Courts & Judicial Proceedings Article ("CJP"),[7] the Department argued that waiver was mandatory if the

[6] The Department filed a similar motion as to Mr. B. in January 2024.

[7] Sections 3-812(b)(2) and (d) provide that:

> (b) In a petition under this subtitle, a local department may ask the court to find that reasonable efforts to reunify a child with the child's parent or guardian are not required if the department concludes that a parent or guardian:
>
> . . .
>
> (2) Has been convicted, in any state or any court of the United States, of:
>
> . . .
>
> (i) A crime of violence against that child or any minor offspring of the parent.
>
> . . .
>
> (d) If the court finds by clear and convincing evidence that any of the circumstances specified in subsection (b) of this section exists, the court shall waive the requirement that reasonable efforts be made to reunify the child with the child's parent or guardian.

CJP §§ 3-812(b)(2) and 3-812(d).

juvenile court were to find, by clear and convincing evidence, that Ms. M. had been convicted of first-degree child abuse resulting in severe physical injury. Ms. M.'s sentencing (scheduled for July 28, 2023, at the time the Department filed the motion) was subsequently postponed.

On September 15, 2023, the cases came before a magistrate for a permanency plan review hearing. According to the Department's September 3, 2023 Report, M.B. and K.B. had been in their current foster home since January 28, 2022, felt safe there, were enjoying it, and had bonded with their foster parents. They felt close to F.S. and continued to visit with L.R. They were in good health and continued to address their mental health issues through therapy and medication. L.R. had been in a medical-level group home, which was age-appropriate with all-female peers, since August 25, 2022. She appeared happy there, interacted with the others, and had a one-on-one staff member to assist her with the activities of daily living. She was receiving medication for mental health issues. Ms. M. was reported to have had another child in December 2022. She continued to visit M.B., K.B., and L.R., to have consistent contact with the Department about them, and to participate in meetings about them**.** She wanted the Department to look into placing M.B. and K.B. with friends and relatives and provided their names to the Department.

Based on the evidence before him, the Magistrate recommended that M.B.'s and K.B.'s permanency plans be changed from reunification to a concurrent plan of reunification and adoption by a non-relative. He also declined to recommend that Ms. M.

have unsupervised visits with the children. Ms. M. noted exceptions to the Magistrate's recommendation, challenging the recommended plan change and the fact that visitation was recommended to be supervised going forward.

In December 2023, Ms. M. was sentenced to 20 years' imprisonment, with all but five years suspended, for first-degree child abuse of L.R., resulting in severe physical injury. That same month, Mr. B. was found guilty by a jury of the same charge. In January 2024, he was sentenced to 25 years in prison.

On March 7, 2024, the cases came before the juvenile court for hearing on the Department's waiver motion, Ms. M.'s exceptions from the September 15, 2023 permanency plan review, and to again review the children's permanency plans.[8] The juvenile court took these matters up one by one.

With regard to its waiver motion, the Department argued that granting it was mandatory. Citing CJP § 3-812, the Department explained that a local department may ask that its obligation to make reasonable efforts toward reunification be waived if a

[8] On March 7, 2024, the juvenile court had four Department reports before it: (1) September 3, 2023 Court Report; (2) October 5, 2023 Court Report Addendum; (3) December 26, 2023 Court Report pertaining to K.B. and M.B.; and (4) February 23, 2024 Court Report pertaining to M.B. and K.B. There is some discrepancy regarding whether a fifth report, that being a March 5, 2024 Court Report Addendum pertaining to L.R., was admitted. The March 7, 2024 transcript indicates that this report was not admitted, the juvenile court sustaining Ms. M.'s objection to the late filing of this report. The corresponding order indicates that this report was admitted, however. No one makes an issue of this discrepancy, and we proceed as if the transcript (March 5, 2024 addendum not admitted) controls. *Cf. Turner v. State*, 181 Md. App. 477, 491 (2008) ("[w]hen there is such a discrepancy between the transcript and the docket entries, absent any evidence that there is error in the transcript, the transcript controls.") (citation omitted).

parent has been convicted of a crime of violence against the child or any other minor child of the parent. It added that child abuse in the first-degree is a crime of violence. It concluded that because Ms. M. had been convicted of first-degree child abuse of L.R., resulting in severe physical injury, the court should waive the Department's obligation to make efforts toward reunifying M.B., K.B., and L.R. with Ms. M.

In opposition, Ms. M. (through counsel) mentioned, but did not elaborate on, the constitutionality of the statute on which the Department relied for relief.

> [MS. M.'S COUNSEL]: Okay. So, I'm going to start with what I always start with. I think it's unconstitutional to not make efforts to place a child back with a parent. But as a practical matter, so long as my client is incarcerated, the Department is making -- there's no efforts the Department can really make, so long as she is incarcerated.

Later, after the children (through counsel) agreed with the Department, the juvenile court asked Ms. M.'s counsel more about her position.

> [THE COURT]: Okay. And, [Ms. M.'s counsel], what part of the Constitution is violated, in your opinion?
>
> [MS. M.'S COUNSEL]: I believe the Constitution, just generally, says the parents have a right to raise their children, unless there's some extraordinary reason why not.[9]

In granting the waiver request, the juvenile court noted that Ms. M. had not identified any constitutional right that was being violated by it.

[9] Ms. M.'s counsel also argued that waiver of reasonable efforts was not mandatory at that time. Specifically, Ms. M.'s counsel asserted that because Ms. M. was then incarcerated, there was little the Department could do in terms of reasonable efforts, and that as a result, it was premature to waive reasonable efforts so long as Ms. M. was incarcerated. The juvenile court did not make findings either way in this regard.

> [THE COURT]: I do find that there -- and I have not been presented with a specifical [sic] Constitutional element that would preclude this, but I do not think this rises to any kind of Constitutional right that's being violated on either one of these two people, so I will deny, I guess Ms. -- not her motion, but what she had to say, [Ms. M.'s counsel], relative to the Constitutional -- some type of Constitutional breach of rights.

The juvenile court then turned to Ms. M.'s exceptions to the Magistrate's recommendations from the September 15, 2023 permanency plan review hearing. Ms. M. had excepted from the Magistrate's recommendation that the children's plans be changed away from reunification, as well as the recommendation that Ms. M.'s visitation with the children be supervised. Ms. M. wanted instead for the plans to remain reunification. Explaining its decision, the juvenile court said,

> I am denying the Exceptions. I read the Court reports. It is, I think, impossible to regard these people as responsible parents, so, I'm not going to do so. Again, I'll deny the Exceptions, and I'll sign the plan as initiated or written by the Magistrate here.

The juvenile court then turned to the permanency plan review hearing that had been scheduled before it for March 7, 2024. The juvenile court learned that neither Ms. M., nor Mr. B., were in a position to care for L.R., K.B., or M.B., nor was Mr. S. in a position to care for L.R. Both Ms. M. and Mr. B remained incarcerated, serving the five- and twenty-five-year sentences, respectively, that they had received. Mr. S. continued to live in another state and was unable to care for L.R., although he expressed a willingness to continue to work toward reunification with L.R. M.B. and K.B. resided together in the foster home they had been in for two years and were doing well. They had bonded with their foster parents and enjoyed sibling visits. L.R., who had resided in medical treatment

group homes since shortly after entering care, had a strong bond with the staff at her current group home and was generally happy there. She had been diagnosed with depression, though, and was undergoing some medication changes in conjunction with treating that.

The Department added that two relatives had been identified as possible alternatives for the children's placement. One was M.B.'s and K.B.'s paternal grandmother, who they visited in December 2023. The Department was concerned about the paternal grandmother's ability to manage M.B.'s and K.B.'s behavioral issues. The other relative was Ms. M.'s fiancé, Mr. Kv. B.,[10] who was the father of Ms. M.'s fifth child and caring for that child. The Department indicated it would not consider placing M.B. and K.B. with Mr. Kv. B. because it would not be making reunification efforts as to Ms. M. and because of Ms. M.'s "extraordinary child abuse" of L.R.[11]

Ms. M. opposed any plan change that took the children away from a family member. Thus, she urged the juvenile court to retain reunification as the permanency plan, and if not that, that the court adopt custody and guardianship with, or adoption by, a

[10] Ms. M. identified him as "Kv. B." in her appellate brief. We adopt this moniker to distinguish him from M.B.'s and K.B.'s father. We mean no disrespect in doing so. To the Department, Ms. M. had identified Mr. Kv. B. as a resource for M.B. and K.B. In her appellate brief, Ms. M. contended that the Department should have considered Mr. Kv. B. as a resource for all three children.

[11] Regarding permanency, the juvenile court also heard from the children's counsel (who agreed with the Department), Ms. M. and Mr. B. (who disagreed), and counsel for Mr. S., who suggested that reunification between Mr. S. and L.R. remain an option.

family member. She wanted her children to be raised in the same household with Mr. Kv. B. She added that M.B. and K.B. had changed for the worse while in foster care, that "[t]here are no boundaries with this [foster] family," and that it was "not a suitable home."

The juvenile court then heard from the CASA[12] volunteer for M.B., K.B., and L.R. He pointed out that M.B. and K.B. had been in their foster home for almost three years and that he had visited with them fifty-five times since they had been in foster care. He added that ". . . each move out of foster care has been traumatic, and the children act out even more aggressively with each move." As to M.B.'s and K.B.'s current foster home, the CASA volunteer said,

> So, the most recent move, which has lasted three[13] years, the children have, in fact, had issues. The foster parents have, in fact, tried to address those issues. They are in a loving household. It's structured; it's safe. The kids, in my opinion, are doing much better than when they first came into foster care.

The CASA volunteer was similarly satisfied with L.R.'s progress and placement, having visited L.R. twelve times. He said,

> Each time I go, I see the burns on her, but I will say that she is also in a very safe environment, with children of her age peers. Her medications are

[12] CASA stands for "court-appointed special advocate." Per the website of Maryland's CASA association, a CASA volunteer is a "court-appointed, trained, and committed adult who represents and advocates for a child's best interest in the child protection program." *See* https://www.marylandcasa.org/get-involved (last visited October 25, 2024).

[13] It appears that the CASA volunteer misspoke as to the length of time M.B. and K.B. had been in their current foster home. According to the Department, K.B and M.B. had been there since January 28, 2022, or a bit longer than two years by the time of the March 7, 2024 hearing.

> addressed faithfully by the staff. She's fed, she's groomed, she's doing very well there. Like any 15-year-old, she's into electronics, has discovered Taylor Swift. And she's got her moments where she's extremely happy and she's got her moments where she's -- maybe shows her depression.

At the conclusion of the hearing, the juvenile court ruled on the various requests the parties had made in regard to permanency planning. It explained:

> I am going to order, with regard to the [B.] children, a sole plan of adoption, as asked for by the Department. Additionally, with regard to L.R., we can do, I guess, the tri-way -- three-way plan, which will be inclusive of a sole plan of custody with -- concurrent with adoption, concurrent with reunification with the natural father, [Mr. S.]. I am convinced, based upon the review of the reports in the file, and most recently the reports from the lead CASA supervisor, who has 55 visits with [M.B. and K.B.], and then the 12 visits with L.R., that he comes at this from an unbiased perspective.
>
> I understand the parents have strong opinions. However, I cannot forget they have both been convicted of Child Abuse in the 1st-Degree and they have whatever interests they have. But taking -- I do think there's clear and convincing evidence to support this and I do that.

Thereafter, the juvenile court issued four Permanency Planning Review Hearing Orders: two (one for K.B. and M.B., another for L.R.) pertaining to the September 15, 2023 review and two (one for K.B. and M.B., another for L.R.) pertaining to the March 7, 2024 review. In the orders pertaining to the March 7, 2024 review, and for all three children, the juvenile court waived the Department's reasonable-efforts obligation,[14] finding (via two checkboxes) that the Department was "not required to provide

[14] The juvenile court did not waive reasonable efforts in the orders pertaining to the September 15, 2023 hearing. Instead, in those orders, the juvenile court found that the Department had made reasonable efforts to finalize the children's permanency plans.

reunification services because . . . the parents have been convicted . . . of a crime of violence. . .” Specifically, the juvenile court said:

> The local department *is not required to provide reunification services* because one of the following circumstances exists:
>
> > The parent has been convicted[15] in any court of the United States of a crime of violence, as defined in the Criminal Law Article of the Annotated Code of Maryland 14-101 or of aiding, abetting, conspiring or soliciting to commit the crime against the Respondent, the other parent of the Respondent or an individual that resides in the household of the parent. [Ms. M.] was convicted of First[-]Degree Child Abuse, Severe Physical Injury, of [L.R.] on 1/24/23 in the Circuit Court for Baltimore City.

(Emphasis added.) Thus, for L.R., the waiver was based on Ms. M.’s having been convicted, on January 24, 2023, of first-degree child abuse, resulting in severe physical injury, of L.R. For M.B. and K.B., the waiver was based on Ms. M.’s having been convicted of first-degree child abuse, resulting in severe physical injury, of L.R., who was another child residing in M.B.’s and K.B.’s household.

The juvenile court also changed the children’s permanency plans. L.R.’s permanency plan was changed from “[r]eunification with parent(s)” to a tripartite plan of reunification with her father, custody and guardianship with a relative, and guardianship

[15] The only variance between this language in L.R.’s order and that in K.B.’s and M.B.’s is that in the latter, the juvenile court spoke to the convictions of both parents, stating, “The parents *have* been convicted . . .” (emphasis added) and including findings about Mr. B.’s conviction.

by a non-relative. Similarly, M.B.'s and K.B.'s permanency plan was changed from "[r]eunification with parent(s)" to a unitary plan of adoption by a non-relative.[16]

Five days later, on March 12, 2024, the juvenile court issued an "Amended Order" in each child's case, granting the Department's waiver motions because Ms. M. had been convicted of crimes of violence. No amended or additional notice of appeal was filed thereafter.[17]

We will add additional facts below as needed.

THE DEPARTMENT'S DISMISSAL MOTION

Preliminarily, the Department moves to dismiss Ms. M.'s appeal to the extent that she challenges the juvenile court's waiver of the Department's reasonable-efforts

[16] For the September 15, 2023 review, which the juvenile court also conducted on March 7, 2024 after hearing Ms. M.'s exceptions, the juvenile court changed M.B. and K.B.'s plans to a concurrent plan of reunification with a parent and adoption by a non-relative. L.R.'s plan (from the September 15, 2023 review) was changed to a concurrent plan of reunification with a parent and custody and guardianship with a relative and guardianship by a non-relative. Following the March 7, 2024 plan review that the juvenile court conducted anew that day, L.R.'s plan specified Mr. S. as the reunifying parent (as part of a tripartite plan), a change that prompted Ms. M.'s appeal because it took reunification with her off the table.

[17] At least three of the documents we discuss below were issued by the juvenile court with all three children's names and case numbers on them. Thereafter, a copy of each document was docketed in each child's case. These documents are (1) Ms. M.'s notice of appeal; (2) the Order of March 11, 2024; and (3) the Amended Order of March 12, 2024. For simplicity, we refer to these items in the singular even though they were docketed in more than one case. For example, we will say, ". . . the notice of appeal was filed[,]" rather than the "notices of appeal were filed." This is so even though, in reality, three notices of appeal were filed, one in each of the children's cases. If there is an instance in which these items were not treated identically, case to case, we will say so and refer to them separately.

obligation. The Department focuses on the March 12, 2024 Amended Order and argues that because it "left the March 7, 2024 'custody order and permanency plan unchanged,'" the March 12, 2024 Amended Order is not subject to interlocutory appeal.[18]

Ms. M. opposes dismissal of her challenge to the waiver, noting that the waiver and the permanency plan changes were both part of the juvenile court's March 7, 2024 written orders. She notes that a juvenile court's decision to waive the Department's reasonable-efforts obligation is subject to interlocutory appeal and that appeal extends to interlocutory rulings that "control and are inextricably bound to the order" under review. She adds that the juvenile court's waiver was "directly intertwined with the court's decision to fully eliminate reunification with [Ms. M.] as a permanency plan."

We agree with Ms. M. and deny the Department's dismissal motion. The waiver and permanency plan changes that Ms. M. challenges took effect on March 7, 2024 because it was then that the juvenile court issued (and docketed) the Permanency Planning Review Hearing Orders setting forth its unqualified decisions on these matters. Md. Rule 2-601(a)(4) (". . . a judgment is effective only when . . . set forth [in a separate document as per Rule 2-601(a)(1)] and entered as provided in [Rule 2-601(b))."); *Hiob v. Progressive American Ins. Co.*, 440 Md. 466, 486 (2014) (Rule 2-601(a) requires a document, a docket entry, and that the document ". . . 'set forth' an unqualified decision of the court as to which party has prevailed and what relief, if any, is awarded."). In the

[18] The March 12, 2024 Amended Order corrected a March 11, 2024 order that provided a different reason for the waiver.

Permanency Planning Review Hearing Orders here, via checkbox, the juvenile court ruled that "[t]he local department is not required to provide reunification services because one of the following circumstances exists." Via a second checkbox, as above, the juvenile court then recounted Ms. M.'s (and Mr. B.'s) convictions for child abuse in the first degree of L.R. In those same orders, the juvenile court went on to change the children's permanency plans away from reunification with Ms. M.[19]

Moreover, the Permanency Planning Review Hearing Orders (from the March 7, 2024 review) are what Ms. M. appealed from, not the March 12, 2024 Amended Order.[20] To secure appellate review in this Court, an appellant must file a notice of appeal ". . . within 30 days after entry of the judgment or order from which the appeal is taken." Md.

[19] Specifically, on March 7, 2024, after delivering its oral rulings, the juvenile court issued four permanency hearing review orders. Two pertained to the permanency plan review hearing originally held on March 7, 2024, before the juvenile court: one for M.B. and K.B., and another for L.R. The third order—issued on March 7, 2024—pertained to the September 15, 2023 hearing for K.B. and M.B. originally held before the Magistrate. The fourth—issued on March 8, 2024—pertained to the September 15, 2023 hearing for L.R.

[20] Ms. M. appealed from all four Permanency Planning Review Hearing Orders by filing a notice of appeal on March 7, 2024. Regarding the Permanency Planning Review Hearing Order issued in L.R.'s case as to the September 15, 2023 review, which order was filed on March 8, 2024, i.e. a day after Ms. M.'s notice of appeal, we deem Ms. M.'s notice of appeal as to that order to have been filed on March 8, 2024 after the order was filed. Md. Rule 8-602(f) (" [a] notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.").

Rule 8-202(a). Here, Ms. M. filed her notice of appeal immediately after the Permanency Planning Review Hearing Orders (from the March 7, 2024 plan review) were docketed. She did not file a notice of appeal after the March 12, 2024 Amended Order was docketed.

Finally, having noted a timely appeal of the Permanency Plan Review Hearing Orders, Ms. M. was entitled to challenge the waiver ruling in those orders on an interlocutory basis. To be sure, "a juvenile court's order waiving a department's obligation to provide reasonable reunification efforts, while leaving a custody order and permanency plan unchanged," is not subject to interlocutory appeal. *In re C.E.*, 456 Md. 209, 226 (2017). But when a waiver is included in the same order as an appealable plan change,[21] and the waiver and plan change are "intertwined," the waiver is subject to interlocutory appeal as well. *Davis v. Att'y Gen.*, 187 Md. App. 110, 123 (2009) (because order vacating an enrolled judgment is subject to interlocutory appeal, appellant may also appeal other "intertwined" rulings included in the same order).

[21] Neither the Department nor the children challenge the appealability, on an interlocutory basis, of the permanency plan changes in the Permanency Plan Review Hearing Orders. A plan change that works a "meaningful shift in direction vis-à-vis" a parent's ability to regain care and custody of their children is subject to interlocutory appeal. *In re Joseph N.*, 407 Md. 278, 292 (2009); CJP § 12-303(3)(x) (permitting interlocutory appeal of an order that ". . . depriv[es] a parent . . . of the care and custody of his child, or changing the terms of such an order[.]"). Here, the change away from reunification with Ms. M. was such a change.

Here, the reasonable-efforts waiver and the plan changes were "intertwined" and included in the same order. In the Permanency Planning Review Orders, the juvenile court waived the Department's reasonable-efforts obligation because Ms. M. and Mr. B. had been convicted of child abuse in the first degree of L.R. Those convictions (and the prison sentences that followed) were also part of what motivated the juvenile court to conclude that reunification was no longer in the children's best interest. Given that these permanency plan changes were subject to interlocutory appeal, the waiver that accompanied them (and prompted them, in part) was also subject to interlocutory appeal.

To the extent that the Department relies on the March 12, 2024 Amended Order in an attempt to overcome this conclusion, we hold that the March 12, 2024 Amended Order could not have had such an effect. *See In re Emileigh F.*, 355 Md. 198, 202-03 (1999) ("After an appeal is filed, a trial court may not act to frustrate the actions of an appellate court. Post-appeal orders [that] affect the subject matter of the appeal are prohibited."). Because it tends to separate the waiver from the plan changes, the Department's reading of the March 12, 2024 Amended Order would render the waiver unappealable on an interlocutory basis. Such a reading would frustrate (if not eliminate) Ms. M.'s interlocutory appeal of the waiver. Whatever the March 12, 2024 Amended Order said, it was the March 7, 2024 Permanency Planning Review Hearing Orders that waived the Department's reasonable-efforts obligation. We will not read the March 12, 2024 Amended Order in a fashion that frustrates Ms. M's ability to appeal that waiver.

DISCUSSION

I. Because Ms. M. did not preserve her constitutional challenge to CJP § 3-812, we decline to address it.

"Ordinarily, [we will not take up an issue] unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Md. Rule 8-131(a). Preservation is particularly important for constitutional issues. *Krause Marine Towing Corp. v. Ass'n of Md. Pilots*, 205 Md. 194, 223 (2012) ("[o]n matters of such import and significance as constitutional questions, we cannot overstress the necessity of fully preserving the issue below. The trial court should be given not only the opportunity to rule, but also the assistance of counsels' arguments and memoranda in reaching its result." (quoting *Hall v. State*, 22 Md. App. 240, 245 (1974))).

The Department and the children urge that we decline to take up Ms. M.'s constitutional challenge to the waiver. The Department argues that Ms. M.'s argument, consisting of three sentences, was too vague to preserve the challenge for appellate review. The children point out that the juvenile court should not have had to ". . . extrapolate [from] counsel's general statements to make the leap to procedural and substantive due process, equal protection, and basic fairness violations of the specific provisions in CJP § 3-812."

Ms. M. acknowledges that her argument here regarding the constitutionality of the waiver here is "more detailed" than the argument she made below. Nonetheless, citing *State v. Greco*, 199 Md. App. 646, 658 (2011), she contends that her constitutional

argument is preserved because it is merely a "more detailed version" of the argument she made below. Alternatively, she argues that if we conclude that her challenge is unpreserved, we should take it up anyway because it is "fully briefed and argued," will aid trial courts in applying CJP § 3-812, and would "ensure a constitutional application of [the statute] that effectuates the best-interests-of-the-child standard."

We decline to take up Ms. M.'s constitutional challenge to CJP § 3-812, and the interpretive standard suggested by Ms. M. shows why. Ms. M. proposes that we conclude that Section 3-812 is unconstitutional unless it is read to afford some discretion to the juvenile court in deciding whether to waive the Department's reasonable-efforts obligation. She posits that the juvenile court should have to conclude that further reasonable efforts would be "fruitless" or "futile" before ordering that they be waived. But Ms. M. did not make this argument below. As a result, the juvenile court never made, or was asked to make, such findings. Under these circumstances, we fail to see how taking up Ms. M.'s constitutional challenge now would be ". . . necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Md. Rule 8-131(a).

Ms. M.'s reliance on *State v. Greco* does not persuade us either. The issue in *Greco*, a postconviction case, was whether the State had adequately argued its position below that two appellate cases did not apply retrospectively such that Mr. Greco was entitled to a new trial. *State v. Greco,* 199 Md. at 658. We concluded that while the argument could have been made "more expansive[ly]" below, *id*., the circuit court did

decide the issue by concluding that the cases did apply retrospectively. Here, by contrast, the juvenile court did not decide the futility/fruitlessness issue below (one way or the other) because Ms. M. did not raise it. *State v. Greco* simply does not apply.

II. The circuit court's consideration of the statutory permanency plan factors was not limited to Ms. M.'s first-degree assault conviction or the waiver of the Department's reasonable-efforts obligation.

At a permanency plan review hearing, the juvenile court is mandated to "change [a child's] permanency plan if a change in the permanency plan would be in the child's best interest[,]" among other determinations. CJP § 3-823(h)(2)(vii). In deciding (or changing) a permanency plan, the juvenile court is directed by CJP § 3-823(e)(2)[22] to consider the factors in Maryland's Family Law Article ("FL"), Section 5-525(f)(1). These factors are:

> (i) the child's ability to be safe and healthy in the home of the child's parent;
> (ii) the child's attachment and emotional ties to the child's natural parents and siblings;
> (iii) the child's emotional attachment to the child's current caregiver and the caregiver's family;
> (iv) the length of time the child has resided with the current caregiver;
> (v) the potential emotional, developmental, and educational harm to the child if moved from the child's current placement; and
> (vi) the potential harm to the child by remaining in State custody for an excessive period of time.

FL § 5-525(f)(1). In considering these factors, the juvenile court is required to "assess the reality of the children's circumstances" and "evaluate the parent's actual history of conduct and behavior[.]" *In re Ashley S.*, 431 Md. 678, 711 and 719 (2013). The court

[22] This statute provides that "[i]n determining the child's permanency plan, the court shall consider the factors specified in § 5-525(f)(1) of the Family Law Article. CJP § 3-823(e)(2).

must also "[e]valuate the safety of the child and take necessary measures to protect the child." CJP § 3-823(h)(2)(vi). "[I]f there are weighty circumstances indicating that reunification with the parent is not in the child's best interest, the court should modify the permanency plan to a more appropriate arrangement." *In re Cadence B.*, 417 Md. 146, 157 (2010).

In reviewing a juvenile court's decision to change a permanency plan, we employ three familiar and interrelated standards. *In re C.E.*, 464 Md. 26, 47 (2019). Factual findings are reviewed for clear error, which exists only when no "competent material evidence exists in support of the trial court's factual findings." *In re Ryan W.*, 434 Md. 577, 593–94 (2013) (citation omitted). The interpretation of statutes and constitutional provisions, i.e., questions of law, are reviewed de novo. *In re C.E.*, 456 Md. at 216. "If it appears that the [juvenile court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless." *In re Yve S.*, 373 Md. 551, 586 (2003) (cleaned up).

The "ultimate decision" regarding changing a child's permanency plan is reviewed for abuse of discretion. *In re Ashley S.*, 431 Md. at 704. "[T]o be reversed the decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable." *In re C.E.*, 464 Md. at 48 (cleaned up). Ms. M., as the appellant here, bears the burden of establishing an abuse of discretion. *See Environmental Integrity Project v. Mirant Ash Mgmt., LLC*, 197 Md. App. 179, 194 (2010).

Ms. M. contends that the juvenile court did not give adequate consideration to the required factors in overruling her exceptions, and later, in changing the children's permanency plans away from reunification. She contends that the juvenile court's reasoning was inadequate and that it impermissibly focused on her first-degree child abuse conviction and the reasonable-efforts waiver the Department requested.

The Department and the children disagree with Ms. M.'s assessment, maintaining that the juvenile court properly considered the statutory factors. Thus, they argue, the juvenile court considered that neither Ms. M. nor Mr. B. were able to offer a safe and stable home for the children because they were incarcerated; that although the children were able to visit with Ms. M. before her incarceration, and M.B. and K.B. enjoyed these visits, M.B. and K.B. were bonded to their foster parents and L.R. was receiving "positive treatment" at her group home. The juvenile court also considered that the children had been out of Ms. M.'s care for four and a half years, that M.B. and K.B. had been in their current foster home for two years. Prior placement disruptions "had been traumatic" for them. At their current foster home, they "were doing much better than when they first came into foster care." L.R., while continuing in a group home, had struggled with behavioral issues and had been diagnosed with depression.

We do not agree with Ms. M. that the juvenile court improperly focused on her conviction and the reasonable-efforts waiver to the exclusion of the other relevant evidence before it. To be sure, the juvenile court must consider all of the statutory factors in deciding whether to change a child's permanency plan, but it is not required to weigh

those factors equally. *In re D.M.*, 250 Md. App. 541, 565 (2021) (affirming change of permanency plan where juvenile court "placed significant weight" on one of the statutory factors). Nor, as Ms. M. acknowledges, was the juvenile court required to engage in an exercise of form over substance in its consideration of the factors. *Id.* at 563 ("The mere incantation of the 'magic words' of a legal test, as an adherence to form over substance, is neither required nor desired if actual consideration of the necessary legal considerations are apparent in the record." (cleaned up)). Here, the juvenile court's consideration of the statutory factors reflected the "reality of the children's circumstances[,]" the parents' "actual history of conduct and behavior[,]" and the measures taken to protect the children:

- ***FL § 5-525(f)(1)(i): The child's ability to be safe and healthy in the home of the child's parent***
  Ms. M. voiced her "strong opinion" that she be able to place the children with a family member. The court acknowledged Ms. M.'s "strong opinion" but stated that it "could not forget" about Mr. B.'s and Ms. M.'s child abuse convictions.

- ***FL § 5-525(f)(1)(ii): The child's attachment and emotional ties to the child's natural parents and siblings***
  Here, the court considered the Department's and CASA's reports (that the juvenile court was "convinced" by) describing the children's successful visits with Ms. M. and each other).

- ***FL § 5-525(f)(1)(iii): The child's emotional attachment to the child's current caregiver and the caregiver's family***
- ***FL § 5-525(f)(1)(iv): The length of time the child has resided with the current caregiver***
- ***FL § 5-525(f)(1)(v): The potential emotional, developmental, and educational harm to the child if moved from the child's current placement***
  For these three factors, the court considered the Department's and CASA's reports describing that M.B. and K.B. had found some much needed permanency with their current foster parents, with whom they had

been placed for more than two years, and that L.R. was doing well in her medical-level group home where she had been for more than a year.

- ***FL § 5-525(f)(1)(vi): The potential harm to the child by remaining in State custody for an excessive period of time***
  The court considered the Department's and CASA's reports detailing the children's having been in foster care for more than four years and the behavioral problems M.B. and K.B. had displayed in having to move placements prior to their finding permanency in their current foster home, where they had been placed for more than two years. Given that the juvenile court had evidence that LR. was doing well in her group home, it considered whether that placement was harming L.R.

Ultimately, although the juvenile court considered Ms. M.'s "strong opinion" that she could offer the children a safe home, the court was not required to weigh her wishes more than the other factors, or without regard to the parents' own circumstances. Ms. M. and Mr. B were incarcerated for first-degree assault against L.R., and would be for some time. During her incarceration and thereafter, Ms. M. would not have the Department's help in reunifying. That reality was also their children's reality. When Ms. M.'s incarceration started, the children had been in care for a long time, having been removed from the home after the assault. While in the Department's care, M.B. and K.B. (and L.R. to a lesser extent) had found permanency in their placements. The juvenile court considered all of this in deciding that permanency plan changes were in the children's best interest.

III. The juvenile court did not abuse its discretion in changing the children's permanency plans.

Ms. M. next contends that because there was insufficient evidence to support the plan changes that the juvenile court ordered, doing so amounted to an abuse of discretion.

Specifically, Ms. M. argues that the evidence before the court showed that she had made "significant strides in remedying the issues" that brought the children to the court's attention. She concluded that her conviction and sentence, standing alone, "did not demonstrate that reunification no longer remained in the children's best interests[,]" and that the children "could be safe and healthy in her care." She adds that it was an abuse of discretion not to order the Department to explore placing the children with Mr. Kv. B., the father of her fifth child.

The Department and the children disagree with Ms. M.'s assessment, maintaining that the juvenile court did not abuse its discretion when it changed the children's permanency plans. They point out that, by the time the juvenile court changed the children's permanency plans away from reunification, the children had already been in foster care for four years and Ms. M. had four years left to serve on her sentence. Regarding Mr. Kv. B., it was not clear that the children had met him. He had not attended, or testified at, any of the children's prior hearings. Under these circumstances, Ms. M.'s wish to continue with reunification would simply have put the children further away, rather than closer, to permanency.

For largely the same reasons that we outlined above, we disagree with Ms. M. Even if Ms. M. had made significant strides in remedying the issues that brought the children to the Department's attention (and offered "strong opinions" about where the children should be placed), the juvenile court was not required to weigh Ms. M.'s strides or her opinions more heavily than—or to the exclusion of—the other permanency plan

factors. Nor was the juvenile court required to disregard the reality of the children's circumstances. The reality was that even if Ms. M. had made significant strides toward addressing the issues that necessitated the Department's intervention, Ms. M. was now incarcerated, serving what was left of a five-year sentence, and the Department would not be required to offer reunification services to her prior to or after her release. Under these circumstances, the juvenile court was well within its discretion to afford less weight to Ms. M.'s efforts and her "strong opinions" about where the children should be placed. Indeed, the juvenile court said, "I understand the parents have strong opinions. However, I cannot forget they have both been convicted of Child Abuse in the 1st-Degree and they have whatever interests they have. But taking -- I do think there's clear and convincing evidence to support this and I do that."

Nor did the juvenile court err by declining to order that the Department explore Mr. Kv. B., the father of Ms. M.'s fifth child, as a placement resource for the children. To be sure, when determining a child's permanency plan, the juvenile court must consider, consistent with the child's best interests, a variety of placement options "in descending order of priority." CJP § 3-823(e)(1)(i). But Ms. M. identifies no authority for the proposition that when considering a change of plan away from reunification, the juvenile court must select any one option over and above the child's best interest. Indeed, "the bedrock of CINA permanency planning is the 'best interests of the child' standard." *In re M.*, 251 Md. App. 86, 123 n.10 (2021) (citations omitted).

Here, because Ms. M. points to no evidence suggesting that it would have been consistent with the children's best interest to place them with Mr. Kv. B., we cannot conclude that it was an abuse of discretion for the juvenile court to decline to do so. Although Mr. Kv. B. was Ms. M.'s fiancé, and the father of Ms. M.'s fifth child, there was no evidence that Mr. Kv. B. had any interest in raising M.B., K.B., or L.R. Nor is there any evidence that he had even met the children or attended any of their hearings. Under these circumstances, the juvenile court was well within its discretion not to adopt a permanency plan that would have placed the children with Mr. Kv. B.

THE DEPARTMENT OF SOCIAL SERVICE'S MOTION TO DISMISS DENIED. JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY ONE-THIRD BY THE DEPARTMENT OF SOCIAL SERVICES AND TWO-THIRDS BY APPELLANT.