Circuit Court for Baltimore County
Case No.: C-03-JV-21-000725

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 82

September Term, 2024

IN RE: L.M.

Arthur,
Reed,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: September 11, 2024

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

This is the second time that this case has come before us. Ms. S., appellant ("Mother"), had primary legal and physical custody of her three children: L.M. and his two half-siblings. In December 2021, after investigating a report of suspected neglect, the Baltimore County Department of Social Services, appellee ("the Department"), petitioned the Circuit Court for Baltimore County, sitting as a juvenile court, to declare each of the children to be a Child in Need of Assistance ("CINA")[1] and place them in shelter care.[2] Following adjudication and disposition hearings in March and April 2022, the juvenile court entered an order denying Mother custody of all three children and declaring two of them—including L.M.—to be CINA.[3] She appealed. We affirmed.[4] *In re: L.M.*, Nos. 322, 464, 422, & 468, Sept. Term, 2022, 2022 WL 17494592, at *1 (App. Ct. Md. Dec. 8, 2022) ("*L.M. 1*").

[1] A "CINA" is "a child who requires court intervention because (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 3-801(f).

[2] "'Shelter care' means a temporary placement of a child outside of the home at any time before disposition" as a CINA. CJP § 3-801(bb).

[3] The juvenile court dismissed the other child's CINA case and awarded custody to her father. *In re: L.M.*, Nos. 322, 464, 422, & 468, Sept. Term, 2022, 2022 WL 17494592, at *1 (App. Ct. Md. Dec. 8, 2022).

[4] Mother's prior appeal concerned all three children and was also consolidated with an appeal by the other CINA's father. *L.M. 1*, 2022 WL 1749592, at *1. The issues related to the other children are not relevant to this appeal as it concerns only L.M. For the same reason, although we identified L.M. in our prior opinion as "L.M.2," we refer to him here as simply "L.M."

Mother now appeals from the juvenile court's order granting custody and guardianship of L.M. to his maternal uncle, Mr. S. ("Uncle"), terminating jurisdiction over L.M., and closing his CINA case. She presents two questions for our review,[5] which we rephrase:

I. Did the juvenile court err or abuse its discretion in granting Uncle custody and guardianship of L.M. and closing his CINA case?

II. Did the juvenile court err or abuse its discretion in ordering that visitation be "decided between the parties"?

For the reasons below, we find no error or abuse of discretion in granting Uncle custody and guardianship of L.M. and closing his CINA case. We also find that the visitation issue is unpreserved and decline to address it. Accordingly, we shall affirm the judgment.

[5] In her brief, Mother frames the questions, verbatim, as:

I. Did the court err when it granted L.M.'s maternal uncle custody and guardianship of L.M. and terminated jurisdiction over the family?

   a. Did the court make inadequate findings in support of its decision?

   b. Did inadequate evidence support permanently moving away from reunification with mother?

   c. Did mother also prove that she should have resumed custody of L.M. or at least received unsupervised contact with him during continued reunification?

II. Did the court's final visitation order violate the non-delegation principle?

FACTUAL & PROCEDURAL BACKGROUND

CINA Adjudication and First Appeal

We first briefly summarize the facts we laid out in *L.M. 1* that led to L.M. being declared a CINA and removed from Mother's custody. We will confine our review to only the facts related to L.M. and the issues in this appeal.

L.M. was born in October 2013.[6] On December 2, 2021, the Department received a report about suspected neglect of L.M. and his half-siblings. *L.M. 1*, 2022 WL 1749592, at *1. The report expressed concerns for the children's safety due to the conditions of Mother's home, her mental health issues and drug use, the lack of appropriate education for the children, and domestic violence between Mother and the youngest child's father. *Id.*

Five days later, Child Protective Services ("CPS") conducted a home safety assessment at Mother's home. *Id.* On arrival, CPS noted that the front door was blocked by furniture. *Id.* at *3. Some windows were also covered by paper or tin foil and wooden bars. *Id.* Once inside, CPS observed untidy conditions, stating that parts of the floor were missing, the home was "extremely cluttered," there was writing on the walls, and the home was infested with mice, ants, and cockroaches. *Id.* Mother stated that she tried to contain the cockroaches to a drawer in the kitchen because she lives under a covenant that "thou shall not kill." *Id.* When Mother opened the drawer, "hundreds of cockroaches were in it."

[6] Mother has reported that L.M.'s father was deported, and his whereabouts are unknown. On January 26, 2023, she signed a parent affidavit regarding a missing unknown parent.

Id. According to CPS, the cockroaches were near open boxes of food that were left out in the kitchen, which was of concern because it posed a "health risk to the children." *Id.*

CPS reported that Mother presented as "extremely mentally ill" and "disconnected from reality," citing how Mother claimed to "be a lawyer, a pediatrician, a licensed foster parent, and other things that she is not." *Id.* Mother also stated that she was home schooling the children "through experience," but the children "weren't sure of what they were learning." *Id.* Mother indicated that she had not been reporting to the county school system as required, and Baltimore County Public Schools ("BCPS") confirmed that, though she was enrolled in BCPS home-schooling, BCPS was having trouble contacting Mother to conduct a mid-year review. *Id.*

CPS spoke with Mother about the Department's concerns for the children's well-being and attempted to create a safety plan with her, but Mother refused to participate. *Id.* So the Department filed CINA petitions with requests for shelter care. *Id.* After an initial foster care placement, L.M. was moved to a kinship home with his adult cousins, Mr. and Ms. F., in February 2022. *Id.* at *4.

At the two-day CINA adjudication hearing, a CPS supervisor testified that Mother "suffers greatly from a [] significant mental health issue" and "presents with some very bizarre, extreme ideations." *Id.* at *5. The supervisor concluded that the children would not be safe in Mother's care, explaining that they "have witnessed a lot of concerns regarding her mental health and how [it] impacts her ability to provide appropriate care for her children." *Id.*

Mother then presented her case by proffer. She denied the allegations in the children's CINA petitions and accused the Department of conflating her religious beliefs with mental health issues. *Id.* Mother stated there is ample evidence demonstrating her ability to care for the children such as that she is employed and has registered with the county's home-school system, tested negative for drugs, addressed the infestation issue, and engaged a therapist. *Id.*

That said, Mother also admitted that her house had been rodent-infested and cluttered. *Id.* She explained that she had resided in monasteries in Thailand, Japan, and other countries and was therefore used to infestations. *Id.* She also confirmed that it is against her religion to kill creatures. *Id.* When asked what she would do if the infestation were to recur, she stated that she would "talk to the [home] owners" (her parents) about what do to. *Id.* She finally explained that if she saw a mouse or a cockroach, she would handle the situation because she has "been advised to do so during the entire crisis." *Id.*

The juvenile court sustained nearly all the allegations against Mother from the Department's CINA Petitions. *Id.* at *6. Citing concerns for the child's health and well-being because of the lack of health care, as well as Mother's mental health and erratic behavior, the court found L.M. to be a CINA and committed him to the Department. *Id.* It declined to award Mother custody citing concerns about her mental health and stability. *Id.* She timely appealed.

On appeal, we held that the juvenile court had not abused its discretion. *Id.* at *9. Mother's home was in an unsafe environment for L.M. to live. *Id.* at *8. Mother's mental health, along with the unsanitary and unsafe conditions of Mother's home and refusal of

health care for L.M., posed a substantial risk of harm to the child's health and safety, and so we affirmed the juvenile court's judgment. *Id.* at *9.

Permanency Planning Period and Hearing

While *L.M. 1* was proceeding in this Court, L.M. adjusted well to the F.s' home. The arrangement was only temporary, however, until Pennsylvania's Interstate Compact on the Placement of Children ("ICPC")[7] Office approved Uncle's home as a placement for L.M.[8] Initially, L.M. was socially delayed, but "[s]ince his placement change, [he] h[ad] made tremendous improvement in learning more socially appropriate behaviors."

At first, the F.s supervised Mother's visits with L.M. But in May 2022, the Department took over supervision when the F.s were no longer willing to do so. Mr. F. later explained to the juvenile court at the permanency planning hearing that he stopped supervising those visits because Mother sent him "threatening text messages," which he attributed to her "mental state."

The Department inspected Mother's home on May 9, 2022. It reported that the home was clean, with no signs of infestation. Mother signed her service agreement the same day.

[7] "The ICPC is a binding contractual agreement among all fifty states, the District of Columbia, and the U.S. Virgin Islands regarding the interstate placement of children." *In re R.S.*, 470 Md. 380, 398 (2020). In particular, "the ICPC extends the jurisdictional reach of a party state into the borders of another party state for the purpose of investigating a proposed placement and supervising a placement once it has been made." *In re Adoption No. 10087 in Cir. Ct. for Montgomery Cnty.*, 324 Md. 394, 44 (1991) (cleaned up).

[8] Pennsylvania requires families to become licensed foster parents prior to ICPC approval. The Department reported that Uncle had agreed to undergo the licensing process, and the ICPC packet was submitted on September 2, 2022.

The next day, Mother completed a psychological evaluation. The psychologist noted that Mother "had a tendency to provide unusual responses to the interview questions." When asked to discuss her understanding of her involvement with the Department, Mother provided limited details. She stated, "CPS came to my home and I invited them into my home and they infringed upon some of my rights, and I think I'm here because I misjudged." She also suggested that she did not "even know why" CPS had come to the home, but she still identified that the Department was concerned with the condition of her home. When asked what she felt she must do to be reunified with her children, Mother replied, "[M]y children were un-rightly taken away from me; there was nothing I was doing unrightfully to cause their removal; there was a guest invited into our family that was unable to respect us, and that's what caused this to happen[.]"

The psychologist observed that "[a]t no point during the evaluation did [Mother] express any guilt, remorse, or responsibility for the fact that her children were removed from her [] care." The psychologist added that Mother "was extremely resistant to admitting any type of personal shortcomings, and she made a very obvious attempt to present a socially acceptable front." Given Mother's "denial/minimization of the issues" that caused her children's removal, the psychologist suggested that if Mother regained custody, it "may be appropriate to monitor her parenting of the children for an extended period of time." Mother was ultimately diagnosed with unspecified personality disorder with histrionic, paranoid, and obsessive-compulsive traits and possible auditory processing disorder.

From June through November 2022, Mother declined in-person visits with L.M. but attended virtual visits. During these biweekly virtual visits, Mother would create "wedges" between L.M. and the F.s. She would tell L.M. that he did not have to do anything that he did not want to do. For example, the F.s had a specific bedtime for then 8-year-old L.M., but Mother did not "want to give him a bedtime."

The juvenile court held the permanency planning hearing on September 22, 2022. After considering the Department's report, including Mother's psychological evaluation, and hearing arguments from the parties, the court ordered that the initial permanency plan be a sole plan of reunification. The court scheduled the first review hearing for February 2023.

First Review Period

In October 2022, Mother accepted a full-time position as a substitute teacher at L.M.'s school. When L.M. saw her at the school, he cried hysterically and said he wanted to go home. Once the school learned of the CINA proceeding and court orders, the school terminated Mother's employment.

Mother signed a consent form for her mental health treatment at Oasis Health Ventures on October 10, 2022. In November, Mother's therapist informed the Department that she attended weekly sessions and was "working on coping strategies, communication skills and self-advocacy." Oasis could not disclose any details of Mother's progress—such as her diagnostic evaluation or treatment plan—however, because Mother had consented to only a limited release of documentation regarding solely her attendance. The Department tried several times to obtain a full, updated release from Mother, but she was unresponsive.

Near the end of November 2022, L.M. was diagnosed with an adjustment disorder with mixed disturbance of emotions and conduct. He started weekly therapy in January 2023.

Starting in December 2022, Mother agreed to, and began having, in-person, supervised visits with L.M. But during these visits, the Department often had to redirect Mother to have positive communications and not to share her negative feelings about the F.s with L.M. Mother would become combative and aggravated when redirected. Similarly, L.M.'s behavior in the F.s' home would regress after these negative conversations.

First Review Hearing

At the first permanency plan review hearing on February 16, 2023,[9] the Department recommended that the juvenile court adopt a plan of reunification concurrent with custody and guardianship to a relative. The Department told the court that Uncle was completing his foster parent licensing and training, which had begun on November 3, 2022. L.M.'s attorney told the court that L.M. was excited to move to Pennsylvania with Uncle and his cousins with whom L.M. had had frequent contact. Mother requested that the plan remain a sole plan of reunification, opposed L.M.'s move to Pennsylvania, and stated that she and L.M. loved and missed each other. L.M.'s attorney noted that L.M. enjoyed visiting with Mother.

[9] This was the first hearing after our decision in *L.M. 1*, which was issued on December 8, 2022.

After the hearing, the juvenile court adopted the Department's recommendation of a permanency plan of reunification concurrent with custody and guardianship to a relative.[10] The court set the next review hearing for July 2023.

Second Review Period

Meanwhile, L.M. moved into Uncle's home. L.M.'s therapist also advised the Department that he no longer needed therapy and that he was excited about his move to Pennsylvania. Shortly before L.M. moved, Mother contacted law enforcement and asked for a welfare check on L.M., stating that he was moving out-of-state without her consent. After the move, Mother's visits with L.M. changed from supervised weekly in-person visits to one-hour supervised virtual visits. The Department continued to have multiple conversations with Mother redirecting her to not project her negative feelings regarding L.M. moving to Pennsylvania and to make the visits about L.M., which continued to aggravate her.

In mid-June 2023, Mother informed the Department that she would no longer be seeking mental health services and would not sign an updated service plan. Soon after, Oasis confirmed that it had "discharged [Mother] from services."

Second Review Hearing

At the July 6, 2023, review hearing, Mother addressed the court herself. She stated, among other things, "I put myself last on numerous occasions in order to provide service

[10] At the review hearing, Mother claimed that she was Cherokee, so the juvenile court also directed the Department to make appropriate inquires to determine if the Indian Child Welfare Act applied. The Department investigated, and the Cherokee Nation advised that Mother was not on their rolls.

to my country as sort of an overseer to a religious cause which is more monastic as a nun, sort of like a praying monk on a daily and also a full-time mother." She also claimed, "I've made a portable wailing wall. I contacted the Nintendo gaming network and created an entire game based on the ascension of mankind." And she claimed to be employed by her own company and to have a GoFundMe page. She also declared that she was a "cultural anthropologist and international relations specialist" as "an honorary graduate from Long Island University."

L.M.'s attorney supported the Department's request for a continued concurrent permanency plan of reunification and custody and guardianship to a relative. L.M. was reportedly doing very well in Uncle's home, and Uncle supported L.M.'s continued relationship with Mother and encouraged him to participate in virtual visits. The juvenile court continued the concurrent plan and set the next review hearing for December 2023.

Third Review Period

In this time, L.M. continued to make "tremendous improvement in learning more appropriate social behaviors." The Department received reports that he appeared to be thriving and happy in Uncle's care and had adjusted well.

Uncle brought L.M. to Maryland to visit Mother in the community six times during this review period. But each time Mother refused to participate. She resumed regular, weekly, supervised virtual visits with L.M. in October 2023. But during those visits, Mother continued to often have inappropriate conversations with L.M., particularly regarding her negative feelings about his placement with Uncle. In November 2023, the

Department was forced to end one virtual visit prematurely when Mother expressed "erratic frustration regarding [L.M.'s] placement."

On November 2, 2023, Mother told the Department she was participating in "WRAP treatment" focused on wellness. The Department tried contacting the program but could not do so. The Department eventually learned that WRAP did not provide mental health services and that Mother did not directly communicate with any providers in the program.

Also in November 2023, L.M. was again diagnosed with adjustment disorder with mixed disturbance of emotions and conduct and resumed weekly therapy.

Third Review Hearing

At the December 21, 2023, review hearing, the Department recommended that the juvenile court award custody and guardianship to Uncle and terminate jurisdiction. L.M., through counsel, agreed. The Department presented the court with the home study[11] of Uncle's home that included, among other things, ICPC approval, child protective services clearances, criminal records checks, financial information, and review of physical and mental health.

Mother disagreed with the Department's recommendation and addressed the court. She discussed: there being an "energy vortex . . . in every Holy Land, whether it's in your home or anything your repent"; "voting for Jesus Christ on her ballot"; that "[w]e've talked to different celebrities also pertaining to this so the outcome of this is currently Serenity Denard is on the wailing wall with several people listed that they don't—in the rat program

[11] The home study packet was created by Pennsylvania's Interstate Compact Unit.

that they were talking about"; that "we waste so much electricity"; that "[c]ashiers need chairs"; and "[s]ome people need vacations, according to the [Thirteenth] Amendment."

At the end of the hearing, the magistrate recommended terminating the CINA proceeding with an award of custody and guardianship to Uncle and visitation as arranged between the parties. Mother filed timely exceptions and requested a *de novo* hearing.

Exceptions Hearing

At the exceptions hearing on March 4, 2024, Mother testified at length with little questioning or interruption. She stated, "I'm a local coordinator that places students." She asserted that the Department, in removing L.M. from her care, had "tak[en] [him] off of [his] designated educational plan, [and his] health plan." She claimed there were "30 million people on GoFundMe for [L.M.]" According to Mother, "the type of therapy that I do is usually art therapy. And every subject from K through 12." Mother believed her only mental health concern was the stress of having her children removed. She also stated, "I have a magnanimous training but as a citizen trying to adhere to Trump's State of the Union address which I've been in lots of correspondence with. Trump knows about this." Mother shared her belief that Uncle "kidnapped [L.M.] with an ice cream party in an organized kidnapping crime[]." She reiterated that her ballot had been rejected when she voted for Christ. Mother asserted that L.M. needed to reunite with her "[a]nd if it continues, you're just going to make Mark Zuckerberg who just got in trouble for something, you're going to make him upset because he's been watching the whole time." Near the end of her testimony, Mother explained that "my reason for saving cockroaches was to try to generate electricity, was to try to have (inaudible). All of those infestations and things have been

taken care of. Now I'm presenting it to other people who are investing. So it's the development of the green culture."

The court acknowledged that Mother was "both polite and made a good appearance on her own behalf[,]" but it also characterized her testimony as "rambling nonsense" and found it "almost impossible to find any kind of . . . [c]ohesive line through" it. The court considered Mother's testimony, the Department's court reports in the file, this Court's prior opinion in the case, and L.M.'s best interest. It denied Mother's exceptions, granted Uncle custody and guardianship of L.M. with visitation "as decided between the parties[,]" and closed the case. Mother timely appealed.

STANDARD OF REVIEW

Appellate review of a juvenile court's decision in CINA cases involves three interrelated standards: (1) a clearly erroneous standard for factual findings; (2) a *de novo* standard for matters of law; and (3) an abuse of discretion standard for the court's ultimate decision. *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 47 (2019). Because Mother's appeal relates only to the court's ultimate custody and guardianship decision, the deferential abuse of discretion standard applies. *See In re M.*, 251 Md. App. 86, 111–12 (2021). "[A]n abuse of discretion exists 'where no reasonable person would take the view adopted by the [juvenile] court, or when the court acts without reference to any guiding rules or principles.'" *In re Andre J.*, 223 Md. App. 305, 323 (2015) (quoting *In re Yve S.*, 373 Md. 551, 583 (2003)). An abuse of discretion "should only be found in the extraordinary, exceptional, or most egregious case." *Alexander v. Alexander*, 252 Md. App. 1, 17 (2021) (citing *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005)).

DISCUSSION

We begin with a review of the CINA framework. Once a child is declared a CINA, the Department must develop a "permanency plan" that is "consistent with the best interests of the child." CJP § 3-823(e)(i). The permanency plan "sets the tone for the parties and the court" by providing "the goal toward which [they] are committed to work." *In re Damon M.*, 362 Md. 429, 436 (2001).

The juvenile court must hold an initial permanency planning hearing, at which the permanency plan is determined, "[n]o later than 11 months" after the child enters out-of-home placement. CJP § 3-823(b)(1)(i). The permanency plan is decided in a "descending order of priority": (1) reunification with a parent or guardian; (2) placement with a relative for adoption or custody and guardianship; (3) adoption by a nonrelative; (4) custody and guardianship by a nonrelative; or (5) another planned permanent living arrangement. CJP § 3-823(e).

The juvenile court then reviews the permanency plan at a review hearing "at least every 6 months" until the child is no longer committed to the Department. CJP § 3-823(h)(1)(i). At each review hearing, the court must:

> (i) Determine the continuing necessity for and appropriateness of the commitment;
>
> (ii) Determine and document in its order whether reasonable efforts have been made to finalize the permanency plan that is in effect;
>
> (iii) Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating commitment;
>
> (iv) Project a reasonable date by which a child in placement may be returned home, placed in a preadoptive home, or placed under a legal guardianship;

(v) Evaluate the safety of the child and take necessary measures to protect the child;

(vi) Change the permanency plan if a change in the permanency plan would be in the child's best interest; and

(vii) For a child with a developmental disability, direct the provision of services to obtain ongoing care, if any, needed after the court's jurisdiction ends.

CJP § 3-823(h)(2).

In determining both the initial permanency plan and whether to change it, the court must consider the statutory factors set forth in Md. Code Ann., Family Law ("FL") § 5-525(f)(1) while giving "primary consideration" to the "best interests of the child[.]" CJP § 3-823(e)(2); *see also In re D.M.*, 250 Md. App. 541, 562 (2021). Those 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).

If the court determines reunification is impossible, impracticable, or unlikely, it may consider "a permanency plan with either concurrent or single long-term placement goals[.]" *In re Karl H.*, 394 Md. 402, 417 (2006). When a court approves a concurrent plan

of custody and guardianship by a relative, it "broadens the permanency plan by providing a secondary goal[.]" *In re D.M.*, 250 Md. App. at 559. At that point, "[t]he Department's focus [is] no longer limited to making reasonable efforts to reunify [the child] with [their parent(s)]." *Id.* (quoting *In re Joseph N.*, 407 Md. 278, 292 (2009)) (second alteration in *In re D.M.*). Instead, the Department takes "concrete steps to implement both primary and secondary permanency plans, for example, by providing time-limited family reunification services while also exploring relatives as resources." COMAR 07.02.11.03(B)(16).

That said, "reunification and custody and guardianship by a relative are 'mutually exclusive' and 'directly contradictory' goals." *In re D.M.*, 250 Md. App. at 558 (quoting *Karl H.*, 394 Md. at 431). Thus, when a court changes a sole plan of reunification to a concurrent plan of reunification or custody and guardianship by a relative, "the order results in a 'meaningful shift in direction' in the CINA case[.]" *Id.* at 559 (quoting *Joseph N.*, 407 Md. at 292). Accordingly, an order adding a concurrent plan of custody and guardianship by a relative is immediately appealable. *Id.*

Finally, before granting custody and guardianship to a non-parent, the court must consider:

> (i) Any assurance by the local department that it will provide funds for necessary support and maintenance for the child;
>
> (ii) All factors necessary to determine the best interests of the child; and
>
> (iii) A report by a local department or a licensed child placement agency, completed in compliance with regulations by the Department of Human Services, on the suitability of the individual to be the guardian of the child.

CJP § 3-819.2(f)(1).

An order granting custody and guardianship to a relative:

(1) Rescinds the child's commitment to the Department;

(2) Achieves the child's permanency plan;

(3) Terminates the local department's legal obligations and responsibilities to the child; and

(4) Terminates the child's case, unless the court finds good cause not to terminate the child's case.

CJP § 3-819.2(c).

The Department and the juvenile court must make "[e]very reasonable effort" to permanently place the child within 24 months. CJP § 3-823(h)(4).

I. Custody and guardianship to Uncle

On appeal, Mother contends that the juvenile court abused its discretion in granting Uncle custody and guardianship of L.M. and closing his CINA case because the court "failed to make the necessary legal and factual findings" and "the evidence was insufficient to warrant permanently moving away from reunification." Specifically, she argues that neither the court's oral ruling, nor its written order, shows that the court considered the statutory factors set forth in FL § 5-525(f)(1) and that, under those factors, the evidence could not justify closing L.M.'s case. The Department[12] counters that the posture of the case did not require the juvenile court to consider the FL § 5-525(f)(1) factors; it had to consider only those set forth in CJP § 3-819.2(f)(1). We agree with the Department.

[12] L.M., through counsel, filed, in this Court, a Line adopting the Department's brief in its entirety and asking that the judgment be affirmed.

Under CJP § 3-823(e)(2), the juvenile court had to consider the FL § 5-525(f)(1) factors "[i]n determining [L.M.'s] permanency plan[.]" As discussed above, a court "[d]etermine[s] the child's permanency plan[]" at the permanency planning hearing. CJP § 3-823(e)(1)(i). The court here "determine[d] [L.M.'s] permanency plan" on September 22, 2022, and set a sole plan of reunification.

Then, at each review hearing, the juvenile court had to evaluate, among other things, if it "would be in [L.M.'s] best interest" to change the permanency plan. CJP § 3-823(h)(2)(vii). If it found that a change was warranted, the court needed to again consider the FL § 5-525(f)(1) factors to re-determine L.M.'s permanency plan. *See In re D.M.*, 250 Md. App. at 563. The court here approved a concurrent plan of custody and guardianship to a relative in February 2023. Its order "result[ed] in a 'meaningful shift in direction' in [L.M.'s] CINA case[.]" *Id.* at 559 (quoting *Joseph N.*, 407 Md. at 292). Mother could have appealed from that order. *Id.* But she did not.

Instead, she appeals from the March 2024 Order granting custody and guardianship to Uncle. Unlike the February 2023 Order approving the concurrent plan of reunification and custody and guardianship to a relative, however, the March 2024 order ultimately granting custody and guardianship did not *change* the permanency plan; it "*achieve[d]* the permanency plan[.]" CJP § 3-819.2(c) (emphasis added). A court's obligation to consider the FL § 5-525(f)(1) factors is triggered only when first determining the permanency plan or when the court changes and re-determines the permanency plan. *See In re D.M.*, 250 Md. App. at 562–63. But the court here neither determined, nor changed L.M.'s permanency plan. Rather, the court assessed "the continuing necessity for and

appropriateness of [L.M.'s] commitment[]" and determined it was no longer necessary or appropriate. CJP § 3-823(h)(2)(i).

Put differently, a juvenile court has to consider the FL § 5-525(f)(1) factors only when it "determin[es] the child's permanency plan[.]" CJP § 3-823(e)(2). The court "determin[es]" a permanency plan whenever it sets a new plan. This occurs, for example, at the permanency planning hearing when the initial plan is established. *See* CJP § 3-823(e)(1)(i). Or at a review hearing when a previously determined sole plan is changed to a newly determined sole plan. *See, e.g., In re Ashley S.*, 431 Md. 678, 714–15 (2013). Or when a newly determined plan is added concurrently to a previously determined sole plan. *See, e.g., In re D.M.*, 250 Md. App. at 563–64. But the court does not "determin[e]" the permanency plan when it finds that the child's commitment is no longer necessary or appropriate. *See* CJP § 3-823(h)(2). Rather, at that point, the court has determined that the plan has been achieved. *Cf.* CJP § 3-819.2(c)(2). In short, a juvenile court is not required to consider the FL § 5-525(f)(1) factors if it is not establishing or changing a child's permanency plan. Consequently, nothing required the juvenile court here to consider those factors before granting custody and guardianship to Uncle.

That said, the juvenile court still had to consider the three factors in CJP § 3-819.2(f)(1) before granting Uncle custody and guardianship. *First*, the juvenile court had to consider "[a]ny assurance by the local department that it w[ould] provide funds for necessary support and maintenance for [L.M.]." CJP § 3-819.2(f)(1)(i). The record does not reflect that the Department made any such assurances, so there was nothing for the court to consider with respect to this factor. *Next*, the court had to consider "[a] report by a

local or a licensed child placement agency, completed in compliance with regulations adopted by the Department of Human Services, on the suitability of [Uncle] to be the guardian of [L.M.]." CJP § 3-819.2(f)(1)(iii). The record reflects that the court was provided with, and properly considered, Pennsylvania DHS's report, and Mother does not contend that the report was in any way inadequate to satisfy the factor.

Finally, the court had to consider "[a]ll factors necessary to determine the best interests of [L.M.]." *See* CJP § 3-819.2(f)(1)(ii). Unlike when determining the permanency plan, the statute does not specify what factors are "necessary" to determine L.M.'s best interests at this stage. *Compare* CJP § 3-823(e)(2) *and* FL § 5-525(f)(1) *with* CJP § 3-819.2(f)(1)(iii). Instead, the juvenile court's assessment of what factors are necessary is an exercise of its discretion. *See In re M.*, 251 Md. App. at 111. To be sure, the court may use the FL § 5-525(f)(1) factors if it so chooses. *See id.* at 117. But in the end, its determination of what factors are necessary to determine the child's best interests at this stage must simply not be "beyond the fringe" of what is "minimally acceptable." *In re Yve S.*, 373 Md. at 583–84 (2003).

Here, the court expressly stated its decision was guided by "the child's best interest[,] which [was] the real only focus that [it] ha[d.]" In reaching its decision, the court relied on Mother's testimony, the Department's court reports, and this Court's prior opinion. The Department's reports showed that Mother was unwilling or unable to change her behavior to strengthen her relationship with L.M. From June through November 2022, Mother refused face-to-face visits with L.M. She also refused in-person visits six times between August and November 2023 when Uncle brought L.M. to Maryland. And during

virtual visits, Mother would often speak negatively to L.M. about his caregivers and would become combative and aggravated when the Department redirected her. She showed no improvement in this regard throughout this case.

To be sure, Mother acted to remedy some of the issues that led to L.M.'s removal from the home. She took a parenting class, addressed the infestations, and attended therapy through June 2023. But as the Department points out in its brief, success in CINA cases is not a matter of "checking off tasks"; instead, the court must measure the result of those actions. The record here shows no recognizable or foreseeable improvement in Mother's ability to parent L.M.

In Mother's challenge to the original CINA finding, the greatest concerns were L.M.'s lack of health care coupled with Mother's mental health and erratic behavior. *L.M. 1*, 2022 WL 17494592, at *9. Mother's testimony at the hearing suggested a likelihood of repeat events. Prior to L.M.'s removal, he had not been to a doctor or dentist in over two years. *Id.* Mother had claimed she was his "doctor and dentist and . . . 'didn't believe in taking [him] to the doctor.' When Mother was asked what she would do if [L.M.] became sick, Mother stated that she would 'turn to Jehova-Rapha and pray on it.'" *Id.* Years later, at the March 2024 hearing, Mother still expressed continued frustration that the Department had removed L.M. from his "health plan," suggesting that she did not intend to maintain L.M.'s health care should she regain custody.

What we found "most disturbing" in our prior review was "the testimony and reports about the drawer full of 'hundreds' of live cockroaches in the kitchen[.]" *Id.* And at the March 2024 hearing, Mother expressed frustration that she had not been asked why she

was keeping the cockroaches. According to her, she had saved the cockroaches to "generate electricity" and was now pursuing investors for "the development of the green culture." We add that Mother's proffer in the original CINA proceedings suggested she had addressed the infestations only because she had "been advised to do so during the entire crisis." *Id.* at *5. Her later testimony suggests that she still did not understand the problem with allowing the infestations to occur at all and that as soon as the "crisis" was over, she would allow them to return. Mother was continuing to deny and minimize significant issues just as the psychologist had noted during her psychological evaluation nearly two years earlier.

Finally, though Mother participated in some therapy early in the case, her lack of cooperation concerning her release forms made it impossible for the Department—and by extension the juvenile court—to evaluate her progress. And by the March 2024 hearing, Mother had completely abandoned her mental health treatment. The WRAP program did not provide mental health treatment or even involve speaking with any mental health providers. Mother testified that she was in art therapy and did "every subject from K through 12." It is unclear what she meant by this, and, in any event, there is no documentation of any such therapy in the record. Mother's testimony and the Department's reports demonstrated that Mother was either unwilling or unable to appreciate the gravity of her situation and truly address her underlying problems.

CPS observed initially that Mother was "disconnected from reality." More than two years later, the juvenile court observed that she was still "living outside of reality," Throughout her testimony, Mother continued to display "very tangent[i]al" speech and

identified herself as different people. There was simply no evidence that Mother's situation had improved, and the Department's reports suggested she was unwilling or unable to work on improving it.

The court here did not "act[] without reference to any guiding rules or principles." *In re Yve S.*, 373 Md. at 583. It recognized that although the situation was "heartbreaking," Mother's behavior remained consistent with the original findings of the mental health professionals. It determined that, in L.M.'s best interest, "the current situation ma[de] the most sense[.]" After more than two years and three placements, L.M. required permanency and stability that Mother could not provide. L.M. was reportedly thriving since moving in with Uncle in June 2023, and making "tremendous improvement in learning more appropriate social behaviors." Uncle also ensured that L.M. continued his relationship with his half-siblings and encouraged maintaining his relationship with Mother. On this record, we cannot say that "no reasonable person would take the view adopted by the [juvenile] court[.]" *Id.* The court thus did not abuse its discretion in granting Uncle custody and guardianship of L.M. and closing the case.

II. Visitation

Mother also contends that the juvenile court erred as a matter of law when it ordered that mother's visitation with L.M. was as "arranged between the parties." She argues that the court needed to set the minimum visitation that Uncle had to afford Mother and L.M. That said, Mother concedes that she did not object to the court's visitation order. And for that reason, the Department contends that Mother did not preserve the issue of visitation for appellate review. We again agree with the Department.

As this Court explained in *In re Caya B.*, 153 Md. App. 63, 78 (2003):

> If the permanency plan calls for custody and guardianship by a relative but does not contemplate adoption, the court may issue a decree of guardianship to the relative and may then close the case. *See* [CJP] § 3-823(h)(iii)(1). Parental rights are not terminated in such a situation: the parents are free at any time to petition an appropriate court of equity for a change in custody, guardianship, or visitation.

Here, the magistrate recommended that custody and guardianship be granted to Uncle, with visitation as "arranged between the parties," and that the court's jurisdiction be terminated. Mother excepted, stating that she "disagree[d]" with the recommendation "that the case close with [c]ustody [and] [g]uardianship to a [r]elative." She asked that the matter be scheduled "for a [*d*]*e novo* hearing" and for "such other and further relief as the nature of this cause and justice may require."

A party that files an exception to a magistrate's findings, conclusions, and recommendations "shall specify those items to which the party objects," and the hearing "shall be limited to those matters to which exceptions have been taken." CJP § 3-807(c)(1). *Accord* Md. Rule 11-103(e)(1)(B) ("[A]ny party may file exceptions to the magistrate's proposed findings, conclusions, or recommended order," and shall state "with particularity, those items to which the party excepts."). Mother's notice of exceptions did not specify any objection to the magistrate's visitation recommendation. It merely excepted to the recommendation "that the case close with [c]ustody [and] [g]uardianship to a [r]elative." Even if the notice's language was enough to entitle Mother to a *de novo* hearing on all issues, *see In re Marcus J.*, 405 Md. 221, 233–34 (2008), she still failed to raise the visitation issue at the *de novo* hearing despite having the opportunity to do so, *see* Md. Rule

2-517(c) (requiring a party to "make[] known to the court the action that the party desires the court to take or the objection to the action of the court" unless the party has no opportunity to do so). Accordingly, the issue of visitation was not preserved for appellate review, and we decline to address it. *See* Md. Rule 8-131(a).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.