Circuit Court for Montgomery County
Case No.: C-15-JV-22-000137

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1131

September Term, 2024

IN RE: A.B.

Wells, C.J.
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: February 3, 2025

*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 Maryland Rule 1-104(a)(2)(B).

Ms. B. ("Mother") appeals the Circuit Court for Montgomery County's order awarding a change in permanency plan for her daughter, A.B., to A.B.'s maternal grandfather ("Grandfather") and step-grandmother ("Grandmother"). On appeal, Mother presents three questions for our review, which we rephrase and reorder as follows:[1]

I. Did the court err in modifying A.B.'s permanency plan?

II. Did the court err in failing to grant Mother unsupervised visitation with A.B.?

III. Did the court err in finding that the Department of Social Services had made reasonable efforts towards reunification?

For the reasons set forth herein, we answer each question in the negative, and shall affirm the judgment of the circuit court.

[1] Mother's questions, as presented in her brief, are:

1. Did the Circuit Court of Montgomery County commit clear legal error and abuse its discretion by denying Mother unsupervised visitation without an express finding that there was further likelihood of abuse or neglect in Mother's care?

2. Did the Circuit Court of Montgomery County commit clear error and abuse its discretion by allowing the Department of Social Services to re-litigate the Shelter Petition as a basis for altering the Respondent's Permanency Plan?

3. Did the Circuit Court of Montgomery County commit clear legal error and abuse its discretion by finding reasonable efforts on behalf of the Department of Social Services, despite the Department's case manager testifying and reporting that she would not work towards the court-ordered permanency plan of reunification?

BACKGROUND

A.B. was born in Hawaii to Mother and husband Mr. H. ("Father"), two active-duty Air Force members, on July 3, 2017. When A.B. was nine days old, she was brought to the hospital due to seizures, where she was discovered to have a fractured skull, intracranial hemorrhages, rib fractures, and facial bruising. Father explained that two days prior, he was holding A.B., lost his balance, and "over corrected[,]" causing A.B.'s face to hit his shoulder. A.B. was found critically ill and at "imminent risk for death" and was intubated and sedated. Her injuries were noted as "highly concerning for non-accidental trauma." The Hawaii Department of Human Services ("DHS") assumed temporary custody of A.B.

A.B.'s injuries initiated an investigation into the death of her infant brother, G.B., who had died one year earlier with similar injuries. Prior to his death, Mother and Father brought G.B. to the hospital claiming that he had become "limp and unresponsive[.]" G.B. was found to have an intracerebral hemorrhage which, because apparently there was no history of trauma and because G.B. and Mother had tested positive for Herpes Simplex Virus antibodies, was determined to be "most likely due to Herpes Sim[]plex Virus encephalitis." Despite "intensive antibacterial and antiviral therapy[,]" G.B. died at six weeks of age. Although G.B.'s autopsy indicated "several healing rib fractures" noted as "concerning for non-accidental traumatic injury[,]" his cause of death was determined as "natural" from "[m]ulticystic encephalopathy, consistent with the clinical impression of herpes simplex virus infection."

Re-examination of G.B.'s death following A.B.'s injuries resulted in several findings, including that "testing for herpes simplex virus DNA were all negative[,]" that "examination of the eyes revealed numerous retinal hemorrhages" and that there were additional rib fractures "not identified at autopsy." On December 8, 2017, G.B.'s manner of death was amended to homicide from "blunt force injuries of the head[.]" Mother and Father were charged with the death of G.B. and for injuries to A.B. pursuant to the Uniform Code of Military Justice. In February 2020, Father was convicted of child endangerment and aggravated assault of A.B. by a military court martial, dishonorably discharged from the military, and sentenced to three years' confinement. In October 2020, Mother was acquitted on all charges.

Meanwhile, A.B. remained in DHS custody. On July 25, 2017, A.B. was released from the hospital to resource caregivers who were, at the time, friends of Mother and Father. Although Mother and Father initially maintained daily contact with A.B., their relationship with A.B.'s caregivers became "strained[,]" and in June 2018, A.B. was relocated to a second foster home. Finally, in November 2018, when A.B. was 16 months old, she was placed with Grandfather and Grandmother (collectively, "Grandparents") in Montgomery County, Maryland.

Thereafter, Mother's visits with A.B. primarily occurred virtually, however, from October 2020 to February 2021, for reasons unclear from the record, Mother had no contact with A.B. or Grandparents. In February 2021, the Hawaii DHS initiated virtual contact between A.B. and Mother. Although visits between A.B. and Mother were to be held weekly, the visits were described as "sporadic" due, in part, to Mother cancelling

visits. In August 2021, Mother moved to Maryland, and virtual visits between Mother and A.B. continued.

In March of 2022, A.B.'s case was transferred from Hawaii to the Circuit Court for Montgomery County. The Circuit Court for Montgomery County held permanency planning hearings in June 2022, November 2022, April 2023, October 2023, and December 2023, where A.B.'s permanency plan remained reunification.[2] In May 2024, however, the Department of Social Services (the "Department") filed a report recommending that A.B.'s permanency plan be changed to adoption by Grandparents. Within the report, the Department noted continued concerns regarding "bonding and attachment issues" between Mother and A.B. and Mother's "judgment and the level of involvement" with Father. The Department also asserted that since the last permanency planning hearing, Mother had shown A.B. a picture of Father since the last permanency planning hearing, causing A.B. to "appear[] traumatized." The Department added that A.B. usually asks to leave visits with Mother early.

On May 24, June 5, and July 15, 2024, the court held a hearing on the Department's request to change A.B.'s permanency plan. The court heard from A.B.'s therapist, a Department social worker, a psychologist from the Lourie Center for

[2] In Hawaii, A.B.'s permanency plan had primarily been reunification with her parents, apart from a motion to terminate Mother and Father's parental rights filed by DHS in April 2020. That motion was later withdrawn.

Children's Social & Emotional Wellness, Julie Wessel,[3] as well as Mother's therapist and Mother. The Department social worker testified that "there is no attachment" and "no bond" between Mother and A.B. A.B.'s therapist similarly testified that A.B. "doesn't have an attachment relationship with [Mother.]"

Ms. Wessel with the Lourie Center testified that A.B. had a "warm, organized, secure relationship with her grandparents." A.B.'s therapist described Grandmother as A.B.'s "safe haven" and testified that A.B. "looks to [Grandmother] for support," "runs to [Grandmother] to show her things," and has "expressed that she feels safe expressing all kinds of emotions" with Grandmother. A.B.'s therapist testified that A.B.'s "world would crumble" if removed from Grandparents' care.

Regarding A.B.'s early trauma, Mother testified that she didn't "know what happened to [A.B.]" and that she believed that "there could have been many things that are possible[.]" She testified that she was "still on good terms" with Father. When asked about A.B. becoming upset after mentioning and showing a photo of Father, Mother asserted that "[i]t was just a comment" and "[t]here was not a lot of thought behind it." Mother acknowledged that "visits have only been getting worse" and A.B. "wants to seem to have a relationship with [Mother] less and less as we move on[.]" She sought "more flexibility" with the visits.

[3] The Lourie Center is "a private, non-profit agency that uses scientific research and clinical experience to foster parent-child relationships and study infant and child mental health." *In re Faith H.*, 409 Md. 625, 632 n.8 (2009). A.B. was referred to the Lourie Center for a "Child Placement Consultation Team Evaluation" in June 2021.

On July 26, 2024, the court changed A.B.'s permanency plan to adoption by Grandparents. Mother noted this appeal. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

We simultaneously apply three different levels of review when reviewing cases involving the custody of children. *In re A.N.*, 226 Md. App. 283, 305-06 (2015). First, we review the court's factual findings for clear error. *Id.* at 306. Next, "'[i]f it appears that the [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 Adoption/Guardianship of Victor A.*, 386 Md. 288, 297 (2005) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). Finally, the trial court's ultimate conclusion "'should be disturbed only if there has been a clear abuse of discretion.'" *In re Yve S.*, 373 Md. at 586 (quoting *Davis v. Davis*, 280 Md. 119, 126 (1977)).

DISCUSSION

I. THE COURT DID NOT ERR IN CHANGING A.B.'S PERMANENCY PLAN TO ADOPTION BY GRANDPARENTS.

A. Parties' Contentions

Mother asserts that in changing A.B.'s permanency plan, the court erroneously "relied almost exclusively on speculation and the Department's allegations concerning the [s]helter [p]etition, as opposed to [her] progress during the review period[.]" She maintains that "the testimony and evidence presented contradicts the [c]ircuit [c]ourt's finding that Mother had been unable and unwilling to address [A.B.'s] trauma, or that no progress had been made." In support, she points to testimony that A.B. has a "secure

relationship" with Mother and adds that the Department "unabashedly refused to work with Mother[.]" In response, the Department asserts that the court properly modified A.B.'s permanency plan after finding that Mother had failed to establish a bond with A.B., and Grandparents had provided safety and stability for several years.

B. Legal Framework

The broad purpose of the Child in Need of Assistance (CINA) statute, set forth at Maryland Annotated Code, Courts and Judicial Proceedings ("CJP") §§ 3-801 – 830, is "to protect and advance a child's best interests when court intervention is required." *In re Najasha B.*, 409 Md. 20, 33 (2009). To that end, the statute provides that once "a child is declared a CINA, the [d]epartment must develop a 'permanency plan' that is 'consistent with the best interests of the child.'" *In re D.M.*, 250 Md. App. 541, 560 (2021) (quoting CJP § 3-823(e)(1)(i)). "The permanency plan is an integral part of the statutory scheme designed to expedite the movement of Maryland's children from foster care to a permanent living, and hopefully, family arrangement." *In re Yve S.*, 373 Md. at 581. "Once set initially, the goal of the permanency plan is re-visited periodically at hearings to determine progress and whether, due to historical and contemporary circumstances, that goal should be changed." *Id.* at 582; *see also* CJP § 3-823(h)(1).

As this Court recently explained, "[a]lthough [permanency] planning begins with the presumption that reunification with parents is in a child's best interests, that presumption may be rebutted [if] the court determines, after considering the statutory factors in F[amily]L[aw] § 5-525(f)(1), that 'weighty circumstances' dictate that a different plan is in the child's best interests." *In re M.*, 251 Md. App. 86, 123 n.10 (2021)

(internal citations omitted); *see also In re Adoption of Cadence B.*, 417 Md. 146, 157 (2010). When a permanency plan involves an out-of-home placement, the court must "give primary consideration to the best interests of the child[.]" Md. Code Ann., Family Law ("FL") § 5-525(f)(1). The following factors shall be considered:

> (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) .

Finally, "when reviewing a juvenile court's decision to modify the permanency plan for the children, this Court 'must determine whether the court abused its discretion.'" *In re A.N.*, 226 Md. App. at 306 (quoting *In re Shirley B.*, 419 Md. 1, 19 (2011)). In accordance therewith, our role "is not to determine whether, on the evidence, we might have reached a different conclusion." *In re Adoption No. 09598 in the Cir. Ct. for Prince George's Cnty.*, 77 Md. App. 511, 518 (1989). Instead, the decision will be reversed only for an abuse of discretion, or if it is "well removed from any center mark

imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *North v. North*, 102 Md. App. 1, 14 (1994).

C. Analysis

The record indicates that the court properly considered the best interests of A.B. and each of the factors set forth in FL § 5-525(f)(1) in deciding to modify A.B.'s permanency plan. First, the court found that A.B. "cannot be safe and healthy" in Mother's home. Specifically, the court noted that "[A.B.'s] physical, emotional, and mental health are fragile as a result of an aggravated assault committed by her father that has left her with permanent neonatal traumatic brain injury, anxiety, PTSD, speech and developmental delays" and that Mother "is unable to address the root cause of [A.B.'s] horrific injuries and prefers to ignore the issue" and "has shown an inability to protect her emotionally and has caused her pain and emotional dysregulation without remorse[.]"

Second, as to A.B.'s attachment and emotional ties to her natural parents and siblings, A.B. has no relationship with Father, no living siblings, and no attachment or emotional ties to Mother "[d]espite more than several years of consistent weekly in-person visitation and dyadic therapy[.]" Instead, A.B. "expresses a strong desire not to see her mother."

As to the third and fourth FL § 5-525(f)(1) factors, the court found that A.B. has been in her Grandparents' custody since November 2018, and she "has a strong, healthy, and genuine emotional attachment to [them] and their two children." Further, the court observed that A.B. "seeks [Grandmother] out for comfort, when needed[,]" that she calls

Grandfather and Grandmother, "daddy and mommy[,]" and that Grandfather and Grandmother "have been and continue to be a safe haven for [A.B.]."

As to the fifth FL § 5-525(f)(1) factor, the court found the potential harm in removing A.B. from Grandparents' care significant, noting that:

> All are in agreement that the potential emotional, developmental, and educational harm would be devastating to [A.B.] if she [were] removed from her current caregivers. They have provided her stability, they have nurtured her, and provided a safe environment which is essential for her psychological well-being and development. The harm of removal is not potential. In this case it would be catastrophic for [A.B.]; as noted by the experts, and therapists for mother, as well as the department.

Finally, as to the potential harm of remaining in State custody, the court noted that "[A.B.] has been in State custody for seven years, her entire life" and "[r]emaining in custody for an excessive period of time deprives her of permanency which she deserves in an environment in which she can thrive."

Mother does not specifically challenge the court's factual findings. Instead, she points to testimony that A.B. has a "secure relationship" with Mother, contends that the court failed to consider her progress during the review period and the Department refused to work with her, and asserts that the court's decision did not meet the "requirements necessary to overcome the presumption that reunification is in [A.B.]'s best interests[.]"

Although Mother is correct that Ms. Wessel of the Lourie Center noted that A.B. had a secure relationship with Mother, Ms. Wessel also testified that removing A.B. from her current placement, "a placement that she has been in since age 16 months, and I believe she is now 7 or almost 7 years old, has significant risk[.]" Further, we disagree

with Mother's contention that the court relied "almost exclusively" on allegations regarding the shelter petition. Instead, the transcript indicates that the court reviewed an extensive amount of material in reaching its decision, including:

> seven years of the history of this case, court orders, and reports from Hawaii, medical reports, family service plans, safe family home reports, multidisciplinary team conference reports, child placement consultation team evaluations, legal memorandum, letters from experts, psychological evaluations, department reports, court records, exhibits, and trial testimony.

In so doing, the court noted that reports from "[s]ocial workers and court orders in Hawaii, from six years ago, mirror the current social worker reports and court orders in this [c]ourt today."

Moreover, the court found Mother's assertions regarding the Department "misplaced," noting that:

> It is not the department that has been directed for six years to focus on bonding, and attachment, and protection. It is not the department that went periods of time, in [A.B.]'s life, with no contact. It is not the department that had to be told to build a bridge and collaborate with [A.B.]'s treasured caregivers for her best interest, and was still reluctant, and waited until it was too late. The location of the visits; whether it's the department, the visitation house, the park, McDonald's, or the library, is not the reason mother and [A.B.] have no bond. It is clear at this point that visits could be in Disneyland and it would make no difference. And it certainly was not the department that derailed a plan to introduce father into [A.B.]'s life. And it was not the department that caused her emotional dysregulation.

Finally, we disagree with Mother's assertion that the court erred in determining that the presumption in favor of reunification had been overcome. A.B., now seven years

old, has been in state custody less than two weeks short of her entire life. She's been in Grandparents' care – an undisputed "safe haven" for her – since she was 16 months old. The court found that, despite several years of supervised visitation, there had been "no progress toward establishing a bond and attachment between mother and daughter[,]" which was supported not only by testimony from A.B.'s therapist, but from Mother, who acknowledged that A.B. remained "not very interested in playing with [her] or talking to [her]."

Indeed, the court noted that there was "a disconnect" between A.B. and Mother, that Mother "appears indifferent," and "at times callous and unconcerned," and that there was "no indication that more time for mother will fill that crater and create a bond that does not exist after seven years." "A key purpose of the CINA law is to 'achieve a timely, permanent placement for the child consistent with the child's best interests[.]'" *In re Ashley S.*, 431 Md. 678, 712 (2013) (quoting CJP § 3-802(a)(7)). We cannot say that the court's decision to modify A.B.'s permanency plan to adoption by Grandparents, ending a "prolonged custodial limbo" for A.B., was well removed from any center mark imagined by this Court. *Id.*

II. THE COURT DID NOT ERR IN ORDERING CONTINUED SUPERVISED VISITATION.

A. Parties' Contentions

Mother asserts that in ordering continued supervised visitation, the court "committed a clear legal error by failing to include a finding that there was sufficient evidence that further abuse or neglect was likely[,]" citing to FL § 9-101. The Department responds that Mother failed to preserve her assertion regarding supervised

visitation and, in any event, that "[b]y keeping the status quo of supervised visitation in place [], the court was not required to make such a finding [under FL § 9-101]."

B. Legal Framework

In child custody cases involving neglect or abuse, FL § 9-101(a) provides that "if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party." Subsection (b) provides that "[u]nless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child." FL § 9-101(b).

C. Analysis

As an initial matter, we note Mother does not appear to have requested unsupervised visitation with A.B. from the court. Accordingly, her contention that the court erred in failing to provide her with unsupervised visitation has not been preserved for our review. *See* Md. Rule 8-131(a). Even if Mother properly raised the issue, we disagree that FL § 9-101 indicates any abuse of discretion in the facts before us. Had the court found the evidence indicated that Mother abused or neglected A.B., the court would have been required to deny custody or visitation, with the exception of supervised visitation assuring A.B.'s safety and well-being, unless it found "that there is no likelihood of further [] abuse or neglect[.]" FL § 9-101(b). Here, however, the court

made no finding that Mother abused or neglected A.B., thus FL § 9-101(b) was inapplicable to the facts before us.

III. THE COURT DID NOT ERR IN FINDING THAT THE DEPARTMENT MADE REASONABLE EFFORTS TOWARDS REUNIFICATION.

A. Parties' Contentions

Mother maintains the court erred in finding that the Department had made reasonable efforts towards the goal of reunification, noting that the Department "repeatedly attempted to change [A.B.]'s Permanency Plan to Adoption," "routinely and unilaterally cancelled visits[,]" and exhibited "undeniable bias" against Mother. The Department responds that Mother has failed to demonstrate any reversible error on behalf of the circuit court, and Mother's contention regarding routinely cancelled visits is unsupported by the record.

B. Legal Framework

FL § 5-525(e)(1) provides that the Department shall make "reasonable efforts" to "preserve and reunify families[,]" including "to make it possible for a child to safely return to the child's home." Reasonable efforts are "efforts that are reasonably likely to achieve the objectives" of preventing the child's placement in the Department's custody. CJP § 3-801(x). The "reasonable efforts" definition has been described by the Supreme Court of Maryland as "'amorphous[,]' without any 'bright line rule to apply to the 'reasonable efforts' determination[, meaning that] each case must be decided based on its unique circumstances.'" *In re Shirley B.*, 419 Md. at 25 (quoting *In re Shirley B.*, 191 Md. App. 678, 710-11 (2010)). In determining the reasonable efforts that should be

made, however, "the child's safety and health shall be the primary concern." FL § 5-525(e)(2).

Finally, we apply "the clearly erroneous standard when reviewing the juvenile court's factual finding that the Department made reasonable efforts to preserve and reunify the family." *In re Shirley B.*, 419 Md. at 18. "Under the clearly erroneous standard, we look at the record in the light most favorable to the prevailing party, and if there is any competent, material evidence to support the circuit court's findings of fact, we cannot hold that those findings are clearly erroneous." *Fitzzaland v. Zahn*, 218 Md. App. 312, 322 (2014).

C. Analysis

The court determined that reasonable efforts towards reunification had been made, noting that the Department had:

> 1) Maintained at least bi-weekly face to face contact with [A.B.] and her caretakers to ensure that [A.B.]'s needs are being met;
>
> 2) Communicated frequently with [Grandmother] as it relates to [A.B.];
>
> 3) On May 1, 2024, the Department held an administrative review to discuss changing the permanency plan;
>
> 4) Maintained at least monthly contact with Ms. Margaret Braun;
>
> 5) Maintained at least monthly contact with Dr. Melinda Carlson;
>
> 6) Communicated with [Mother] as needed;
>
> 7) Facilitated and supervised twice a week visits between [A.B.] and [Mother];

8) Provided [A.B.]'s provider information to [Father];

9) Sent [Father] updates and photos of [A.B.] monthly;

10) Referred [A.B.] for neuropsychological evaluation;

11) Attempted to engage [Mother] and [Grandmother] during visits[.]

Mother does not specifically challenge any of these findings, including that the Department facilitated and supervised visitation between A.B. and Mother twice weekly for nearly two years. Instead, Mother alleges generally that the Department cancelled visits, exhibited bias against her, and repeatedly attempted to change the permanency plan to adoption. The record indicates, however, that only two visits were cancelled by the Department, and as previously noted, the court found that Mother's contentions regarding the Department were misplaced.

Finally, we are unpersuaded that the Department's attempts to modify the permanency plan to adoption by Grandparents, after years of A.B. being in their custody, and determining that there was "no attachment" between A.B. and Mother following years of supervised visitation, indicates reversible error by the court. The court found that the Department had made reasonable efforts towards reunification and under the facts before us, we cannot say that there was no competent, material evidence to support that determination.

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