

Circuit Court for Baltimore County
Case No. C-03-JV-21-000335

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1165

September Term, 2023

IN RE: D.W.

Berger,
Nazarian,
Reed,

JJ.

Opinion by Nazarian, J.

Filed: September 4, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

In August 2023, the Circuit Court for Baltimore County granted Ms. W. (“Aunt”) legal guardianship of D.W. (“D”) and granted his parents, C.C. (“Mother”) and D.W. (“Father”) (collectively, the “Parents”) one hour of supervised visitation per month. On appeal, Mother argues that the court abused its discretion by (1) denying unsupervised visitation and (2) granting one hour of supervised visitation per month. We find no abuse of discretion and affirm.

I. BACKGROUND

In April 2021, the Baltimore County Department of Social Services (the “Department”) became involved after D was born substance-exposed to cocaine and fentanyl and Mother tested positive for both substances. In June 2021, the court placed D in shelter care with Aunt in Salisbury. The court granted the Parents supervised visitation and ordered them to cooperate with the Department.

During their visits with D, the Parents appeared to be under the influence of substances on several occasions—they slurred their words and nodded off and were prohibited from holding D during those visits. In July 2021, the court sustained a CINA petition¹ and committed D to the custody of the Department. D remained with Aunt and the Parents were granted supervised visitation. The Parents were directed to comply with several court-ordered mandates including to: maintain consistent contact with the

¹ A “child in need of assistance” (CINA) is a child who requires court intervention because the child has been abused or neglected, has a developmental disability, or has a mental disorder, and whose parents are unable or unwilling to give proper care and attention to the child and the child’s needs. Md. Code (2001, 2020 Repl. Vol.), § 3-801(f)-(g) of the Courts and Judicial Proceedings Article (“CJP”).

Department, submit to a substance abuse evaluation, participate in recommended substance abuse treatment until successfully discharged, comply with service agreements, and sign releases of information in cooperation with the Department. Mother complied with the court-ordered requirement to complete a substance abuse evaluation. She was diagnosed with severe heroin and cocaine use disorders and moderate marijuana use disorder. She was enrolled in substance abuse treatment but left before being successfully discharged.

Aunt and the Department lost contact with Mother in October 2021 and the Parents did not appear for D's initial CINA review hearing in November. The juvenile court ordered a permanency plan of reunification with the Parents concurrent with adoption or custody and guardianship to a relative. The court mandated that the Parents maintain stable, clean, and hazard-free housing, complete parenting classes, and maintain employment sufficient to care for D. On March 2, 2022, the Department reported that it still had not heard from Mother. The court reaffirmed the permanency plan on March 7 to continue reunification concurrent with custody and guardianship.

Mother reconnected with the Department on March 31, 2022 and reported having had virtual visits with D. At the August 2022 review hearing, the Department reported that Mother had made more contact and had engaged with at least one substance abuse treatment provider but had left before completing the program. At the time of the court report, the Department could not confirm that Mother was actively engaged in substance abuse treatment. In January 2023, it was reported that Mother had made minimal contact with the Department. The Department made plans to conduct a home study for Aunt to

have custody and guardianship of D. The Department filed the home study with the court in June 2023.

Also in June, the Department reported that it had confirmed Mother's active engagement with a substance abuse treatment provider since October 2022. The Department further reported confirming Mother's compliance with the program's urinalysis screenings, having tested negative for illicit drugs. The Department recommended that the court grant custody and guardianship to Aunt, reporting D to be active, healthy, and meeting his developmental milestones. In July 2023, the Parents and Aunt attended a court-ordered mediation session to discuss visitation terms. A Result Form was filed to indicate that the session was held, but the record contains no signed mediation agreement establishing visitation terms.

The juvenile court held the final permanency plan review hearing in August 2023. Although the Department recognized that the Parents were doing reasonably well in treatment, it noted their struggles with recovery throughout the life of the case, emphasized that the only home D had known was with Aunt, and reaffirmed the recommendation to grant Aunt custody and guardianship. Mother noted that she had been sober for a considerable length of time and she wanted to see D more in the future. She asked that if the court were to grant custody and guardianship to Aunt, it should grant her unsupervised visitation for more than the one hour per month that she claimed was offered during mediation. Father objected to the Department's request, arguing that he did not receive adequate transportation assistance to access D. The Parents spoke of the distance between

their home in Westminster and Aunt’s home in Salisbury and the transportation challenges this entailed. D countered that the Parents had been offered four virtual visits in the last month and had only shown up for one of them. D requested that the court grant custody and guardianship to Aunt on account of their deep bond and his health and wellbeing under her care.

The court granted Aunt legal guardianship of D and orally ordered the Parents to have one hour of supervised visitation per month “as agreed upon or proposed, if you will—whether it was agreed upon or not, you know, proposed in the mediation.” After advising that the burden was on the Parents to make efforts to facilitate visits, the court terminated its jurisdiction. The final written order reflected only that the Parents’ visits were “to be arranged between the parties.” Both Mother and Father timely appealed; Father’s appeal was dismissed by this Court after Father passed away and no substitute party came forward to continue the appeal.

II. DISCUSSION

Mother presents three issues on appeal², which we have rephrased: *first*, whether

² Mother phrased her Questions Presented as follows:

1. Does the court’s oral visitation order control and, if not, does the written visitation order violate due process and the non-delegation principle?
2. Did the court err in refusing to grant mother unsupervised visitation with D.W. and visitation more often than once per month for a single hour before granting aunt legal guardianship and closing the case?

D phrased his Questions Presented as follows:

the juvenile court's oral or written visitation order controls; *second*, whether the court erred in denying her unsupervised visitation; and *third*, whether the court erred in granting only one hour of supervised visitation per month. All parties agree that the oral ruling controls, as do we, so only the last two questions are at issue. We hold that the court did not abuse

1. Did the juvenile court avoid clear error when it determined that the Department made reasonable efforts toward reunification by providing and facilitating opportunities for regular visitation between the Parents and D.W., but the Parents' lack of contact with the Department and inconsistent attendance at the arranged visitation prevented those efforts from being successful?
2. Did the juvenile court properly exercise its discretion in granting custody and guardianship of D.W. to his Aunt, with whom he had been placed as a newborn and remained with for over two years, when his Parents still did not have stable housing or employment and continued to struggle to manage their addictions to dangerous substances?
3. Did the juvenile court properly exercise its considerable discretion when it determined that it was in D.W.'s best interest to have hour-long supervised visits once per month with the Parents?

The Department phrased its Questions Presented as follows:

1. Did the juvenile court properly act within its broad discretion in granting Mother supervised monthly visitation, given her ongoing substance abuse issues, her failure to exercise regular visitation with D.W., and her failure to visit with D.W. for the past five months?
2. Did the juvenile court properly act within its broad discretion in changing D.W.'s permanency plan to a sole plan of custody and guardianship to a relative when the Department provided reasonable efforts toward reunification and Mother and Father made minimal demonstrable progress recovering from their substance abuse issues during the time D.W. resided with Ms. W.?

its discretion in (1) denying Mother unsupervised visitation and (2) deciding that one hour of supervised visitation per month was in D’s best interests.

We review a trial court’s judgment in a CINA custody and visitation proceeding for abuse of discretion. *In re Yve S.*, 373 Md. 551, 583 (2003); *In re Billy W.*, 387 Md. 405, 447 (2005). We give substantial deference to the trial court because it acts in the child’s best interests and it “is in a far better position than is an appellate court . . . to weigh the evidence and determine what disposition will best promote the welfare of the minor.” *In re Yve S.*, 373 Md. at 586 (cleaned up); *Scott v. Prince George’s County Dept. of Social Services*, 76 Md. App. 357, 382-83 (1988). The application of the abuse of discretion standard “usually depends on the particular facts of the case [and] the context in which the discretion was exercised.” *Myer v. State*, 403 Md. 463, 485 (2008). An abuse of discretion occurs when the trial court’s exercise of discretion was arbitrary and capricious or fell “beyond the fringe of what that court deems minimally acceptable.” *King v. State*, 407 Md. 682, 697 (2009) (cleaned up). A trial court’s order may indicate abuse of discretion when it strays from the court’s findings, does not relate reasonably to the court’s objective, does not reference guiding principles, or would not be reached by a reasonable person. *Id.*; *In re M.*, 251 Md. App. 86 (2021). Abuse of discretion is also characterized as discretion that is “manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *Jenkins v. City of College Park*, 379 Md. 142, 165 (2003) (cleaned up).

A. The Juvenile Court Did Not Abuse Its Discretion By Denying Mother Unsupervised Visitation.

Mother contends *first* that the juvenile court abused its discretion by denying her

unsupervised visitation. She contends that she established that there would be no likelihood of further abuse or neglect if she were to be granted unsupervised visitation. D and the Department argue that the court properly denied Mother unsupervised visitation, and we agree.

Under Family Law § 9-101(b), a court shall deny visitation rights to a party that has abused or neglected a child. Md. Code (1984, 2019 Repl. Vol.), § 9-101(b) of the Family Law Article (“FL”). A court may grant supervised visitation if it assures the child’s physiological, psychological, and emotional wellbeing. *Id.* But the court may only award unsupervised visitation if it finds specifically that there is no likelihood of further abuse or neglect. *Id.* A parent seeking unsupervised visitation bears the burden of persuading the court to make such a finding. *In re Yve*, 373 Md. at 587.

Mother argues that the court should have allowed her unsupervised visitation under § 9-101 because her extended period of sobriety established that there would be no likelihood of further abuse or neglect. And indeed, Mother has made admirable progress in substance abuse treatment and, according to the record, has maintained her sobriety since at least April 2022. She has been enrolled in substance abuse treatment since October 2022, and her assigned counselor attested to her compliance with the intensive outpatient treatment program. But although the juvenile court made sure to commend Mother for her success, it was not persuaded that there would be no likelihood of further abuse or neglect if it were to grant unsupervised visitation.

The record in this case reflects sound reasons for the court to refrain from finding

no likelihood of further abuse or neglect. Mother attended supervised visits while intoxicated and, as a result, was prohibited from holding D. Even after reaching an extended period of sobriety, she couldn't take full advantage of her opportunities to visit and bond with her child. She also didn't comply with court-ordered conditions such as maintaining consistent contact and cooperation with the Department, obtaining employment sufficient to provide for D, and maintaining stable housing. Despite her progress in substance abuse treatment, the court found that Mother has struggled to prioritize D's well-being. This was the court's finding to make in light of the evidence and testimony before it, and we cannot say that the court erred in finding that Mother had not met her burden of proving that there would be no likelihood of further abuse or neglect.

Mother argues as well that the court gave too much weight to the setbacks she experienced in her recovery. She stresses that recovery is not a linear process and that many recovering addicts relapse during their time in substance abuse treatment. We have no doubt that this is true, but the court weighed these realities against the evidence of Mother's recovery and readiness to care for D in deciding whether there was any likelihood of further abuse or neglect if Mother were to have unsupervised visitation. In addition, Mother proffers that there is no likelihood of further abuse or neglect because her setbacks in recovery occurred earlier in this case, before she reached the extended period of sobriety. Even so, the court found that Mother had struggled to prioritize D's well-being even after reaching an extended period of sobriety. We see no abuse of discretion in the circuit court's conclusion that Mother did not persuade the court that there would be no likelihood of

further abuse or neglect if it were to grant unsupervised visitation.

B. The Juvenile Court Did Not Abuse Its Discretion By Finding That One Hour Of Supervised Visitation Per Month Was In D’s Best Interests.

Mother argues *second* that the juvenile court abused its discretion by granting one hour of supervised visitation per month, claiming that this restriction on visitation was not in D’s best interests. D and the Department counter that the court did not abuse its discretion and that the visitation order serves D’s best interests. We agree with D and the Department.

In custody and visitation disputes, the juvenile court is guided by the overarching principle that its determinations must serve the best interests of the child. *In re Billy W.*, 387 Md. at 447. The court considers a myriad of factors in determining the best interests of the child, including the parent’s fitness, “the environment and surroundings in which the child will be reared,” “the influences likely to be exerted on the child,” and whether the child can make rational choices. *Boswell v. Boswell*, 352 Md. 204, 222 (1998) (cleaned up). Out of concern for the child’s general welfare, the court may decide that visitation should be “restricted or even denied when the child’s health or welfare is threatened.” *In re Billy W.*, 387 Md. at 447. The court’s authority ties back to the State’s role as *parens patriae*, “a corollary of the State’s interest in protecting the health, safety, and welfare of its citizenry.” *In re Yve S.*, 373 Md. at 569. The court has broad discretion in exercising this authority because it is in “a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best

promote the welfare of the minor.” *Id.* at 586 (cleaned up). And for these reasons, the court’s judgment is “accorded great deference, unless it is arbitrary or clearly wrong.” *Scott*, 76 Md. App. at 383.

In this case, the juvenile court exercised its considerable discretion to tailor the visitation order to D’s best interests and did not abuse that discretion. The court evaluated the Parents’ suitability to be involved in D’s life carefully before determining that one hour of supervised visitation per month was in D’s best interests. The court’s order is not arbitrary because the restriction on visitation relates reasonably to Mother’s continued struggles to prioritize D’s welfare. The court relied on the fact that Mother was unable to avail herself fully of the opportunities to bond with D, to maintain consistent communication with the Department and Aunt, and to comply with court-ordered requirements. The court was best suited to determine what level of visitation would best promote D’s health, safety, and welfare, and we cannot say that it erred in drawing the lines it did.

Mother contends that the restriction on visitation is not in D’s best interests because the parent-child relationship is constitutionally protected. And it’s true that a parent’s right to raise their child is an essential right “so fundamental that it may not be taken away unless clearly justified.” *In re Adoption/Guardianship No. 10941 in Circuit Court for Montgomery County*, 335 Md. 99, 112-13 (1994). But this right is not absolute, and it is subject to the court’s authority to intervene when a minor’s welfare is endangered. *In re Mark M.*, 365 Md. 687, 705-06 (2001). The court’s judgment to restrict visitation is a

lawful, reasonable limitation on Mother’s right as a parent, especially in light of this family’s history of substance abuse-driven difficulties and the neglectful impact on D.

Mother also claims that the juvenile court’s order is not in D’s best interests because it contradicts the presumption that “liberal unrestricted visitation” fulfills a child’s needs. *Boswell*, 352 Md. 204 at 221. In cases where a non-custodial parent has not abused or neglected their child, it is presumed that liberal visitation is in the child’s best interests so that they have “reasonable maximum opportunity to develop a close and loving relationship.” *Id.* at 220. But in situations of abuse or neglect, this presumption “may be overcome” by the court’s obligation to make determinations in the best interests of the child. *Id.* Here, Mother believes that she established that there is no likelihood of further abuse or neglect, preserving the presumption that liberal unrestricted visitation is in D’s best interests. Yet as discussed above, Mother did not persuade the court that there was no likelihood of further abuse or neglect under § 9-101. The court denied Mother liberal unrestricted visitation properly because the case involves abuse or neglect, and the court was not able to find on this record that there was no likelihood of further abuse or neglect.

Additionally, Mother contends that she should be awarded more visitation time per month because of the distance she (or Aunt and D) would have to travel to attend visits. The juvenile court evaluated the circumstances carefully before determining that one hour of supervised visitation per month would be in D’s best interests. It’s true that Mother lives a considerable distance from Aunt, and the court was concerned that ordering additional visitation would place unreasonable burdens on Aunt to accommodate them, and thus that

additional and unsupervised visits were not consistent with D's best interests. We see no abuse of the court's discretion in deciding that one hour of visitation per month would be in D's best interests, and because parental rights have not been terminated, Mother remains free to petition the court for additional visitation or other changes in the terms of custody if circumstances change materially in a way that could support a conclusion that more visitation would serve D's best interests.

Finally, Mother argues that she should have been guaranteed regular in-person visitation with D before the case was closed. But we see no error in the juvenile court's finding that the Department made reasonable efforts toward reunification throughout the life of the case.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
APPELLANT TO PAY THE COSTS.**