Circuit Court for Baltimore City
Case Nos.: 821245003 and 822105001

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1249

September Term, 2023

IN RE: J.C. and D.J.

Shaw,
Ripken,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: October 15, 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 appeal arises from a decision of the Circuit Court for Baltimore City, sitting as a juvenile court, to change the permanency plans for two children, J.C., born in February 2021, and D.J., born in April 2022. The juvenile court changed the permanency plan for J.C. from reunification with his mother, D.D. ("Mother"), to adoption by a non-relative or custody and guardianship. Additionally, the court changed the permanency plan for D.J. from reunification with her Mother to custody and guardianship by a relative.[1]

On 2 September 2021, the Baltimore City Department of Social Services ("DSS") placed J.C. in shelter care[2] and, the following day, the juvenile court authorized J.C.'s continuation in shelter care. Before J.C.'s adjudicatory hearing was concluded, Mother gave birth to D.J. Shortly after her birth, DSS placed D.J. in shelter care and, subsequently, the juvenile court authorized her continuation in shelter care. Eventually, the juvenile court found each child to be a child in need of assistance ("CINA").[3] The court awarded custody of J.C. to DSS for placement in foster care and custody of D.J. to DSS for placement with a relative.

[1] D.J.'s father, M.J., was represented and appeared at the shelter care hearing. He is not a party to this appeal. In September 2020, Mother identified A.C. as J.C.'s father. At a hearing on 3 September 2021, she testified that she was uncertain of the identity of J.C.'s father. At a hearing on 27 October 2021, Mother said that D.Sm. was J.C.'s father, but she did not provide DSS or the juvenile court with any contact information for D.Sm. Neither A.C. nor D.Sm. are parties to this appeal.

[2] Shelter care is defined in § 3-801(bb) of the Courts and Judicial Proceedings Article ("CJP") of the Maryland Code as "a temporary placement of a child outside of the home at any time before disposition" as a child in need of assistance.

[3] A CINA is "a child who requires court intervention" because the child has, among other things, been abused or neglected, and the child's parents "are unable or unwilling to give proper care and attention to the child and the child's needs." CJP § 3-801(f) and (g).

DSS recommended, shortly thereafter, changing the permanency plan of reunification for each child. At a 30 March 2023 status conference, DSS advised the court that it had filed a proposal to change D.J.'s permanency plan "from reunification to placement with a relative for custody and guardianship." The juvenile court consolidated the children's contested permanency planning hearings. A consolidated contested review hearing was held before a magistrate over three days in May and June 2023. On 18 July 2023, the magistrate issued a proposed order in which he determined that "reunification with the parent is not in the child's interests" and recommended that J.C.'s permanency plan be changed to adoption or guardianship by a non-relative, and D.J.'s permanency plan be changed to guardianship for relative placement. The magistrate recommended also that the juvenile court find that DSS made reasonable efforts to reunify the family. The magistrate's order specifically provided, however, that:

> a more comprehensive written report of this Magistrate's proposed findings of fact, conclusions of law, recommendations and proposed orders with respect to today's decision on this matter will be forthcoming.

Notwithstanding the fact that the magistrate's order was neither complete nor final, nine days later, on 27 July 2023, the juvenile court judge adopted it. On 23 August 2023, Mother filed a notice of appeal. *Seven months after the magistrate filed his initial order*, he issued another order that included "a memorandum explaining the bases for the court's [18 July 2023] decision" and findings of fact that included consideration of factors required by § 5-525(f)(1) of the Family Law Article ("FL") of the Maryland Code. On 7 March 2024, the juvenile court adopted the magistrate's proposed factual findings and order. No

exceptions or an additional notice of appeal were filed. As explained below, at that point, the appeal from the initial order of the juvenile court was stayed.

Proceedings in the Appellate Court of Maryland

On 15 December 2023, Mother filed an unopposed motion to stay the appeal based on the fact that DSS had filed a petition to terminate Mother's parental rights to J.C. and, if that petition was granted, the issues in the instant appeal regarding changes to the permanency plan might become moot. We granted Mother's motion and stayed the appeal pending a further order. Mother's counsel was ordered to update this Court as to the status of the termination of parental rights ("TPR") proceedings in the juvenile court. On 8 February 2024, Mother's counsel filed an unopposed motion to continue the stay and advised this Court that, among other things, the trial on the petition to terminate Mother's parental rights had been postponed to 25-27 June 2024. We granted the motion, continued the stay, and ordered Mother's counsel to provide updates regarding the status of the TPR proceedings in the juvenile court. On 1 April 2024, Mother's counsel filed an unopposed motion to lift the stay. Counsel advised this Court that trial on a petition to terminate Mother's parental rights to J.C. was still scheduled to take place on 25-27 June 2024, and that trial on a petition to terminate Mother's parental rights to D.J. had not been scheduled yet. Counsel requested that the stay be lifted "[d]ue to the continued delay in adjudicating the TPR petitions, which will not be resolved for at least three months[.]" We granted that motion and lifted the stay.

QUESTIONS PRESENTED

Mother presents the following questions for our consideration:

> I. Did the [juvenile] court err as a matter of law when it ordered the children's permanency plans changed away from reunification in July 2023 based on a magistrate recommendation that included no proposed factual findings whatsoever?
>
> II. Does the lack of exceptions limit the scope of mother's appeal, and if so, did mother receive ineffective assistance of counsel?
>
> III. Did the [juvenile] court err in finding, and did DSS fail to prove, that DSS made reasonable efforts to reunify [M]other and her children, especially considering DSS's position that [M]other is cognitively limited with significant mental health issues?
>
> IV. Did the [juvenile] court err in changing the children's plans away from reunification during the very first post-disposition review hearing[]?

For the reasons explained below, we shall affirm the decision of the juvenile court to change the permanency plans for each child.

BACKGROUND

A. Mother's History

Mother has a long history of involvement with DSS. In addition to the two children who are the subject of this appeal, she has three older children: I.C., born in January 2017, and twins, D.D.B. and K.D.B., born in December 2018. At the time of the twins' birth, Mother disclosed to hospital staff that she had smoked marijuana during her pregnancy. Neither Mother nor either of the twins tested positive for any illicit drugs on the day the twins were born, but hospital staff expressed concerns about discharging the twins to Mother's sole custody. Mother had been diagnosed with bipolar disorder and attention deficit hyperactivity disorder ("ADHD"), but was not participating in mental health treatment. Mother acknowledged that, as a teenager, she had been hospitalized at Sheppard

Pratt for psychiatric treatment, and that she had not had mental health treatment since she was seventeen years old.

DSS filed CINA petitions for all three of the older children. Before the twins were discharged from the hospital, the juvenile court granted an order of shelter care for the three children and they were placed in foster homes. In the order granting shelter care, the juvenile court noted that DSS received three prior reports against Mother, including reports for medical neglect resulting from untreated "bed bites," leaving the oldest child unattended in a car, and leaving the oldest child in the care of an adult who walked away from caring for the child. DSS entered safety plans with Mother with regard to the claim of medical neglect (which was ruled out ultimately) and for leaving the child unattended in a car. At the time the adjudication order was issued on 8 April 2019, Mother was homeless and lacked therefore appropriate housing for the children. On 23 April 2019, Mother was hit by a car. Following that accident, she reported that she was unable to care for herself and was living in a medical shelter.

The juvenile court issued a disposition order for the three children on 20 June 2019. The parties stipulated to certain facts and the proposed disposition. The juvenile court found the children to be CINAs and committed them to the custody of DSS. Among other things, the court found that Mother signed a service agreement pursuant to which she agreed to comply with "her mental health regimen and take medication if prescribed[.]" Mother agreed also to "identify housing," "maintain visitation," and provide confirmation of her intended visits with the children twenty-four hours in advance of each visit.

On 1 December 2019, while still in the medical shelter, Mother obtained prospectively, from the Baltimore City Mayor's Office of Homeless Services Coordinated Access Program, a three-bedroom supportive housing apartment through Dayspring Programs, Inc. ("Dayspring"). In March 2020, Mother met with Dayspring's clinical director for a twenty-five-minute therapy session. Three other therapy appointments were set for the month of March, but Mother failed to keep those appointments. The clinical director noted that Mother appeared "to have problems with impulsivity and/or cognitive skills as evidenced by her not adhering to program guidelines and becoming verbally combative." Mother committed multiple violations for failing to pay her rent on time, was not at home for scheduled visits, missed team meetings, was disrespectful to clients and staff, and yelled and cursed. On one occasion, the police had to be called when she fought with another client.

According to Tonia Matthews, Mother's case manager at Dayspring, Mother failed to begin parenting classes, anger management class, or seek employment until the children's court date approached, but she did complete ultimately parenting and anger management classes. Matthews did not notice, however, any change in Mother's behavior after she completed the parenting and anger management classes. Matthews spoke to Mother about her behavior toward clients and staff, but her conduct did not improve. Mother disclosed to Matthews that she had been diagnosed with bipolar disorder, ADHD, and post-traumatic stress disorder ("PTSD"). Mother said she did not need therapy, felt it did not help, and refused to attend therapy. In January 2021, however, Mother told

Matthews that she was not mentally well, but needed a therapist, which was arranged. Mother began therapy on 18 January 2021.

In February 2021, Mother gave birth to J.C. Mother tested positive for marijuana three days before J.C.'s birth and at the time of his birth. Matthews recommended that Mother and J.C. be moved to a smaller home in another program. While at Dayspring, Mother had a three-bedroom apartment because the plan was reunification with her three children, but after a year, her children still did not reside with her. Mother left Dayspring on 11 June 2021, and moved to a smaller home on North Curley Street through the efforts of Promise Housing, an agency that houses homeless individuals. According to Matthews, when Mother moved out of her Dayspring-provided apartment, it was cluttered and horribly dirty, food was left in the refrigerator, and dead bugs were throughout the home.

B. J.C.'s Removal From Mother's Care

On 2 September 2021, DSS worker Monica Johnson was instructed to go to Mother's home on North Curley Street and retrieve J.C. because there had been a report alleging that Mother, who "had severe mental illness," had a gun in the house, left the child unattended, smoked marijuana, and kept her house in poor condition. Because of the allegation that there was a gun in the house, Johnson was accompanied to Mother's home by Baltimore City police officers. An officer knocked on the door and Mother responded by pretending to be a family member and saying that the child's mother was at Lexington Market. Mother provided also a phone number. When Johnson dialed the number she heard a phone ring inside Mother's home. An officer looked through a window and saw a baby

on a couch. Mother asked repeatedly for Johnson and the police to display a warrant to enter her home.

After about thirty minutes, Mother acknowledged her true identity, but refused still to open the door. Police "cleared the block" and told Mother they would have to use force to enter because of the alleged gun in the house. Two neighbors tried, unsuccessfully, to convince Mother to open the door and give them the baby. Eventually, Mother's grandmother arrived and Mother opened the door. When Johnson entered the house, she observed a man, later identified as Mother's brother, who departed immediately. Johnson observed trash, dirty dishes, cat feces, and a kitten, and reported a "foul smell" in the house that she believed could have been marijuana. She did not observe a gun. Mother denied that there was a gun in the house. Johnson observed J.C. on the sofa and was concerned because he could have rolled off or smothered himself. Mother picked up J.C. and held him tight, but turned him over ultimately to an officer. Mother "changed her voice several times" and stated that she had some mental health issues, but was in treatment. She did not provide, however, the name of the place that was providing her treatment, her provider's phone number, or any documentation to show she was receiving treatment. Mother was unable also to provide any information about J.C.'s wellness visits or his healthcare provider. Johnson reported that Mother behaved erratically, vacillating between screaming, crying, and being calm. Although her behavior did not rise to the level of requiring a call for an ambulance, Johnson believed Mother was having a mental health crisis and did not feel comfortable leaving J.C. in her care.

J.C. was placed with a foster family on 2 September 2021. The juvenile court authorized his continuation in shelter care. His adjudicatory hearing did not conclude until the following year, on 1 September 2022. Initially, there were issues regarding Mother's visitation with J.C. Mother claimed that from 3 September to 12 October 2021, she did not have any visits with J.C. She maintained that she had difficulty with transportation and communication, and that it was difficult for her to confirm visits twenty-four hours in advance. She requested unsupervised visits in her home until a hearing could be held on any need for continued shelter care. The magistrate denied that request and determined that "the failure to have these visits is not because of obstacles that are being thrown in the way by the Department of Social Services." According to the magistrate, it was Mother who was "not taking advantage of the resources that are being made available to her." Thereafter, Mother attended weekly supervised visits with J.C. She continued to reside in the home on North Curley Street that was provided through Promise Housing.

D.J. Enters Care

In April 2022, Mother gave birth to a daughter, D.J. At the time of D.J.'s birth, both she and Mother tested positive for marijuana. D.J. did not require medical intervention. Hospital records showed that on 11 April 2022, Mother was walking around the hospital carrying D.J. When it was explained to her that, for safety reasons, the baby should be transported in a bassinet, Mother responded that D.J. was her baby and "you can't tell me what to do." On the same day, D.J.'s father, M.J., was observed on two occasions punching a wall after he was told that the baby could not go home with him.

In response to a report for a substance-exposed newborn, Ebony Covert, a family preservation case worker from DSS, met with Mother and M.J. to discuss their ability to care for the child. Mother reported that she lived alone in her home on North Curley Street. M.J. refused to provide his address. He and Mother explained later that M.J. was living in Mother's home even though he was not on the lease. Mother identified D.S., whom she claimed was her sister, as a person who could supervise Mother as she cared for D.J. DSS developed a safety plan with D.S.

On 13 April 2022, DSS granted M.J.'s request to take D.J. to a doctor's appointment and then return her to D.S.'s home. M.J. failed to return D.J. to D.S.'s house. When contacted by D.S. and a DSS worker, he said that "no one was going to find his baby." The following day, the baby was found with M.J. and Mother at Mother's home. DSS reported that Mother and M.J. refused to allow a case worker access to the child. The worker described their behavior as hostile. DSS issued an emergency shelter care authorization and D.J. was placed in shelter care with D.S. Five days later, the juvenile court authorized D.J.'s continued placement in shelter care.

On 22 April 2022, DSS case worker Marsha Towson was assigned to D.J.'s case. Mother admitted that D.S. was not her sister and advised Towson that she and D.S. were not getting along and had disputes about the way things were being done with regard to D.J. At the request of both parents, on 4 May 2022, D.J. was placed with M.J.'s cousin, S.A. S.A. did not have a good relationship with Mother either, describing her as having "a really bad temper" and always being "disrespectful." S.A. reported situations when M.J. smelled of alcohol or had alcohol with him when he visited D.J. S.A. believed that M.J.

needed parenting classes because he did not know how to provide basic care for D.J. In June 2022, M.J. entered a substance abuse treatment program.

Towson noted that both parents had quick tempers. On one occasion, Mother put her hands on M.J. while they were in a vehicle. On 22 June 2022, Mother got into an altercation, was arrested, and charged with affray. After pleading guilty, she was incarcerated until her release on 5 January 2023. While incarcerated, Mother lost her housing. During the six months she was incarcerated, Mother had telephone contact, but, understandably, no in-person visits with either J.C. or D.J.

CINA DETERMINATION FOR J.C.

A number of hearings were held in J.C.'s contested CINA proceeding. The testimony included the following:[4] At a hearing on 31 March 2022, Mother's brother testified that he was present in Mother's house when DSS removed J.C. from the home. He described the home as "decent" and said there was nothing wrong with it. Mother's aunt, M.F., visited Mother's home on the day that J.C. was removed and described it as "very decent." There were dishes in the sink and Mother had a cat, but the house was clean. She visited Mother in the home once a week and never observed deplorable conditions, roaches, or rats.

At a hearing on 20 April 2022, Mother testified that she saw a therapist twice a week while at Dayspring and more for emergencies. She completed anger management classes

[4] By stipulation, the court considered also testimony that DSS workers Monica Johnson and Yvette Bennerson gave during contested shelter care hearings on 5 and 8 November 2021, subject to strict application of the rules of evidence.

and learned to use coping skills instead of acting impulsively. She claimed that she moved from Dayspring because she was dealing with "some little issues with residents," and because her child was young and she felt they should move. She was last prescribed psychotropic medications in 2015 when, as a teenager, she was at Sheppard Pratt.

Mother denied ever leaving J.C. alone at home. On 2 September 2021, the day J.C. was removed, he was on the couch with her brother while she was upstairs getting dressed to go to a visit with her other children. She denied that her house was in disarray or that there were cat feces on the floor. She acknowledged that she had a cat, but said that it used cat litter that was on the floor in the basement.

When Mother was receiving therapeutic services at Dayspring, she was diagnosed with bipolar disorder and ADHD, but was not taking medications. Mother stated that, with her bipolar disorder, her emotions go up and down and sometimes she has a "tendency to get a little upset." She claimed to use coping skills to control herself and learned to walk away when she is upset. At the time J.C. was removed on 2 September 2021, she did not have mental health services because she had just moved and was waiting for a referral. After receiving the referral, Mother called the provider, but asserted she did not receive a return call. Mother stated she found, on her own, a new therapist, Shae Gorham,[5] from Solid Ground Wellness. She had been seeing Gorham roughly two or three times a week for over a year. That time frame conflicted, however, with Mother's acknowledgment that she was not receiving therapy from Gorham while she was at Dayspring.

[5] Gorham's last name is spelled various ways in the record, but we shall use "Gorham."

At a hearing on 9 August 2022, Mother testified (via Zoom) from the facility where she was incarcerated after having pleaded guilty to affray. She was cross-examined about the two mental health diagnoses of ADHD and bipolar disorder. After Mother stated that she did not believe that she had a disability, the following exchange occurred:

> [Counsel for DSS:] You don't believe that you have bipolar disorder?
>
> [Mother:] I don't believe it. I – I seriously don't believe it. I'm not on medication. I talk to a therapist. I'm able to communicate and express my feelings and how I feel. I'm a – I feel as though I'm a regular human being who has the same feelings as everybody else.
>
> Q. Ms. [D.], why do you think you were diagnosed with bipolar disorder?
>
> A. Because I was forced to be in Sheppard Pratt. I was forced to deal with these things when I was younger.
>
> Q. Isn't it true that you have occasions where your temper gets the better of you and your behavior is pretty explosive?
>
> A. No, that's not true.
>
> Q. Isn't it true that you've gotten in a lot of fights with other people including residents at Dayspring and people that –
>
> A. No, that's not true.
>
> Q. – you interact with in the community?
>
> A. That's not true.
>
> Q. So is it your testimony that you don't experience any symptoms of – any mental health symptoms?
>
> A. At this time I don't believe that I have a mental health problem at all. I don't believe it.
>
> Q. Ms. [D.], you testified that you moved from Dayspring because you were dealing with little issues with the other residents. What were those issues?

A. One; this – that – that question has nothing to do with my kids, but I will answer it. The reason why is because they were making noises over top of my head and at that time I was pregnant with [J.C.] I was not getting any sleep. But I did calmly ask these people to please with the noise.

Q. Isn't it true that you had a fight with another resident at Dayspring –

A. No, ma'am.

Q. – outside of the facility?

A. No, ma'am.

Q. Isn't it true that the police came?

A. That's true.

Q. Why did the police come?

A. That I can't even answer. They were called. People called them. They seen us arguing.

Q. Arguing?

A. Arguing.

On 1 September 2022, the magistrate issued proposed findings of fact and an adjudicatory order that the juvenile court adopted. After sustaining various facts alleged by DSS, the court found that:

> Mother's history with Baltimore City Department of Social Services, Baltimore County Department of Social Services, and her various providers clearly demonstrates a pattern of failing to comply with the services needed to ensure her ability to safely parent the respondent, and an ongoing pattern of mood instability, housing instability, and housing conditions that fail to meet basic health and safety standards.

The court found also that DSS had made reasonable efforts to prevent the removal of J.C. from his home.

An uncontested disposition hearing for J.C. was held on 18 January 2023, less than two weeks after Mother had been released from incarceration. At that time, Mother had lost her housing through Promise Housing, was homeless, and was living temporarily with a relative. The juvenile court found J.C. to be a CINA and awarded custody to DSS.

CINA DETERMINATION FOR D.J.

After several contested hearings, the parties stipulated to certain adjudicatory facts alleged in D.J.'s CINA petition. The parties agreed that D.J. should remain with S.A. pending a contested disposition hearing. Ultimately, the disposition hearing on 3 February 2023 was not contested. The court determined that M.J. did not have independent housing, had not maintained contact with DSS or entered into a service agreement, and was not currently in a position to care for D.J. Mother had been released on supervised probation on 5 January 2023, had lost her housing, was living temporarily with a relative, and was working to get her benefits restored. The juvenile court found D.J. to be a CINA and awarded custody to DSS for relative placement with S.A.

CHANGE IN PERMANENCY PLANS

At a hearing on 30 March 2023, counsel advised that DSS was proposing to change the permanency plans away from reunification. M.J. was not at the hearing, but was represented by counsel. At that time, Mother was living in a shelter. The juvenile court consolidated D.J.'s case with J.C.'s case. A contested permanency planning hearing was held before a magistrate on 16 and 17 May and 13 June 2023.

D.J.'s father, M.J., was not at the hearing on 16 May 2023, but his attorney appeared and advised the juvenile court that he did not "have representation." Mother, who was still

living in a shelter, did not have any contact information for M.J. DSS requested that the juvenile court change J.C.'s permanency plan from reunification to placement with a non-relative for either custody and guardianship or adoption. It asked also that D.J.'s permanency plan be changed from reunification to placement with a relative for adoption and/or custody and guardianship. At the time of the hearing, J.C. had been in foster care for nineteen or twenty months and D.J. had been in care for a little more than a year. DSS asserted that Mother had not made progress toward reunification, and counsel for the children requested a change in the permanency plans for both children because of their time in care and Mother's lack of progress toward reunification.

Karen Jennings, a DSS case manager for out-of-home placement, testified that J.C. was in foster care, that he was a "very bright little boy," he attended daycare, had his own bedroom, was doing well, was happy and well-adjusted, and all of his basic and medical needs were being taken care of by his foster family. Jennings visited J.C. on a monthly basis and transported him for visits with Mother and his siblings. J.C.'s foster parents reported that J.C. returns from visits with Mother "juiced up on sweets" and not paying attention, and that it was hard for him to settle down.

Jennings testified that Mother had visits with all five of her children every Tuesday for an hour and a half at a visitation center. DSS workers observed the visits from an observation window. According to Jennings, there was not much conversation or engagement between Mother and the children. In three out of four visits, Mom got on her cellphone, but she allowed the children to talk to the person on the phone. Mother arrived generally at the visits with a box of snacks such as cheese curls, cakes, cookies, and juices

for the children. In the visits prior to the hearing, after handing out the snacks, Mother focused on caring for J.C.'s hair. J.C. has a lot of hair and she made it known to J.C.'s foster parents that she did not want his hair to be cut. J.C. sat in Mother's lap eating his snacks while the other children ran around and played. Mother did not say much to J.C. and did not engage with the other children. On occasion, DSS workers had to bang on the glass of the observation window to notify Mother that something was going on in the room that required her attention. On one visit, J.C. seemed upset and cried about having his hair combed. Jennings went to ask Mother to give J.C. a reprieve because he was getting very upset. Mother became angry, "went from 1 to 100," began screaming that J.C. was fine, and continued to comb his hair.

When asked about barriers to reunification, Jennings said that, except for attending visits with the children, she did not have anything to show that Mother was working towards reunification and that recently she was unable "to get anything from" Mother. Mother was homeless and Jennings did not know who Mother was seeing for therapy. Mother never provided a signed consent form to allow DSS to obtain information about her mental health provider, her diagnosis, or her compliance with treatment. When Jennings asked for information, Mother told her to speak to her attorney. Jennings sent a service plan and a consent for release of information to Mother's attorney, but got nothing back. With respect to marijuana use, Jennings stated that she was concerned that Mother was using it to self-medicate. Jennings sent several notices to addresses provided for D.Sm., one of the men identified by Mother as J.C.'s father, but did not get a response.

Marsha Towson was assigned to be D.J.'s case manager in April 2022. When D.J. first entered care, she was placed with fictive kin,[6] D.S., but that only lasted about a week because of conflicts between D.S. and Mother. D.J. was placed next with her father's cousin, S.A., with whom she has resided since May 2022. Towson visited D.J. weekly and conducted monthly home visits. She stated that D.J. was meeting her milestones and doing well. D.J. was bonded to S.A., had started walking, and had visits with her paternal grandmother. When D.J. first entered care, Mother and M.J. visited her every Monday, but those visits ended when Mother was incarcerated and M.J. ceased visiting. On one occasion, in about March 2023, M.J. appeared unexpectedly at the visitation center. He appeared to be intoxicated as he walked across the room and picked up D.J. from her high chair. Towson ran into the room and asked Mother to take D.J. from M.J., which she did. M.J. called Towson names. Towson called security and asked that M.J. be removed because he appeared to be intoxicated. That was the last time Towson saw him. The phone number Towson had for M.J. was disconnected and M.J. had not been in contact with DSS. Towson asked S.A. if she had heard from M.J. She had not.

Like Jennings, Towson testified that Mother visited with all five of her children on Tuesdays and that she brought them a box of snacks. After distributing the snacks, Mother combed the hair of one child while the three oldest children played and D.J., who recently started walking, walked around the room. On one occasion, D.J. fell and got a bump on her head. Towson got some ice, but when she entered the room and asked Mother to check on

[6] Kinship or social ties based on other than a blood relationship or marriage.

D.J., Mother responded that the child was "fine" and said, "you know, kids fall and bump their head." According to Towson, Mother was not receptive to advice and there was always push back.

When Mother was released from incarceration, she told Towson she was receiving therapeutic services, but did not provide any documentation. Towson provided Mother with a referral for mental health care, but when the provider reached out to Mother, she told them she was in therapy already someplace else. Mother never informed DSS where she was receiving services or the name of her therapist. Mother did not want to speak about service agreements and always told Towson to send paperwork to her attorney.

In about April 2023, S.A. told Towson that she had to block calls from Mother because she was being disrespectful. S.A. told Mother that, if she had issues, she would have to contact a DSS worker. Mother was upset because she wanted to cook food for D.J.'s birthday party, but S.A. declined that offer. Mother called S.A. late at night and was disrespectful. S.A. blocked her calls on several occasions.

According to Towson, the primary barriers to reunification were that Mother failed to provide any documentation of her mental health treatment, was living in a shelter and lacked housing for the children, and failed to provide a substance abuse evaluation. There was no documentation that Mother had been in therapy since D.J.'s birth. Towson was the case worker for Mother's three oldest children and was aware that, at one time, Mother was using marijuana to self-medicate. Mother said she had a medical marijuana card, but did not provide a copy of it to DSS.

D.J. was placed in the care of her father's cousin, S.A., on 4 May 2022. They lived together in S.A.'s house with S.A.'s teenage son. D.J.'s paternal grandmother and great-grandmother visited every weekend and other relatives visited regularly. D.J.'s father, M.J., was visiting early on, but S.A. had not seen him since Christmas 2022. S.A. did not have M.J.'s contact information, but explained that he had been arrested a few months before the 17 May 2023 hearing. Initially, S.A. allowed Mother and M.J. to visit D.J. at her house, but on one occasion, Mother became upset after S.A. told her the baby was being held too tightly. After that, S.A. told Mother she had to go through DSS for visits because S.A. did not want any trouble. S.A. sometimes made video calls to Mother so she could see D.J. Mother called and texted S.A. Sometimes Mother would get upset and would be disrespectful to S.A. and start "hooping and hollering," so S.A. hung up on her a few times. Mother called and harassed S.A. about D.J.'s birthday party because she wanted to make food for the event, but S.A. had made already arrangements for the food. Mother responded, "how you going to f-ing tell me what I can do for my daughter?" Thereafter, Mother threatened S.A. and D.J.'s grandmother. S.A. described Mother as having "a real bad temper." As a result, Mother did not get to attend D.J.'s birthday party. S.A. testified that she was willing to adopt D.J.

J.C. was placed with foster parent J.S. and his wife on 2 September 2021. They lived in a townhouse where J.C. had his own bedroom. J.S. and his wife worked, and J.C. attended an early learning center. J.S.'s sister, who lived nearby, had a two-year-old son who got along with J.C. J.S.'s parents and his wife's parents lived nearby, and they saw them on the weekends. J.S. was aware that Mother did not want J.C.'s hair to be cut. He

and his wife respected those wishes. J.S. was aware that Mother braided J.C.'s hair at visits. J.S. attended a course offered to foster parents to learn how to braid hair. J.S. testified that he and his wife would enjoy being J.C.'s permanent, long-term parents. He had no objection to maintaining contact with J.C.'s siblings and had a couple of outings and Zoom calls with them. He was willing also to attend a mediation session with Mother to discuss contact if he was to be given custody of or adopt J.C.

At the hearing on 17 May 2023, Mother testified that D.Sm. is J.C.'s father. She supplied his date of birth, but did not know where he was residing and did not have a useable phone number for him. She does not contact him and does not know any of his family or friends who might be able to contact him. After Mother was released from incarceration on 5 January 2023, she stayed with an aunt. In the middle of March 2023, Mother decided that she no longer wished to live with her aunt because she did not "want to live under people . . . [she] want[ed] [her] own house with [her] own kids." At the time of the hearings on 17 May 2023, Mother lived in a shelter. She was working to obtain a three-bedroom house for her and her children from a program run by the Mayor's office. As for employment, Mother wanted to be a chef and was "thinking about opening [her] own business."

Mother said that she had been "in and out of mental health treatment" since August 2022 because she moved and had to find a new therapist. In 2022, she saw a therapist named "Dalia" and also saw "Shae Gorham" through "Wellness." She also had a therapist while in a "Mommy Baby's" program. She said DSS had information about "Shae Gorham" who she saw at least four, maybe five times. Mother stopped seeing Gorham

because she said that she "couldn't help [Mother] or come to court when it was time to testify, and [Mother] felt as though that was a huge factor . . . in the court case." Mother testified that she did not see a therapist after Gorham, but was trying to get another referral from her drug treatment program. Mother stated also that, "almost two months" before the 17 May 2023 hearing, she started seeing a therapist named Derrick Henson, who she met with via phone twice a week for thirty to forty minutes. She told Henson that she sought therapy because she "was currently trying to get [her] kids back and that DSS has been pressuring [her] about medication." Mother testified that it had "been a few years" since she was in a drug program called "Interfaith Academy" on North Avenue, but she did it for "over two years." She claimed she did the drug program because DSS said she needed to do it, but she denied having a drug problem.

Mother described how therapy helped her with coping skills. She acknowledged that DSS workers tried to "redirect" her sometimes "and it really frustrates" her so the therapist suggested she count to ten. Mother also acknowledged that she got upset when, on one occasion, S.A. suggested that some food Mother gave to D.J. made the child sick. Mother sent a text message to S.A. saying that she was going to continue to give D.J. cheese curls and juice. Mother checks in with S.A. to see how D.J. is doing "at least maybe once a day or once every other day."

The hearing was continued to 13 June 2023. At the time of that hearing, Mother was still living at the shelter and awaiting housing from the program run by the Mayor's office. Mother said that, for the past four months, she had been seeing a therapist one or two times

a week, on Tuesdays and Thursdays, although she visited with her children on Tuesdays. She worked with her therapist on coping skills and when to use them.

Mother stated that she was employed at a corner store called "Mama Ella's" on North Avenue. She started working on Sunday, 11 June 2023, and said she worked from 8:30 a.m. to 10 p.m. cooking, cleaning, taking orders, and serving. When asked how much she was being paid, Mother said, "I pretty much just say I get paid by the hour," and "I want to say approximately $26 to $30 maybe an hour. Something like that." When asked why she did not know specifically how much she was being paid, Mother said that she had just started the job, that she had not really spoken to her boss about it, and that she wanted "to say roughly I should be making about $300 per week." Mama Ella's was open seven days a week, and Mother's plan was to work eleven and a half hours a day, six days a week, but she told her boss she would not work on Tuesdays. Mother also said that "if people don't come, I don't get paid. If people come, I get paid." Mother said that she had obtained a food handler's certificate and planned to use it to open her own business. For the past two years, she had been working on starting her business. She filled out applications to start "LLCs" and was working on getting money to pay for them. She had been looking also for a place to buy from which she could run her business. She intended to sell seafood bowls and operate "a soul food buffet."

With regard to visits with the children, Mother said she had a "misunderstanding" with Towson when, during a visit at the visitation center, D.J. opened a cabinet. Mother viewed it as a safety issue and told Towson "I could sue y'all because that's a safety issue for my child." Mother put a chair in front of the cabinet and redirected D.J. Mother stated

her desire for J.C.'s foster parents to not cut his hair and to take him to a shop to have his hair braided because "they don't know how to do it." She claimed also that D.J.'s caretaker was putting fake hair into D.J.'s natural hair. She claimed she took out the fake hair and took photographs of it, and that it is an ongoing issue. She complained also that no diapers were sent to the visitation center with J.C. Mother claimed she did not receive any information about what her children were doing in daycare or about doctor appointments or health issues. Mother expressed also her disappointment that visits were cancelled when DSS workers were out of the office. She had not been offered make-up visits when there was a court hearing or other conflicts with the Tuesday visits.

Towson was called as a rebuttal witness. She testified that there were diapers, wipes, and pull-ups at the visitation for Mother to use. With regard to the incident involving D.J. opening cabinet doors, Towson said that she asked Mother to keep an eye on her. Mother "started with 'It's a safety hazard. I'm going to sue the Department,' and so forth." Mother put chairs in front of the cabinets. After Towson stepped out of the room, Mother "continued to go on how she was going to sue the Department because we don't have safety locks and things like that." Towson said she had no conversations with Mother about housing, and Mother did not ask for help with housing; nor did Mother ask about the children's medical appointments. Towson acknowledged that missed visits were not made up necessarily. On one occasion, Mother was offered some extra time at the end of another visit, but she did not receive the full amount of the time missed. According to Towson, scheduling make-up visits depended on the visitation center's schedule.

DISCUSSION

QUESTIONS I. & II.

Mother contends that the juvenile court erred as a matter of law when it ordered in July 2023, the children's permanency plans changed from reunification, based on the magistrate's recommendation and order that included no proposed factual findings whatsoever. In addition, she argues that her failure to file exceptions should not be construed as a waiver or otherwise prevent her from challenging all aspects of the juvenile court's decision to change the permanency plans. We shall discuss together these contentions.

We agree with Mother that the juvenile court erred technically in adopting the magistrate's recommendation and order in July 2023, when no proposed factual findings were set forth, and where the magistrate stated specifically that a more comprehensive written report would be forthcoming on an unspecified future date. A decision in a contested CINA case is of critical importance because it impacts significantly the lives of the parents and children involved. "While the system of resorting to [magistrates] is one of long standing and undoubtedly has salutary effects resulting in the more expeditious dispatch of the judicial process, the system cannot supplant the ultimate role of judges in the judicial process itself." *Ellis v. Ellis*, 19 Md. App. 361, 365 (1973) (footnote omitted). *See also Wenger v. Wenger*, 42 Md. App. 596, 602 (1979) (stating that a judge may never delegate away his or her decision-making function to a master). As we noted in *Ellis* with respect to child custody cases, litigants in CINA cases, as in all judicial proceedings, are entitled to have their case determined ultimately by a duly qualified judge of a court of

competent jurisdiction. 19 Md. App. at 365. Mother, like all parents, was entitled to more than the judge's adoption of a magistrate's admittedly incomplete recommendation. *Id*. at 365-66. It was her right to have the benefit of the judge's fully informed judgment, as distinguished from the magistrate's alone. *Id.* at 366.

We agree also with Mother that her failure to file exceptions to the magistrate's bifurcated recommendation and order should not be construed as a waiver. Because the magistrate's initial recommendation and order provided specifically that a more comprehensive written report would be forthcoming, there were initially no material factual findings to which Mother could note an exception. Moreover, under Maryland Rule 8-131(a), even with regard to the lack of exceptions to the magistrate's final report, "an appellate court has discretion to excuse a waiver or procedural default and to consider an issue even though it was not properly raised or preserved by a party." *Jones v. State*, 379 Md. 704, 713 (2004). The Rule provides, in relevant part, that:

> Ordinarily, an appellate court will not decide any other 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).

In deciding whether to exercise our discretion to address an unpreserved issue, Maryland's Supreme Court has said that we should ponder two considerations. First, whether the exercise of discretion "will work unfair prejudice to either of the parties." *Jones*, 379 Md. at 714. In considering whether the prejudice suffered by a party rises to the level of "unfair," we "should consider whether the failure to raise the issue was a

considered, deliberate one, or whether it was inadvertent and unintentional." *Id.* As an example, the Supreme Court noted that unfair prejudice may "result if counsel fails to bring the position of her client to the attention of the lower court so that that court can pass upon and correct any errors in its own proceedings." *Id.* Second, we should "consider whether the exercise of [our] discretion will promote the orderly administration of justice." *Id.* at 715. This consideration seeks "to prevent the trial of cases in a piecemeal fashion, thereby saving time and expense and accelerating the termination of litigation." *Id.*

In the case before us, the exercise of our discretion in Mother's favor is warranted. Even if there was some finding from which Mother could have excepted, the magistrate stated clearly his intent to file a fulsome written justification for the recommendation in the future. This approach fostered apparent confusion for Mother and/or her counsel as to how to proceed. Mother had a right to rely on the magistrate's statement and to forebear filing exceptions. Requiring her to file exceptions to the magistrate's preliminary and incomplete recommendation and order would unfairly prejudice Mother and result in piecemeal litigation.

Although Mother was not required to file exceptions before the magistrate filed his comprehensive written report, and was entitled to more than a pro forma adoption by the court of the magistrate's initial recommendation, the juvenile court's initial error in adopting the incomplete recommendation and order was remedied when the magistrate filed his full and final report in February 2024, and the juvenile court adopted the magistrate's recommendations and proposed order in March 2024. At that point, Mother had filed a notice of appeal from the initial order, which set forth an apparent ultimate

result. When the March 2024 order was issued, it maintained the status quo and, as a result, suggests that the July 2023 order failed arguably to constitute an appealable interlocutory order under CJP § 12-303(3)(x), which permits a party to appeal from an interlocutory order "[d]epriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order[.]" That was no fault of Mother under these circumstances.

In light of the unusual procedural path traveled by these CINA cases, the general purpose of the CINA statute, and our *parens patriae* authority, we shall exercise our discretion to consider in this appeal both the July 2023 and March 2024 orders together, and to determine whether the juvenile court erred in (1) finding that DSS made reasonable efforts to reunify Mother with J.C. and D.J., and (2) changing the children's permanency plans away from reunification with Mother. *See In re T.K.*, 480 Md. 122, 147 (2022) (stating that the broad purpose of the CINA statute "is to ensure that juvenile courts (and local departments of social services) exercise authority to protect and advance a child's best interests when court intervention is required" (internal quotation marks and citation omitted)); *In re Mark M.*, 365 Md. 687, 705-06 (2001) ("Pursuant to the doctrine of *parens patriae*, the State of Maryland has an interest in caring for those, such as minors, who cannot care for themselves.").

Standard of Review

Appellate courts apply "'three distinct but interrelated standards of review'" to a juvenile court's determinations in a CINA proceeding. *In re J.R.*, 246 Md. App. 707, 730 (2020) (quoting *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018)). The

court's factual findings are reviewed for clear error. *In re R.S.*, 470 Md. 380, 397 (2020). Matters of law are reviewed *de novo*, without deference to the juvenile court. *Id.* "[T]he final conclusion of the juvenile court, when based upon 'sound legal principles' and factual findings that are not clearly erroneous, will stand, unless there has been a clear abuse of discretion." *Id.* (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). "A court abuses its discretion when 'no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding rules or principles.'" *In re K.L.*, 252 Md. App. 148, 185 (2021) (quoting *Santo v. Santo*, 448 Md. 620, 625-26 (2016)).

The CINA Framework

Parents "have a fundamental, Constitutionally-based right to raise their children free from undue and unwarranted interference on the part of the State, including its courts." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495 (2007) ("*Rashawn H.*"). There is "a presumption of law and fact – that it is in the best interest of children to remain in the care and custody of their parents." *Id.* This right is not absolute, however. The fundamental right to parent must be balanced with the State's interest in protecting children, who cannot protect themselves, in most instances, from abuse and neglect. *In re H.W.*, 460 Md. at 216; *Rashawn H.*, 402 Md. at 497; *In re Mark M.*, 365 Md. at 706 ("That which will best promote the child's welfare becomes particularly consequential where the interests of a child are in jeopardy[.]"). Those competing rights are implicated in CINA proceedings, the purpose of which are "'to protect children and promote their best interests.'" *In re Priscilla B.*, 214 Md. App. 600, 622 (2013) (quoting *In re Rachel T.*, 77 Md. App. 20, 28 (1988)); *see also* CJP § 3-802 (stating the purposes of the CINA statutes).

A juvenile court may find that a child is in need of assistance upon a showing, by a preponderance of the evidence, CJP § 3-817(c), that the child "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." CJP § 3-801(f); *In re M.*, 251 Md. App. 86, 115 (2021).

Once a child is declared a CINA and removed from the care of a parent, the juvenile court must hold a hearing within eleven months to determine a permanency plan for the child. CJP § 3-823(b)(1)(i). "The permanency plan is intended to 'set[ ] the tone for the parties and the court' by providing 'the goal toward which [they] are committed to work.'" *In re D.M.*, 250 Md. App. 541, 561 (2021) (quoting *In re Damon M.*, 362 Md. 429, 436 (2001)). "Every reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement." CJP § 3-823(h)(5).

Under the statutory scheme, "unless there are compelling circumstances to the contrary, the plan should be to work toward reunification, as it is presumed that it is in the best interest of a child to be returned to his or her natural parent." *In re Yve S.*, 373 Md. at 582. Accordingly, the juvenile court, when determining a permanency plan, must follow a prescribed hierarchy of placement options 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 non-relative; (4) custody and guardianship by a non-relative; 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's commitment is rescinded or a voluntary placement is terminated. CJP § 3-823(h)(1). At each review hearing, the juvenile court shall:

> (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 appropriateness of and the extent of compliance with the case plan for the child;
> (iv) Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating commitment;
> (v) 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;
> (vi) Evaluate the safety of the child and take necessary measures to protect the child;
> (vii) Change the permanency plan if a change in the permanency plan would be in the child's best interest; and
> (viii) 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 juvenile court must consider the factors set forth in FL § 5-525(f)(1), CJP § 3-823(e)(2), and give "primary consideration to the best interests of the child[.]" FL § 5-525(f)(1); *see also In re D.M.*, 250 Md. App. at 562. 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).

While the juvenile court is required to consider the relevant statutory factors and make specific findings based on the evidence with respect to each of them, it is not required "'to recite the magic words of a legal test.'" *In re D.M.*, 250 Md. App. at 563 (quoting *In re Adoption/Guardianship of Darjal C.*, 191 Md. App. 505, 531-32 (2010)). The key is whether "'actual consideration of the necessary legal considerations [is] apparent in the record.'" *Id.* (citations omitted).

III.

Against this backdrop, we turn to the questions at hand, beginning with Mother's contention that the juvenile court erred in finding, in its July 2023 order, that DSS "made reasonable efforts to alleviate the circumstances that caused the child [sic] to come into foster care and achieve the presumptive plan of reunification[.]" Mother asserts that DSS failed to make good faith efforts to provide services to achieve reunification that were tailored to her specific cognitive and mental health needs. Specifically, she argues that DSS failed to provide consent forms or a service agreement to cover the post-disposition review period, failed to follow up after learning that Mother told A&E Health Services she was engaged in services elsewhere, and failed to provide any housing assistance after Mother's release from incarceration, either when she was residing temporarily with a relative, or after learning in March 2023 that she was homeless. The record does not support Mother's contention that the juvenile court erred in finding that reasonable efforts were made.

Under Maryland law, the juvenile court was required to make a finding as to whether the local department made reasonable efforts to finalize the permanency plans in effect for each child. CJP §§ 3-816.1(b)(2)(i) and 3-823(h)(2)(ii). Reasonable efforts are "efforts that are reasonably likely to achieve the objective[]" of finalizing the permanency plan in effect for a child. CJP §§ 3-801(w) and 3-816.1(b)(2)(i). The court must "assess the efforts made since the last adjudication of reasonable efforts and may not rely on findings from prior hearings." CJP § 3-816.1(b)(5). "[T]here is no bright line rule to apply to the 'reasonable efforts' determination; each case must be decided based on its unique circumstances." *In re Shirley B.*, 191 Md. App. 678, 710-11 (2010). A juvenile court's finding with regard to whether DSS made reasonable efforts toward reunification is a factual finding that we review pursuant to the clearly erroneous standard. *Id*. at 708-09.

This record makes clear that, from late January to the start of the permanency plan hearing on 16 May 2023, Mother refused DSS's offers of assistance and refused to engage with respect to services. At the hearing on 16 May 2023, DSS worker Jennings testified that in recent months she had been unable to get anything from Mother. Mother never signed a consent form for the release of information from mental health providers and Jennings did not know who she was seeing for therapy. Mother told Jennings routinely that everything should go through her attorney. Jennings testified that she sent a consent form release of information to Mother's attorney and, on 2 March 2023, she sent a service plan, but got nothing back.

With regard to housing, Jennings was aware that, at one time, Mother was living with Ms. K. who was a potential foster care or adoptive resource for J.C. Jennings had

contact with Ms. K. and told her what DSS needed, but "that never went anywhere." Prior to that, Mother lived with Ms. S. Jennings set up several times for Ms. S. to provide fingerprints, but she did not show up. Until the end of March 2023, Jennings did not know that Mother was homeless and living in a shelter. According to Mother, the shelter was providing her with resources to acquire housing through a program run by the Mayor's office. She had submitted an application for a three-bedroom home for her and her five children and was awaiting notification from the Mayor's office that a home was available.

As for mental health services, after Mother's release from incarceration, DSS worker Towson asked her if she was receiving mental health services. Mother said she was, but failed to provide documentation. In light of Mother's failure to provide documentation, Towson provided a referral for Mother to A&E Healthcare Services. Towson was notified by that provider that it contacted Mother on 16 February 2023, and she declined services and stated that she was receiving therapy from another provider. On one occasion, when Mother's social worker was present at a visit, Towson asked if Mother was receiving mental health services, but Mother did not want to speak with Towson about that. DSS did not learn the name of Mother's current therapist until 17 May 2023, the second day of the hearing.

Maryland's Supreme Court has recognized that DSS "is not obliged to find employment for the parent, to find and pay for permanent and suitable housing for the family, to bring the parent out of poverty, or to cure or ameliorate any disability that prevents the parent from being able to care for the child." *Rashawn H.*, 402 Md. at 500. In the pertinent review period, Mother refused DSS's offers of assistance, declined to engage

with DSS workers with respect to services, declined to sign a service agreement, declined to sign a consent form to allow DSS to receive information, and decided to pursue housing through a program at the shelter where she was living. On the record before us, we are unable to say that the juvenile court erred in determining that DSS made reasonable efforts to alleviate the circumstances that caused the children to enter care and to achieve reunification.

IV.

Mother contends that it was premature for the juvenile court to change the children's permanency plans away from reunification, and that there were no compelling circumstances to override the strong presumption that reunification with Mother was in the children's best interests. Considering each of the factors set forth in FL § 5-525(f)(1), we are convinced that there was ample evidence presented at the various hearings to support the juvenile court's decision to change the children's permanency plans.

1. The children's ability to be safe and healthy in the parents' home

On this factor, the juvenile court found:

> Notwithstanding the fact that [Mother] has never been found to be affirmatively abusive to her children, [her] mental and emotional state, and her unwillingness/inability to benefit from services intended to assist in that regard, cause this court to conclude that the respondents would not be safe and healthy in [her] home. [D.J.'s father] has never cared for [her], has all but disappeared from her life, and is not imputed with a presumption that if given a chance to do so he would provide her with ordinary care.

The evidence showed that Mother was homeless and living in a shelter. After being incarcerated for engaging in an affray, she lost the housing she had obtained through Promise Housing. When she was released from incarceration in January 2023, she lived

with her aunt, Ms. S., but decided that she did not "want to live under people" and wanted her "own house with [her] own kids," so she went to live in a homeless shelter. While at the shelter, she applied for housing through a program offered by the Mayor's office, but had not received housing at the time the hearing began in May 2023.

Mother had a history of mental health issues including diagnosed mental health disorders. Mother testified that she had been "in and out of mental health treatment," but she did not believe that she had any mental health issues or that she would benefit from therapy. At the hearing on 17 May 2023, Mother testified that she had been "seeing" a therapist, Derrick Henson, for about two months. She told Henson that the reason she was seeking therapy was because it was "mainly one of the requirements of me getting my kids back." Although Mother testified that she had seen a number of mental health providers, and one DSS worker had communicated with Shae Gorham, a therapist Mother saw for "a few months," Mother never provided a signed consent to release information to DSS so it could verify her participation in appropriate therapy and the "success" it may have in helping Mother achieve reunification with her children. Other evidence showed that Mother's "mercurial" behavior did not change even after she completed parenting and anger management classes. There was ample evidence to support the juvenile court's finding on this factor.[7]

[7] Mother argues that the court found erroneously that she

> engaged in an 'overindulgence' of marijuana, considering both DSS workers admitted that they did not have any affirmative indication that mother currently used marijuana, the sustained petition findings did not document

(continued…)

2. and 3. The children's attachment and emotional ties to their natural parents, siblings, current caregivers, and the caregivers' family

As to the second required factor, the children's attachment and emotional ties to their natural parents and siblings, the juvenile court concluded that "[a]lthough there is reason to believe that both respondents have an emotional tie to their siblings, neither has been in their parents' care for a significant period of time." As to the third required factor, the children's emotional attachment to their current caregivers and the caregivers' families, the court found that "[t]his is a compelling factor in this court's decision. [J.C.] has flourished in the foster parents' care and [D.J.] is in a loving, relative placement." Mother argues that the court gave "short shrift " to the second required factor by focusing on the children's time in custody and failed to examine the children's emotional ties to her and the fact that visits went well.

The court found that Mother participated regularly in visitation with the children, but that during the visits she focused "on specific, narrow matter," such as braiding J.C.'s

> [M]other's marijuana use past D.J.'s birth, and [M]other's uncontroverted testimony reflected that she completed a program in the past and was testing clean for her probation.

That argument is not supported by the record. In its order, the juvenile court found that Mother "was not interested in receiving services from [DSS], including to address *what appeared to be* an overindulgence in cannabis." (Emphasis added). The record shows that even after Mother attended a drug program, she and D.J. tested positive for marijuana at the time of D.J.'s birth. The DSS case workers presented the issue as one of health and safety. Towson, who was also the case worker for Mother's three older children, expressed concern that Mother was "using marijuana, and at the time she was self-medicating." Similarly, Jennings testified that the concern about Mother's marijuana use was "not so much with the marijuana smoking," but with whether "she's using that to self-medicate. That's the only concern."

hair, "to the exclusion of interacting with the other children." Evidence showed that during the visits, Mother did not speak much to J.C. and did not really engage with the other children. According to Jennings, there was not much conversation or engagement between Mother and the children. Towson testified also that Mother loved her children. S.A. testified that she sometimes set up video calls between Mother and D.J.

J.C., who was born in February 2021, lived with Mother for the first six months of his life and then lived with his foster parents continuously since 2 September 2021. Jennings testified that J.C. seemed very happy and "well adjusted" with his foster family. J.C.'s foster father testified that J.C. had contact with his brothers and they had been on "a couple of outings" together.

After her birth in April 2022, D.J. was placed with fictive kin. Shortly thereafter, in May 2022, she was placed with S.A., where she has lived since. Towson testified that D.J. was doing well in her placement, had bonded with her caregivers, and had visits with other paternal relatives. Neither child visited with Mother during the six months she was incarcerated.

The record does not contain a great deal of evidence with respect to the children's attachment to and emotional ties with Mother. The evidence admitted below, however, supported the findings of the juvenile court as to both factors.

4. The length of time the child has resided with the current caregiver

The juvenile court found that "[t]his factor is comparable to the previous in militating in favor of a plan of adoption by non-relatives for [J.C.] and custody and guardianship by a relative for [D.J.]" The court's finding was supported by evidence. At

the time of the May 2023 hearings, J.C. was about two years and three months old. For approximately the first six months of his life, he lived with Mother. From 2 September 2021 to the time of the hearings, he lived continuously with his foster parents. At the time of the May 2023 hearings, D.J. was about thirteen months old and had been in the care of S.A. for nearly her entire life. Under CJP § 3-823(h)(5), "[e]very reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement." There is nothing in the statute, however, that prohibits a court from effectuating a permanent placement in less than twenty-four months.

5. and 6. The potential emotional, developmental, and educational harm to the child if moved from the child's current placement, and the potential harm to the child by remaining in State custody for an excessive period of time

The court found that these considerations "militat[ed] in favor of a plan of adoption by non-relatives for [J.C.] and custody and guardianship by a relative for [D.J.]" As we have noted already, J.C. was well-adjusted with his foster family and D.J. was doing well and had bonded with S.A. The foster parents and S.A. remained committed to caring for J.C. and D.J., respectively, and provided safe and stable homes for them. The court was free to consider the testimony of J.C.'s foster father, S.A., Jennings, and Towson, as well as Mother's failure to engage with DSS to address her mental health issues and the fact that she was residing in a homeless shelter. From that evidence, a reasonable inference could be drawn that moving the children from their current placements would cause emotional, developmental, and educational harm. Likewise, a reasonable inference could be drawn that keeping the children in State custody any longer could cause harm, particularly considering, as we have already noted, that CJP § 3-823(h)(5) requires that "[e]very

reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement." J.C. had been in foster care for about twenty months. Although D.J. had only been in placement for about thirteen months, Mother had not taken any significant steps toward reunification with her.

Summary

In sum, the evidence was more than sufficient to support the juvenile court's decision to change the children's permanency plans. We cannot say that the juvenile court abused its discretion in determining that reunification with Mother was not in the children's best interests.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY, SITTING AS A JUVENILE COURT, AFFIRMED; COSTS TO BE PAID BY APPELLANT.