

Circuit Court for Howard County
Case No.: C-13-JV-22-000065
Case No.: C-13-JV-22-000066
Case No.: C-13-JV-22-000067
Case No.: C-13-JV-22-000068

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1497

September Term, 2023

IN RE: T. F-C; R. F-C; AN. F-C; AS. F-M

Nazarian,
Zic,
Harrell, Glenn T., Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: March 19, 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).

In this child in need of assistance¹ (“CINA”) case, the Howard County Department of Social Services (“the Department”), appellee, removed four children – As. F-M, now age 15; T. F-C, now age 6; R. F-C, now age 4; and An. F-C, now age 2, also appellees – from the care of their mother, T.F. (“Mother”), appellant, based on allegations of neglect. The father of the three youngest children is deceased and As.’ father is incarcerated in North Carolina until 2029 and did not participate in her case.

Mother appeals from the judgment of the Circuit Court for Howard County, sitting as a juvenile court, that granted custody and guardianship of the children to the paternal grandmother of the three younger children, A.W. (“Grandmother”).² That order further granted Mother biweekly visitation and terminated the juvenile court’s jurisdiction.

¹ A “child in need of assistance” is “a child who requires court intervention because” the child has been “abused” or “neglected,” or “has a developmental disability” or “mental disorder,” and whose “parents, guardian, or custodian” cannot or will not “give proper care and attention to the child and the child’s needs.” Md. Code., Cts. & Jud. Proc. (“CJP”) § 3-801(f) and (g).

² The children did not file a brief in this Court, but instead filed a Line taking the position that the juvenile court correctly determined that it was in their best interest to be placed in Grandmother’s custody and asking us to affirm the order of the juvenile court.

QUESTIONS PRESENTED

Mother presents two questions, which we rephrase slightly:³

1. Did the juvenile court abuse its discretion when it denied Mother a brief postponement to obtain new counsel?
2. Did the juvenile court err by granting Grandmother custody and guardianship and terminating its jurisdiction?

We answer those questions in the negative and affirm the order of the juvenile court.

FACTS AND PROCEEDINGS

The CINA Petition

On June 8, 2022, the Department filed a petition in the juvenile court, which it later amended, alleging that the children were CINAs due to neglect. The petition alleged that the Department’s Family Preservation Unit had been working with Mother since 2017. T., R., and An. were born substance-exposed to marijuana and opiates. The Department most recently provided services in March 2022 due to “educational neglect and lack of supervision, [and] placing the children at substantial risk of harm.” Specifically, the Department alleged that As., then age 13 and 14, missed 141/169 days of school during her 7th grade year, and was acting as the primary caregiver for her three younger siblings. T., then age 4 and 5, had missed 64.5/179 days of pre-kindergarten

³ Appellant phrased the questions as follows:

1. Did the juvenile court abuse its discretion when it denied mother a brief postponement to obtain new counsel?
2. Did the court err when it granted [Grandmother] custody and guardianship of the children and terminated jurisdiction over the family instead of keeping reunification with mother as a goal?

from August 2021 to June 2022. The family had been staying in two separate hotel rooms at a Red Roof Inn, with Mother occupying one room and the children in a second room under As.’ care. An. had “open wounds due to a severe diaper rash.” The family was evicted “due to non-payment and filthy, unsanitary, and unsafe living conditions” at the end of April 2022. At the time the CINA petition was filed, the family was living at a Super 8 Motel.

As. was interviewed at her school on June 7, 2022 by social workers with the Department. She stated that she was left to care for her siblings daily and often did not know Mother’s whereabouts. As. cared for her siblings overnight while her Mother slept in another hotel room. “[T]his had been going on for years[,]” according to As. Mother coached As. on what to say to the Department.

That same day, the Department removed the children from Mother’s care and placed them in shelter care. The juvenile court entered a shelter care order on June 9, 2022. Five days after the children were sheltered, they were placed with Grandmother.⁴

Adjudication and Disposition

On July 20, 2022, the juvenile court held an adjudication and disposition hearing. Mother generally denied the allegations of the CINA petition but agreed that the Department could prove the allegations and proceeded by consent. The court sustained the allegations and found that the children were CINAs. It ordered them committed to

⁴ Because Grandmother’s home was undergoing renovations, the children lived briefly with the younger children’s paternal great-grandmother.

the custody of the Department, with “liberal[,] supervised” visitation with Mother. In a supplemental order, the court directed Mother to “complete a psychological assessment with a parenting component,” a substance abuse evaluation, a parenting class, to reengage with individual therapy, to participate in family therapy with As. when therapeutically appropriate, and to follow any treatment recommendations.

The Initial Review Hearing

The juvenile court held an initial review hearing on December 21, 2022. The children were living with Grandmother. The younger children were doing well, but As. was struggling academically and behaviorally at her middle school. Grandmother wished to transition As. to a school close to her home and As., through counsel, agreed with that request. The Department recommended that the children remain with Grandmother.

Mother, who was living at a hotel in Savage, Maryland, did not contest the Department’s recommendation. She recently had completed a psychological evaluation focused upon her parenting capacity. The evaluation concluded that Mother did not currently have adequate support for her depressive disorder, anxiety disorder, and mild cannabis use disorder such that she “currently” does not have parental capacity to care for her children. The psychologist recommended that Mother consult with a neurologist regarding her back pain, undergo a substance abuse evaluation and a psychiatric evaluation, attend parenting classes, participate in psychotherapy, and obtain stable housing and employment. Her counsel stated that Mother understood that before the children could be reunited with her, she needed to “have a home for them to come to and

a way to support them” and that, based on her evaluation, she also had “some things to do on that front as well[.]”

The court entered an order continuing the children in the care and custody of the Department for placement in foster care; ordering “liberal[,] supervised” visitation between Mother and the children; and ordering Mother to participate in parenting classes, reengage with individual therapy, obtain stable housing, and participate in a substance abuse evaluation.

Initial Permanency Planning Hearing

On May 10, 2023 the juvenile court held an initial permanency planning review hearing. In advance of that hearing, the Department filed a court report that set out the following relevant facts, none of which were contested at the hearing. The children continued to live with Grandmother. As. had transferred to a new middle school near Grandmother’s house. Though she continued to struggle behaviorally, she was passing her core academic classes and was expected to graduate. In February, As. threatened suicide in a text message sent to her court appointed special advocate. She was hospitalized from February 10 through 13. Mother reported that “she was out of town” and attempted to contact Grandmother when Mother returned on February 13. Mother contacted Grandmother’s daughter who told Mother to communicate to Grandmother. Mother did not call As. As. was in individual therapy.

Mother was attending an outpatient mental health program. Mother took several prescription medications but had not shown them to the Department. The Department was unable to reach the “medication management” physician that Mother identified.

Mother visits with her children when she arranges it with Grandmother. When Mother visits with the children, she is minimally engaged with them and spends most of the time on her cell phone. In January 2023, Mother visited with the children at Burger King. Prior to that visit, Grandmother had confiscated As.’ cell phone as a consequence for behavioral issues. When Mother arrived and observed that Grandmother had returned As. cellphone to her, Mother became angry that As. had not told her that she had her phone back. The younger children were scared because Mother and As. were yelling at each other. Mother bought lunch for the younger children but did not buy lunch for As. At the following visit, Mother asked to meet only with the three younger children.

For a period of about three months, the Department tried to arrange a meeting with Mother to discuss her previous evaluations and the Department’s Service Agreement. The meeting finally was held on March 14, 2023. Mother reported that she worked as a makeup artist for a high school basketball team and wrote papers for college students. She was paid in cash for both jobs. Mother was looking for housing in Lanham, Maryland and was in the process of obtaining her medical marijuana card. Mother stated that she would undergo a substance abuse evaluation once she received approval for her card.

At the hearing, As. told the court that she was upset that when she was hospitalized Mother did not “show up” or “call” her.

The Department recommended a permanency plan of reunification with Mother. Children’s counsel recommended a permanency plan of custody and guardianship to Grandmother, noting that Mother had not made “any progress” and the children were

“thriving” in Grandmother’s care.⁵ Mother agreed with the Department’s recommendation, arguing that it was premature to change the permanency plan. Her counsel explained that she understood that “the clock is ticking” and realized that there were things she had to do before the children could return to her care.

The magistrate recommended a concurrent plan of reunification and custody and guardianship to a relative. The next review hearing was scheduled for August 2, 2023, and the magistrate noted that what happens at that hearing was “pretty much going to be affected by what [Mother] manages to get done or not get done.”

The magistrate filed recommendations on May 10, 2023. Mother did not note any exceptions. The juvenile court entered an order adopting the magistrate’s findings and recommendation on May 23, 2023.

The Contested Magistrate’s Hearing

On July 21, 2023, the Department filed a court report recommending that custody and guardianship of the children be granted to Grandmother and that the juvenile court terminate jurisdiction over them. A contested review hearing before a magistrate commenced on August 2, 2023.

Mother testified that she needed more time because she had “checked off every box” except finding stable housing. She recently had signed up for the Howard County housing voucher program. Mother maintained that it would be “cruel” and “traumatizing” for the children to be taken away from her after recently losing their

⁵ Counsel explained that her position represented the considered judgment of As., and that Counsel substituted her judgment for the younger children.

father. She said if she was given a few more months, she would “definitely” obtain housing. Mother emphasized that she respected As.’ wishes and would not try to force her to return to live with Mother if she was more comfortable staying with Grandmother.

Mother introduced into evidence a letter from Prosperity Clinic that stated that she had been treated for pain management between April and July 2023 by a physician assistant who no longer worked for the practice. The clinic had been “unable to reach” Mother’s prior treatment provider for an update on her treatment plan. Though the letter stated that Mother’s complete medical records were attached to “provide the court with a comprehensive overview of [Mother’s] medical history and treatment progress,” the records were not made part of the exhibit. The Department and children’s counsel objected to admission of the letter, noting that it was undated and unsigned. The magistrate ruled that the objections went to weight and admitted the letter “for what it’s worth.”

As. testified that Mother was given a full year to “do what she’s supposed to do” and had only recently begun doing so. As. asked the court to award custody and guardianship to Grandmother. She said that Mother was making excuses and focusing on her “mindset” rather than concrete “actions.”

Grandmother testified that at the most recent visit, Mother “came in [] smelling [and] reeking.” Grandmother stated, “I don’t know what she had but it was awful.” She

then stated that she did not believe that Mother could be “attentive” to her youngest children – who were ages “two, four, and six” – while “under the influence.”⁶

The court asked Mother’s attorney whether she had completed a substance abuse evaluation. Counsel responded that Mother had provided him some documents “late last night” and that he needed to review them but asked the court to allow him to recall Mother in rebuttal to testify about that.

In her rebuttal testimony, Mother disputed that she waited until the “last minute” to complete services, explaining that she did not realize that she had to communicate to the Department about her progress. She also disputed that she had been under the influence during her last visit, noting that she lives in a hotel and that smells linger. Mother stated that she had completed a substance abuse evaluation and a psychiatric evaluation at “Brighter Days.” She had provided a letter to her attorney from the treatment provider “last night.” According to Mother, it stated that she:

didn’t need any further substance abuse treatment. [The treatment provider] looked over my drug tests and everything that I’d been taking because I’d been doing drug tests every two weeks for months. I provided those results to [Hadassah Freed, the foster care social worker assigned to the children’s case] as well. And [the treatment provider] said he didn’t feel like I needed any further substance abuse. We were just going to continue with my mental health plan which was, you know, therapy and dealing with my anxiety and my depression.

⁶ Mother’s counsel argued that because Maryland had recently legalized the recreational use of cannabis, Mother’s use of that substance could not be a basis for a finding of neglect unless it harmed the children or put them at risk of harm. *See* CJP § 3-801(s)(2). Counsel specified that neglect under the CINA subtitle “does not include the use of cannabis by any parent . . . unless, as a result of the use of cannabis the child’s health,” welfare, or mental health is harmed or at substantial risk of harm.

The magistrate determined *sua sponte* to continue the matter until August 30, 2023 to ensure that all of the documentation was before the court. Counsel for the children objected, emphasizing that Mother provided this documentation to her attorney the night before the hearing, which was too late. The court recognized that this was problematic but directed Mother’s counsel to submit any documents by the end of the week and continued the review hearing.

At the continued review hearing, after the magistrate began hearing testimony from a witness called by the children, Mother stated that she wanted to go “in front of a judge anyway.” The Department interjected that if it was Mother’s intention to go through this hearing and then file exceptions and go before a judge for a *de novo* hearing,⁷ it would request that the matter be continued and scheduled in front of a judge. Mother agreed, stating, “Yes, I think that we need to do that.” Children’s counsel argued that an initial decision by the magistrate still would be “advantageous.” The magistrate noted that she only had postponed the hearing to “get further documentation” from Mother but determined that it would be more efficient to reset the hearing in front of a judge.⁸

⁷ A party other than the State that files exceptions to a decision of a magistrate in a CINA proceeding may elect a hearing *de novo* before a judge on the matters to which exceptions have been taken. CJP §§ 3-807(c)(2), (4).

⁸ No exhibits were introduced at the hearing before the magistrate made this determination. Mother filed a motion in this Court to supplement the record to reflect that her attorney had pre-filed two exhibits in MDEC on August 29, 2023, one labeled “Prosperity Letter” and one labeled “Brighter Days Letter.” The exhibits were not attached to the motion to supplement, however. This Court denied the motion to supplement by ordered entered December 21, 2023.

The Continued Contested Hearing Before a Judge

Mother's Postponement Request

Three weeks later, on September 20, 2023, the parties appeared before a judge. At the outset of the hearing, Mother's counsel advised the court that Mother had discharged him that morning and asked to withdraw from the case. Mother confirmed that it was her desire to hire a private attorney, whom she identified by name. The court asked Mother if she understood that the hearing would be "going forward" that day. Mother replied, "Well, I do need to have time for my other counsel to come in." She requested a continuance for "maybe a week or something" to allow her to hire new counsel.

The Department and children's counsel opposed the request for postponement.

Mother argued that she needed a "more zealous attorney" who would "advocate for [her]." The court asked when she had received notice of the hearing date. Mother responded that she received it on September 1, 2023 and spoke to private counsel, but that she "had to be able to try to afford the retainer[.]"

After hearing more about the history of the proceedings, the court ruled that it would not postpone the hearing. The court advised Mother that she could proceed with her current attorney or represent herself at the hearing. Mother elected to continue with her current counsel and requested an opportunity to confer in a breakout room.

Mother's attorney also requested a postponement, stating that he was not prepared to proceed both because Mother sought to discharge him and because she had not been "communicating with [him] lately." The court recognized the difficult position counsel

was in due to the lack of communication but directed him to confer with Mother in the breakout room.

The Department's Case

In its case, the Department called Hadassah Freed, the foster care social worker assigned to the children's case. Ms. Freed recommended that Grandmother be granted custody and guardianship of the children. She testified that the children were "very bonded" to Grandmother and were "thriv[ing] with the stability and structure that she provides[.]" Mother was "inconsisten[t]" with her visits and had made "minimal progress" since the children entered foster care. For example, the "visitation schedule" is "weekly visitation," but Mother had not visited with the children "in the last several weeks." The reasons offered for missing visits varied, but often Mother was "upset" with Grandmother and with Ms. Freed, she was "out of town," or she was "ill."

Mother had completed her psychological evaluation and taken an online parenting class, but she had not provided the Department with documentation of a substance abuse evaluation; she had not obtained stable housing; she had not maintained stable employment; and she had not followed the recommendations of the psychologist, including seeing a neurologist concerning her back pain or submitting to a psychiatric evaluation.

Ms. Freed testified that Mother often smelled of marijuana when she arrived for visits with the children. Mother also was "prescribed medications" and had sent the Department photographs of her prescription bottles. The medications had been

prescribed by three different providers in differing doses and the Department only was able to confirm one of the prescriptions with a provider who had since left the practice.

Ms. Freed believed Mother was currently living in a hotel in Elkridge. Prior to that, she had lived in a different hotel in Ellicott City and, prior to that, a third hotel in either Ellicott City or Columbia.

Ms. Freed did not believe that the children would be safe if they were returned to Mother’s care because her “status today is really the same as when the kids came into care.” She still lived in a hotel and had not found stable employment. Her inconsistency with visitation also raised concerns. There was no evidence that Mother would be able to provide the children with stable and consistent care.

Ms. Freed stated that the children were bonded to Grandmother. Even in Mother’s presence during visits, Ms. Freed observed that they sought out Grandmother for comfort, not Mother.

In response to questions from the court, Ms. Freed testified that As.’ therapist determined that it was “not therapeutically recommended” for Mother to participate in family therapy with As. “at this time” because Mother was not “in a space to hear As[.]” Though Mother had been consistently working with As.’ therapist, in recent weeks she had been unresponsive when the therapist reached out to her.

The Children’s Case

Children’s counsel called three witnesses: Grandmother, As., and Mother’s maternal grandfather (“TF”). Grandmother testified that Mother had visited with the children no more than ten times in 2023, despite being entitled to weekly visits. After the

incident at the Burger King in January 2023, Grandmother asked the Department to begin supervising the visits between Mother and the children.

Grandmother had completed a home study through the Department and was approved as a caretaker for the children. She expressed concern that if the children were returned to Mother’s care, they would become depressed, and that As. would resume a parental role with her younger siblings.

She explained that since the children entered her care, she had ensured that they received proper medical and dental care. T had 12 cavities that needed to be filled. She noted that the children were behind in vaccinations when they entered her care but were now up to date on all of their medical needs. Mother was invited to attend medical and dental appointments but did not do so.

As. testified that when she and her siblings lived with Mother, it was “depressing” because Mother “wasn’t there.” As. acted “like the mom” but she was too young and needed to take care of herself. She could not attend school and often did not know Mother’s whereabouts. Since she and her siblings moved in with Grandmother, As. was “able to be a kid.” She had friends and could participate in school activities. She had recently started high school and made the cheerleading team.

As. felt “great” about living with Grandmother and wanted the court to grant her custody and guardianship. She did not want to resume living with Mother, noting that she spent “half of [her] life” in hotels and Mother still was living in a hotel.

With respect to Mother’s marijuana use, it bothered As. that Mother was under the influence when she visited with the children. As. noticed that Mother was high during visits at least five or six times.

As. testified that she was “hurt” and felt “let down” when Mother requested a postponement before the magistrate in August because she “just wanted the case to close[.]” It was overwhelming for her and took “a toll on [her] mental health” every time she had to appear in court to testify.

TF testified that As. lived with him in North Carolina from birth until around age five. Mother left As. with him and did not tell him she was leaving. TF had given Mother money for hotels “[c]ountless times.”

Mother’s Case

In her case, Mother testified and called her mother (“VF”). VF testified that Mother just needed the opportunity to find housing and then she would be able to care for her children. She disputed TF’s testimony that he cared for As. in North Carolina. She explained that she lived with TF during that period and that she was As.’ caregiver, not TF. She acknowledged that Mother did leave As. with her and TF and go to Florida, though she was unsure how long Mother was gone. VF stated that she does not have a relationship with Grandmother and the two are not in contact.

VF provided money for hotels for Mother “[m]any, many, many, many[, m]any[, m]any” times. Mother could not work because she was disabled, according to VF. The disability is related to “degenerative disc disease,” “a cyst on her spine,” and “something with her hip[.]”

Mother testified that she had “completed the majority of the tasks that were asked of [her].” She provided documentation to Ms. Freed in June 2023 showing that she had been approved for temporary disability and was receiving disability payments. She also submitted “signed paperwork from [her] doctor” that stated that she could not “work for a year.” She had completed a substance abuse assessment and a psychiatric evaluation. She had a “lump sum of income” and had been approved for the Howard County housing voucher program.

Mother introduced into evidence the letter from Prosperity Clinic. She explained that she suffers from “degenerative disc disease,” has “a cyst on the root of [her] nerve,” and has a “cam disorder with [her] hips.” She experienced severe postpartum depression after An. was born, which was also shortly after the father of her younger children died unexpectedly.

Mother explained that she did not intend to resume caring for her children while living at a hotel. She wanted time and to work with Grandmother to gradually transition the children back into her care once she was able to find suitable housing. She anticipated that within three, and not more than six, months she would be ready to begin that transition.

In response to questioning from the court, Mother testified that she had lived in hotels since around 2018 and only had applied for a housing voucher in the past year. The last time she was regularly employed was in 2013 or 2014, when she worked as a substitute teacher. The court asked about new savings Mother referenced during her cross-examination. She responded that because she had been able to improve her credit

score, she had taken out an \$8,000 line of credit. The court questioned how she would afford rent if she was able to find housing. She explained that she wanted to go back to school and treat her back pain so that she could work again.

The Court's Ruling

The juvenile court stated that there is no dispute that since the children entered Grandmother's care over a year earlier, they had been "well cared for and are stable and are getting their health needs, medical needs met, their educational needs met, and physical and emotional needs are being met." The children were "fragile" given the trauma of losing their father (As.' stepfather).

Though Mother argued that she had made significant progress, she pointed to the rise in her credit score and to her line of credit. Because that was not a stream of income, however, the court reasoned that even if Mother was able to obtain housing, it is not certain that she could maintain stable housing, which would be detrimental to the children. The court emphasized Mother's testimony that she had not been steadily employed since 2014 and had not lived outside of a hotel since 2018, when she and her late husband lived with Grandmother. The court was skeptical of Mother's testimony that she could achieve a stable housing situation in three to six months given there is not a "basis for that." The court ruled that it was in the best interests of the children for custody and guardianship to be granted to Grandmother and for the CINA cases to be closed. The ruling stated that Mother is to have access to the children at least once every two weeks, as agreed between her and Grandmother. Mother would be responsible for her own transportation.

On September 27, 2023, the court entered a permanency planning review order encompassing these findings and rulings and, separately, a custody and visitation order. This timely appeal followed.

DISCUSSION

I. THE COURT DID NOT ERR IN DENYING MOTHER’S POSTPONEMENT REQUEST.

“CINA cases are civil proceedings.” *In re Ashley E.*, 158 Md. App. 144, 164 (2004) (citations omitted). In a civil case, under Maryland Rule 2-508, the circuit court “may continue [] a trial or other proceeding as justice may require.” The Supreme Court of Maryland has held that this language means that the granting or denial of a continuance or postponement is “within the sound discretion of the trial” court. *Touzeau v. Deffinbaugh*, 394 Md. 654, 667 (2006). Consequently, this Court will not disturb a trial court’s denial of a motion to postpone “except on a clear showing of abuse of discretion[.]” *Jenkins v. City of College Park*, 379 Md. 142, 165 (2003) (quotation marks and citation omitted); *see also Touzeau*, 394 Md. at 669 (“Absent an abuse of that discretion we historically have not disturbed the decision to deny a motion for continuance.”) (citations omitted). An abuse of discretion occurs when the judicial ruling in question is “manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *Jenkins*, 379 Md. at 165 (quotation marks and citation omitted).

Mother asserts that because parents are afforded a right to counsel in CINA proceedings, *see* CJP § 3-813(a), this Court should be guided by the procedural protections afforded to criminal defendants who seek to discharge counsel before trial.

She contends the court’s decision here was manifestly unreasonable for three reasons. First, she only requested a brief postponement of a week. Second, the reason she gave for discharging her counsel – his lack of zealous advocacy – was meritorious. Third, her counsel explained that he was not prepared to represent Mother at her hearing that day.

The decision in *Touzeau* is instructive. There, the Supreme Court of Maryland considered whether a trial court abused its discretion by denying a motion made eleven days prior to trial for a continuance to permit an unrepresented party to retain counsel in a contested child custody action. 394 Md. at 665-66. In answering “no” to this question, the Court first identified three scenarios in which a trial court’s denial of a request for a continuance will be treated as an abuse of discretion: (1) when the continuance is “mandated by law;” (2) when counsel is “taken by surprise by an unforeseen event at trial,” even though counsel has “diligently” prepared “for trial;” and (3) when an unforeseen event occurs that prejudices a party as long as counsel (or the party) “acted with diligence to mitigate the effects of the surprise.” *Id.* at 669-70.

In the case before us, Mother does not assert that there was a Maryland statute or rule that required the trial court to grant a postponement in a CINA case to enable a parent to obtain different counsel. There was no requirement for the trial court to invoke the procedures required by Rule 4-215, as argued by Mother, which have no applicability to CINA proceedings.⁹ *See Touzeau*, 394 Md. at 676 (noting that though parents in

⁹ That Rule requires, as pertinent, that a court first determine the meritoriousness of a criminal defendant’s request to discharge counsel and, if it has merit, to permit the discharge and grant a continuance, if necessary. Md. Rule 4-215(e).

CINA proceedings are afforded due process protections, the Court had “declined to require the full panoply of constitutional due process protections to litigants, as afforded to defendants in criminal cases”) (citation omitted). Though Mother focused upon the meritoriousness of her request, the issue before us is not whether Mother had the right to retain private counsel (she did), but whether she was entitled to a postponement on the day of the contested permanency planning hearing to give her an opportunity to do so.

There likewise was no unforeseen event that caught Mother or her counsel by surprise and that justified the grant of a postponement. Mother had been represented by appointed counsel since June 9, 2022, more than a year before the permanency planning review hearing at issue. The record does not reflect at what point Mother became dissatisfied with counsel’s representation. At the time of the hearing, it had been nearly four months since the court adopted a concurrent permanency plan of reunification *and* custody and guardianship to a relative. Mother was on notice as of July 21, 2023 that the Department recommended that custody and guardianship be granted to Grandmother. Mother did not seek to discharge appointed counsel and hire private counsel when she learned of the Department’s recommendation, at the August 2, 2023 permanency planning review hearing, in the interim between that hearing and the continued hearing on August 30, 2023, or when she requested a hearing before a judge, instead of magistrate.

Though Mother’s attorney also asked for a postponement, the primary basis for his request was Mother’s failure to “communicat[e]” with him “lately.” We agree with the Department that a party’s failure to communicate with their attorney cannot be a

justification for postponing a permanency planning review hearing as it runs counter to the child’s interest in permanency. *See In re Adoption of Jayden G.*, 433 Md. 50, 82 (2013) (“A critical factor in determining what is in the best interest of a child is the desire for permanency in the child’s life.”) (citation omitted). For all these reasons, the court did not abuse its broad discretion by denying Mother’s belated request for a postponement to allow her to hire private counsel.¹⁰

II. THE COURT DID NOT ERR WHEN IT GRANTED CUSTODY AND GUARDIANSHIP TO GRANDMOTHER.

A. Standard of Review

We review CINA proceedings under three distinct but interrelated standards. *In re Yve S.*, 373 Md. 551, 586 (2003). First, “[w]e review legal questions without deference, and if the lower court erred, further proceedings are ordinarily required unless the error is harmless.” *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018) (citing *In re Adoption of Ta’Niya C.*, 417 Md. 90, 100 (2010)). Second, we review the juvenile

¹⁰ Mother argues on appeal that her counsel’s failure to offer into evidence a letter from Bright Point Wellness that he pre-filed as an exhibit in advance of the August 30, 2023 magistrate’s hearing is evidence that counsel was not effectively representing her. As noted, this Court denied Mother’s motion to correct the record to include evidence that an exhibit labeled “Brighter Days letter” was pre-filed, but not introduced at the hearing. Given that the contents of the letter were not made part of the record in the circuit court or on appeal, we cannot assess whether the decision not to introduce it was inadvertent or a strategic choice.

In any event, as our ensuing discussion makes clear, the record reflects that Mother’s failure to maintain stable housing over a lengthy period of time and the lack of evidence that she would be able to correct that deficiency in the foreseeable future was the juvenile court’s focus. Thus, even assuming that the content of the letter established that Mother had completed a substance abuse evaluation and did not require any further treatment, counsel’s failure to introduce that letter into evidence did not prejudice her.

court’s findings of fact for clear error. Md. Rule 8-131(c); *In re Yve S.*, 373 Md. at 586.

“A finding of a trial court is not clearly erroneous if there is competent or material evidence in the record to support the court’s conclusion.” *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996). Finally, we review the court’s ultimate decision for abuse of discretion. *In re Yve S.*, 373 Md. at 585-86.

“Throughout our review, we are mindful that ‘[b]ecause the overarching consideration in approving a permanency plan is the best interests of the child, we examine the juvenile court’s decision to see whether its determination of the child’s best interests was “beyond the fringe” of what is “minimally acceptable.”’” *In re: M.*, 251 Md. App. 86, 111 (2021) (citations omitted). We recognize that:

it is within the sound discretion of the [juvenile court] to award custody according to the exigencies of each case, and . . . [s]uch broad discretion is vested in the [juvenile court] because only [the juvenile judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [the juvenile judge] 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.

In re Yve S., 373 Md. at 585-86.

B. Procedural Arguments

Mother raises procedural and substantive challenges to the juvenile court’s ruling. We begin with her procedural challenges. Mother contends that the juvenile court erred by relying upon unadmitted documents to make findings in support of its ruling. Specifically, the permanency planning review order referenced a home study completed for Grandmother’s home; the most recent court report filed by the Department; and a

Court Appointed Special Advocate (“CASA”)¹¹ report, none of which were introduced into evidence. The Department responds that much of the information contained in those reports was the subject of testimony before the juvenile court.

Many of the findings in the juvenile court’s order were identical to findings in the initial permanency planning review order, entered on May 23, 2023. The juvenile court was permitted to take judicial notice of its prior orders. *See* Md. Rule 5-201(c) (permitting a court to take judicial notice on its own initiative); *In re: H.R., E.R. & J.R.*, 238 Md. App. 374, 401-02 (2018) (juvenile court may take judicial notice of prior CINA orders). Likewise, because the juvenile court is required by statute to take notice of a home study report before it may grant custody and guardianship to a relative, it properly considered the home study report conducted for Grandmother’s home, which also was the subject of testimony at the hearing. *See* CJP §§ 3-819.2(f)(1)(iii)-(2). Because the remaining facts in the order were the subject of testimony at the hearing from Ms. Freed, Grandmother, Mother, and As., we are not persuaded that Mother suffered any prejudice occasioned by the court reviewing the Department’s court report or the CASA report that covered the same topics.¹²

¹¹ Due to a “growing concern regarding lack of quality legal representation for abused and neglected children,” the CASA advocacy program was created to “represent the best interests of children.” *In re Billy W.*, 387 Md. 405, 435 (2005).

¹² Had the Department moved for their admission, the Department’s court report and the CASA report would have been presumptively admissible as public records, subject only to reliability challenges. *See In re H.R.*, 238 Md. App. at 406-07.

C. Substantive Arguments

On the merits, Mother contends that the juvenile court erred by not keeping “reunification on the table” given the short time since the children were removed from Mother’s care. She points to evidence showing that Mother was making progress in satisfying the court ordered services, including by undergoing psychological, substance abuse and psychiatric evaluations, attending therapy, and working towards family therapy with As.

The Department responds that there was ample evidence supporting the juvenile court’s finding that it was in the best interests of the children for Grandmother to be granted custody and guardianship. We agree.

In determining a permanency plan for a child adjudicated a CINA, a juvenile court shall “to the extent consistent with the best interests of the child,” prioritize “[r]eunification with the parent or guardian” over a plan giving custody or guardianship to a relative. *See* CJP § 3-823(e)(1)(i) (setting forth descending order of priority for permanency plans). Nevertheless, “if there are weighty circumstances indicating that reunification with the parent is not in the child’s best interest, the court should modify the permanency plan to a more appropriate arrangement.” *In re Adoption of Cadence B.*, 417 Md. 146, 157 (2010) (citation omitted). In assessing whether to change a permanency plan, the juvenile “court shall consider the factors specified in” section 5-525(f)(1) of the Family Law Article (“FL”). CJP § 3-823(e)(2).

The six FL § 5-525(f)(1) factors are: 1) “the child’s ability to be safe and healthy in the home of the child’s parent;” 2) “the child’s attachment and emotional ties to [his or

her] natural parents and siblings;” 3) “the child’s emotional attachment to [his or her] current caregiver and the caregivers’ family;” 4) “the length of time the child has resided with the current caregiver;” 5) “the potential emotional, developmental, and educational harm to the child if moved from the child’s current placement;” and 6) “the potential harm to the child by remaining in State custody for an excessive period of time.”¹³

“While the [circuit] court is required to consider the ‘relevant statutory factors’ and ‘make specific findings based on the evidence with respect to each of them,’ the court is ‘not required to recite the magic words of a legal test.’” *In re D.M.*, 250 Md. App. 541, 563 (2021) (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). Here, the court did not specifically enumerate the factors, but the record reflects that the court considered the requisite factors in making its decision.

¹³ Before granting custody and guardianship, circuit courts must also consider the following:

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

CJP § 3-819.2(f)(1).

On the first factor, the court found that the children could not be safe and healthy in Mother’s care given the “gross instability” of her past care and the lack of evidence that Mother’s living conditions had changed in any appreciable way. The evidence showed that when Mother cared for the children, An. developed a severe diaper rash with open wounds, the children fell behind on vaccinations and routine medical and dental care, and the younger children were primarily cared for by their then 13-year-old sibling. The evidence further showed that the family lived in hotel rooms that were in unsanitary condition.

Though there was evidence showing that Mother had made progress in certain areas since the children were removed from her care, the juvenile court was primarily focused upon Mother’s housing and employment instability. The court found that Mother had lived in hotels for five years and continued to live in hotels at the time of the review hearing. The court reasonably found the evidence unpersuasive that she could obtain stable housing in the foreseeable future given that she did not have stable employment or a source of income beyond her disability income and a line of credit that she would have to repay. The court did not credit Mother’s testimony that she could obtain housing in three to six months, finding it unsupported by any evidence or by her past behavior. *See In re Adriana T.*, 208 Md. App. 545, 570 (2012) (“It has long been established that a parent’s past conduct is relevant to a consideration of the parent’s future conduct. Reliance upon past behavior as a basis for ascertaining the parent’s present and future actions directly serves the purpose of the CINA statute.”) (citations omitted).

On the second and third FL § 5-525 factors, addressing the children’s bond with Mother, each other, and Grandmother, the court found that the children were thriving in Grandmother’s care and that their medical, educational, physical, and emotional needs all were being met in her care. The court further found that the children were “fragile” and had been negatively affected by the instability of their care with Mother, as well as traumatized by the death of the younger children’s father (and As.’ stepfather). The court noted that As., who was the only child with considered judgment, testified that she felt safe with Grandmother and was able to “be a teenager as opposed to ‘a parent’ to her younger siblings.” She appreciated the stability in Grandmother’s home. The juvenile court found explicitly that the children “need stability” to thrive.

Mother emphasizes the “total omission of any findings” about the children’s attachment and/or emotional ties to her. The juvenile court did not have significant evidence before it about the children’s attachment to Mother. There was evidence that As. spent her early years being cared for by her maternal grandmother and her maternal great-grandfather and, more recently, had herself acted as the parent to her younger siblings. As. testified that she wanted to remain with Grandmother permanently. Ms. Freed testified that when the younger children needed comfort during visits with Mother, they sought out Grandmother, not Mother. She further testified that As.’ therapist did not believe it was therapeutically appropriate to begin family therapy with As. and Mother because Mother was not prepared to listen to As. Ms. Freed and Grandmother also testified that Mother was inconsistent with visits. Considering the record in this case, the

juvenile court reasonably focused upon the existence of the bond between the children and Grandmother.

The last three FL § 5-525 factors all bear upon the time spent in care and the harm that could result if the children were removed from the current caregiver or remained in State care for too long. Though the children had been in Grandmother’s care for just over a year, the same evidence discussed above showed that they were strongly attached to her and thriving in her care. The court found that the Department had made “extensive efforts to work with [Mother],” but that she had not made sufficient progress in ameliorating the conditions that led to the children being removed from her care, most significantly housing instability. There also was evidence before the court that As. was traumatized by appearing in court, testifying that it “took a toll on [her] mental health” and stating that she just wanted the security of knowing that she would remain in Grandmother’s care.

Considering the court’s findings bearing on all the relevant statutory factors, none of which were clearly erroneous, it did not abuse its discretion by determining that it was in the best interests of the children for custody and guardianship to be granted to Grandmother, with visitation rights granted to Mother, and to terminate the jurisdiction of the juvenile court.

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