Circuit Court for Prince George's County
Case No. CINA-21-0067

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1992

September Term, 2022

IN RE: C.L.

Nazarian,
Tang,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Getty, J.

Filed: August 16, 2023

*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).

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Under State law, a local department of social services that has reason to believe that a child is a victim of abuse or neglect may initiate an action in juvenile court to have the child declared a "child in need of assistance"—commonly known by the acronym "CINA."[1] If the juvenile court ultimately finds that the child is a CINA, additional proceedings are held by the court to provide the necessary assistance to the child.

In this case, appellant mother ("Ms. D.L.") gave birth to C.L. in May 2021 after which Ms. D.L. and C.L. both tested positive for phencyclidine, commonly known as "PCP." Upon C.L.'s release from the hospital, Ms. D.L. and C.L. resided in the Shepherd's Cove Women's Shelter (the "Shelter"). The Shelter alerted the Prince George's County Department of Social Services (the "Department") about concerns over C.L.'s care. After an investigation, the Department filed a CINA Petition.

The Circuit Court for Prince George's County sitting as a juvenile court granted temporary limited guardianship to the Department, ordered shelter care and later adjudicated C.L. a CINA. During the course of several permanency plan hearings, C.L. was placed in foster care due to the inability of Ms. D.L. to complete substance abuse treatment and properly provide newborn care. While the Department sought reunification and considered placement of C.L. with a relative caregiver, maternal uncle Mr. J.L., these efforts were impeded for various reasons.

[1] A CINA is a "child who requires court intervention" because he or she "has been abused, has been neglected, has a developmental disability, or has a mental disorder," and his or her "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).

At a final permanency plan hearing in December 2022, the juvenile court granted custody and guardianship to the nonrelative foster caregivers. In addition, the court granted weekly visitation to Ms. D.L. and Mr. J.L. and it terminated its jurisdiction.

On appeal, Ms. D.L. presents the following questions for this Court's review:

> 1. Did the juvenile court abuse its discretion when it granted custody and guardianship of C.L. to his nonrelative caregivers and terminated jurisdiction over the child where both reunification with mother, [Ms. D.L.], and custody and guardianship with maternal uncle [Mr. J.L.]—preferred permanency plans—remained viable options in the child's best interests?
>
> 2. Did the juvenile court engage in reversible error when it failed to make any express findings concerning whether it remained in C.L.'s best interests to continue to pursue custody and guardianship with his maternal uncle, [Mr. J.L.]?

For the reasons set forth below, we shall affirm the judgment of the juvenile court.

FACTS & PROCEDURAL HISTORY

A. Events Leading to C.L.'s Being Declared a CINA and Placement into Foster Care

Ms. D.L., gave birth to C.L. in May 2021, and both mother and child tested positive for PCP. According to hospital reports, Ms. D.L. had no prenatal care, and she was unprepared for the baby. The Department met with Ms. D.L. the next day to perform a Substance Exposed Newborn Evaluation ("SENE").[2] During the SENE, Ms. D.L. denied

[2] Promptly after receiving a substance exposed newborn report from a health care practitioner, the local department "shall assess the risk of harm to and the safety of the newborn to determine whether any further intervention is necessary." FL § 5-704.2(h)(1). "If the local department determines that further intervention is necessary, the local department shall: (i) develop a plan of safe care for the newborn; (ii) assess and refer the family for appropriate services, including alcohol or drug treatment; and (iii) as necessary,

using PCP during her pregnancy. She proffered that she was not aware of how she could have tested positive for PCP but perhaps it was because she took a cigarette from someone at the Shepherd's Cove Women's Shelter (Ms. D.L.'s most current residence).

The Department attempted to get information on the father and other family members, but Ms. D.L. refused to identify the father and stated that he was nonexistent and would not be a part of the newborn's life. Additionally, Ms. D.L. was unable to locate any family members to help supervise her and the newborn as required by substance exposed newborn policy. Accordingly, the Department referred Ms. D.L. to the Prince George's County Health Department ("Health Department") for an in-patient alcohol and drug evaluation.

After her discharge from the hospital on May 28, Ms. D.L. went back to living at the Shelter. However, C.L. remained at the hospital because the hospital staff observed certain medical concerns for C.L. including mild tremors, poor feeding habits, and not sleeping well after feeding.

Shortly after her return to the Shelter, Ms. D.L. presented herself to the Health Department for the in-patient alcohol and drug evaluation. The Health Department determined that Ms. D.L. did not meet the criteria for in-patient care because she denied taking PCP and denied any history of substance abuse. Subsequently, the Health

develop a plan to monitor the safety of the newborn and the family's participation in appropriate services." FL § 5-704.2(h)(2).

Department referred Ms. D.L. to Bridging the Gap, a substance abuse treatment facility, to complete a full alcohol and drug evaluation.

Ms. D.L. completed her assessment with Bridging the Gap on June 7. Ms. D.L.'s urinalysis tested positive for PCP; however, Ms. D.L. claimed that she was not using drugs. Bridging the Gap recommended that Ms. D.L. undergo outpatient treatment for a duration of 18 weeks and scheduled her for meetings two times a week. On the same day, C.L. was discharged from the hospital and the Department released C.L. to live with Ms. D.L. at the Shelter under a safety plan. The safety plan required Ms. D.L. to notify either her case manager at the Shelter or the Department whenever C.L. was taken out of the Shelter. In addition, the safety plan prohibited Ms. D.L. from "co-sleeping" with C.L.

Ms. D.L. complied with the safety plan for three days before individuals at the family shelter expressed concerns for C.L.'s well-being. On the evening of June 10, the Department received a phone call from the Shelter reporting that Ms. D.L. left with C.L. When she returned, Ms. D.L. was "noticeably high," incoherent, slurring her speech, and holding C.L. with C.L.'s head dangling. A social worker from the Department responded to the call, visited the Shelter, and found C.L. sleeping in the same bed as Ms. D.L.

Staff members of the Shelter and the Department met on June 11 to discuss C.L.'s well-being under Ms. D.L.'s care. In particular, Shelter staff informed the Department that they observed Ms. D.L. leave the Shelter with C.L. on multiple nights and return in an inebriated state. After the meeting, the Department filed a CINA Petition for temporary

guardianship to remove C.L. from Ms. D.L.'s care and for shelter care so that C.L. could be placed in out-of-home care.

The juvenile court held a shelter care hearing on June 14, in which the court found that it was contrary to the newborn's welfare to leave C.L. in Ms. D.L.'s care due to Ms. D.L.'s substance abuse. The juvenile court awarded temporary custody of C.L. to the Department, ordered shelter care and granted Ms. D.L. liberal supervised visitation with C.L. Subsequently, the Department placed C.L. with a foster couple, Mr. L-B and Mr. B-L on June 21.

At a hearing on October 7, the juvenile court adjudicated C.L. as a CINA, ordered custody and limited guardianship of C.L. to the Department and permitted Ms. D.L. to have liberal supervised visits with C.L. Further, the court ordered Ms. D.L. to work with the Department on reunification efforts by attending parenting classes and completing a mental health assessment, recommended therapeutic services, and substance abuse treatment.

B. Permanency Planning Hearings, Department Reports, and Home Studies

There were four permanency planning hearings held between November 2021 and December 2022. In anticipation for each hearing, the Department issued a report to update the juvenile court of the Department's observations of C.L. and Ms. D.L.

With regard to Ms. D.L.'s substance abuse treatment, the Department reported that Ms. D.L. was discharged from Bridging the Gap in October 2021 due to her failure to participate in the program. Attached to the report was the discharge summary from Bridging the Gap. In the discharge summary, Bridging the Gap stated that Ms. D.L. did

not demonstrate consistency and continued to use illicit drugs. Ms. D.L. only appeared for seven out of twenty scheduled drug tests with Bridging the Gap, and all seven that she took were positive for PCP.

Ms. D.L.'s defense for non-compliance was that she was overwhelmed, had minimal support, and needed to focus on her job and current residential situation. Bridging the Gap noted that "it [is] unfortunate that [Ms. D.L.] does not understand that her using [drugs] is one of the major causal factors to her current situation" and recommended that Ms. D.L. pursue inpatient residential treatment. The Department reported that Ms. D.L. rejected inpatient treatment and the Department referred Ms. D.L. to an outpatient program, Fields and Fields. Ms. D.L. was enrolled at Fields and Fields on November 1, 2021.

The juvenile court held its initial permanency planning hearing in November 2021. At this hearing, the juvenile court sustained that C.L. was a CINA and concluded the sole permanency plan was to be reunification with Ms. D.L. with a projected achievement date of March 2022. The juvenile court ordered the Department to continue to explore all potential placements with relatives of Ms. D.L. It also permitted Ms. D.L. to have supervised weekly visitation with C.L. After the hearing, the Maryland Infants and Toddlers Program ("MITP")[3] conducted an individualized family service plan evaluation for C.L. After the evaluation, it was reported that C.L. was eligible for early intervention

[3] "The Maryland Infants and Toddlers Program (MITP) directs a family-centered system of early intervention services for young children with developmental delays and disabilities and their families." *Maryland Infants and Toddlers Program*, Md. Dep't of Ed., https://marylandpublicschools.org/programs/Pages/Special-Education/MITP/index.aspx [https://perma.cc/43LA-W748] (last visited Aug. 16, 2023).

services because C.L. was experiencing at least a 25 percent delay in communication and gross motor skills. MITP recommended physical therapy for C.L.'s motor skills and sign language therapy to help with communication.

Before the second permanency planning hearing in March 2022, the Department reported that "[C.L.] is doing well and thriving in the foster parents' care. [C.L.] continues to [take regular naps] during the day and sleeps through most of the nights." The Department included a brief description of the weekly visits that it had been facilitating between Ms. D.L. and C.L. From November 2021 through March 2022, Ms. D.L. attended all but two of the visits. The Department also acknowledged that Ms. D.L. was discharged from Fields and Fields due to her failure to attend scheduled sessions.

At the permanency planning hearing in March 2022, Ms. D.L., the Department, and the Best Interest Attorney for C.L. requested that the juvenile court change the permanency plan from reunification with Ms. D.L. to a concurrent plan of reunification with Ms. D.L. and custody and guardianship with a relative or non-relative. The juvenile court agreed and changed the permanency plan accordingly with the next hearing set for July 2022. The court ordered Ms. D.L.'s continued weekly supervised visitation with C.L. and added the provision that Ms. D.L.'s visits could become unsupervised with three months of documented sobriety. The court further ordered the Department to explore all potential relatives and family friends for potential placement of C.L.

In May 2022, the Department initiated an Interstate Compact on the Placement of Children ("ICPC")[4] request that Pennsylvania conduct a home study for C.L.'s maternal uncle, Mr. J.L., who lived in Philadelphia, to determine if Mr. J.L. would be a suitable placement for C.L.

In response, the Philadelphia Department of Human Services sent a letter dated September 2, 2022, that explained their difficulty in completing the home study:

> On June 1, 2022, ICPC sent an acknowledgement letter to [Mr. J.L.]. ICPC sent another acknowledgement letter on June 23, 2022. ICPC completed a home study visit at [Mr. J.L.'s] residence on July 14, 2022. On July 28, 2022, ICPC emailed [Mr. J.L.], requesting documents still required to complete the home study request. On August 8, 2022, ICPC spoke with [Mr. J.L.] on the phone still requesting required documents. On August 24, 2022, ICPC sent out a notification letter requesting documents still required to complete the home study.
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> As a result of not receiving requested documentation and compliance with the ICPC process, The Philadelphia Department of Human Services has denied and closed the request for placement of [C.L.] with [Mr. J.L.].

The Department completed a guardianship home study of C.L.'s foster parents in June 2022. Among other findings, the home study reported that C.L. lived with Mr. L-B and Mr. B-L along with two other foster children aged 14 and 11. Extended family of the foster parents lived nearby and provided support and care for C.L., including frequently engaging with C.L. at family gatherings. Significantly, Mr. L-B's mother provided

[4] The Interstate Compact on the Placement of Children "ICPC" is a statutory agreement which requires all 50 states, the District of Columbia and the US Virgin Islands to "cooperate with each other in the interstate placement of children" so that "[e]ach child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care." FL § 5-602(1).

childcare for C.L. during the day while the foster parents work and engaged C.L. in stimulating activities. The home environment included a neighborhood that is clean and visually inviting and a house that is structurally sound and child-proofed where C.L. has a separate bedroom. The home study further acknowledged that "[C.L.] appear[ed] to be well taken care of by this family and [Mr. L-B and Mr. B-L] ha[d] a strong desire to provide permanency for [C.L.] through Custody and Guardianship." At the end of the home study, the Department recommended that the foster parents be granted guardianship of C.L.

Before the third permanency planning hearing, the Department reported that Ms. D.L. had been referred to a different substance abuse treatment facility, Utopia, for therapeutic services. The Department's June 2022 report stated that "C.L. is doing extremely well and sleeps through the night. [C.L.] stands [without assistance] and would take a couple of steps before [C.L.] falls." C.L. also began to "vocalize saying 'no' and 'dada.'" The juvenile court sustained the concurrent plan of reunification with Ms. D.L. and custody and guardianship with a relative or non-relative at the July 2022 permanency planning hearing and set December 2022 as the target date for a final permanency plan.

The Department issued its final report in November 2022 in anticipation of the December 2022 permanency planning hearing. The Department reported that C.L. was doing extremely well and learning sign language to improve his communication skills. For his medical needs, C.L. was seeing a pediatrician monthly and was attending regular appointments with a gastroenterologist, occupational therapist, and speech and swallow therapist. The Department further reported that the foster parents, Ms. D.L., and C.L.'s

maternal uncle, Mr. J.L., had been meeting "mostly every week at the Department for visits." At these visits, C.L. presented as cheerful, funny, adventurous, and was always well-groomed and well-dressed for visits.

On December 14, 2022, a day before the final permanency planning hearing, Utopia sent a letter confirming that Ms. D.L. was enrolled in their intensive outpatient services beginning October 5, 2022, that she remained participatory in the treatment and individual therapy sessions, and that she was demonstrating positive clinical growth.

C. The Juvenile Court Grants Custody and Guardianship of C.L. to Foster Parents

The juvenile court held its final permanency planning and review hearing on December 15, 2022. After hearing testimony and considering the evidence on the record, the court ordered custody and guardianship to C.L.'s foster parents, Mr. L-B and Mr. B-L.

The court heard testimony from Emily Martey, a social worker for the Department. Ms. Martey testified about her observations supervising Ms. D.L.'s weekly visits with C.L. She acknowledged that Mr. J.L. had accompanied Ms. D.L. to the weekly visits and that Ms. D.L. was late to the visits "95 percent of the time." When asked about her observations as to C.L.'s attachment to Mr. L-B and Mr. B-L, she answered "[C.L.] has definitely developed a preference for [Mr. L-B and Mr. B-L] . . . when mom tries to pick [C.L.] up, [C.L.] will cry and then when he gets within [Mr. L-B's] eye connection, [C.L.] starts laughing or when mom puts [C.L.] down, [C.L.] runs back to [Mr. L-B]." Ms. Martey continued "I can see the connection and the love between them is really great. It is really great."

Ms. Martey also testified that she referred Ms. D.L. to Parenting Through Change, The Family Tree, and Utopia for parenting classes and substance abuse treatment. Parenting Through Change informed Ms. Martey that they attempted to contact Ms. D.L. but were unsuccessful. The Family Tree informed Ms. Martey that they were unable to release information to her because Ms. D.L. had not signed a release form. Ms. Martey testified that when she reached out to Utopia in October 2022, Ms. D.L. was not enrolled in Utopia's program. However, Ms. Martey did acknowledge Utopia's letter dated December 14, 2022, that confirmed Ms. D.L. was receiving Utopia's services. When asked about payment for Ms. D.L.'s services at Utopia, Ms. Martey answered, "I asked them to continue services and to send an invoice to the Department and they would take care of it."

The court heard testimony from Mr. L-B who testified to C.L.'s health and medical needs. Mr. L-B stated that "[C.L.] has been characterized in the failure to thrive[5] area and has been unable to gain weight, so [C.L.] is below the [first] percentile." He further testified that C.L. does not eat the necessary foods for a child of C.L.'s age, that C.L. could not sit at the age of six months without being supported, that C.L. did not crawl on time, and that C.L. is technically not speaking at the moment. Mr. L-B then provided a list of what types of medical attention C.L. is receiving. C.L. sees a speech and swallow therapist as well as a nutritionist at Children's Hospital every three months. In addition, C.L. receives services from a speech therapist, occupational therapist, and a physical therapist

[5] Failure to thrive is "[a] medical and psychological condition in which a child's height, weight, and motor development fall significantly below average growth rates." *Failure to Thrive*, Black's Law Dictionary (11th ed. 2019).

once a month. Finally, Mr. L-B testified that he was willing to accept custody and guardianship of C.L.

The court heard testimony from Ms. D.L. Ms. D.L. testified that she had been visiting C.L. every Tuesday for the last five to six months. Ms. D.L. also disagreed with Ms. Martey's testimony and stated that she was "technically not late for her visits." When asked why she was unable to receive consistent substance abuse treatment until October 2022, Ms. D.L. stated "[Ms. Martey] said that I would have to pay out of pocket and so I explained to her that I wasn't able to pay out of pocket at that particular time." Ms. D.L. further answered that "I was discharged from Fields and Fields because of my work schedule. I wasn't able to accommodate . . . my zoom meetings because I had to work."

Ms. D.L. testified that "[C.L.] is happy to see me every time when I come [visit]." When asked about why the court should keep the case open, Ms. D.L. answered "[b]ecause [C.L.] is my son. I love [C.L.]. And I chose to have [C.L.]. And I really would like for [C.L.] to be back with me because I mean, I just think that [C.L.] should be with [me] because it was my choice to have [C.L.] and that is all." Ms. D.L. further acknowledged that, if C.L. couldn't go back with her, she wanted C.L. to be with Mr. J.L.

The court heard testimony from Mr. J.L. Mr. J.L. testified that he was "definitely highly interested in having C.L. come live with him until [Ms. D.L.] is 100 percent back on her feet." Mr. J.L. stated that he had been attending the weekly visits with C.L. "so we could become acclimated with each other." When asked about the ICPC, Mr. J.L. stated that he had been in contact with the agency but did not continue that contact because of

"[Ms. D.L.]'s progress lately, she has been doing very well over the past . . . four months." Mr. J.L. stated, "I didn't [think] we were in this much of a time crunch" and that he was not aware that the ICPC had closed the case until the week of the hearing.

In closing arguments, the Department and C.L.'s attorney argued that it was in the best interest of C.L. for the court to grant custody and guardianship to C.L.'s foster parents. Ms. D.L. asked for the court to keep the case open and continue to pursue reunification with Ms. D.L. and in the alternative, grant custody and guardianship to Mr. J.L.

The hearing judge first highlighted that substance exposed newborn cases are some of the most difficult cases. The hearing judge then applied the facts of this case to the mandatory statutory factors of Family Law § 5-525(f)(1).

Considering C.L.'s ability to be safe and healthy in the home of Ms. D.L., the hearing judge observed that "the child could not be safe with [Ms. D.L.]" because, at birth, C.L. tested positive for PCP and Ms. D.L. has not produced a negative test since that time. The hearing judge "was thrilled" that Ms. D.L. had joined the Utopia program, but also noted that those services did not begin until October 2022, "well over a year of this case being in effect." The hearing judge stated "it certainly seems that [Ms. D.L.] is working towards providing a safe and healthy home for [C.L.]. But there is insufficient evidence that at this time she can do so."

The hearing judge was required under the statute to examine C.L.'s attachments and emotional ties. Regarding C.L.'s natural parents and siblings, the hearing judge noted that C.L. has not developed a strong relationship with Ms. D.L. because "it hasn't been safe to

be with the mother." Regarding C.L.'s caregivers and the caregiver's families, the hearing judge found that "[C.L.] is very bonded to both foster fathers . . . as well as to Mr. L-B's mother." The hearing judge further articulated that "for reasons beyond [C.L.'s] control, [C.L.] has indeed lived with [Mr. L-B and Mr. B-L] and has bonded to [Mr. L-B and Mr. B-L] because they have provided excellent care for all this time and met substantial development needs."

Given the length of time C.L. has resided with the current caregivers, the hearing judge found that "[C.L.] has been with the current caregivers for [C.L.'s] entire life in essence. [C.L.] went there in June [2021] . . . [and] was born in May 2021. [They are] the only parents [C.L.] has ever known."

Assessing the emotional, developmental, and educational harm to C.L. if the court were to move C.L.'s placement, the hearing judge acknowledged Mr. L-B's "extensive testimony about [C.L.]'s needs and developmental delays," and observed that all of C.L.'s needs were being tended to by the foster fathers.

Finally, addressing the potential harm to C.L. by remaining in State custody for an excessive period of time, the hearing judge stated, "I don't think State custody *per se* is problematic in this case." Instead, the hearing judge explained the threat to C.L.'s well-being is "that the very permanency [C.L.] has experienced in [C.L.'s] life and the very support that [C.L.] has been able to rely on [could be severed if the case is left open], as if that would have no impact on [C.L.]."

Agreeing with the recommendations of the Department and C.L.'s attorney, the juvenile court ordered custody and guardianship to Mr. L-B and Mr. B-L. The court further acknowledged that it was in C.L.'s best interest to maintain and continue C.L.'s relationship with Ms. D.L. The court ordered that Ms. D.L. shall continue to have at least weekly visits with C.L.

Ms. D.L. filed a timely notice of appeal to this Court. On appeal, Ms. D.L. first argues that the juvenile court abused its discretion by granting custody and guardianship to a non-relative and terminating its jurisdiction when the statute places a priority on familial placements. Ms. D.L. further argues that the juvenile court erred by failing to make express findings in denying a permanency plan of custody and guardianship with Mr. J.L., the maternal uncle of C.L.

STANDARD OF REVIEW

In CINA proceedings, our review of the juvenile court's decision "involves three interrelated standards: (1) a clearly erroneous standard, applicable to the juvenile court's factual findings; (2) a *de novo* standard, applicable to the juvenile court's legal conclusions; and (3) an abuse of discretion standard, applicable to the juvenile court's ultimate decision." *In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. 30, 45 (2017). We review a juvenile court's ultimate decision regarding a CINA permanency plan for abuse of discretion. *In re Ashley S.*, 431 Md. 678, 704 (2013); *In re Shirley B.*, 419 Md. 1, 18–19 (2011).

"There is an abuse of discretion 'where no reasonable person would take the view adopted by the [juvenile] court,' or when the court acts 'without reference to any guiding rules or principles.'" *In re Yve S.*, 373 Md. 551, 583 (2003) (internal citation omitted). "[O]ur function . . . is not to determine whether, on the evidence, we might have reached a different conclusion[]" than that of the juvenile court. *C.A. & D.A.*, 234 Md. App. at 46 (quoting *In re Adoption No. 09598 in the Circuit Court for Prince George's County*, 77 Md. App. 511, 518 (1989)). Instead, we only reverse the juvenile court's decision when it is "'well removed from any center mark imagined . . . and beyond the fringe of what the court deems minimally acceptable.'" *Ashley S.*, 431 Md. at 704 (quoting *Yve S.*, 373 Md. at 583–84). "Where the best interest of the child is of primary importance, the trial court's determination is accorded great deference, unless it is arbitrary or clearly wrong." *C.A. & D.A.*, 234 Md. App. at 46.

DISCUSSION

Maryland's CINA statute provides "detailed requirements" for a juvenile court at each stage of CINA proceedings. *In re M.H.*, 252 Md. App. 29, 42 (2021); *see* Md. Code (1974, 2020 Repl. Vol.), Courts & Jud. Proc. ("CJP") §§ 3-801–30. When a child is declared a CINA, the Department must create a permanency plan that is consistent with the best interests of the child. *In re D.M.*, 250 Md. App. 541, 560 (2021); *see* CJP § 3-823(e)(1)(i). The permanency plan establishes "the direction in which the parent, agencies, and the court will work in terms of reaching a satisfactory conclusion to the situation." *Ashley S.*, 431 Md. at 686. "In this regard, the permanency plan is 'an integral part of the

statutory scheme designed to expedite the movement of Maryland's children from foster care to a permanent living, and hopefully, family arrangement.'" *D.M.*, 250 Md. App. at 561 (quoting *In re Adoption of Jayden G.*, 433 Md. 50, 55 (2013)); *see* CJP § 3-802(a)(7) (stating that one of the main goals of the permanency plan is "[t]o achieve a timely, permanent placement for the child").

"No later than 11 months" after a child is declared a CINA, the juvenile court is required to have a hearing to determine the child's permanency plan. CJP § 3-823(b)(1)(i). During the permanency planning hearing, the juvenile court determines the child's permanency plan from the following in "descending order of priority":

> (1) reunification with the 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) for a child at least 16 years old, another planned living arrangement.

CJP § 3-823(e)(1)(i); *see Ashley S.*, 431 Md. at 686.

The CINA statute provides that the child's permanency plan shall only be considered in descending order of priority "to the extent consistent with the best interests of the child[.]" CJP § 3-823(e)(1)(i). In that regard, the court must consider factors outlined in § 5-525(f)(1) of the Family Law Article:

> (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 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.

Md. Code (1984, 2019 Repl. Vol.), Fam. Law ("FL") § 5-525(f)(1).

The juvenile court is further obligated to review its selected permanency plan "at least every six months" until the child is no longer committed to the Department. CJP § 3-823(h)(1)(i). In its review, the juvenile court is required to "change the permanency plan if a change in the permanency plan would be in the child's best interests." CJP § 3-823(h)(2)(vi). "Every reasonable effort shall be made to effectuate a permanent placement for a child within 24 months." CJP § 3-823(h)(5).

A. Reunification with Ms. D.L.

Ms. D.L. contends that the juvenile court's analysis of the factors in FL § 5-525(f)(1) was flawed and that a proper analysis of the factors would reveal that it was in C.L.'s best interests to continue to pursue a permanency plan of reunification with Ms. D.L.

To reiterate, in reviewing for abuse of discretion, our function is not "to determine whether, on the evidence, we might have reached a different conclusion[]" than that of the juvenile court. *C.A. & D.A.*, 234 Md. App. at 46. Instead, we will only reverse the juvenile court's decision when it is "'well removed from any center mark imagined and beyond the fringe of what the court deems minimally acceptable.'" *Ashley S.*, 431 Md. at 704 (quoting *Yve S.*, 373 Md. at 583–84).

There is an overarching principle in CINA proceedings that the child's welfare is of "transcendent importance." *C.A. & D.A.*, 234 Md. App. at 48. To that point, "in CINA cases, the juvenile court judge is given 'broad statutory authority' to act in the best interest

of the child." *D.M.*, 250 Md. App. at 566. It is well settled in Maryland that "the controlling factor in adoption and custody cases is not the natural parent's interest in raising the child, but rather what best serves the interest of the child." *In re Adoption/Guardianship No. 10941 in Cir. Ct. for Montgomery Cnty.*, 335 Md. 99, 113 (1994). "Where the best interest of the child is of primary importance, the trial court's determination is accorded great deference, unless it is arbitrary or clearly wrong." *C.A. & D.A.*, 234 Md. App. at 46.

In considering "the child's ability to be safe and healthy in the home of the child's parent," FL § 5-525(f)(1)(i), the hearing judge observed that "[C.L.] could not be safe with [Ms. D.L.]." In support, the hearing judge acknowledged that C.L. tested positive for PCP at birth and that Ms. D.L. had not produced a negative drug test demonstrating sobriety since C.L.'s birth. The hearing judge stated "it certainly seems that [Ms. D.L.] is working towards providing a safe and healthy home for [C.L.]. But there is insufficient evidence that at this time she can do so."

On brief, Ms. D.L. argues that even if she could not provide a safe and healthy home for C.L. *at the time*, she was "well on her way" to recovery and her recent enrollment in Utopia warranted the court to keep reunification on the table. Specifically, she quotes the CINA statute that states "[e]very reasonable effort shall be made to effectuate a permanent placement for a child within 24 months." CJP 3-823(h)(5). Since, at the time of the December 2022 hearing, it had only been 18 months since C.L.'s placement into foster

care, Ms. D.L. contends that the court erred in not granting her more time to reunify with C.L. We do not agree.

While Ms. D.L.'s enrollment in the Utopia program is laudable, as the hearing judge properly considered, her enrollment did not begin until October 2022, "well over a year of this case being in effect." Since that time, the record in front of the hearing judge demonstrated that Ms. D.L.'s history with substance abuse treatment was inconsistent at best. She was discharged from Bridging the Gap in October 2021 and Fields and Fields in March 2022 due to her failure to participate in the programs. Notably, in its discharge summary, Bridging the Gap stated "it [is] unfortunate that [Ms. D.L.] does not understand that her using [drugs] is one of the major causal factors to her current situation."

Prior to C.L.'s placement into foster care, Ms. D.L. took C.L. out of the Shelter against the Department's safety plan and returned "noticeably high" holding C.L. in a dangerous position. Although the hearing judge did not expressly articulate each of these facts in considering Ms. D.L.'s ability to provide a safe home, it was not required to do so. *See John O v. Jane O*, 90 Md. App. 406, 429 (1992) ("The trial judge need not articulate each item or piece of evidence she or he has considered in reaching a decision . . . The fact that the court did not catalog . . . all the evidence which related to each factor does not require reversal."); *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) ("The trial judge need not articulate each item or piece of evidence she or he has considered in reaching a decision[.]"). The facts were before the court, and we presume it properly applied the relevant facts to the required considerations. *Cf. Jayden G.*, 433 Md.

at 87 (presuming the juvenile court properly exercised its discretion despite the absence of a record revealing the court's thought process).

Ms. D.L.'s contention that she should have been afforded more time because C.L. had been in foster care for 18 months instead of 24 months has no weight. Ms. D.L. relies on the CINA provision that "[e]very reasonable effort shall be made to effectuate a permanent placement for a child *within* 24 months." CJP 3-823(h)(5) (emphasis added). The juvenile court did just that. Despite Ms. D.L.'s contention, the statute does not require the juvenile court to wait 24 months to effectuate a permanent placement. In fact, "'it is in the child's best interest to be placed in a permanent home and to spend as little time as possible in' the custody of the Department." *In re M.*, 251 Md. App. 86, 128 (2021) (quoting *Jayden G.*, 433 Md. at 84). On the other hand, at the December 2022 hearing, the juvenile court was required to "change the permanency plan if a change in the permanency plan would be in the child's best interests." CJP § 3-823(h)(2)(vi). Considering Ms. D.L.'s history of drug use and unsafe behavior, the juvenile court did not abuse its discretion in determining that Ms. D.L. could not provide a safe and healthy home for C.L. *See D.M.*, 250 Md. App. 568 ("Relying upon past actions of a parent as a basis for judging present and future actions of a parent directly serves the purpose of the C.I.N.A. statute."); *In re Dustin T.*, 93 Md. App. 726, 731 (1992) ("[I]t has been long since settled that a parent's past conduct is relevant to a consideration of his or her future conduct.").

The juvenile court next considered C.L.'s emotional ties to Ms. D.L. as required by FL § 5-525(f)(1)(ii). In considering this factor, the juvenile court observed that C.L. has

not developed a strong relationship with Ms. D.L. because "it has [not] been safe to be with [Ms. D.L.]." Ms. D.L. criticizes the juvenile court for failing to consider that C.L.'s emotional bond with Ms. D.L. could grow if reunification was kept open and she were awarded more than one supervised visit with C.L. a week. However, it was Ms. D.L. who hampered her ability to have more lenient visitation with C.L., not the juvenile court. *See Ashley S.*, 431 Md. at 710 ("[T]he weakened bond between [mother] and her children was [] attributable . . . to her . . . inability to fulfill basic parental commitments."). At the March 2022 hearing, the juvenile court gave Ms. D.L. an option to have unsupervised visits with C.L. if she could document three months of sobriety. Ms. D.L., who was "uniquely situated" to provide evidence of sobriety, did not provide the court with such evidence. *See In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 722 (2011) (reasoning that the parent is best situated to provide evidence of sobriety in cases involving substance abuse). Therefore, we find no abuse of discretion in the juvenile court's discussion of C.L.'s emotional attachment to Ms. D.L.

Regarding the third, fourth, and fifth factors, Ms. D.L. contends that the juvenile court abused its discretion in focusing "almost exclusively on the bond between C.L. and his foster [parents]." To the contrary, the juvenile court is obligated to consider C.L.'s emotional attachments to Mr. L-B and Mr. B-L. FL § 5-525(f)(1)(iii). The juvenile court is also required to discuss the length of time C.L. has stayed with Mr. L-B and Mr. B-L, FL § 5-525(f)(1)(iv), and the potential emotional, developmental, and educational harm to C.L. if C.L. were to be removed from foster care, FL § 5-525(f)(1)(v).

We have emphasized that in reviewing the statutory factors of FL § 5-525(f)(1), the juvenile court must "valu[e] the child's current *emotional attachments*, recogniz[e] that time has an effect on the child, and recogniz[e] that removing a child from a placement where the child has formed *emotional attachments* can cause potential emotional . . . harm to the child." *M.*, 251 Md. App. at 127–28 (emphasis added). Although the "emotional attachment between children and their foster care providers cannot, by itself, justify a change in permanency plan away from reunification[,]" *Ashley S.*, 431 Md. at 711, there is no error when a juvenile court considers a child's bond to their foster parents in assessing the reality of the child's circumstances. *See id.*; *Jayden G.*, 433 Md. at 102 ("[T]he best interests of the child do not permit the juvenile court to ignore the reality of a child's life.").

Keeping these principles in mind, we find no abuse of discretion in the juvenile court's assessment of the third, fourth, and fifth statutory factors. Considering C.L.'s emotional attachment to Mr. L-B and Mr. B-L, the hearing judge noted that "[C.L.] is very bonded to both foster fathers . . . as well as to Mr. L-B's mother." Analyzing the length of time C.L. has resided with Mr. L-B and Mr. B-L, the hearing judge found that "[C.L.] has been with the current caregivers for [C.L.'s] entire life in essence. [They are] the only parents [C.L.] has ever known." Assessing the emotional, developmental, and educational harm to C.L. if the court were to move C.L.'s placement, the hearing judge acknowledged Mr. L-B's "extensive testimony about [C.L.'s] needs and developmental delays," and observed that all of C.L.'s needs were being tended to by Mr. L-B and Mr. B-L.

Finally, the juvenile court considered the potential harm to C.L. by remaining in State custody for an excessive period of time. FL § 5-525(f)(1)(vi). The hearing judge acknowledged, "I don't think State custody *per se* is problematic in this case." Instead, the hearing judge explained the threat to C.L.'s well-being is "that the very permanency [C.L.] has experienced in [C.L.'s] life and the very support that [C.L.] has been able to rely on [could be severed if the case is left open], as if that would have no impact on [C.L.]." Ms. D.L. again attacks this assessment on the grounds that the hearing judge abused its discretion in relying solely on C.L.'s emotional attachment with Mr. L-B and Mr. B-L rather than other considerations. We disagree.

"A critical factor in determining what is in the best interest of a child is the desire for permanency in the child's life." *Jayden G.*, 433 Md. at 82. "'[I]t is in the child's best interest to be placed in a permanent home and to spend as little time as possible in' the custody of the Department." *M.*, 251 Md. App. at 128 (quoting *Jayden G.*, 433 Md. at 84). Despite Ms. D.L.'s argument, the hearing judge was clearly considering the permanency that C.L. has experienced since being placed with Mr. L-B and Mr. B-L—specifically, the detrimental effects of taking C.L. away from Mr. L-B and Mr. B-L, who have provided stability and extensive care for C.L.'s entire life. A disruption in that level of permanency would not be in C.L.'s best interests. *See Jayden G.*, 433 Md. at 82.

Ms. D.L. failed to participate in and benefit from the services that would have put her on a path to being able to provide C.L. with permanency for 18 months. Going beyond her discharge from both Bridging the Gap and Fields and Fields, the testimony from Ms.

Martey showed that the Department referred Ms. D.L. to multiple parenting classes with which Ms. D.L. failed to follow through. During that same timeframe, C.L. had the ability to thrive in Mr. L-B and Mr. B-L's care. Mr. L-B testified to the numerous appointments that C.L. attends and his developmental progress. Despite having tested positive for PCP at birth, Mr. L-B reported that C.L. is learning to walk, eat normally, and speak through sign language. Further, the Department's home-study revealed that Mr. L-B and Mr. B-L provide a stable homelife at their residence located in a clean and safe neighborhood. They also have extended family living in the area that provide support and frequently engage with C.L. at family gatherings and visits. This is exactly the type of permanency that the CINA statute is set out to achieve. *See* CJP § 3-802(a)(7) (stating that one of the main goals of the permanency plan is "[t]o achieve a timely, permanent placement for the child"). We find no abuse of discretion in the juvenile court's discussion of the sixth factor.

After considering "[a]ll factors necessary to determine the best interests of the child[,]" CJP § 3-819.2(f)(1)(ii), it was proper for the juvenile court to grant custody to C.L.'s non-relative foster parents, CJP § 3-819.2(b). Considering the hearing judge's analysis and the evidence on the record, we conclude that the juvenile court did not abuse its discretion in considering the factors in FL § 5-525(f)(1) and granting custody and guardianship of C.L. to Mr. L-B and Mr. B-L. We will only reverse if the juvenile court's decision is "'well removed from any center mark imagined . . . and beyond the fringe of what the court deems minimally acceptable.'" *Ashley S.*, 431 Md. at 704 (quoting *Yve S.*, 373 Md. at 583–84). That is not the case here.

B. Potential Placement with C.L.'s Uncle, Mr. J.L.

Ms. D.L. contends that the juvenile court abused its discretion in failing to follow the hierarchy of permanency plans and make express findings as to whether it was in C.L.'s best interests to continue to pursue placement with Mr. J.L.

As discussed above, the CINA statute sets forth a hierarchy of permanency plans that the juvenile court is to consider:

> (1) reunification with the 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) for a child at least 16 years old, another planed living arrangement.

CJP § 3-823(e)(1)(i). At first glance, this list contemplates that placement with relatives should come before placement with non-relatives. However, the same provision states that the hierarchy should only be considered in descending order of priority "to the extent consistent with the best interests of the child." *Id.* Clearly, the juvenile court is to give first priority to the best interests of the child before giving priority to the hierarchy. *See In re Shirley B.*, 191 Md. App. 678, 707 (2010), *aff'd*, 419 Md. 1 (2011) (stating that in developing a permanency plan, the best interests of the child are the primary consideration). Additionally, in determining the best interests of the child, the statute turns to the factors in FL § 5-525(f)(1) to guide the juvenile court's analysis.

As we have discussed in detail in the previous section, the juvenile court properly considered each factor in FL § 5-525(f)(1) to determine C.L.'s best interests. None of those factors required the juvenile court to consider relatives such as Mr. J.L. We therefore conclude that the juvenile court did not abuse its discretion in not speaking at length about

whether it was in C.L.'s best interests to continue to pursue placement with Mr. J.L. because it was not legally obligated to do so.

Ms. D.L. also cites the CINA provision that states that "[u]nless good cause is shown, a court shall give priority to the child's relatives over nonrelatives when committing the child to the custody of an individual other than a parent." CJP § 3-819(b)(3). She argues that the juvenile court abused its discretion in failing to give priority to Mr. J.L., a relative, over Mr. L-B and Mr. B-L, non-relatives. She further argues that the juvenile court should have kept C.L.'s case open to continue to pursue placement with Mr. J.L.

That particular provision of the CINA statute, CJP § 3-819(b)(3), does not apply to the current state of C.L.'s case. Instead, that provision is located in the section of the CINA statute which sets out guidelines for the disposition hearing where the juvenile court determines whether a child is a CINA. C.L.'s disposition hearing was held on the same day as C.L.'s adjudicatory hearing in October 2021 in which the juvenile court found that C.L. was a CINA and granted custody and guardianship to the Department.[6]

[6] Ms. D.L. also cites a provision of the Maryland Family Law Statute which states, "[i]f a kinship parent or a kinship caregiver is located subsequent to the placement of a child in a foster care setting, the local department may, *if it is in the best interest of the child*, place the child with the kinship parent or kinship caregiver." FL § 5-534(c)(4) (emphasis added). That provision is the standard for relative placement in Maryland's formal kinship care program and is not applicable to this case. However, it is still relevant to note that, similar to the standard in Ms. D.L.'s case, the kinship care program's standard for subsequent placement with a kinship parent or caregiver is premised upon the best interests of the child. Thus further demonstrating the overarching principle in Maryland that the best interests of the child is of "transcendent importance." *C.A. & D.A.*, 234 Md. App. at 48.

After the disposition hearing and initial placement, the juvenile court must review a child's permanency plan in accordance with the factors of FL § 5-525(f)(1). CJP § 3-823(e)(2). The court must "[c]hange the [child's] permanency plan if a change in the permanency plan would be in the child's best interest[,]" CJP § 3-823(h)(2)(vi), with the ultimate objective being that "[e]very reasonable effort . . . be made to effectuate a permanent placement for the child[,]" CJP § 3-823(h)(5). To effectuate a permanency plan, "the [juvenile court] may grant custody and guardianship to a relative or a nonrelative[,]" CJP § 3-819.2(b), which "[t]erminates the child's [CINA] case, unless the court finds good cause not to terminate the child's case[,]" CJP § 3-819.2(c)(4).

Pursuant to this CINA procedure, after C.L.'s initial placement in foster care, it was within the discretion of the Department to determine if placement with Mr. J.L. was in C.L.'s best interests. The record demonstrates that the Department and the juvenile court clearly contemplated Mr. J.L. as a potential placement for C.L. At the March 2022 permanency planning hearing, in accordance with the request of Ms. D.L., the Department, and C.L.'s attorney, the juvenile court changed C.L.'s permanency plan to a concurrent plan of reunification with Ms. D.L. and custody and guardianship with a relative or non-relative. The juvenile court also ordered the Department to explore all relatives and family friends for potential placement of C.L. Subsequently, the Department initiated an ICPC request to Pennsylvania to conduct a home study for Mr. J.L. However, the ICPC request was closed due to Mr. J.L.'s failure to comply. Further, at the December 2022 hearing, Mr. J.L. admitted that it was his choice not to comply with the ICPC because he believed

Ms. D.L. was making progress. After the ICPC request was closed, the Department asked the court to order custody and guardianship to Mr. L-B and Mr. B-L, thus determining that placement with Mr. J.L. was not in C.L.'s best interests.

The Department and the juvenile court properly considered Mr. J.L. as a potential permanent placement for C.L. The Department must "'consider' placement with a relative" but "is not required to recommend [such] placement[.]" *In re Richard H.*, 128 Md. App. 71, 75 (1999).

Moreover, none of the factors in FL § 5-525(f)(1) require the juvenile court to consider the child's attachment to the relative with whom the child may be placed. Instead, the court must consider the child's attachment to his or her natural parents, any siblings, and the current caregiver and caregiver's family. FL § 5-525(f)(1)(ii)-(iii). The court must also consider the length of time the child has been with the caregiver, the potential harm of moving the child from the current placement, and the potential harm of the child remaining in state custody. FL § 5-525(f)(1)(iv)-(vi).

It is apparent that the juvenile court considered the factors with the proper focus being the best interest of the child. The same evidence we have discussed that tended to show stronger attachment to C.L.'s foster parents than to Ms. D.L. supports the conclusion that C.L. had a stronger emotional attachment with Mr. L-B and Mr. B-L than with his uncle, Mr. J.L. Likewise, the length of time in their care weighs in favor of awarding custody and guardianship to Mr. L-B and Mr. B-L.

Despite Ms. D.L.'s contention, we find no abuse of discretion in the juvenile court's determination that it was not in C.L.'s best interests to continue to explore placement with Mr. J.L. *See C.A. & D.A.*, 234 Md. App. at 46 ("Where the best interest of the child is of primary importance, the trial court's determination is accorded great deference, unless it is arbitrary or clearly wrong."). Indeed, one of the main goals of the CINA statute is "[t]o achieve a timely, permanent placement for the child[.]" CJP § 3-802(a)(7). The juvenile court did just that by granting custody and guardianship of C.L. to Mr. L-B and Mr. B-L.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the juvenile court.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.