Circuit Court for Baltimore County
Case No. C-03-JV-22-000499

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 896

September Term, 2024

IN RE: M.M.

Graeff,
Tang,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, J.

Filed: February 14, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal arises from a judgment, entered in the Circuit Court for Baltimore County, sitting as the juvenile court, in which the court altered the permanency plan of a child, M., to include adoption. M.'s mother, Ms. V., noted an appeal from that judgment, presenting a single question for our review:

> Did the juvenile court commit error when it changed M.'s permanency plan to include adoption as a goal?

Finding no error, we affirm.

BACKGROUND

M. was born in November 2020 to Ms. V. ("Mother") and Mr. M. ("Father").[1] Following his birth, M. was sent to live with his paternal great aunt, Ms. B., and her husband, Mr. B. M. remained in Mr. and Ms. B.'s care until, on June 30, 2022, Mother and Father showed up at Mr. and Ms. B.'s home with the police and took M. Up to that point, Mother and Father had not participated in M.'s care.

On July 6, 2022, the Baltimore County Department of Social Services (the "Department") received a report that M.'s medical needs were not being met. At the time, M. had been diagnosed with "a genetic disorder, cognitive limitations, a seizure disorder, and behavioral concerns that include[d] banging his head against the wall." According to M.'s medical providers, M.'s medical needs had been well managed up to that point. M.'s medical providers reported that M. had several upcoming appointments and that they had been unable to get in contact with Mother or Father regarding those appointments.

[1] Father is not a party to the instant appeal.

On July 8, 2022, the Department attempted to contact Mother, but her phone was disconnected. When the Department contacted Father, he reported that M. "was with his sister[.]" The Department then made an unannounced visit to Mother's home, where the Department made contact with Mother's current husband, Mr. V., who reported that M. was "in the process of being adopted by a family friend" who lived in Utah. Mother and Father thereafter provided a notarized letter indicating that M. had been adopted by a non-relative in Utah on July 7, 2022. The Department quickly discovered that the letter was fraudulent and that M. was actually in the physical custody of a different family friend, who lived in Maryland. On July 13, 2022, M. was sheltered by the Department and placed back in the care of Mr. and Ms. B.

The following day, the Department filed a petition in the juvenile court requesting that M. be declared a child in need of assistance ("CINA").[2] In August 2022, the juvenile court granted the Department's petition and found M. to be a CINA.

In September 2022, Ms. B. passed away. M. remained in Mr. B.'s sole care. In January 2023, the juvenile court adopted a permanency plan that included reunification with Mother and Father.

In October 2023, the juvenile court held a permanency planning review hearing. Following that hearing, the court ordered that M.'s permanency plan be changed to

[2] Section 3-801(f) of the Courts and Judicial Proceedings Article of the Maryland Code defines "child in need of assistance" as "a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs."

reunification with Mother and Father concurrent with placement with a relative for custody and guardianship.

In March 2024, a permanency plan review hearing was held before a magistrate. Following that hearing, the magistrate recommended that M.'s permanency plan be changed to include five concurrent plans: reunification with Mother and Father; custody and guardianship by a relative; custody and guardianship by a non-relative; adoption by a relative; and adoption by a non-relative. Mother and Father filed exceptions.

The juvenile court held a hearing on Mother's and Father's exceptions. According to the evidence presented at that hearing, M. continued to have "complex medical needs" and "extremely limited verbal capacity[.]" M. was diagnosed as "non-verbal" and was currently learning sign language. M. had also been diagnosed with epilepsy and had been prescribed seizure medication. M. had been issued orthopedic shoes to assist with walking stability and had been receiving physical therapy.

M. continued to live with Mr. B., who was taking good care of M. Mr. B. had spoken with the Department "regarding his ability to provide long term care to [M.,]" and Mr. B. had "provided the Department with a potential support that can assist him with caring for [M.] in the event reunification does not occur." The Department noted that Mr. B. had "a network of family and community[,]" including "two neighbors who support Mr. [B.] during the week with caring for [M.]" The Department also noted that it had identified two individuals, K.E. and B.F., "to become restricted foster parents as a long-term placement resource for [M.]" At the time, K.E. and B.F., who were family members of one of Mr.

B.'s neighbors, had "been building a bond with [M.] by allowing him to attend overnight visits at their home Thursday through Saturday."

Since M.'s birth, neither Mother nor Father had "participated in any of [M.'s] medical appointments, provided medical intervention, or daily care for his needs." Mother was determined to have "a serious, pervasive, and persistent neurodevelopmental disorder which presented in early childhood." Mother, who was thirty-four years old at the time, possessed language skills, literacy, and comprehension "equivalent to that of a 7-8-year-old[,]" and her cognitive functioning fell "below 99% of others." Mother's "adaptive deficits" were determined to be "notably below others," such that Mother would "likely require lifelong support and monitoring[.]" Despite those limitations, Mother had remained communicative with the Department and had participated in supervised visitation with M. The Department planned "to expand visitation in a broader community setting to support [Mother] caring for [M.] in a larger environment." Mother admitted that "her current residence is not appropriate for [M.] to live, and she is currently looking for housing." Mother's parenting evaluation revealed that she did "not currently have the [p]arental [c]apacity but may gain parental capacity in the future."

Father had been diagnosed with several psychiatric disorders for which it was recommended that he engage in psychotherapy and medication management. The Department was unable to confirm whether Father was receiving the appropriate care for his mental health issues. Father admitted that his current residence was not suitable for M. Father had been in contact with the Department and had been engaging in supervised visitations with M. Like with Mother, Father's parenting evaluation revealed that he did

"not currently have the capacity to [p]arent" but that "he could gain the capacity in the future."

Mr. B., who was seventy-two years old at the time of the exceptions hearing, testified that he had been caring for M. "since the day after he [was] born." Mr. B. stated that he "do[es] everything for [M.]," including making sure M. "gets to all his doctors' appointments, mak[ing] sure he gets to school on time, things of that sort." Mr. B. added that he would continue caring for M. if he were to obtain custody and guardianship. Mr. B. stated that he had several neighbors who assisted him in caring for M. When asked about K.E. and B.F., the two individuals the Department was investigating as a long-term resource, Mr. B. stated that he had provided their names to the Department after the Department told him that he "was too old to take care of M." and that the Department "needed someone that was younger" who could provide long-term care. Mr. B. noted that K.E. and B.F. currently took care of M. "on the weekend" and that they had a "very nice" relationship with M.

At the conclusion of the hearing, the Department argued that the court should adopt the magistrate's recommendation of a "five-way" permanency plan that included reunification with Mother and Father, custody and guardianship by a relative, custody and guardianship by a non-relative, adoption by a relative, and adoption by a non-relative. The Department insisted that the plan would allow the Department to "continue to assess, assess caregivers, assess the child, assess the parents[.]" The Department noted that Mr. B. had "been a God send to this child" and that the Department did not want to minimize "the effect that his care and love has had on the child and on the situation as a whole." The

Department made clear that, if it were to move forward with adoption, there would be a "serious discussion" regarding a liberal contact agreement between Mr. B. and M.

Mother argued that the court should reject the five-way plan and instead adopt a plan of reunification with a concurrent plan of custody and guardianship to Mr. B. Mother noted that Mr. B. had proven he was capable of caring for M.

M.'s counsel argued that reunification was not viable and that the court should change M.'s permanency plan to adoption only. Counsel noted that, presently, Mr. B. was sharing custody of M. with K.E. and B.F. Counsel explained that, though the parties should work "to figure out a situation that Mr. [B.] remains as involved as possible with [M.]," granting custody and guardianship of M. to Mr. B. would "not provide the permanence and stability . . . that a three-year-old child with special needs is going to require[.]"

In the end, the juvenile court denied Mother's and Father's exceptions and adopted the magistrate's recommended "five way" permanency plan. The court praised Mr. B. and the job he had done in caring for M. since M.'s birth. The court found that Mother and Father were not capable of caring for M., and the court noted its concerns regarding "the behavior that took place in this case" and "the parents' limitations[.]" The court found it "very concerning" that M. had been in formal care for approximately two years. The court found that "it's in the best interest of this minor child that options be maintained[,]" though the court was "surprised" that the permanency plan included reunification because the court could "not see how it is possible that these parents will be able to reunify at the present time[.]"

This timely appeal followed. Additional facts will be supplied as needed below.

STANDARD OF REVIEW

Appellate review of a juvenile court's decision regarding child custody involves three interrelated standards. First, any factual findings made by the juvenile court are reviewed for clear error. *In re Yve S.*, 373 Md. 551, 586 (2003). Second, any legal conclusions made by the juvenile court are reviewed *de novo*. *Id.* Finally, if the court's factual findings and legal conclusions are not erroneous, the court's ultimate conclusion will be disturbed only if there is an abuse of discretion. *In re J.J.*, 231 Md. App. 304, 345 (2016). "A court abuses its discretion when 'no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding rules or principles.'" *In re K.L.*, 252 Md. App. 148, 185 (2021) (quoting *Santo v. Santo*, 448 Md. 620, 625-26 (2016)).

DISCUSSION

Parties' contentions

Mother contends that the juvenile court erred in changing M.'s permanency plan to include adoption because the evidence did not support such a change. Mother argues that the evidence demonstrated that M.'s permanency plan should have included only reunification and a concurrent plan of custody and guardianship with Mr. B. Mother argues that, because Mr. B. had been M.'s sole caregiver and because he remained a suitable caretaker, the court's inclusion of adoption by a non-relative contradicted M.'s best interests.

The Department contends that the juvenile court acted within its broad discretion in including concurrent plans of adoption. The Department notes that M.'s complex medical

needs will likely necessitate care beyond the age of eighteen, that Mother and Father lacked the capacity to parent, and that "practical limitations" impeded Mr. B.'s ability to remain a long-term caregiver for M. The Department argues that, under the circumstances, the court committed no abuse of discretion in including adoption in M.'s permanency plan.

Analysis

When a child is declared a CINA and removed from the care of a parent, the juvenile court is required to hold a hearing to determine a permanency plan for the child. Md. Code, Cts. & Jud. Proc. § 3-823(b)(1). "The permanency plan is intended to 'set[] the tone for the parties and the court' by providing 'the goal toward which [they] are committed to work.'" *In re D.M.*, 250 Md. App. 541, 561 (2021) (quoting *In re Damon M.*, 362 Md. 429, 436 (2001)). Ordinarily, a permanency plan prioritizes reunification with the parent or guardian, but the plan could include, in descending order of priority, placement with a relative for adoption or custody and guardianship, placement with a non-relative for adoption or custody and guardianship, or, for children of a certain age, another planned permanent living arrangement. Cts. & Jud. Proc. § 3-823(e)(1). Once a permanency plan is set, the court must hold periodic review hearings to determine the continued appropriateness of the current permanency plan. Cts. & Jud. Proc. § 3-823(h). "At the review hearing, the court shall . . . [c]hange the permanency plan if a change in the permanency plan would be in the child's best interest[.]" Cts. & Jud. Proc. § 3-823(h)(2)(vii).

When determining a permanency plan, or when considering a change to a permanency plan, the court must give primary consideration to the best interest of the child.

Cts. & Jud. Proc. § 3-823(e)(1); *see also* Md. Code, Fam. Law § 5-525(e)(1). In addition, the court must consider the following factors:

> (i) the child's ability to be safe and healthy in the home of the child's parent;
>
> (ii) the child's attachment and emotional ties to the child's natural parents and siblings;
>
> (iii) the child's emotional attachment to the child's current caregiver and the caregiver's family;
>
> (iv) the length of time the child has resided with the current caregiver;
>
> (v) the potential emotional, developmental, and educational harm to the child if moved from the child's current placement; and
>
> (vi) the potential harm to the child by remaining in State custody for an excessive period of time.

Fam. Law § 5-525(f)(1); *see also* Cts. & Jud. Proc. § 3-823(e)(2).

Ultimately, "the juvenile court judge is given broad statutory authority to act in the best interest of the child." *In re D.M.*, 250 Md. App. at 566 (citation and quotation marks omitted). "Thus, we will reverse the juvenile court's order as an abuse of discretion only if we determine the order is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Id.* (quoting *In re Shirley B.*, 419 Md. 1, 18-19 (2011)).

Against that backdrop, we hold that the juvenile court did not abuse its discretion in changing M.'s permanency plan to include adoption. The court was presented with ample evidence from which to conclude, based on the above statutory factors, that changing M.'s permanency plan was consistent with his best interests. Regarding the first two factors, it was virtually beyond dispute that Mother was unable to provide a safe and healthy home

for M., who was afflicted with severe physical and developmental disabilities that would likely persist. Moreover, there was no indication that Mother and M. had any meaningful attachment or emotional ties. M., who was three years old at the time of the exceptions hearing, had never been in Mother's care for any notable period, and Mother had never provided for M.'s medical or daily care needs.

Regarding the third, fourth, and fifth factors, all of which concern M.'s current placement, there was little question that Mr. B., with whom M. had lived since birth, had done an excellent job caring for M. and had developed a strong bond with M. Thus, were M. moved from that placement, the potential for some emotional or developmental harm to M. was not insignificant. That said, it was clear that M. was developing bonds with other individuals in his life, including K.E. and B.F., whom Mr. B. himself had identified as a long-term resource and who had been caring for M. a portion of every week. It was reasonable for the Department to consider others, including K.E. and B.F., as potential adoptive sources, particularly given that Mr. B., who was seventy-two years old at the time of the exceptions hearing, was already relying on those sources to care for M., and given that M. needed, and would likely continue to need, intensive and constant care. Moreover, as the Department and M.'s counsel made clear at the exceptions hearing, the Department was actively working to ensure that, whatever M.'s long-term care plan ended up being, the plan would include Mr. B., and the Department would make sure that Mr. B. and M.'s emotional bond would be preserved as much as possible.

The final factor, the potential harm to M. by remaining in State care, also mitigated in favor of the court's "five way" plan. Because M. had already been in State care for two

years at the time of the court's decision, it was imperative that the court implement a plan that would achieve permanence for M. quickly. *See* Cts. & Jud. Proc. § 3-823(h)(5) ("Every reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement."). Although it was reasonable for the court to conclude that M.'s best interests would be served by granting custody and guardianship to Mr. B., it was also reasonable for the court to conclude, for the reasons previously discussed, that M.'s interests would best be served if the Department were permitted to investigate other viable alternatives, including K.E. and B.F. As such, the court exercised sound discretion in changing M.'s permanency plan so that all viable alternatives could be investigated concurrently.

Mother contends that, because Mr. B. was a relative and had proven to be a suitable caretaker, it was against M.'s best interest for the court to include a non-relative as an adoption resource, particularly given the priority the statute gives to family members. Mother argues, therefore, that the court erred in including that option in M.'s permanency plan.

We disagree. To be sure, Mr. B. has clearly been an excellent resource and has developed a strong and meaningful bond with M., and the statutory framework concerning permanency plans does favor placement with a relative over placement with a non-relative. Nevertheless, those facts do not compel the conclusion that the court abused its discretion in determining that it was in M.'s best interest to have adoption by a non-relative as an option in his permanency plan. As discussed, M. suffered from serious physical and developmental disabilities that likely necessitated care beyond the age of maturity. Mother

had never cared for M., who was three years old at the time of exceptions hearing, and it did not appear that Mother would be able to care for M. at any point in the foreseeable future. Although Mr. B. was worthy of consideration as a long-term resource, his age and reliance on outside help raised reasonable concerns about his ability to continue to provide the level of care M. required. In fact, Mr. B. was not the only person caring for M.; M. was spending at least two days per week with K.E. and B.F., whom Mr. B. himself had identified as a viable long-term resource. Finally, the court's "five way" plan did not preclude custody and guardianship with Mr. B. or even reunification with Mother and Father; it merely permitted the Department to explore viable alternatives to those arrangements. Given those circumstances, we cannot say that the court's decision to include adoption in M.'s permanency plan was "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *In re D.M.*, 250 Md. App. at 566 (citations and quotation marks omitted).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.