Circuit Court for Baltimore County
Case No.: C-03-JV-21-000720

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1560

September Term, 2023

IN RE: E.B.

Beachley,
Ripken,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: April 26, 2024

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Nineteen months after declaring E.B. a child in need of assistance ("CINA") pursuant to Md. Code Ann. (1974, 2020 Repl. Vol.), § 3-801(f) of the Courts and Judicial Proceedings Article ("CJP"), the Circuit Court for Baltimore County awarded custody and guardianship of E.B. to his maternal aunt and uncle. E.B.'s mother, H.B., appeals and presents the following two questions for our review:

1. Did the court err when it granted the maternal uncle and aunt custody and guardianship of E.B. and terminated jurisdiction over the family instead of keeping reunification with mother as a goal?

2. Did the court err as a matter of law when it directed in the final custody and guardianship order that any visitation between mother and E.B. "is arranged between the parties" and failed to set the minimum visitation the relative caregivers were required to provide mother and E.B.?

For the reasons set forth herein, we answer the first question in the negative, but conclude that the court erred as to its visitation order. Accordingly, we shall reverse the circuit court's determination regarding visitation and remand for further proceedings.

BACKGROUND

E.B. came to the attention of appellee, Baltimore County Department of Social Services ("DSS"), in December of 2021 after DSS received a report that H.B. "was having delusions causing her to believe that the family home had been bugged and that she and [E.B.] had chips implanted in their heads trying to control them." DSS was further notified of an incident in which H.B. had asked her mother, E.B.'s grandmother ("Grandmother"), to "get a gun" and watch E.B. because "bad people were coming for him." Grandmother

declined to do so and later discovered that H.B. and E.B. had left the home at 4 a.m.[1] After being unable to reach H.B. by phone, Grandmother filed a missing persons' report. H.B. returned home with E.B. at 4 a.m. the following day.

In that time, police in Washington, D.C., responded to a report that H.B. had approached an individual in Washington, D.C. and stated that someone had drugged E.B. When police arrived, H.B. fled by car with E.B. Police were able to identify H.B. by her license plate and notified DSS.

Upon returning home, on December 5, 2021, H.B. agreed to a safety plan whereby E.B. would stay with his maternal uncle, N.B. ("Uncle"), and N.B.'s wife, M.K. ("Aunt"), and their two-year-old son, and H.B. would seek mental health treatment. However, that evening, Uncle called the police after H.B. arrived at his home and "began banging on windows," demanding to see E.B. The following day, H.B. told DSS that she was "hearing voices throughout the home" and that a person she had known in high school "was speaking to [E.B.] through a chip implanted in his head."

On December 7, 2021, DSS received two reports: one from Grandmother that H.B. "became belligerent" and threw items at Grandmother's car, then followed Grandmother when she left, parked next to her car and sent "aggressive text messages"; and a second report from Uncle that H.B. "showed up at [E.B.'s] school and cause[d] a commotion." That day, E.B. was sheltered due to concerns regarding H.B.'s "mental health and overall

[1] H.B. and E.B. resided in Grandmother's home at the time.

stability."[2] On December 8, 2021, DSS filed a petition asserting that E.B. was a CINA.[3] On January 21, 2022, the court held a hearing where H.B., through counsel, did not dispute the allegations in the CINA petition and acknowledged that testimony would establish "that the department has enough evidence to sustain the allegations in the petition." The magistrate recommended that E.B. be declared a CINA and remain at Aunt and Uncle's home, and that H.B. have liberal supervised visitation with E.B.

H.B. filed exceptions to the magistrate's recommendations. Following a hearing on February 28, 2022, the court denied H.B.'s exceptions, noting that although H.B. was "making progress," that she was "not there yet." The court noted that it was concerned about "some pretty serious type of allegations of delusional behavior." By an order dated March 2, 2022, the court declared E.B. a CINA. E.B. remained with Aunt and Uncle and H.B. was awarded liberal supervised visitation with E.B.

Initially, Aunt and Uncle agreed to supervise visits between H.B. and E.B. However, on April 20, 2022, they reported that they were no longer comfortable doing so because of H.B.'s "confrontational behavior" towards Aunt. Accordingly, a third party began supervising H.B. and E.B.'s visitation.

[2] A child is "sheltered" under CJP § 3-801(bb) when temporarily placed "outside of the home at any time before [a child in need of assistance] disposition." In this case, E.B. began residing at Aunt and Uncle's on December 5, 2021, where he remained when sheltered by DSS two days later.

[3] A CINA is "a child who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." CJP § 3-801(f).

Following a review hearing in June of 2022, the court identified reunification with H.B. as the permanency plan for E.B., and in accordance therewith, ordered that H.B. comply with several requirements, including a mental health evaluation.[4] After doing so, H.B. was diagnosed with Unspecified Anxiety Disorder and with a provisional diagnosis of Bipolar I Disorder, and began attending therapy.

The court held a permanency planning hearing in September of 2022. DSS reported that E.B. was "doing quite well" with Aunt and Uncle and that he "enjoys spending time with his cousin in the home and with friends in the neighborhood." DSS and the best interest attorney appointed for E.B. sought to add a concurrent permanency plan of custody and guardianship to Aunt and Uncle. H.B. asserted that it was "too soon to change to a concurrent plan" and that she was "making good progress." Additionally, H.B. sought increased and unsupervised visitation with E.B. The court denied both parties' requests and set another hearing for February of 2023.[5]

When the parties appeared before the court in February of 2023, DSS noted that although there had been "some progress by [H.B.], there have also been some steps back[,]" and E.B.'s attorney noted that Mother was "still reporting hearing voices." Accordingly, DSS and E.B.'s attorney again requested a concurrent permanency plan of custody and guardianship to Aunt and Uncle "given the time that this case has been [sic] and also the

[4] The order asserted that E.B.'s permanency plan was "[r]eunification with parent(s)." However, the record indicates that E.B.'s putative father had not been involved in E.B.'s life and that DSS's efforts to locate him were unsuccessful.

[5] The record indicates that the court was, in part, concerned about a "fairness issue" relating to an evaluation H.B.'s counsel received from DSS that morning.

nature of the mental health struggles that mom is experiencing[.]" H.B. responded that she was "actively engaged in her therapy" and again argued against any change to the permanency plan. The magistrate again denied changing the permanency plan, indicating that he would "give it another reporting period and we'll see where we are."

On April 5, 2023, Aunt brought E.B. to the library for a scheduled supervised visit with H.B. When H.B. learned that the visitation supervisor had forgotten about the scheduled visit, H.B. "became irate" and shoved Aunt, leading to a second-degree assault charge (and conviction) against H.B. She was sentenced to 10 years, all suspended, with 18 months of probation. Aunt also obtained a protective order prohibiting H.B. from having contact with her for one year.

On October 5, 2023, the parties appeared for a hearing. DSS and counsel for E.B. again requested an award of custody and guardianship of E.B. to Aunt and Uncle and asked that the case be closed. DSS acknowledged that H.B. had "done a lot of things that have been recommended by the [c]ourt[,]" but that there were ongoing concerns, including H.B.'s failure to advise her therapist that she continued to hear voices, and that she would send "berat[ing]" emails and text messages to the DSS social worker and to Uncle.

DSS further noted that they were "still dealing with the debugging, the paranoia" concerns, and that they had received reports "about [H.B.] posting on Facebook about meeting people to come in and debug her home" in September of 2023. Between July and September of 2023, H.B. posted on Facebook that unknown people were "bugging . . . her home, car, and [E.B.'s] placement[,]" and that she paid someone $200 to debug her car

"but that did not stop their access." She also shared on Facebook that "they are bugging her out of church," "sexually harassing her and trying to convert her to their religion."

H.B. responded that although she "has struggled with issues, . . . she has done everything to make herself be in a position as an adult where [E.B.] can be in her home and cared for by her[,]" and asserted that DSS's requests should be denied. Alternatively, in the event the court decided to award custody and guardianship to Aunt and Uncle, H.B. requested visitation at a minimum of every other week, and that the court provide visitation resources if Uncle is not willing to supervise the visits.[6]

Ultimately, the court awarded Aunt and Uncle custody and guardianship of E.B. and terminated E.B.'s designation as a CINA. Additionally, the court ordered that visitation between H.B. and E.B. be "arranged between the parties." Specifically, the court's order regarding visitation provided, in full, that:

> [V]isitation with parents is arranged between the parties. The Department shall provide to the parties, to the extent possible, ideas and resources it is aware of that provide assistance or facilitation of visitation between parties.

H.B. timely filed this appeal. Additional facts will be provided as necessary.

STANDARD OF REVIEW

"There are 'three distinct but interrelated standards of review' applied to a juvenile court's findings in CINA proceedings." *In re J.R.*, 246 Md. App. 707, 730 (2020) (quoting *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018)). First, we review the court's factual findings for clear error. *Id*. (citing *In re Adoption/Guardianship of Amber*

[6] Aunt's protective order against H.B. remained in place until April 13, 2024.

R., 417 Md. 701, 708 (2011)). Next, we review whether the court erred as a matter of law without deference. *Id.* at 730-31 (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). "[I]f it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless." *In re Adoption/Guardianship of Victor A.*, 386 Md. 288, 297 (2005) (second alteration in original) (quoting *In re Yve S.*, 373 Md. at 586).

Lastly, "we review the court's ultimate decision for abuse of discretion." *In re M.H.*, 252 Md. App. 29, 45 (2021) (citing *In re Yve S.*, 373 Md. at 585-86). In other words, our role "is not to determine whether, on the evidence, we might have reached a different conclusion." *In re B.C.*, 234 Md. App. 698, 708 (2017) (quoting *In re Abigail C.*, 138 Md. App. 570, 587 (2001)). Instead, "an abuse of discretion exists 'where 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 Andre J.*, 223 Md. App. 305, 323 (2015) (alteration in original) (quoting *In re Yve S.*, 373 Md. at 583).

DISCUSSION

H.B. asserts that the court's ruling should be reversed because "the totality of the circumstances warranted keeping reunification as a permanency goal for [H.B.] and E.B." In support, H.B. contends that "the evidence showed that E.B. could soon be safe in mother's care and that mother had made significant progress in remedying the issues that brought the family to the court's attention." DSS responds that the court "acted within its broad discretion and in E.B.'s best interests," and thus, that the custody and guardianship award should be affirmed.

Additionally, H.B. contends that the court's determination that visitation be "arranged between the parties" failed to set forth the minimum appropriate visitation, relying on this Court's decision in *In re Caya B.*, 153 Md. App. 63, 81 (2003). Accordingly, she requests that we reverse and remand for the parties to "submit any evidence they may have tending to show whether visitation does, or does not, need to remain supervised." DSS agrees that the court's visitation order must be vacated because the court failed to provide H.B. a minimum level of visitation. Accordingly, DSS requests that we remand this matter "for the limited purpose of establishing the minimum amount of visitation and expressly stating that visitation must be supervised."

I. The court did not err in granting Aunt and Uncle custody and guardianship of E.B.

The statute governing CINA matters, set forth at CJP §§ 3-801-830, provides "detailed requirements" for CINA proceedings. *In re M.H.*, 252 Md. App. at 42. One such requirement is that after a child is determined to be a CINA, "[t]he court shall hold a permanency planning hearing to determine the permanency plan" for the child. CJP § 3-823(b)(1). In accordance therewith, the court is to give "primary consideration" to the child's best interests. Md. Code Ann. (1984, 2019 Repl. Vol.), § 5-525(f)(1) of the Family Law Article ("FL"). Furthermore, this Court has noted that permanency planning "begins with the presumption that reunification with parents is in a child's best interests[.]" *In re M.*, 251 Md. App. 86, 123 n.10 (2021). However, "that presumption may be rebutted" if "the court determines, after considering the statutory factors in FL § 5-525(f)(1), that 'weighty circumstances' dictate that a different plan is in the child's best interests." *Id.*

(quoting *In re Cadence B.*, 417 Md. 146, 157 (2010)). The court considers the following factors when assessing the best interests of a child:

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

FL § 5-525(f)(1); *see also* CJP § 3-823(e)(2).

Furthermore, this Court has noted the "'valid premise . . . that 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. at 128 (quoting *In re Jayden G.*, 433 Md. 50, 84 (2013)). Indeed, the CINA statute provides that, "[e]very reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement." CJP § 3-823(h)(5); *see also In re Adoption/Guardianship of Victor A.*, 386 Md. 288, 304 (2005) (noting that the "overriding theme" of the CINA statute "is that a child should have permanency in his or her life" (quoting *In re Yve S.*, 373 Md. at 576)).

Here, the record reflects that the court appropriately considered the best interests of E.B. and each of the factors set forth in FL § 5-525(f)(1) before awarding custody and

guardianship of E.B. to Aunt and Uncle. Specifically, considering the first factor enumerated under FL § 5-525(f)(1), E.B.'s ability to be safe and healthy in the home of H.B., the court noted that:

> [T]here are significant concerns to the department that the child would not be safe in the home of the child's parents based upon the behaviors that the parent is exhibiting, based upon the failure to be fully forthcoming with therapeutic concerns and based upon the continued aggressive behavior exhibited by the mother.

Further, as to the second factor, E.B.'s attachment to H.B., the court found as follows:

> The [c]ourt has considered the child['s] attachment and emotional ties to the child's natural parent and siblings. The [c]ourt finds here that there is a clear emotional bond with the child and the child's mother; the child is very fond of the child's mother, but does exhibit concerns about being solely alone with the child's mother. Based upon what the child has articulated, the [c]ourt finds to be concerns [sic] with the veracity of statements made by the child's mother and also that also concerns to the [c]ourt [sic].

As to the length of time E.B. had resided with Aunt and Uncle, and the potential emotional attachment to Aunt and Uncle under FL §§ 5-525(f)(1)(iii) and (iv), the court noted that:

> The child's emotional attachment to the child's current caregiver and the caregiver's family, the [c]ourt finds for the almost two years that the child has been in the placement with the maternal aunt and uncle, that there has been significant emotional attachments the child has formed with the child's current caregiver and the caregiver's family including the child of that family. The length of time in which the child has resided with the current caregiver and again the [c]ourt finds that the child has been in the current placement since the child has been sheltered or committed to the department.

Moreover, as to FL § 5-525(f)(1)(v), the potential harm in moving E.B. away from his placement with Aunt and Uncle, the court concluded that removal of E.B. from the home "would be potentially harmful":

> The [c]ourt further has considered the potential emotional[,] developmental and educational harm to the child if moved from the child's current placement. The [c]ourt does find that the child has been in the same school since the child has been of an age in which the child would attend school. The [c]ourt finds the child potentially would be educationally harmed to be removed from the child's current placement, is emotionally bonded and the child's developmental, any type of educational, therapeutic or other emotional needs are being met by the current caregivers. The [c]ourt further finds that that would be potentially harmful if the child was removed.

Finally, considering FL § 5-525(f)(1)(vi), the potential harm in remaining in state custody, the court noted that E.B. had already been in state custody for a "great length" of time, and that the matter was in an "arguably . . . worse position" than before the case's inception due to H.B.'s criminal conviction:

> The potential harm to the child by remaining in state custody for an excessive period of time, again, the [c]ourt so finds that the child has been sheltered and then committed for a period of time which the [c]ourt finds is then, that is of great length. That is not the only factor, but it is a factor that the [c]ourt gives weight to to some extent when considering when the permanency plan would be completed. And the [c]ourt finds that in review of the report and the evidence that are submitted to the [c]ourt, the [c]ourt does find as it stated before that much of the same issues that were present and were concerning to a fact finder of this [c]ourt and also to the department are the same circumstances that are exhibiting today and that we are much in the same position as we were back when there was a hearing and shelter care on December 8th, 2021. The [c]ourt finds arguably that we are in a worse position because there has now been a criminal conviction for assault and there also is a current protective order in place which shows to this [c]ourt that there has been an escalation in the inability for the mother to control her behaviors.

On appeal, H.B. argues that the court erred in its findings concerning H.B. not being forthcoming about her symptoms in therapy and her aggressive behavior. She admits that the court based its findings on testimony from the social worker, but argues that the social worker's testimony "was speculative" because the therapist reported shortly before the

October 2023 hearing that H.B. was "making progress," had "insight to symptoms," and was "compliant with treatment." She further argues that she did not exhibit "continued" aggression because the evidence revealed only one instance of physically violent behavior.

We cannot conclude that the court's findings were erroneous. There was ample evidence suggesting that H.B. denied her ongoing auditory hallucinations and paranoid delusions, permitting the fact-finder to reasonably infer that she was not accurately reporting these symptoms to her therapist. Additionally, H.B. seeks to limit the word "aggression" to only acts of physical violence. However, "aggressive behavior" includes not only the physical assault of Aunt in April 2023, but also H.B.'s actions in December 2021, when she threw items at Grandmother's car, and when she banged on the windows of Aunt and Uncle's house demanding to see E.B., and the "berat[ing]" text messages H.B. sent to the DSS social worker.[7] As to H.B.'s criticism of the court's reliance on the social worker's testimony, "[i]t is not our role to reassess the credibility of the witnesses who testify before the trial court." *Thornton Mellon, LLC v. Adrianne Dennis Exempt Tr.*, 250 Md. App. 302, 329 (2021).

[7] H.B. argues that the court should not have considered her December 2021 actions because those incidents were mentioned in the original petition for shelter care but subsequently removed by the parties' agreed-to amendments to the petition. Therefore, according to H.B. "there was no sustained finding that [H.B.] actually became physically aggressive with her family" in December 2021. However, as H.B. acknowledges, these same allegations were repeated in DSS reports that were admitted into evidence at the October 2023 hearing without objection. Counsel for DSS mentioned the December 2021 incidents in closing argument, and at no point did H.B. object or argue that it would be inappropriate for the court to consider the incidents. H.B.'s argument on this point has not been preserved for appellate review.

H.B. further contends that the "totality of the circumstances warranted keeping reunification as a permanency goal for [H.B.] and E.B." She contends that there was no evidence that E.B. "would suffer harm if his CINA case remained open for at least one more six-month review period," or that E.B. "wanted immediate case closure."[8] (Emphasis removed).

However, these assertions do little to indicate that the court abused its discretion or acted "without reference to any guiding rules or principles." *In re Andre J.*, 223 Md. App. at 323 (quoting *In re Yve S.*, 373 Md. at 583). Instead, the record reflects that the court made its determination after "giving great weight to the best interests of the child" and the fact that there were "still compelling concerns of safety if reunified" with H.B. Further, the court made its decision after twice denying DSS's request to change the permanency plan from reunification with H.B., leading to over a year of additional proceedings. Indeed, at the time of the court's decision, E.B. had already been in state custody for nearly 22 months, yet the circumstances were "arguably . . . worse" than at the case's inception. We cannot say that the court abused its discretion in declining to keep the matter open for an additional review period.

Finally, H.B. maintains that her "continued therapeutic progress warranted keeping reunification on the table[,]" citing to our opinion in *In re Adoption/Guardianship of J.T*, 242 Md. App. 43 (2019), where we reversed a termination of parental rights and noted that "[i]n cases involving mental illness, a court should carefully assess whether, at the time of

[8] We note that counsel for E.B. agreed with DSS that Aunt and Uncle should be awarded custody and guardianship.

the merits hearing, the parent's efforts to rehabilitate her mental illness 'were beginning to bear some fruit[.]'" *Id.* at 62 (quoting *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 971 P.2d 1046, 1054 (Ariz. Ct. App. 1999)). However, the facts before the Court in that case indicated that the mother was "becoming stable," was forthcoming about her mental health to medical professionals, and had not "exhibit[ed] any violent behavior towards other people." *In re Adoption/Guardianship of J.T.*, 242 Md. App. at 67-68. Here, although it was undisputed that H.B. had made some progress,[9] she was convicted of second-degree assault less than two months before the court's ruling, where the court noted that "much of the same issues that were present and were concerning" at the matter's inception were "the same circumstances that are exhibit[ed] today." Accordingly, given the facts and the record before us, we are unpersuaded that "no reasonable person would take the view adopted by the [trial] court[.]" *In re Andre J.*, 223 Md. App. at 323 (alteration in original) (quoting *In re Yve S.*, 373 Md. at 583).

II. The court erred in ordering that any visitation between H.B. and E.B. shall be "arranged between the parties[.]"

Although not absolute, the right of a parent to visit his or her child placed in the custody of another "is an important, natural and legal right[.]" *Boswell v. Boswell*, 352 Md. 204, 220 (1998) (quoting 2 William T. Nelson, Divorce and Annulment § 15.26, at 274-75 (2d ed. 1961)). Accordingly, "[n]ot only must access to the child[] be reasonable, but any limitations placed on visitation must also be reasonable." *Id*. (citing *North v. North*,

[9] However, much of the evidence indicated that H.B. continued to deny experiencing auditory hallucinations or paranoid delusions, which the court found to be credible.

102 Md. App. 1, 12 (1994)). Further, this Court has noted that visitation rights "are not [to] be denied even to an errant parent unless the best interests of the child would be endangered by such contact." *Roberts v. Roberts*, 35 Md. App. 497, 507 (1977).

It follows that the trial court does not have discretion to "delegate its responsibility to determine the minimal level of appropriate contact between the child and his or her parent." *In re Justin D.*, 357 Md. 431, 449 (2000). Instead, the court must set forth "at least the minimal amount of visitation that is appropriate and that DSS must provide, as well as any basic conditions that it believes, as a minimum, should be imposed." *Id*. at 450. Accordingly, although orders related to visitation are "generally within the sound discretion of the trial court," *Barrett v. Ayres*, 186 Md. App. 1, 10 (2009), where a trial court's order concerning visitation "constitutes an improper delegation of judicial authority to a non-judicial agency or person, the trial court has committed an error of law." *In re Mark M.*, 365 Md. 687, 704-05 (2001); *see also In re Caya B.*, 153 Md. App. at 81 (holding that the trial court erred in failing to set forth the minimum amount of visitation or conditions that would apply and leaving it in the hands of the guardians).

H.B. and DSS agree, as do we, that the court's order failed to establish the "minimal level of appropriate contact" between H.B. and E.B. as required by the caselaw. That the order merely provides that visitation would be "arranged between the parties" constitutes an improper delegation of the court's authority regarding visitation to non-judicial individuals, namely, Aunt and Uncle. Moreover, as H.B. correctly points out, Uncle had indicated that he would only facilitate visitation after "see[ing] some of the behaviors towards his family reduced," and Aunt's restraining order against H.B. remained in place

for over six months after the date of the court's ruling. Thus, it is unclear what, if any, visitation H.B. would be afforded under the court's order. Such a limitation on H.B.'s "important, natural and legal right" to visit E.B. is not supported by the facts in the record before us. *Boswell*, 352 Md. at 220 (quoting Nelson, *supra*, at 274-75). Accordingly, we shall vacate the court's visitation provision and remand the case to the circuit court for additional proceedings to determine the minimum amount of visitation to be afforded to H.B., and any basic conditions that should apply.

THE CIRCUIT COURT FOR BALTIMORE COUNTY'S AWARD OF CUSTODY AND GUARDIANSHIP IS AFFIRMED. THE VISITATION PORTION OF THE ORDER IS VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE EQUALLY DIVIDED BETWEEN APPELLANT AND APPELLEE BALTIMORE COUNTY DEPARTMENT OF SOCIAL SERVICES.