UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1846

September Term, 2014

IN RE: YARITZA H.

Wright,
Reed,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: June 3, 2015

This is a case involving Yaritza H. ("Yaritza"), who has been adjudicated by the Circuit Court for Montgomery County, sitting as a juvenile court, to be a Child in Need of Assistance or CINA.[1] Yaritza's biological mother, Flor H. ("Ms. H.") appeals from the juvenile court's Permanency Plan Hearing Order, dated October 2, 2014.[2] On appeal to

[1] Sections 3-801(f) and (g) of the Courts Article respectively define "Child in Need of Assistance" and "CINA":

> **§ 3-801. Definitions.**
>
> (a) *In general*. – In this subtitle the following words have the meanings indicated.
>
> * * *
>
> (f) *Child in Need of Assistance*. – "Child in Need of Assistance" means 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.
>
> (g) *CINA*. – "CINA" means a child in need of assistance.

Maryland Code (1974, 2013 Repl. Vol.), §§ 3-801(f), (g) of the Courts and Judicial Proceedings Article ("CJ"). *See In re Adoption/Guardianship of Cross H.*, 431 Md. 371, 376-77 (2013); *In re Adoption of Amber R.*, 417 Md. 701, 704 n. 1 (2011); *In re Karl H.*, 394 Md. 402, 406 (2006).

[2] This Court has said with respect to the permanency plan:

> When a child is declared a CINA and removed from the home, the court must "hold a permanency planning hearing to determine the permanency plan for [the] child . . . ." CJ § 3-823(b)(1). "'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,
> (continued…)

this Court, Ms. H. questions whether the juvenile court "err[ed] by changing Yaritza's permanency plan[.]"[3]

We have jurisdiction pursuant to Section 12-303(x) of the Court's Article, Md. Code (1974, 2013 Repl. Vol.), § 12-303(x) of the Courts & Judicial Proceedings Article, and shall affirm in all respects.[4]

(continued…)
family arrangement.'" *In re Joseph N.*, 407 Md. 278, 285 (2009) (quoting *In re Damon M.*, 362 Md. 429, 436 (2001)). *Accord In re Ashley E.*, 387 Md. 260, 287 (2005). It not only "'provides the goal toward which the parties and the court are committed to work,'" it determines the "'[s]ervices to be provided by the local social service department and commitments that must be made by the parents and children . . . .'" *In re Joseph N.*, 407 Md. at 285 (quoting *In re Damon M.*, 362 Md. at 436).

In re: Shirley B., 191 Md. App. 678, 706 (2010), *aff'd*, 419 Md. 1 (2011).

[3] In her brief, Ms. H. raises the following question:

> Did the court err by changing Yaritza's permanency plan where the plan change and anticipated case closure would deprive the mother and daughter from developing a meaningful relationship?

Briefs have also been filed by the Attorney General on behalf of the Montgomery County Department of Health and Human Services ("Department") and by appointed counsel on behalf of Yaritza.

[4] The Order from which this appeal is taken adversely affects Ms. H.'s maternal rights because it changes the plan to a custody and guardianship by a relative, thus changing the nature and terms of her "care and custody of [the child] to her detriment." *In re: Billy W.*, 386 Md. 675, 691-92 (2005).

BACKGROUND

Introduction

Yaritza was born on October 8, 2013, and almost immediately came to the attention of the Montgomery County Department of Health and Human Services ("Department"). The hospital where Yaritza was born became concerned for her welfare and contacted the Prince George's County Department of Social Services. Yaritza's case was soon referred to Montgomery County because the mother, Ms. H., lived there with her brother.

On October 21, 2013, the Department filed a petition with the juvenile court seeking a judicial determination that Yaritza is a CINA. The petition alleged a "history of child neglect and substance abuse" and represented as well that Ms. H.'s participation in or compliance with various programs and services, that were ordered in connection with other cases involving Yaritza's older siblings, were unsuccessful.

On October 21, 2013, the juvenile court issued a Shelter Care Order, and, based on the allegations in the petition, placed Yaritza in the temporary care and custody of the Department pending further action. On November 3, the Department filed the "1st Amended Child in Need of Assistance Petition."

Pre-trial Settlement Hearing – November 5, 2013

The parties participated in a pre-trial settlement hearing before the juvenile court on November 5, following which the juvenile court issued an Interim Order, which included the following finding:

> [¶] **3. That**, pursuant to Rule 11-114 and Md. Code, Courts and Judicial Proceedings Article § 3-817, the allegations in the First Amended Child in Need of Assistance Petition are

> **sustained** by the Court **against the Mother** by the agreement between the County, the Child, and the Mother.

Hearing – November 14, 2013

A hearing was conducted on November 14, 2013, at which time the juvenile court addressed allegations relating to the child's father, Rubio, who failed to appear or accept responsibility for the child; the juvenile court sustained allegations with respect to him. Ruling "on the basis of th[e] sustained facts" in the petition, the juvenile court found that "Yaritza's placement's [was] necessary to protect her from serious immediate danger." The juvenile court explained that "[t]here's nobody able to provide supervision or protection for her and continued placement in her home is contrary to her welfare." The court continued:

> THE COURT: And on the basis of those findings I will find that Yaritza has been neglected. And her parents, Ms. H. by agreement and [father] in absentia, are unable or unwilling to give proper care and attention to her and her needs. . . .

Counsel for the Department then pointed out that Ms. H. and the Department had submitted a "list a recommendations that had been agreed to – by mother, those regarding the child and herself[.]" The juvenile court then ruled as follows, based on the recommendations proffered by the Department:

> THE COURT: Okay. On the basis of the facts sustained in the first amended child in need of assistance p[etition] I'll make the following orders. With regard to disposition, that Yaritza is a child in need of assistance under the jurisdiction of the Court or now placed under the jurisdiction of the Court. Committed to the Department of Health and Human Services Child Welfare Services for placement or continued placement in foster care. A limited guardianship . . . for medical, educational, and travel purposes. Visits between mother, Ms.

> H., and Yaritza's supervised minimum twice a week under the direction of the department not to include overnights. Ms. H will participate in and complete a substance abuse program that included urinalysis and breathalyzer testing. But until she is admitted to such a program she will undergo twice weekly urinalysis and breathalyzer testing under the direction of the department. Ms. H. will also undergo a comprehensive psychological evaluation and comply with treatment recommendations under the direction of the department. And that she participate in parenting education under the direction of the department. . . .

On November 18, the juvenile court filed the Adjudication and Disposition Order to reflect the rulings from the bench. The juvenile court found that the allegations in the CINA petition had been established by a preponderance of the evidence. The juvenile court found that Yaritza was a Child in Need of Assistance (CINA) and committed her to the Department for "continued placement in foster care[.]"

The Order directed Ms. H. to:

> 1) Participate in and complete a substance abuse program that includes urinalysis and breathalyzer testing, and follow all recommendations;
> 2) Participate in urinalysis and breathalyzer testing, twice weekly, prior to beginning a substance abuse program;
> 3) Complete a comprehensive psychological evaluation and comply with all treatment recommendations; and
> 4) Participate in parenting education;
> all under the direction of the Department[.]

The juvenile court also reaffirmed the limited guardianship with the Department at a review hearing on April 28, 2014. The juvenile court reaffirmed the permanency plan of reunification.

Volviendo A Vivir

Ms. H. enrolled in a substance abuse treatment program, Volviendo A Vivir ("VAV"), at La Clinica del Pueblo, on December 18, 2013, and graduated on June 17, 2014. According to Maria Paige, the Substance Abuse Services Manager, and Ernesto Cedeno, a Substance Abuse Counselor, the VAV "treatment team applaud[ed Ms. H.'s] dedication to her recovery and sobriety maintenance and her positive attitude towards improving her life." Another letter from *La Clinica*, this one authored by Alma Hamar, the lead mental health therapist, reported that Ms. H. "attended all the sessions and was awarded a certificate of completion in June 18, 2014."

In anticipation of the permanency plan hearing, the Department reported that since being discharged from the VAV program, Ms. H.:

> has not been compliant with the discharge recommendations which include weekly attendance with La Clinica del Pueublo's substance abuse support group, participation in Alcohol Anonymous Meetings, creating productive activities during free time, and implementing a personal prevention plan to maintain sobriety.

Permanency Plan Hearing - October 2, 2014

The facts that are most relevant to the issue raised on appeal were developed at the contested permanency planning hearing on October 2, 2014. The juvenile court heard testimony from Lakeisha Barksdale and Ms. H. Ms. Barksdale was accepted without objection as an expert in the field of social work.

Ms. Barksdale testified that Yaritza was "doing extremely well" with her maternal aunt and uncle. She had noticed some developmental delays that afflicted the child:

> [DEPARTMENT'S COUNSEL:] – did you come to learn what caused those developmental delays?
>
> A Yes. Recently Yaritza had an MRI, and she was also seen by a neurologist. And a lot of the causes were due to substance abuse. She's currently being followed by Infants and Toddlers, I believe twice a week, because of those delays.
>
> Q And when you say substance abuse, substance abuse by whom?
>
> A The mother.
>
> Q And Yaritza, when was, at what age was Yaritza removed from the mother?
>
> A I believe immediately after the hospital. Maybe one or two days, I'm not exactly sure. But I know immediately after being born.

Ms. Barksdale monitored Yaritza's placement by visiting the aunt, and also sought to facilitate visits between Ms. H. and Yaritza. She testified that Ms. H. had completed only about "5 out of 32 visits," and during those visits required "a lot of coaching."

Ms. Barksdale kept in touch with Ms. H.'s substance abuse case manager every month. She also provided resource information, telling Ms. H. about free medical clinics in response to the latter's medical issues, specifically, a case of poison ivy. Ms. Barksdale elaborated:

> Q Okay, and why did you provide that information to her?
>
> A The mother showed up at the [Family Involvement meeting] . . . stating that she had poison ivy. And then later changed her story that she had some medical condition.
>
> We were concerned about mom's health, as well as the baby's, so we provided her with free clinics where she could be checked out by a doctor.

She reiterated that the Department provided "free clinic information."

Ms. Barksdale explained that Yaritza had been referred to the Infants and Toddlers program "[b]ecause of the delays they witnessed on the case[.]" When asked about the referral of Ms. H. to Dr. Richard Ruth, the psychologist, Ms. Barksdale explained that Dr. Ruth would be "more culturally sound" in relating to Ms. H. The doctor had yet to complete a psychological evaluation, however, because his communication with Ms. H. has been "infrequent."

Ms. Barksdale acknowledged that while Ms. H. had completed a substance abuse program, she failed to finish the recommended aftercare program. The social worker elaborated:

> Q And by not completing the aftercare recommendations, what specifically do you mean that she did not complete?
>
> A I believe, from the report, it has her attending, I'm trying to get the term out, but attending Alcoholics Anonymous. I'm not sure, off the top of my head, but some type of classes where she can continue to be sober and receive the necessary support with that program. And as to my knowledge, she has not.

Ms. Barksdale also testified that Ms. H. was still unemployed, and that the mother could not provide her home address. Following the completion of the home study, the Department recommended that Yaritza be placed with the maternal aunt and uncle. She acknowledged that the aunt received a stipend, "temporary cash assistance," which is money available for relatives who take care of a foster child. This is required, because the Department would be unable to provide the necessary funds. Ms. Barksdale then presented the conclusions and recommendations that she reported to the juvenile court:

> [DEPARTMENT'S COUNSEL:] Now, within that report, you make a recommendation of changing the permanency plan, is that correct?
>
> A Correct.
>
> Q And what recommendation do you give?
>
> A The recommendation provided in the report is for the plan to be changed to custody and guardianship to the maternal aunt and uncle.
>
> Q And why do you, why are you recommending that change?
>
> A Yaritza is stable in the home. The environment is very loving and supportive. They continue to provide services offered by Infant and Toddlers. They are open, at some point in time, for Yaritza to be reunified with her mother.
>
> Q Now what is the department's plan if the permanency plan is changed for the next month?
>
> A If the plan is changed -- I'm sorry. Could you say that again? I'm sorry.
>
> Q Does the department have any plan, with regards to this case, after October 28th?
>
> A No.
>
> Q And when you say, why are you saying no?
>
> A Because the plan would be changed to custody and guardianship, meaning that the aunt and uncle would have Yaritza placed in their home.

Ms. Barksdale emphasized that the Department would always be "open to visits" between Ms. H. and Yaritza. The concern, she stressed, was whether there would be any medical issues "because we don't want to put the baby at risk." Once the mother would be cleared medically, then the visits could resume. In addition, if the Department closed this

case, it would "offer[] to implement a visitation provider." This would be a third party that would supervise the visits. The difficulty with assigning a provider to facilitate visitations was that Ms. Barksdale did not know where Ms. H. lived.

Ms. Barksdale opined that the appropriate permanency plan recommendation would also include case closure. She outlined the Department's concerns if Yaritza were to be reunited with Ms. H. at this time:

> Q And can you also, are you also able to provide an opinion as to any risk or safety if Yaritza were to be currently reunified with the mother?
>
> A Yes. The [D]epartment is still concerned with the mother's ability to parent Yaritza. And what I mean by parenting, is that given that the visits are supervised and there's consistent cueing and redirection of how to care for her, I'm not sure that the mother would be able to secure Yaritza's safety if we were not involved in her care.

Ms. Barksdale testified that the Department was aware that Ms. H. had referred herself to La Clinica del Pueblo for parenting classes. Yet, as noted above, Ms. H. was unable to apply the skills that she had learned from *La Clinica*. The Department thus had to model appropriate parenting behavior during the visits. Ms. Barksdale explained:

> The information received in La Clinica did not translate during the visits. So that is why the department was consistently cueing and redirecting mom with appropriate behaviors for parenting Yaritza.

She testified that Ms. H. had tested positive about twice for cocaine since September 2013. Ms. Barksdale responded "no" when asked whether there were any other services that the Department could provide after the case was closed. When cross-examined by

Yaritza's counsel about the interaction between Ms. H. and the child during the last supervised visit, she recounted with respect to Yaritza's demeanor:

> She [Yaritza] didn't have much of it, she's not really bonded, if that's an appropriate word to use, because of the infrequent visits and interactions with her mother. So she's normally looking for myself or my partner, because these are faces that she sees more frequently.

On the other hand, Yaritza's demeanor when with the maternal aunt was "totally different." The social worker explained that "if the uncle is present, she only wants to be with him, and she's clingy towards him. If she's with the aunt, she's dancing, she's smiling, she's blowing kisses. She's a very happy baby." Ms. Barksdale suggested that the child was more active at the aunt's house because other children were there, and that "it may be more stimulati[ng] in the home that she's in now, because there are additional children." She also explained that Yaritza was moved from a foster family to the aunt's home because she could be with family members.

Ms. H's counsel cross-examined Ms. Barksdale about Ms. H.'s compliance with various recommendations in the VAB [VAV] report.[5] Without consulting her report, Ms. Barksdale was unable to state whether Ms. H. had attended the AA meetings, church and whether the mother was engaged in any productive free time activities. Ms. Barksdale was also unable to testify as to whether Ms. H. had been attending to her healthcare needs. She

[5] This acronym "VAB" appears throughout the transcript, and is an incorrect transcription of the correct acronym, "VAV." VAV stands for *Volviendo A Vivir*, an "intensive outpatient substance abuse program at La Clinica del Peublo, a community health clinic in Washington, D.C." *Correspondence from La Clinica del Pueblo*, dated July 2, 2014, admitted as Department's Exhibit 2, review hearing of October 2, 2014.

acknowledged that VAV conducted a mental health evaluation, that VAV concluded that individual therapy sessions were not recommended, and that La Clinica del Pueblo provided a positive report about Ms. H.'s participation in their program. Mother's counsel introduced a number of certificates to demonstrate Ms. H.'s completion of various programs through the *La Clinica*. The certificates do not appear to demonstrate the extent of Ms. H.'s follow-up efforts.

Counsel asked Ms. Barksdale about the strained relationship between the mother and the maternal aunt. When counsel asked whether custody of Yaritza with the aunt would effectively foreclose visits from Ms. H., Ms. Barksdale responded:

> I wouldn't say that it's not likely. From conversations with the aunt and uncle, they would like to see improvements with Ms. H. and at this time, they feel more comfortable having a third party supervised visit [as recommended by the Department].

The Department would not recommend that the third party be a member of the family. When asked who would provide this service, Ms. Barksdale testified that the Department did not have a specific provider, and cited the fact that it has not received a current address for the mother. But the resources were available. According to Ms. Barksdale, "anywhere in the District, Maryland, or Virginia area, they have what's called supervised visitation providers. Which are trained professionals that are able to assist parents and/or families in cases similar to Ms. H." She acknowledged that, once the Department closed this case, Ms. H. would be responsible for locating a visitation professional. She was unsure whether Ms. H. had the resources to do this alone. Ms. Barksdale explained that Ms. H. "has not maintained consistent communication with the

department." Although Ms. H. has attended two of the three required psychological sessions with Dr. Ruth, the evaluation remained incomplete as of the date of the hearing.

On redirect examination, Ms. Barksdale explained the significance of the case closure:

> [DEPARTMENT'S COUNSEL:] What's the significance of looking to close the case administratively on October 28th?
>
> A The significance would be that Yaritza has been in a home at that date for six months, which would go in conjunction to the department's recommendation for custody and guardianship to the maternal aunt and uncle. It would also provide them the financial assistance for the guardianship stipend.

She further explained:

> A What we have is a custody and guardianship stipend. It basically allows relatives who have had children in their home for at least six months to qualify for the monies that they are allowed until the child is either 18 years old and ages out, the child is reunified with a biological relative, or the child continues schooling up to 21. So it's guaranteed assistance, financially, for that child and that relative.
>
> Q Okay. But that's also dependent on them having custody and guardianship, correct?
>
> A Correct.

Ms. H. never contacted Ms. Barksdale to arrange for follow-up services after completing the drug treatment class. She was then cross-examined again by Ms. H.'s attorney, and the transcript reflects the following exchange:

> Q Ms. Barksdale, you said that Ms. H. only contacted you three times for visits, to ask for visits with Yaritza?
>
> A Correct.

Q And you've had the case now for almost a year? But Ms. H. has had more than three visits with Yaritza, isn't that true?

A When I answered correct about the three visits, they were pertaining to the incident with the poison ivy, that she said that she had, but she's also no-showed on several visits which would include the three.

Q Well let's talk about the visits that happened since the last hearing.

A So since the last hearing, she's attended 5 out of a possible 30-ish. I think the number's in my court report.

Q And, but she's asked you three times to have visits with Yaritza?

A Right, where she's also no-showed during those three times that she's requested.

Q Okay. So that would be eight visits then?

A I'm not sure.

Q Well, if she showed up for those three visits --

A She no-showed, not that she showed. She's called to say to say that she would show, but she has not shown up for the scheduled visit with the department.

Q Well, finding in your report, there would be about 30 possible visits that she would be able to attend?

A Correct.

Q Since the last court hearing until the date of the report?

A Correct.
Q She showed up for five of them?

A Correct.

Q And she called three times and scheduled visits and did not show up for those three?

A Correct.

Q And did you tell her that she could not see Yaritza until she had, until she went to the doctor for the poison ivy?

A No, I did not tell her that.

Q Did you discuss the poison ivy with her?

A Yes, I did.

Ms. H. testified at length, and stated that she had difficulty communicating with the Department. Ms. H. asserted that she would primarily communicate with Amy Cashman, the Department's Community Service Representative. She complained that Ms. Barksdale "doesn't never speak with me" because "she never has any time to speak with me and Amy's the one that tells me the things."

Ms. H. was granted two visits per week with Yaritza. At one point she had missed two weeks of visits. When asked whether she was informed that she could make up a missed visitation, Ms. H. claimed that the Department never told her whether she could make up visits that she had missed. A representative from the Department would be there for the visits, and Ms. H. recalled that she would follow their instructions.

Ms. H. has four older children. She takes care of three of her other children when their father is at work. Her fourth child is in the custody of that child's father, another man who has refused to permit Ms. H. to see her. There is some confusion as to where Ms. H. lives. She testified that, as of the date of the hearing, she planned to move, but was unable to supply the address. Ms. H. said that she resided in a friend's basement in "Hyattsville,

or Mt. Rainier" on Otis Street. Ms. H. said that she had developed a case of poison ivy, and that this was a reason she did not visit with Yaritza. The Department informed her that she needed to see a doctor for this condition. Ms. H. recalled that she did not get an appointment, because her rash had cleared up. As a result, she explained, she did not receive any document from the doctor clearing her to see Yaritza.

Ms. H. testified that she has attended some parenting programs and has been awarded some certificates for her participation. Three of the certificates were from *La Clinica del Pueblo*. The first related to providing emotional support for children; the second was for the completion of an anger management course; the third was for participation in a substance abuse program. Ms. H. insisted that, as of the time of the hearing, she was no longer abusing drugs. Although she had tested positive on two occasions out of 26 urinalyses, these positive results occurred in January and March, 2014. The remaining tests were negative, Ms. H. explained, because she "wasn't using."

When questioned about her compliance with recommendations that were set forth in a discharge paper from VAV, where she had received treatment, Ms. H. testified:

> [MOTHER'S COUNSEL:] And in the discharge forms, there were some aftercare recommendations?
>
> A Yes.
>
> Q One of the recommendations was for you to attend the social support group at La Clinica Del Pueblo, on Tuesdays from 7:30 to 9:00 p.m.?
>
> A Yes.
>
> Q Okay. Have you attended those groups? The social support group sessions?

A No, because I was told that the program has ended.

Q And one of the other recommendations is for you to --

* * *

BY [MOTHER'S COUNSEL]:

Q Ms. H., did you go to the healthcare, did you go to the doctor once a year as recommended by the, in the VAB discharge form?

* * *

A No.

* * *

BY [MOTHER'S COUNSEL]:

Q Since June, 2014, you've been to the doctor?

A Only when I have the baby, the girl. When I have the baby.

* * *

Q Okay, so you have been to the doctor since June 2014?

A Yeah, I went on Thursday.

Q And it said that you're supposed to implement a personal prevention plan in order to stay sober for a long time?

A Yes.

Q Have you stayed sober, well, have you stayed sober since June 2014?

A Since I graduated from those classes, yes.

Q And it said that you're supposed to look into activities to have help, it says to look into increasing new, healthy activities in your free time. Have you done that?

> A Yes, since I had the kids during the vacation time, I took the kids to the park, I took them to my mother's.
>
> Q And I think you also answered the next recommendation that it made a reference to activities with your children and family members.
>
> Have you also attended church every weekend?

Ms. H. responded "no," and explained that she was unaware that she had to go to church. She testified that she had attended AA meetings, and that she was "going Mondays, Tuesdays and Thursdays" during the time she was actively enrolled in the program. She explained that she no longer attended the meetings, because she had not been told that she was required to do so. She assured the juvenile court that she would attend AA meetings if she were accepted.

Ms. H., although ordered to obtain employment, said that she was unemployed but had been looking for work. As for the order that she undergo a psychological evaluation, Ms. H. explained that, while she had seen the psychologist twice, she lacked transportation and funds to complete the third evaluation. She owed $135 for the latter meeting because she had missed the regularly scheduled evaluation.

Ms. H. described her relationship with her sister as poor, explaining that "[w]e don't get along well." She acknowledged that she would interact with her sister provided it gave the opportunity to see Yaritza.

Following testimony and argument, the juvenile court rendered detailed findings and conclusions. The juvenile court first found that the Department had made reasonable efforts to achieve the permanency plan of reunification:

> [THE COURT:] Specifically, the department has monitored Yaritza's placement through monthly home visits to ensure her safety and well-being.
>
> The department has facilitated supervised visits with Yaritza and her mother, Ms. H. The department has maintained communication with the substance abuse manager, Ms. Paige, at La Clinica Del Pueblo. The department has provided resource information to Ms. H. regarding free medical clinics. The department has maintained communication with the maternal aunt and current caregiver, Cici E.
>
> The department has maintained communication with the Infants and Toddlers program. The department has assisted the maternal aunt with resources for the temporary cash assistance program.
>
> * * *
>
> Has coordinated and assisted Ms. H. with the completion of a service agreement, and has maintained communication with the referring psychologist, Dr. Ruth, as it relates to the court ordered psychological testing.

The juvenile court then made specific findings with respect to Ms. H.'s efforts to achieve reunification:

> Ms. H. has not been able to comply with court orders in this case, or with the requirements of the service agreement. She was ordered to complete a psychological evaluation with Dr. Ruth and follow all treatment recommendations. As far as I can see, the first order for the psychological evaluation was at the adjudication disposition hearing on November 18th of 2013, almost a year ago.
>
> She testified today that she has now made some appointments and has another one set for next week, but still, we have no psychological evaluation and certainly no treatment recommendations, and it's been almost a year.
>
> Ms. H. was ordered to complete a substance abuse evaluation and follow all treatment recommendations. She did complete

> a substance abuse evaluation. She has not followed the treatment recommendations, however.
>
> She was discharged from the program with recommendations that included weekly attendance at La Clinica Del Pueblo substance abuse support group, and participation in Alcoholics Anonymous meetings.

The juvenile court was clearly concerned that Ms. H. was not sufficiently proactive in her efforts:

> With respect to the support group, she testified today that she was told by someone, I don't know who, she didn't indicate, that that program was cancelled. She did not follow up and ask the department for any assistance in finding an alternative.
>
> With respect to the AA meetings, she asserted today that she was unaware that she was still supposed to participate in AA meetings. She hasn't done that.
>
> She was, and I would note that the discharge summary, the discharge recommendations were made on June 17th, 2014, so that's three and a half months ago. During those three and a half months, I can only presume, since she didn't participate in any of the programs, that she's had no follow up support to maintaining sobriety.
>
> She was ordered in May of 2014 to seek employment. She is still unemployed. She did testify today that she is looking for employment, but that she hasn't been able to find it. She didn't provide even one example of a location where she has sought a job, or any documentation of any efforts made.
>
> She also testified that she's been watching her three oldest children, Monday through Friday, while their father works, which suggests to the Court that she wouldn't have much time available to even seek employment if that statement is accurate.

The court addressed the uncertainty regarding Ms. H.'s address:

> Probably a, one of the most significant concerns to the court today is the fact that the department doesn't have a current address for Ms. H. And that's, as of this moment, as we sit here at the end of this hearing, they don't have an address. They had a family involvement meeting in August of 2014, that's when they learned that she had moved from her prior address without letting the department know.
>
> Between then, August 5th, 2014, and today, October 2nd, 2014, she still hasn't given the department an address where they would be able to locate her.
>
> Which has handicapped them on many levels, including their ability to help her and to find other arrangements that she might be able to make for visitation.
>
> With respect to her current address, all we know is that she said, this morning, that she's living in the basement of a home which she shares with another woman, and that that woman has her own room. Again, we don't have an address, we don't know the name of the other woman, we don't know the condition of the basement, and she said this morning that she was going to move, and then by this afternoon, when we resume the hearing, she apparently changed her mind and said she wasn't going to leave.

Ms. H.'s attendance, or lack thereof, at many of the possible visits with the child was also a source of concern:

> Of probably equal paramount concern to the court is the fact that of 30 possible visits since the last hearing, Ms. H. has appeared for 5. Again, she's not working. Really haven't heard anything from Ms. H. that explains to me why she missed 25 out of 30 visits.
>
> I know she testified that she did miss some visits because the department indicated the child was ill. The department said they offered make up visits and scheduled them, but she didn't show up for the visits.
>
> She said that she missed some other things, I think, because of transportation problems, but we're talking about the

> overwhelming majority of visits in this case, not a select few. That suggests to the court a lack of commitment to her daughter.

The issue of Ms. H.'s bout with poison ivy was addressed:

> At that family involvement meeting in August, apparently Ms. H. disclosed to the department that she had what she believed to be poison ivy, some sort of a rash that might very well be communicable, and that might have jeopardized her daughter's health and, of course, her own if it went untreated.
>
> The department did provide her with medical referrals and if she had followed through on those, there wouldn't have been any reason why she couldn't have visited after that. She came in today and indicated that she just went to the doctor last Thursday. So that's close to two months since disclosing the rash and being told the need for medical evaluation before she'd be able to see her daughter again.

The court then concluded:

> So the court is going to change the permanency plan in this case to custody and guardianship to the maternal aunt. I've just outlined some of my concerns about Ms. H.'s progress since the last hearing and her commitment to doing things that were indicated to her to be necessary in order to facilitate reunification as a goal.
>
> In addition, I've considered the factors specified in family law article, section 5-525. I've considered the child specifically. I've considered the child's ability to be safe and healthy in the home of Ms. H.
>
> First and foremost, we don't know where Ms. H. lives. We have no idea about the appropriateness or lack thereof of the home. We don't even have an address. We don't know about her emotional ability to parent her daughter. We don't have a psychological evaluation, although it was requested that she participate in this almost a year ago.
>
> We don't really have a lot of assurance about her ability to remain sober. We have no follow through on the discharge

> directions that were ordered that were designed, in large part, to support her and assist her in maintaining her sobriety.
>
> She has no apparent means of financial support. She did testify that her current boyfriend, who is not the father of these children, but that her current boyfriend is paying her utility bills.
>
> We're not sure, in this case, based upon the evidence, even besides where she's living now, how long she'll be there. As I said, she changed her mind in the course of today whether she was going to remain in the current residence or move.

The court addressed the extent of emotional ties between Yaritza, Ms. H. and her half-siblings:

> With respect to the child's attachment and emotional ties to her natural parents and siblings, the evidence today reflects that Yaritza has had very little contact with her mother, Ms. H. She was removed, essentially, right after birth. She and Ms. H. have never lived together. Ms. H. has never been her primary caregiver, and her visitation has been very intermittent since this case was opened.
>
> Mr. R. has been non-participatory in this process and by all apparent evidence has never had any contact with Yaritza. She does have half-siblings. It doesn't appear to the court, from what evidence is before me, that she's ever had any contact with them, either. They do not live with their mother and Yaritza's never lived with her mother.

The court then addressed the support that has been offered by the maternal aunt:

> With respect to the length of time that the child has resided with the current caregiver, Yaritza has been with her aunt since April 28th of 2014, little more than five months. By all accounts, she's doing very well in her aunt's care. She's now eleven months old. The report and the testimony of the social worker indicate that she's adjusted well in her aunt's home to her aunt, her uncle, and her cousins. Her aunt has made sure that she, Yaritza, attends her weekly physical therapy through Infants and Toddlers, as well as all her medical appointments.

> They've included her in swimming classes with other family members. She's begun to crawl, to make kissing sounds, dance, hold her food without assistance from others, all developmentally appropriate milestones that she's achieving in her aunt's care. And the social worker testified today that she was not doing so well in her first foster care placement. That her improvement has accelerated since she's been in the care of her aunt.
>
> The court finds that there would be potential emotional and developmental harm to Yaritza if she were removed from her aunt's home now, where she is thriving and where she is progressing normally and where she is bonded and adjusted.
>
> * * *
>
> I have considered the department's assurance that at the six month mark in this case, the maternal aunt will be eligible for guardianship stipends, which will help her provide financially for Yaritza.

Finally, the juvenile court noted "that it is always preferable for a child not to remain in state custody for an excessive period of time. To have a normal, stable secure, family experience when that's possible. And in this case, it's not only possible, it's a reality and she's thriving in the situation."

The court next summarized all of the sources it reviewed in making its decision

> I have reviewed the department's report as required by court's and judicial proceeding, article section 3-819.2(f)2, including the home study, the child protective services history, the criminal records check, and the review of the proposed guardians' physical and mental health history, and that is in the court file.
>
> So, for all those reasons, having considered all of the factors, as well as the testimony today and the department's 3-819.2 report, as I said, the court will change the permanency plan to custody and guardianship by a relative.

On October 20, 2014, the juvenile court filed the Permanency Planning Hearing Order which embodied the juvenile court's findings and conclusions rendered at the hearing.

With respect to Ms. H., the juvenile court specifically found:

> **THAT** the Mother's **Progress Under Supervision** includes, but is not limited to:
>
> a. Mother has not been compliant with the Court Order or tasks of the service agreement;
>
> b. Mother has not completed a psychological evaluation;
>
> c. Mother completed a substance abuse program and parenting education classes but has not been compliant with discharge recommendations including weekly attendance at a substance abuse support group and participating Alcoholic Anonymous Meetings;
>
> d. Mother is unemployed;
>
> e. Mother did not obtain medical treatment for herself when she believed she had contracted poison ivy;
>
> f. Mother failed to show at scheduled weekly visits with the Department; and
>
> g. Mother attended only five out of thirty potential visits with Yaritza.

The juvenile court's Order also outlined the reasons for the Department's recommendations, and reiterated the juvenile court's finding that the Department had made a number of reasonable efforts "to achieve the current permanency plan of reunification and meet the needs of the child[.]"

Based on its findings of first level facts, the juvenile court ordered, *inter alia*, "that the permanency plan for Yaritza be changed to a Custody and Guardianship by a Relative under [CJ] § 3-819.2" and reaffirmed the limited guardianship to the maternal aunt. On October 30, 2014, Ms. H. brought this timely appeal.

We reserve additional details as necessary to address the issues before us.

DISCUSSION

Arguments

Ms. H. contests the juvenile court's decision to change the permanency plan for the child to a "Custody and Guardianship by a Relative" and to close the Department's involvement in the case. She complains that the result of these changes would effectively end her maternal relationship with Yaritza. She specifically avers that the apparent lack of "parenting skills" should not foreclose her opportunity to parent her daughter. She acknowledges that, while she has not been "fully compliant with services," she insists that "on the day of the hearing she was on a path to remedy the situation." She further maintains, without citation to authority, that a "concurrent plan would not disrupt Yaritza's life given the child's young age." Ms. H. contends that "allowing reunification efforts to be continued" would "allow the mother and daughter to develop a bond that would surely be broken given the mother's relationship with her sister[,]" and would provide Yaritza "the opportunity to relate to her half-siblings."

The Department responds that the juvenile court considered all relevant factors in making its decision. The Department emphasizes that Yaritza has been doing well during the time she has been with her aunt, an improvement over the care she received while in a

foster home. The Department agrees with the juvenile court's finding that "it is always preferable for a child not to remain in State custody any longer than necessary." The Department disagrees with Ms. H.'s claim that the change in the permanency plan was effected to ensure that the aunt would receive financial assistance. According to the Department, Ms. H.'s assertion is "inaccurate." Instead, the stipend was "evidence that [the aunt] would be able to provide financially for Yaritza." The Department finally discounts Ms. H.'s claim that the change in the permanency plan would end the likelihood that she could visit with Yaritza. Indeed, the Department points out, the juvenile court's order assumes the continuation of visitations by directing that the twice weekly visits be under supervision.

Yaritza has appeared in support of the juvenile court's decision, and takes issue with Ms. H.'s implication that the change in the permanency plan was driven in part by the prospect of a financial advantage for the aunt. Yaritza points out that the "relatives are in fact providing for the care of Yaritza without any financial assistance from the Department, or the mother." "The Department," Yaritza's attorney continues, "has assisted the relatives in utilizing the WIC program and TCA (Temporary Cash Assistance) program through the State of Maryland." In short, the aunt is not collecting a windfall in financial assistance.

For the reasons set forth below, we shall affirm.

Standard of Review

Orders of the juvenile court regarding permanency plans are immediately appealable. *In re Yve S.*, 373 Md. 551, 583 (2003) (citation omitted).

As in the review of a judgment after a case tried without a jury, we review a CINA adjudication under Md. Rule 8-131(c) "on both the law and the evidence. In reviewing the decision of a juvenile court, we apply "three different but interrelated standards of review." *In re Adoption/Guardianship of Cadence B.,* 417 Md. 146, 155 (2010).

We review the juvenile court's findings of fact for clear error. *In re Shirley B.*, 419 Md. 1, 18 (2011).With respect to appellate review of findings of fact, "we may not set aside a finding of fact unless we are left with the definite and firm conviction that a mistake has been committed[.]" *Orient Overseas Line v. Globemaster Baltimore, Inc.*, 33 Md. App. 372, 387 (1976) (citation and internal quotation marks omitted), *cert. denied*, 279 Md. 682, 683 (1977); *see* Md. Rule 8-131(c) ("[We] will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.").

The juvenile court's legal conclusions are subject to plenary review. *See In re Michael G.*, 107 Md. App. 257,265 (1995) (explaining appellate review of purely legal issues are expansive). Accordingly, any deference accorded the juvenile court's findings of fact does not extend to the court's conclusions of law. *See YIVO Institute for Jewish Research v. Zaleski,* 386 Md. 654, 662-63 (2005) (citations and internal quotation marks omitted).

Finally, we review the juvenile court's ultimate disposition for abuse of discretion:

> [T]here is some confusion in our cases with respect to the standard of review applicable to the chancellor's ultimate conclusion as to which party should be awarded custody. . . . [I]t is within the sound discretion of the chancellor to award custody according to the exigencies of each case, and as our decisions indicate, a reviewing court may interfere with such a

> determination only on a clear showing of abuse of that discretion.

In re Yve S., 373 Md. at 585-86 (quoting *Davis v. Davis*, 280 Md. 119, 125-26 (1977) (footnote omitted)). In reviewing for an abuse of discretion, we are mindful that "[q]uestions within the discretion of the trial court are much better decided by the trial judges than by appellate courts, and the decisions of such judges should only be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred." *In re Shirley B.*, 419 Md. at 19 (citation and internal quotation marks omitted). "[W]e examine the juvenile's court's decision to see whether its determined of the child's best interest was beyond the fringe of what is minimally acceptable." *In re Ashley S. & Caitlyn S.*, 431 Md. at 715 (internal citation and internal quotation marks omitted).

Analysis

The evidence before the juvenile court was more than sufficient for the court to conclude that it was not in Yaritza's best interests to be placed in Ms. H's care. Accordingly, the juvenile court did not abuse it discretion in determining that Yaritza's best interest would be served by changing the permanency plan to custody and guardianship by a relative.

The Court of Appeals explained in *In re Adoption No. 10941*, 335 Md. 99, 103 (1994), that the "Maryland General Assembly has enacted a comprehensive statutory scheme to address those situations where a child is at risk because of his or her parents'

inability or unwillingness to care for him or her."[6] The procedures for determining the appropriate placement for a child declared to be a CINA are set forth in Md. Code (1974, 2013 Repl. Vol., 2014 Supp.), §§ 3-801 – 3-830 of the Courts & Judicial Proceedings Article ("CJ"). This statute is applied in concert with relevant provisions of the Family Law Article and the regulations promulgated by the Secretary of the Department of Health and Human Services. *See* Md. Code (1984, 2012 Repl. Vol., 2014 Supp.), § 5-525(f)(1) of the Family Law Article ("FL").

"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." *In re Joseph N.*, 407 Md. 278, 285 (2009) (citation and internal quotation marks omitted). "In developing the permanency plan, the department [DHHS] is required to consider a statutory hierarchy of placement options in descending order of priority." *In re Adoption No. 10941*, 335 Md. at 105. The paramount concern is the "best interest of the child." *In re Ashley S. & Caitlyn S.*, 431 Md. at 715. And the "overriding theme of both the federal and state legislation is that a child should have permanency in his or her life." *Id*. at 106. The Family Law Article informs the juvenile court of the following factors that must be considered:

[6] It has long been recognized that a parent has the fundamental right to rear his or her children. *See Troxel v. Granville*, 530 U.S. 57, 66 (2000); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *In re: Adoption/Guardianship No. 6Z000045*, 372 Md. 104, 115 (2002); *In re Adoption/Guardianship No. 10941*, 335 Md. 99, 105 (1994). *See Koshko v. Haining*, 398 Md. 404, 422-424 (2007).

> **5-525. Creation of foster care program**
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> * * *
>
> **Permanency plan; best interests of the child**
> (f)(1) In developing a permanency plan for a child in an out-of-home placement, the local department shall give primary consideration to the best interests of the child, including consideration of both in-State and out-of-state placements. The local department shall consider the following factors in determining the permanency plan that is in the best interests of the 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* CJ § 3-823(e)(2) ("In determining the child's permanency plan, the court shall consider the factors specified in § 5-525(f)(1) of the Family Law Article.")

In reviewing the case before us, we remain mindful of this fundamental precept, as well as the overriding prudential concern, that an adjudication such as that before us, must be in the best interests of the child. *See Michael Gerald D. v. Roseann B.*, 220 Md. App. 669, 679 (2014). Indeed, "[a] key purpose of the CINA law is to 'achieve a timely,

permanent placement for the child consistent with the child's best interests[.]'" *In re Ashley S. & Caitlyn S.*, 431 Md. 678, 712 (2013) (quoting CJ § 3–802(a)(7)). *See In re Priscilla B.*, 214 Md. App. 600, 622 (2013) ("The purpose of CINA proceedings is to protect children and promote their best interests." (citation and internal quotation marks omitted)

The juvenile court adequately considered the concerns that Ms. H. failed to provide Yaritza with a "safe and healthy" home. FL § 5-525(f)(1)(i). Ms. H could not provide an address, and was inconsistent in her testimony regarding her future plans for housing. In addition Ms. H failed to undergo a psychological evaluation as requested a year earlier, had no means of financial support, and the court emphasized a lack of assurance about her ability to remain sober given her failure to follow through on the discharge directions. Ms. H tested positive twice for cocaine. Ms. H also failed to comply with court orders to address these concerns.

Next, the juvenile court considered Yaritza's "attachment and emotional ties" to Ms. H and siblings. FL § 5-525(f)(1)(ii). The juvenile court considered the facts that Yaritza was removed from Ms. H's care, immediately after birth, and Ms. H had been "non-participatory" in the process. She "had very little" and "intermittent" contact with Yartiza, and had never lived with her. There was also no evidence that Yaritza had any contact with her siblings.

The juvenile court then considered Yaritza's "emotional attachment" to her current caregiver and caregiver's family. FL § 5-525(f)(1)(iii). The record showed that Yaritza had developed a close bond with her current caregivers. Yartiza had been doing well and her development had "accelerated" as a result of the maternal aunt and uncle regularly taking

Yaritza to physical therapy, medical appointments, swimming classes, and the constant interaction with her cousins.

The juvenile court recognized that Yaritza had resided with her current caregiver for more than five months, and that Yaritza would suffer emotional and developmental harm if she was removed from an environment that had accelerated and improved her development. *See* FL § 5-525(f)(1)(iv)-(v).

Finally, the juvenile court noted "that it is always preferable for a child not to remain in state custody for an excessive period of time. To have a normal, stable secure, family experience when that's possible. And in this case, it's not only possible, it's a reality and she's thriving in the situation." *See* FL § 5-525(f)(1)(vi).

The evidence, therefore, showed an ongoing uncertainty of Ms. H's sobriety, living arrangement, and ability to provide a safe environment to Yartiza. Also significant are Yaritza's lack of emotional attachment to Ms. H, and Yaritza's strong emotional attachment to her current caregivers and cousins. In addition, Yaritza's development had improved substantially while living with her current caregivers, and therefore, removal from that home would harm Yaritza and would not be in her best interests. "[O]nce juvenile court has approved of the permanency plan for a CINA, that court *must* '[c]hange the permanency plan if a change in the permanency plan would be in the child's best interest' and *must* '[e]valuate the safety of the child and take necessary measure to protect the child.'" *In re Norberto*, 133 Md. App. 558, 568 (2000) (quoting Md. Code (1974 and 1998 Repl. Vol.) § 3-826.1(f)(2)(v) and (vi) of the Courts Article) (emphasis in original)). As noted by the Court of Appeals that "in cases where abuse or neglect is evidenced,

particularly in a CINA case, the court's role is necessarily more pro-active." *In re Yve S.*, 373 Md. at 570 (quoting *In re Mark M.*, 365 Md. 687, 705-06 (2001)).

We are mindful that Ms. H. completed a variety of programs that were designed to assist her in addressing the problems she presented. While this progress is commendable, Ms. H. had not remedied the problems identified by the juvenile court. *See In re Priscilla B.*, 214 Md. App. 600, 633-34, (2013) (holding the trial court did not err in placing CINA with Grandmother and Caregivers because Mother and Father failed to remedy problems identified by the court and Mother and Father failed to undergo "substance abuse evaluations[,]" "couples counseling[,]" "and the repairs in the home were 'close' but not finished. Again, we need not wait for harm to happen, and our review confirms that the trial court did not abuse its discretion in placing [Child] with Grandmother and the Caregivers." (citation omitted) Thus, Ms. H has further to go to justify the conclusion that overturning the permanency plan, as changed, would be in Yaritza's best interests.

Finally, we also note Ms. H.'s concerns that the change in the plan would jeopardize her relationship with her daughter. We are not persuaded. The Order provides for visitations, and should this arrangement break down, the parties can address that issue in further hearings before the juvenile court and then, in the appropriate case, on appeal. Until that point, any fear about the future would be premature and invite speculation.

Finding no abuse of the juvenile court's discretion, we shall affirm.

ORDER OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY, SITTING AS A JUVENILE COURT, AFFIRMED. COSTS TO BE PAID BY APPELLANT.