Circuit Court for Worcester County
Case No. 23-I-14-000009

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1568

September Term, 2016

IN RE: A.H.

Friedman,
Shaw Geter,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: February 17, 2017

On July 8, 2014, the Worcester County Circuit Court, sitting as a juvenile court, declared A.H. ("the child"), born in 2010, to be a child in need of assistance ("CINA").[1] For the next several months, the Worcester County Department of Social Services ("the Department" or "appellee") worked with Ms. T. ("Mother" or "appellant"), generally unsuccessfully, to resolve the issues that precipitated the CINA petition.[2] Eventually, on December 14, 2015, the circuit court changed the child's permanency plan to placement with a relative for custody or adoption.

On May 9, 2016, the parties appeared before a magistrate, who recommended that custody of the child be given to the paternal aunt, Ms. C. Mother noted exceptions to the magistrate's recommendation, and a *de novo* hearing was held on August 25, 2016. The juvenile court determined that it was in A.H.'s best interests to award custody to Ms. C. and close the CINA case. Additionally, the court ordered that visitation between Mother and A.H. continue on a weekly basis, with the visits supervised for the first two months following entry of the order. Mother noted this appeal and raises three issues for our review:

> 1. Did the Court err by changing A.H.'s permanency plan to a plan that no longer included reunification with her mother?

[1] A CINA is 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, guardians, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Maryland Code (1973, 2013 Repl. Vol., 2014 Suppl.), Courts & Judicial Proceedings Article ("CJP"), § 3-801(f).

[2] The child's father, Mr. C., is incarcerated in Virginia. Through counsel, he consented to the award of custody of A.H. to his sister, Ms. C. Mr. C and A.H. filed briefs in this Court.

2. Did the court err by awarding custody and guardianship to the paternal aunt and by closing the CINA case in violation of the mother's due process and fundamental rights?

3. Did the court err by changing the mother's visits to supervised ones?

For the reasons stated below, Mother's first issue is not properly before us. Additionally, we determine that her third issue is moot. Lastly, we answer Mother's second question in the negative and affirm the judgment of the juvenile court.

FACTS AND PROCEDURAL HISTORY

Initial Involvement

A.H. came to the attention of the Department in February 2014 when it was reported that Mother had missed "over twenty" medical appointments for A.H.'s half-siblings, twins Za.T. and Zu.T., who were medically fragile.[3] When Department workers went to the residence Mother shared with her mother, Ms. B., to serve the shelter care order as to the twins, they determined that the home was unsuitable for A.H., the twins, and her other half-siblings, C.T. and A.T. There was inadequate bedding for all of the residents of the home. Moreover, there were empty oxygen tanks and oxygen tubing throughout the house, as well as trash on the kitchen floor – including a dried egg and chicken bones – and dead insects everywhere. Additionally, the Department was concerned that Ms. B. could not care for the children due to a medical issue and the age of the children. The Department, therefore, immediately sheltered A.H. and her half-siblings, which the juvenile court later approved with a shelter care order.

[3] We note that A.H. is the oldest of Mother's children.

The Department placed A.H. in a resource home with C.T., until they were transferred to a foster home in July 2014. The twins went to another foster home, and A.T. was placed in a third foster home. After these placements, the Department learned that A.H. had missed "substantial amounts" of school. Indeed, at that time four-year-old A.H. could not count to ten, recite the alphabet, or identify colors or shapes. Additionally, the child also had unmet medical needs, including six cavities, which were treated over the course of several months.

The Department held a family involvement meeting ("FIM") with Mother on February 28, 2014. The Department reviewed the importance of medical visits with Mother and offered visitation with all of the children. At this visit, Department staff developed concerns because Mother was "flat," appeared "less motivated" to interact with the children, and "appeared to have no control in the room." Department staff also noticed that A.H. was "parentified" and seemed used to caring for her younger half-siblings – changing diapers, for example.

On March 5, 2014, the juvenile court granted the shelter care petition filed by the Department, finding that the removal of the children from Mother and Ms. B's home was proper. Soon thereafter, the Department petitioned the court to find the children to be CINA. On May 14th the court entered an order sustaining the facts alleged in the CINA petition, and on July 8th, the court entered a disposition order, declaring the children to be CINA. The court ordered Mother to enter into a service agreement with the Department, submit to drug and alcohol testing, undergo a mental health examination, complete a parenting class, maintain stable employment, and maintain safe and appropriate housing.

The court also ordered the Department to schedule visitation for Mother and to complete an interstate compact on the placement of children ("ICPC") investigation for several relatives residing in Virginia.[4]

In foster care, the child received medical attention, addressing her cavities and concerns with signs of early puberty. Additionally, the Department enrolled her in a full-day Head Start program to address her learning deficits. The child also engaged in play therapy.

Throughout the summer of 2014, the Department worked with Mother to address the court's concerns and arrange visitation. Initially, visits were scheduled between Mother and all five children, but the Department was concerned that this was "overwhelming" for Mother and the children. Accordingly, visits were arranged such that Mother met with each child individually (with the exception of the twins) once a week and met with all of the children together once a month. In the summer of 2014, Mother attended two visits and cancelled four visits. At the start of the school year, the Department combined visits with the child and her half-sibling C.T., with whom A.H. had bonded in foster care. Mother consistently attended the combined visits with A.H. and C.T., but she routinely arrived late. When Department staff raised this concern with Mother, she claimed it was not "a big deal" or accused the Department, wrongly, of being late to visits.

[4] The ICPC is an agreement entered into by all states to ensure cooperation among state authorities regarding placement of children in other states. *See* Maryland Code (1984, 2012 Repl. Vol.), Family Law Article ("F.L."), § 5-601 *et seq.*

Mother also entered into a service agreement with the Department. The service plan required Mother to obtain and maintain stable employment and safe housing, as well as engage in mental health treatment and attend the children's medical appointments. Dr. James Lewis evaluated Mother on August 11, 2014, and determined that she had cognitive and academic limitations, including borderline intellectual deficiency, a personality disorder, and a developmental learning disorder. Dr. Lewis recommended that Mother engage in psychotherapy, and the Department referred her to Eastern Shore Psychological Services ("ESPS"). At that time, Mother falsely claimed to have a job at Walmart, and the Department was unable to verify that Mother was otherwise employed. Mother and/or people residing at the home also blocked access to the home for visits by Department staff. Mother was also inconsistent in attending the children's medical visits.

The Permanency Plan Hearing

At a November 24, 2014 hearing, the court determined that the children's permanency plan should be concurrently reunification and placement with a relative.[5] The juvenile court remained concerned with Mother's mental health, employment, and housing issues. Various relatives were identified as resources for the children, including Ms. C., the paternal aunt, as a resource for A.H. The child interacted "willingly" with Ms. C. and seemed to enjoy the visits, which the Department increased from bi-weekly to weekly.

[5] This appeal concerns only A.H. We note that custody of C.T. was awarded to her father, and she currently resides in Arkansas. Mother appealed the juvenile court's order awarding custody to the father, and we affirmed in an unreported opinion. *See In re C.T.*, No. 2721, Sept. Term 2014 (filed Oct. 6, 2015). Mother consented to the termination of parental rights in the twins and A.T.

April 27, 2015 Permanency Plan Review Hearing

The juvenile court altered the permanency plan following a permanency plan review hearing on April 27, 2015, changing the plan to solely reunification. The Department reported that A.H. had difficulty adjusting to life in the foster home without her half-sister, who had gone to live with her father in Arkansas. The child had daily phone contact with C.T., however. The child remained enrolled at Head Start and continued to receive medical care, addressing a persistent cough. Subsequent to the date of the last hearing, Mother attended some of A.H.'s therapy sessions. Visitation continued between Mother and A.H., and the child "becomes excited" when she visited Mother. The Department noted that Mother had made "significant progress" in attending visitation, too. Because the Department was concerned that Mother had difficulty bonding with the children, however, the Department sought a bonding assessment at ESPS.

As to the court's other concerns, Mother reported that she was attending therapy at ESPS twice a week. ESPS, however, advised the Department that Mother had attended just one therapy session since the intake appointment on January 9, 2015. ESPS, in fact, discharged Mother on April 8th for non-compliance. As of the date of the permanency plan review hearing, Mother was not engaged in mental health therapy.

In January 2015, Mother reported that she had obtained employment with Horizons, providing in home health care. Mother also stated that she was working at Walmart. Mother failed, however, to provide any documentation of her employment.

As to housing, following a home visit in December 2014, at which Department workers noticed an "unpleasant odor," Mother advised that she recognized the

inappropriateness of the home for children. She stated that she would be moving to a rental home in Pocomoke City with Mr. J., her boyfriend. For an unknown reason, however, that move did not occur.

At this time, the ICPC from Virginia concerning Father's sister, Ms. C., was denied due to a "barrier criminal offense."[6] Ms. C., however, continued to visit with A.H. twice a month. C.T.'s father and his significant other had expressed an interest in obtaining custody of A.H., and an ICPC request was sent to Arkansas, but they later stated they could not proceed with the ICPC process. Mother also identified her sister, Ms. B., as a potential resource for the children. The Department, therefore, sent a request for a home study to the Wicomico County Department of Social Services ("Wicomico DSS"). Ms. B., however, informed the Department that she did not wish to be a resource for the children, and no home study was completed.

September 28, 2015 Permanency Plan Review Hearing

On September 28, 2015, the juvenile court again altered the permanency plan, adding a concurrent plan of placement with a relative. The Department reported that A.H. continued to receive proper medical care and to attend therapy sessions.

A.H. also continued to look forward to visits with Mother, but she began to experience distress following visits. A.H. had developed a strong bond with her foster

[6] The Department learned that in 2006, Ms. C. pled guilty to the manufacture, sale, and/or possession of a controlled dangerous substance in Accomack County Virginia. Ms. C. advised the Department that she was twenty-two and "involved with the wrong crowd" at that time. She also admitted that she had used cocaine. After her release from prison, however, Ms. C. gained employment, opened her own seafood business, and strived to be a positive role model for her son.

parents, but she believed that she would live with "Tink," which is how she referred to Mother. After some of the visits with Mother, A.H. informed Department workers that Mother told her she should not call the foster parents "mommy" and "daddy," which confused A.H. A.H. also said that Mother had told her she had a house now, and A.H. was going to come live with her. The foster parents reassured A.H. that she could call them whatever she wanted and that after visits, they would return to the foster home.

Following a visit on June 17, 2015, Mother informed the Department that she was going to "let the younger three go" and focus on reunification with A.H. The Department stressed to Mother that she should make an effort to comply with the service plan and to complete tasks identified in the plan as soon as possible to show that she was committed to reunification.

Mother informed the Department that she was working at Walmart and provided a timesheet as documentation. The Department was unsure of Mother's work schedule, however. Mother also reported that she lived at various addresses, but the Department was unable to confirm this. For example, Mother informed Department workers that she lived at 521 Bailey Lane in Salisbury, but this address does not exist, and a letter the Department sent to that address was returned, marked "No such number." Mother also failed to provide documentation that she had engaged in mental health therapy.

The Department noted that Mother had completed a parenting class. The Department, however, had attempted without success to persuade Mother to attend a parenting class tailored to her children's ages. The Department also encouraged Mother to

reach out to the Wicomico DSS, as she had moved to that county, to inquire as to resources available to her.

The Department received a report on the requested bonding assessment in June 2015. Dr. Kathryn Seifert completed the assessment, but Mother never met with Dr. Seifert, despite scheduling two appointments to do so. In discussing A.H., Dr. Seifert noted that the child appeared confused as to her family: she could not draw or talk about her family when prompted. Dr. Seifert opined that A.H. needed a stable, caring family situation, and she recommended that A.H. remain with her foster family until a permanent placement could be found.[7] Dr. Seifert determined that, although Mother failed to meet with her, "it is clear from the history that she was not attached to her children in a healthy way." Dr. Seifert concluded that Mother "would not make a[] suitable parent for these children and she has not established a sufficient attachment bond to do so at this point in their lives."

December 14, 2015 Permanency Plan Review Hearing

On December 14, 2015, the court altered the permanency plan, changing it to a concurrent plan of placement with a relative or adoption by a non-relative, removing reunification. The Department recommended the change because A.H. had been out of the home for approximately twenty-two months, and Mother had continued to be non-compliant with the service plan.

[7] The foster parents had informed the Department that they did not want to adopt A.H., but they advised that they would care for A.H. until a permanent solution could be found.

A.H. continued to do well in her resource home. She was enrolled in kindergarten and worked hard to be developmentally on target. The child continued to have contact with C.T. and had the opportunity to visit her, as well. There were no health-related concerns for A.H. at this time.

Following the denial of the ICPC, Ms. C. moved with her son, who was fourteen-years-old in early 2016, from Virginia to Pocomoke City, Maryland, to be a resource for A.H. The Department ordered a home study to determine the appropriateness of Ms. C.'s home, and visits between A.H. and Ms. C. continued, progressing to overnight visits in March 2016.

The Department was able to make one home visit to Mother's new home. The Department worker observed that the home was sparsely furnished with some bedroom furniture and kitchen items. Additionally, the only food in the house was cereal and donuts. The Department worker believed that Mother was not living there full time, as the closets were empty. The Department believed that Mr. J. was living with Mother. The Department was also concerned that Mother, who received family unification program ("FUP") vouchers, had not reported changes in her status to that program's administrators, and if Mother failed to do so, she could lose that assistance entirely due to fraud.

Concerning employment, the Department remained unable to confirm whether Mother worked at Walmart. Department workers had seen Mother working there, but there was no documentation as to hours worked or wages received.

Pursuant to a court order, Mother had unsupervised weekly visits with A.H. beginning in October 2015. A.H.'s resource parents reported that the visits seemed to go well.

The Department was unable to confirm Mother's attendance at parenting classes in Wicomico County because Mother failed to sign the appropriate releases. The Department was also unable to confirm Mother's report of receiving therapy at Community Behavioral Health. Mother provided no documentation.

Magistrate Hearing and August 25, 2016 Hearing

Following the change in permanency plan, the Department placed A.H. in the home of Ms. C. in April 2016. In May 2016, a family law magistrate recommended placing the child in the custody of Ms. C. and ending the CINA case. Mother's exceptions to this recommendation precipitated the August 25, 2016 hearing.

The Department advised the court that A.H. was enrolled in elementary school, and she "loves" it. The Department reported no new medical concerns for A.H. and also noted that she attended monthly therapy sessions.

The Department was able to visit Mother's home for a scheduled home visit. The home was clean and appropriate, but A.H. informed Department staff that there was a "secret room" for Mr. J.'s things that she was not supposed to tell anyone about. The Department could not determine if Mother had updated her status with the FUP voucher program, and the concern that she could lose that benefit persisted.

Mother reported that she had re-engaged in therapy at ESPS. Indeed, ESPS reported that she missed appointments on a regular basis.

At the hearing, Kimberly Linton, a Department employee who had been assigned to A.H.'s case, recommended that A.H. be placed in the custody of Ms. C. Ms. Linton advised the court that a favorable home study had been completed on Ms. C.'s home.

Ms. Linton stated that the Department had ruled out reunification for A.H. because Mother had not been compliant with the service plan and that "we're in the same position we were when she [the child] came into care." Discussing compliance with the service plan, Ms. Linton testified that Mother was "never consistent" with mental health counseling, and she did not know if Mother was currently seeing a therapist. Moreover, Mother was inconsistent with visitation, safe housing, and stable employment, and she had an unfavorable bonding assessment from Dr. Seifert.

As to visitation, Ms. Linton testified that A.H. had some difficulties following the unsupervised visits with Mother, due perhaps to the contentious relationship between her and Ms. C. For example, after one visit, A.H. informed the Department that Mother had told her she does not have to listen to Ms. C. and that she would be coming home with Mother. A.H. also said that when she went to Mother's home, she had to take care of the baby.[8] Ms. Linton also noted that Mother had cancelled some visits, citing work conflicts, which the Department later learned were non-existent. Ms. Linton testified that the Department had to have a conversation with Mother about what was appropriate to say to A.H. Ms. Linton also noted that A.H. acted out after a visit, and broke some items, but Ms.

[8] The Department learned that Mother had given birth to a daughter, M., in April 2016.

C. was able to calm her down. Ultimately, Ms. Linton recommended that the court continue visitation between A.H. and Mother, but the court should order the visits to be supervised.

Genienne Walter, an employee with the Wicomico DSS, testified that because of Mother's case history with the Department, Wicomico DSS conducted a birth assessment following M.'s birth to determine if Mother could safely care for M. Ms. Walter stated that they closed the case and returned M. to Mother's care. Ms. Walter testified that Mother reported working and attending therapy, but she did not provide any documentation. Mother entered into evidence the report of the CASA volunteer, Debbie Hileman.[9] Ms. Hileman stated that Mother "seems like a different person . . . since the case first began." Although Ms. Hileman reported that Mother indicated she had stable employment and secure housing and was attending therapy, Mother had not provided documentation. Ms. Hileman was unable to confirm this information. Ms. Hileman recognized that Mother was making a great effort to comply with the service plan and noted her progress, but she recommended that A.H. continue to reside with the foster parents, while Mother attempted to comply with the service plan.

Mother testified that she was currently employed at a pickle farm, and she had received an offer of employment at Atria as a medical technician. She did not submit documentation of a potential work schedule or wages. Mother noted that her mother cares

[9] CASAs are court appointed special advocates who "aid [courts] in making decisions in the child's best interest; and [e]nsure that the child is provided appropriate case planning and services." CJP § 3-830(a)(3).

for M. while she works, and Mr. J. also assists in caring for M. As to visits with A.H., Mother testified that A.H. cried all the time at visits. Mother also submitted two letters into evidence from ESPS concerning her attendance at therapy sessions. ESPS advised that Mother generally attended weekly therapy sessions, but she had also consistently missed appointments. Furthermore, a therapist at ESPS noted that Mother used therapy sessions to "cope with ongoing situational stressors of not having her children[,]" rather than addressing her psychological needs.

The juvenile court concluded that although Mother had made progress in addressing the service plan, it was slow and incomplete. The court expressed concerns that Mother could not maintain stable employment and noted that she often left M. with her mother for days at a time. The court determined that Mother was not parenting M. full time, and it was unclear how A.H. would fit into the picture. The juvenile court concluded that it was in A.H.'s best interests to be placed in the custody of Ms. C. The court also ordered visitation between A.H. and Mother to continue, but the visits would be supervised for two months following entry of the order. On September 15, 2016, the court entered a written order memorializing its oral findings. This appeal followed.

DISCUSSION

Alteration of Permanency Plan

First, Mother contends that the court erred in altering the permanency plan to one that did not include reunification. She argues that the court erred in its application of the statutory factors listed in F.L. § 5-525 prior to removing reunification from A.H.'s permanency plan. She asserts that the court impermissibly considered her poverty and

employment choices in its conclusion and should have recognized that returning A.H. to Mother's home with continued court oversight was permanence. Essentially, Mother contends that she needed more time to demonstrate her progress with the service plan, and the court should have granted her this opportunity. The Department asserts that Mother has waived any challenge to the alteration of the permanency plan because she failed to note an appeal to the court's December 14, 2015 order altering the permanency plan.

Indeed, we note that Rule 8-202(a) requires, with certain exceptions inapplicable in this case, that "the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." This "requirement is 'jurisdictional, and if the appeal is not timely noted, we must dismiss the appeal.'" *Scarborough v. Altstatt*, 228 Md. App. 560, 565 (2016) (quoting *Carter v. State*, 193 Md. App. 193, 206 (2010)), *cert. denied*, 450 Md. 129 (2016).

The court's December 29, 2015 order altered the permanency plan to placement with a relative and removed reunification. Mother failed to note a timely appeal to this order.[10] Consequently, the issue is not before us.

Assuming the issue were before us, we would conclude that the court did not err for reasons explained in the next section of this opinion.

Award of Custody to Ms. C.

Mother contends that the court erred in awarding custody of A.H. to Ms. C. Specifically, she argues that the court applied "an unconstitutional and impermissible legal

[10] Parties may note an appeal from an order altering a permanency plan pursuant to CJP § 12-303(3)(x).

standard" to award custody to Ms. C. Mother concedes that the court analyzed the proper statutory factors in CJP § 3-819.2(f)(1) prior to awarding custody. She contends, however, that the current statutory framework for CINA is unconstitutional because it applies two different standards to natural parents dependent upon whether the child is placed with a relative, or parental rights are terminated prior to adoption by a non-relative.

In a termination of parental rights ("TPR") proceeding, prior to adoption of a child by a non-relative, the court must make a finding that the parent(s) is unfit and/or exceptional circumstances exist such that it is detrimental to the child's best interest to continue the parental relationship. *See* F.L. § 5-323(b). In instances in which the court is awarding custody of a child to a relative, however, no such finding needs to be made. *See In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 495-96 (2007) (recognizing that custody and visitation disputes are "on a different plane than TPR proceedings[,]" because "a TPR judgment does not just allocate access to a child, but constitutes a total rescission of the legal relationship between parent and child, and that rescission is generally final"); *In re Caya B.*, 153 Md. App. 63, 78 (2003) ("If the permanency plan calls for custody and guardianship by a relative but does not contemplate adoption, the court may issue a decree of guardianship to the relative and may then close the case. Parental rights are not terminated in such a situation: the parents are free at any time to petition an appropriate court of equity for a change in custody, guardianship, or visitation." (Internal citations omitted)). Mother contends that these different standards are unconstitutional, as the court should be required to make the same findings of a parent in either situation.

The Department contends that the court did not abuse its discretion in awarding custody of A.H. to Ms. C. The Department asserts that the court considered the appropriate statutory factors, which Mother concedes. As to Mother's constitutional argument, the Department argues that the court did not need to make a finding of parental unfitness and/or the existence of exceptional circumstances prior to awarding custody to Ms. C., but, if it did, then the court implicitly made such a finding by noting Mother's "insufficient attachment" to A.H. and her inability "to provide a safe and stable environment" for the child**.**

Before any consideration of the court's award of custody of A.H. to Ms. C., we note that Mother did not raise the constitutional argument in the juvenile court. As such, it is not preserved. *See* Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue [except for subject matter jurisdiction] unless it plainly appears by the record to have been raised in or decided by the trial court[.]"). *See also Burch v. United Cable Television of Balt. Ltd. P'ship*, 391 Md. 687, 695 (2006) (refusing to address constitutional argument raised for first time in appellate brief and noting that "'a court will not unnecessarily decide a constitutional question'" (quoting *Balt. Teachers Union, Am. Fed'n of Teachers, Local 340, AFL-CIO v. Md. State Bd. of Educ.*, 379 Md. 192, 205-06 (2004))). Nevertheless, had the argument been raised, we could conclude that Mother was not denied due process.

Turning to Mother's preserved challenge to the court's custody decision, we note that we review CINA proceedings pursuant to three different, yet inter-related standards:

> In CINA cases, factual findings by the juvenile court are reviewed for clear error. An erroneous legal determination by the juvenile court will require further proceedings in the trial court unless the error is deemed to be

> harmless. The final conclusion of the juvenile court, when based on proper factual findings and correct legal principles, will stand unless the decision is a clear abuse of discretion.

In re Ashley S., 431 Md. 678, 704 (2013) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). In this case, Mother's challenge to the court's final conclusion as to custody of the child is reviewed for an abuse of discretion. The Court of Appeals has noted:

> "[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 sum, to be reversed the decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable."

In re Adoption of Cadence B., 417 Md. 146, 155-56 (2010) (quoting *Yve S.*, 373 Md. at 583-84).

CJP § 3-819.2(f)(1) provides that prior to awarding custody of a child determined to be CINA to a relative, the court should consider:

> (i) Any assurance by the local department that it will provide funds for necessary support and maintenance for the child;
>
> (ii) All factors necessary to determine the best interests of the child; and
>
> (iii) A report by a local department or a licensed child placement agency, completed in compliance with regulations adopted by the Department of Human Resources, on the suitability of the individual to be the guardian of the child.[11]

[11] This report must include a home study, criminal records check, medical history, and a review of the individual's history with child protective services. CJP § 3-819.2(f)(2).

Mother concedes that the juvenile court did, indeed, consider these factors, and the statutorily-required report was completed. In analyzing the factors as to the child's best interest, the court stated as follows:

> Here's what I see as far as [Mother]'s situation. [Mother] has made progress. [Mother], however, through the course of this case has shown that that progress comes very slowly and when it does come it's not complete. There are gaps in her mental health, there are remaining questions – well, let me back up for a minute. It does appear from the testimony that the housing in Wicomico County is appropriate. There was testimony from the Department of Social Services worker from Wicomico County that the housing is appropriate.
>
> I still have concerns about employment; the employment history is spotty at best. And the testimony of [Mother] was not entirely credible as to her work history. I remember reading in the report that there was a statement made that she had been working at Wal-Mart in Pocomoke. I heard nothing about that today as far as her work history. She's been working in Hurlock for a short period of time, for two months. Prior to that there's testimony about working in home health, but nothing definitive in that regard.
>
> [Father's counsel] asked questions about whether there were concerns about her lack of a stable employment history. I share the concern that was intimated by that question; I just don't see it. There is testimony that she has received an offer of employment that she is to begin on Monday, however, all I have is a contingent offer letter and there's nothing confirming that employment, that employment has not started. So there's nothing in the record that says that or would indicate that she has employment, she has stable employment, and that is something that the Court can rely on. Based on the history, her employment has been spotty, and to the extent that she does obtain employment it's been inconsistent and it's not lasted. I don't have any – I hope I'm wrong, but I don't have anything in the record and the history to suggest that the employment at Atria is going to be longstanding. As it relates to the employment, certainly that has bearing on her finances.
>
> I must say, too, as it relates to her employment, the testimony was that her employment history – her recent employment history has been spotty. It's not been regular, full-time employment. Yet the witness from the Department of Social Services in Wicomico County talked about how the child is left with maternal grandmother for days at a time while she's working or while she's out looking for work, yet that same witness couldn't testify as

to what, if any, employment that she had. [Mother] by her own testimony says that the child stays with the maternal grandmother for lengths of time, sometimes days at a time. She goes to great lengths to say that she visits the child every day, she takes the bus from Salisbury and goes and visits the child in Pocomoke. That's admirable, but to me, the testimony does not lead me to conclude that she is parenting that child on a full-time basis. Happily enough she has a support system that consists of family members, primarily the maternal grandmother in Pocomoke, but I see that more as a co-parenting – based on what I've heard today, more of a co-parenting relationship between [Mother] and her mother. I see no reason why given her lack of employment that during the course of the recent months since the child was born, the most recent child was born, that the child would not be with [Mother] on a more full-time basis. To me, that indicates, and I conclude from that that although [Mother] is doing reasonably well with this one child she needs an awful lot of assistance from her grandmother. What she's asking me to do is say that or conclude that [A.H.], who's not been with her for 30 months, if you put her in this situation, where I think she's just getting by with this infant, that [A.H.] is going to be safe and healthy in her home, and I'm sorry, but I just can't reach that conclusion at this point.

[Mother's counsel], I do hear you when you say that the amount of time is not dispositive in and of itself, and I agree with you. But I do think that the caselaw tells us and the statutes tell us that it is a significant factor that the Court needs to consider. And [A.H.]'s been in care for 30 months and there's been progress, but it's been incomplete and it's been inconsistent. So [A.H.] does need permanency, and she does need the stability. . . .

In this case, the plan is being changed to relative placement, the child has been with that relative since April, the Court finds that the child is thriving in that environment and is doing very well, is bonded. All of the evidence suggests that's in the file, the testimony today, that the child is bonded with Ms. C[.], is doing very well, and I have to conclude or I do conclude that that stability and certainty is working to the benefit of that child. And it's not speculative, I mean, we've seen it and we can see what's happened since April through today, she's doing well, and what the State is asking is a continuation of that certainty. There's no uncertainty there as far as I'm concerned and I think that the continuation of that certainty is in her best interest.

What [Mother] is asking me to do would be to either keep the case open, but I haven't heard that, but I think that's the compromise position that [Mother] would be asking for is to keep the case open for an additional period of time so that she can continue to progress, if you will. I don't think that

keeping the case open for any more time is in the best interest of the child because it would just contribute to uncertainty, or in the alternative she's asking me to place [A.H.] in her home. And although I give her a lot of credit for the progress that she's made, I just can't conclude that that home would be one that would provide [A.H.] with safety and a healthy environment.

I've considered all of the factors – the court takes judicial notice of the entire file, I believe that I said that. I've taken into consideration the child's health and safety if returned to the parent. I can't conclude that it would be healthy and safe for the child to return to the home of the mother. There's emotional ties and attachment to Ms. C[.] I still have questions about the bonding between [Mother] and the child given the bonding study that was in the file. I accept [child's counsel]'s statement that there is bonding, I'm sure that there is, I'm sure that the continued contact and visitation is in the best interest of the minor child with [Mother], but I can't conclude that she has the ability to form the bond that would be necessary for a safe and healthy home environment on a full-time basis.

The child's been in care for quite some time and has been with Ms. C[.] since April. Potential emotional development and educational harm with removing the child from current placement, I believe that that would be detrimental to the minor child given the fact that she is in a placement that is healthy, stable, and it is on a relatively long term since April of 2016. The child's not – well, the child has been in – not in State custody, it's in the custody of the relative, but that's the suggestion. The Court will consider both in state, out of state permanent placement options for the child, that's not relevant. Those are the requisite factors that the Court has considered.

The Court does conclude that Ms. C[.] is a fit and proper custodian and it's in the best interest of the minor child for custody to be vested with Ms. C[.], custody of [A.H.] The court finds that the child is no longer CINA in light of Ms. C[.] being a fit and proper custodian for the minor child. The Court does find that it would be contrary to the interest of the minor child to be returned to the home of mother at this point, but not contrary to the interest of the child's health and safety to be placed with Ms. C[.] The child is no longer a child in need of assistance. The Department has made reasonable efforts to effectuate the plan, the prior plan, which was reunification.

We are not persuaded that the court abused its discretion in awarding custody of A.H. to Ms. C. The court clearly considered the requisite statutory factors based on facts that were not clearly erroneous and arrived at a decision well-within its discretion.

Supervised Visitation

Lastly, Mother contends that the court erred by changing her visits to supervised ones for two months following entry of the order. She argues that there were no grounds for the court to conclude that A.H. was susceptible to danger or abuse in her temporary care. Mother recognizes that the court ordered supervised visitation based on statements that Mother allegedly made to the child about Ms. C., but Mother asserts that, even if the statements were true, there was "no evidence" that the statements harmed the child or undermined Ms. C.

The Department maintains that there was no error in the court's decision to order supervised visitation. The Department argues that the court properly considered A.H.'s best interests and concluded that Mother could not provide a safe environment for the child. Moreover, the Department pointed to evidence of A.H.'s changed behavior following unsupervised visits, and Mother's statements to the child regarding Ms. C.'s authority as factors supporting the change to supervised visits.

We note, however, that the court's order provided for two months of supervised visitation at which point visitation would "be at the discretion of Ms. C[.]," provided that it occurred every Sunday. Neither Mother nor the Department stated in their respective briefs whether the visits continued to be supervised beyond the court-ordered two month period. Because the order was entered on September 15, 2016, we are beyond the point at which the court-ordered supervised visits were to cease.

As such, there is no remedy this Court could order to rectify any error, assuming *arguendo* there was error. Mother's appeal as to supervised visitation is, therefore, moot.

See In re Adoption/Guardianship of Cross H., 431 Md. 371, 381 (2013) (stating that an appeal is moot "when 'past facts and occurrences have produced a situation in which, without any future action, any judgment or decree the court might enter would be without effect'" (quoting *Hayman v. St. Martin's Evangelical Lutheran Church*, 227 Md. 338, 343 (1962))). Stated differently, "'[a] case is moot when there is no longer an existing controversy between the parties at the time it is before the court so that the court cannot provide an effective remedy.'" *In re W.Y.*, 228 Md. App. 596, 609 (2016) (quoting *Coburn v. Coburn*, 342 Md. 244, 250 (1996)).

Moot appeals are generally dismissed. *See Furda v. State*, 193 Md. App. 371, 401 (2010) ("As a general proposition, 'appeals which present nothing else for decision are dismissed as a matter of course.'" (Quoting *In re Riddlemoser*, 317 Md. 496, 502 (1989))). We may decide to address the merits of a moot case, however, "when the issues concern matters of great importance, the public interest will be affected, or there is a likelihood that the wrongdoing will soon be repeated if not immediately resolved." *W.Y.*, 228 Md. App. at 609 (citing *Lloyd v. Bd. of Supervisors of Elections of Balt. Cnty.*, 206 Md. 36, 42-43 (1954)). We are not persuaded this case falls within an exception to the mootness doctrine. We note, however, that if visits continue to be supervised, there is no basis in this record to support that.

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY SITTING AS A JUVENILE COURT AWARDING CUSTODY TO MS. C. AFFIRMED.
COSTS TO BE PAID BY APPELLANT.