RECENT MARYLAND APPELLATE DECISIONS

CINA/TPR
Cases

December 1, 2007 – April 15, 2013

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***In Re Adoption of Sean M.*, No. 54, September Term 2012, filed March 22, 2013**

Facts: Moira M. ("Mother") and William H. engaged in a romantic relationship from April to November of 2008. They were not married. Sean M. ("Sean") was born to Mother on 16 June 2009. Moira M. became engaged to Jeffrey Craig K. ("Stepfather") in November of 2009. Since that time, she and Sean lived with Stepfather in Queen Anne's County. Mother and Stepfather married on 16 October 2011.

On 14 July 2009, Mother filed a Complaint against William H. in the Circuit Court for Anne Arundel County, asserting that William H. is the natural father of Sean (although Sean's birth certificate does not identify a father) and seeking sole legal and physical custody. In his Answer, William H. denied that he was the natural father of Sean and stated that he had no objection to Mother having custody. On 14 January 2010, the suit was dismissed by agreement of the parties.

On 30 March 2011, Stepfather filed a Petition for Stepparent Adoption of a Minor and Change of Name ("Petition") in the Circuit Court for Queen Anne's County, stating his intention to continue to reside with Sean's mother, and that no natural father of Sean has been identified. The Petition stated also that, even if William H. was the natural father of Sean, he has "abandoned his parental rights" as to Sean because William H.: (1) denied that he was the natural father of the minor child during the earlier custody proceeding in the Circuit Court for Anne Arundel County; (2) has not "exercised any parental rights since the minor child's birth;" and, (3) has not attempted to support and maintain Sean since his birth.

The Circuit Court issued a show cause order and form notice of objection to William H. (himself an attorney admitted in Maryland at the time), who was served properly by personal service on 29 April 2011. The required deadline for William H. to file with the Circuit Court for Queen Anne's County any objection to Stepfather's petition for adoption of Sean was 31 May 2011.

The Circuit Court received William H.'s written objection on Wednesday, 1 June 2011, one day after the expiration of the thirty-day deadline.

Stepfather filed a Motion to Strike Late Notice of Objection, requesting that the adoption proceed as an uncontested matter. Judge J. Frederick Price granted Stepfather's motion, noting that William H. did not allege any disability or any other circumstance to excuse the requirement, pursuant to Maryland Rule 9-107(b)(1), of filing a notice of objection to an adoption within thirty days after the show cause order is served. William H. filed a Motion to Alter and Amend Judgment on 18 August 2011, and, a week later, an Emergency Motion to Stay Adoption Proceeding. The court denied both motions. William H. appealed the denial of the orders to the Court of Special Appeals.

On 27 April 2012, a panel of the intermediate appellate court affirmed, in a reported opinion, the Circuit Court's grant of Stepfather's Motion to Strike William H.'s untimely objection. The court held that the time period established in Md. Rule 9-107(b)(1) applied equally to guardianships as well as adoptions, and that it rendered the late filing of a notice of objection to an adoption as an irrevocable consent to termination of the pertinent parent's rights, In re: Adoption of Sean M., 204 Md. App. 724, 742, 42 A.3d 722, 732 (2012). The intermediate appellate court held also that this statutory scheme did not offend any due process right of William H. Id. at 749, 42 A.3d at 737. The Court of Appeals granted William H.'s petition for Writ of Certiorari, In re: Adoption of Sean M., 427 Md. 606, 50 A.3d 605 (2012), to consider (1) whether a putative parent's failure to file a timely objection to a proposed independent adoption,as directed in a show cause order, constitutes an irrevocable consent to the adoption; and, (2) whether the statutory scheme resulting in an irrevocable deemed consent to an independent adoption offends the due process rights of the putative parent.

Ruling: Affirmed. The Court determined first that the failure of William H. to file timely a notice of objection to the proposed independent adoption constituted an irrevocable consent to the adoption. The analysis began with a comparison of the independent adoption statutory and regulatory provisions with the guardianship statutory scheme, which applies a similar thirty-day objection period. In guardianship proceedings, any late-filed objection results in an irrevocable consent to the guardianship petition. The Court held that, because the statutory schema of guardianship and adoption procedures are sufficiently similar in their plain language and legislative intent as to the effect of a late-filed notice of objection, an untimely objection acts as an irrevocable consent in either a guardianship or an adoption proceeding.

Second, the Court held that, based on the multi-factor test of Matthews v. Eldridge, 424 U.S. 319 (1976), the procedures established in the independent adoption statutory and rule-based provisions provide fair notice to a parent or putative parent that his or her right to

participate in raising his child will terminate by requiring that (1) the parent receives notice that an adoption petition is filed and (2) the parent is made aware clearly that the court may enter an order for adoption only if each of the adoptee's parents consents by writing or by failure to file a notice of objection within the thirty-day statutory time period. The Court determined that, because William H. offered no excuse for his late-filed objection and did not contend that the pertinent statutory and regulatory provisions were unclear, the independent adoption statutory scheme provided fundamentally fair procedures that did not deprive William H. of due process.

FAMILY LAW – ADOPTION – PROCEDURES – INTERVENTION - FAMILY LAW – ADOPTION – FINALITY

***In Re: Malichi W.*, 209 Md. App. 84 (2012)**

Facts: Kris Golden was the maternal cousin of eight-year-old Malichi W. The juvenile court terminated the parental rights of Malichi's biological parents on August 10, 2010. Malichi's biological mother consented to the termination on the condition that Malichi be adopted by Ms. W., who was Malichi's pre-adoptive foster mother, and who had custody of the child since June 6, 2006. Malichi's biological father did not object, and thus he consented by operation of law. On March 9, 2011, the Baltimore City Department of Social Services (the "Department"), the child's appointed guardian, consented to Malichi's adoption by Ms. W. Ms. W. then petitioned the court to adopt Malichi on March 24, 2011.

On April 8, appellant Kris Golden filed a motion in Malichi's adoption proceedings captioned "Motion to Intervene and Appeal." She wanted to be considered as an adoptive parent for Malichi. The juvenile court denied the motion on April 12, stating that it lacked good cause. On May 31, 2011, Golden filed a second motion with the same caption as her first. On June 1, 2011, the juvenile court granted Ms. W's petition for adoption of Malichi. The court then denied Golden's motion on June 10, 2011, finding that there was a lack of good cause and that the issue was moot because "the child was adopted on 6/1/11." Golden filed an appeal.

Ruling: Affirmed Under FL §5-345(a), any adult may petition a juvenile court for an adoption of the child post-TPR. However, the petitioner must include in his or her filing all written consents required by FL §5-350(a). Here, because Yolanda W. filed the consent of Malachi's guardian, the Maryland Department of Social Services, Golden could not petition for adoption. This fact posed an insurmountable barrier to the relief sought by Golden – consideration as an adoptive parent.

Even assuming that Golden's goal was to overturn Ms. W.'s adoption of Malachi, no mechanism exists for her intervention in a post-TPR adoption. The Court examined Title 5, Subtitle 3 of the Family Law Article of the Md. Code (1984, 2006 Repl. Vol.), Title 3, Subtitle 8 of the Courts and Judicial Proceedings Article of the Md. Code (1977, 2006 Repl. Vol.), Title 9 and Title 11 of the Maryland Rules, and Maryland Rule 2-214. None of these rules confer upon a non-parental, non-custodial relative the right to intervene in an adoption proceeding after the termination of parental rights.

In fact, Md. Rule 11-122(b) allows non-parental intervention at the discretion of the

juvenile court, but only for "dispositional purpose." According to the corresponding statute, a "dispositional hearing" is one that determines whether a child is in need of assistance and, if so, the nature of the court's intervention to protect the child's health, saftey, and wellbeing. The specificity and exclusivity of Rule 11-122(b) create the negative implication that no right of intervention exists beyond the dispositional stage – here, an adoption following termination of parental rights. The rationale for such a construction is readily apparent, as there is a need to surround the final adoption decree with a high degree of certainty, and anything which would undermine public confidence in adoption proceedings must be read by the courts in the gravest light.

With a review of the potentially applicable law, the Court of Special Appeals found no statute or rule that would allowed Golden's intervention in the adoption after termination of parental rights. Thus, Golden had no right to intervene in the adoption.

EVIDENCE – TELEPHONE TESTIMONY – EXPERT & LAY WITNESSES – OPINION TESTIMONY – FAMILY LAW – PARENTAL DUTIES & RIGHTS – TERMINATION OF PARENTAL RIGHTS – INVOLUNTARY TERMINATION

***In Re: Adriana T.*, 208 Md. App. 545 (2012)**

Facts: In November 2009, the Prince George's County Department of Social Services ("Department") filed a Child In Need of Assistance ("CINA") Petition for minor child, Adriana T., alleging that Adriana T.'s mother, Monet T. ("Mother"), was a risk to herself and to others, and recommended that she not be left alone with Adriana T. While in labor, Mother attempted to leave the hospital, despite her physician's medical advice. She was involuntarily committed to the hospital's mental unit, and Adriana T. was placed in the temporary care and custody of the Department. The Circuit Court for Prince George's County, sitting as a juvenile court, determined that Adriana T. was a CINA and could be placed with a relative.

Several years earlier, in December 2001, Mother suffered from a psychiatric episode and believed that her mother, Mary T. ("Grandmother") was complicit in a conspiracy against her. Mother fired two shots at Grandmother, but Grandmother survived. Mother was arrested and charged, but found not criminally responsible, and committed to Clifton T. Perkins Hospital Center.

In May 2010, the Department placed Adriana T. with Grandmother in North Carolina. During this time, a social worker, Ms. Joyce Trott, visited Grandmother's residence once a month, monitored Adriana T.'s care, and provided reports to the Department. In October 2010, the Department filed a Petition for Guardianship with Right to Consent to Adoption. Although Adriana T.'s father, Detuan J., consented to the petition, Mother noted her objection. In April 2011, the court determined that the matter was a contested guardianship, and ordered a hearing on the merits.

In June 2011, Adriana T.'s counsel, pursuant to Md. Rule 2-513, filed a motion to take Ms. Trott's testimony by telephone. Mother opposed, arguing that (1) the motion was not timely and deprived her of the opportunity to cross-examine the witness, resulting in substantial prejudice; and (2) the court could not assess the witness' demeanor and credibility. The trial court granted Adriana T.'s motion. Additionally, over Mother's objections of relevancy, the court permitted Grandmother to testify regarding her medical recovery from the gunshot wounds that Mother inflicted. In April 2012, the court ordered that Mother's parental rights be terminated pursuant to § 5-323(d) of the Family Law Article.

Ruling: Affirmed. The Court of Special Appeals held that there was good cause to allow the motion to be filed because Adriana T. lacked funds to finance Ms. Trott's travel and hotel expenses. Mother received notice of the content of Ms. Trott's status reports and accordingly, was aware of what she would communicate through her testimony. Concerning Mother's inability to contact Ms. Trott, the Court willingly assessed the lack of the required contents of Md. Rule 2-513, and determined that Adriana's failure to include the contents were immaterial. Ms. Trott was a disinterested party, who testified to Adriana's general welfare during her placement with Grandmother, and thereby, Ms. Trott's demeanor and credibility were not likely to be critical to the outcome of the proceedings, to the extent that her physical presence was required. Mother's ability to effectively cross-examine was not stifled because Ms. Trott testified by telephone. Mother had a full and fair opportunity to cross-examine, but chose to limit that examination to one question. We concluded that the trial court did not abuse its discretion in permitting the telephone testimony.

Regarding Grandmother's testimony concerning her recovery, we held that it was relevant to the termination of parental rights proceeding because Grandmother's recuperation demonstrated the extent of the damage caused by Mother's violent conduct. Grandmother's testimony also denoted her ability to care for Adriana T., despite the shooting incident, Mother's inability to raise Adriana T., and the potential peril Mother posed to Adriana T.'s health and well-being. As a result of the plausibility of Mother's future violent conduct, the court did not err in admitting the testimony.

FAMILY LAW – CHILD CUSTODY – VISITATION – THIRD PARTIES – EXCEPTIONAL CIRCUMSTANCES ANALYSIS

***In Re: Victoria C.*, 208 Md. app. 87 (2012), *cert. granted*, 430 Md. 344 (2013)**

Facts: Victoria C. was born on August 25, 1993. After Victoria's mother died, her father, George, married Kieran, Victoria's stepmother, in 2005. George and Kieran have two sons, age five and three. Victoria lived with father from birth until March 2009, when she was sent to live with a maternal aunt in Texas. Victoria went to live with her aunt after an abuse allegation against George was sustained. Victoria remained in Texas with her aunt for a period of one year and then returned to Maryland in March 2010. Upon Victoria's return from Texas, George did not allow Victoria to return home and Victoria was taken into the care and custody of the Carroll County Department of Social Services. Victoria was adjudicated to be a child in need of assistance ("CINA").

As an ancillary action to the CINA proceeding, Victoria sought visitation with her two minor siblings, which George and Kieran opposed. A hearing was held before a Master. Victoria testified that she wanted visitation with her brothers. George and Kieran both testified that they opposed visitation because of the poor relationship between Victoria and George. Kieran expressed concern that, if visitation were permitted, the hostility between Victoria and George would adversely affect the relationships between George and his sons as well as between Kieran and her sons. Victoria's social worker recommended against visitation, as did a therapist who had worked with Victoria and George.

The Master recommended visitation, finding that Victoria had proved exceptional circumstances as required by Maryland law. George and Kieran filed timely exceptions. Before the exceptions hearing, Victoria turned eighteen years old and terminated Department of Social Services custody. The circuit court denied George and Kieran's exceptions. This appeal followed.

Ruling: Reversed. Case remanded for entry of an order denying Victoria's petition for visitation. The Court of Special Appeals held that when a third party, including an adult sibling, seeks visitation with a minor child, the third party must satisfy the standard articulated in Koshko v. Haining, 398 Md. 404 (2007). Parents possess a constitutionally protected fundamental right to direct and control the upbringing of their children. In order to safeguard the parent's liberty interest, Koshko requires a threshold showing of either parental unfitness or exceptional circumstances indicating that the lack of third-party visitation has a significant deleterious effect upon the children who are the subject of the petition.

Exceptional circumstances are evaluated on a case-by-case basis. In the context of third-party visitation cases, the Court of Special Appeals has focused on the ability of the party seeking visitation to show future detriment upon the minor children if visitation is not permitted. A finding of future detriment must be based on solid evidence in the record; harm to a minor child will not be presumed. Harm suffered by an adult as the result of a denial of visitation with minor children is not a consideration in the exceptional circumstances analysis. The focus instead must be on whether a minor child is harmed by the absence of visitation.

The Court of Special Appeals determined that the circuit court had improperly applied Koshko in assessing Victoria's visitation petition. There was no evidence in the record of any harm to the minor children due to the lack of visitation with Victoria. Rather, there was testimony indicating potential harm to the minor children from visitation. The circuit court improperly considered harm to Victoria due to the denial of visitation. Victoria is an adult and harm suffered by adults as the result of a denial of visitation should not be considered. Accordingly, the Court reversed the circuit court and remanded for entry of an order denying visitation.

SOCIAL SECURITY ACT -- OLD AGE, SURVIVOR, AND DISABILITY INSURANCE (OASDI) BENEFITS -- USE BY DEPARTMENT OF SOCIAL SERVICES FOR SELF-REIMBURSEMENT OF OASDI BENEFITS TO CHILD DECLARED CHILD IN NEED OF ASSISTANCE BY JUVENILE COURT -- ALLEGATIONS OF BREACH OF FIDUCIARY DUTY, VIOLATIONS OF RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW UNDER FEDERAL CONSTITUTION AND MARYLAND DECLARATION OF RIGHTS -- JURISDICTION JUVENILE COURT -- COMAR REGULATIONS REGARDING OASDI BENEFITS.

***In Re Ryan W.*, 207 Md. App. 698, *cert. granted*, 429 Md. 528 (2012), *and cert. granted*, 430 Md. 11 (2013)**

Facts: In 2002, when he was 9 years old, Ryan W., the appellee, was declared by the Circuit Court for Baltimore City, sitting as a Juvenile Court, to be a Child in Need of Assistance. He was committed to the care and custody of the Baltimore City Department of Social Services ("the Department"), the appellant. Ryan was placed in foster care, living primarily in therapeutic and non-therapeutic group homes. After Ryan's mother died, he became eligible for Old Age, Survivor, and Disability Insurance ("OASDI") benefits under Title II of the Social Security Act. After his father died, Ryan became eligible for additional benefits. In 2009, when Ryan was 16 years old, the Department applied to the Social Security Administration ("SSA") to be named the representative payee to receive Ryan's OASDI benefits. The SSA granted the Department's request. Ryan was not informed, nor was his CINA counsel. The Department received two lump-sum retroactive benefits payments and began receiving $771 per month in current benefit payments. It used all of the monies it received, a total of $31,693.30, to reimburse itself for the cost of Ryan's care.

Subsequently, after the Department was no longer receiving OASDI benefits on Ryan's behalf, he filed a "motion to control conduct" in his CINA case, asking the Juvenile Court to order the Department to conserve any OASDI benefits received on his behalf for his use upon his transition out of foster care. He argued that the Department violated his state and federal constitutional rights to due process and equal protection in applying for benefits without notice to him or his counsel and by using his benefits for self-reimbursement; and that this practice also violated state and federal law.

The Juvenile Court ruled in Ryan's favor, finding that the Department had breached fiduciary duties owing to Ryan and had violated his equal protection and due process rights. It declared two Maryland regulations permitting the self-reimbursement practice *ultra vires* and held that the Department had not acted in Ryan's best interests when it used his OASDI benefits for self-reimbursement, rather than conserving the benefits for his

future use. The Juvenile Court ordered the Department to return to Ryan the entire $31,693.30 in benefits it had received on his behalf.

The Department noted an appeal. It conceded that a portion of the OASDI benefits received on Ryan's behalf as lump-sum, retroactive payments – a little over $8,000 – had to be refunded to him because it only could be applied to cover the cost of Ryan's care for the month prior to its receipt. Otherwise, it took the position that its practice of using OASDI benefits received on behalf of a foster child to self-reimburse complied with federal and state law and that the Juvenile Court lacked jurisdiction to order it to repay the full amount of Ryan's OASDI benefits and to declare Maryland regulations *ultra vires*.

Ruling: Judgment reversed. Under the SSA regulations, the Department was entitled to apply for and receive OASDI benefits for Ryan without informing him or his counsel. Its obligation to conserve benefits for future use was only with respect to benefits over the amount of the cost of his current maintenance and the amount of Ryan's monthly OASDI benefits was far less than the cost of his current maintenance. There was no equal protection violation because the Department's practice did not create two classes of foster children. Moreover, the Juvenile Court has limited jurisdiction that does not include broad equitable powers, such as it exercised in its ruling in this case; nor did it have the power to declare two Maryland regulations, which previously had been approved, *ultra vires*. Ryan was entitled to a refund of approximately $8,100, as conceded, but the ruling of the Juvenile Court was otherwise reversed.

FAMILY LAW – TERMINATION OF PARENTAL RIGHTS – RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL – DISABILITY ALLEGATION

***In Re Adoption/Guardianship of Chaden M.*, 422 Md. 498 (2011)**

Facts: The Baltimore City Department of Social Services ("DSS") filed a petition for guardianship of minor child, Chaden M. DSS alleged in the petition that Chaden M.'s mother, April C., may have had a disability that made her "incapable of consenting to [DSS's] Petition for Guardianship or of participating in the proceeding for Guardianship." The nature of the alleged disability was mental health. DSS requested that an attorney be appointed for April C. Attorney Smith entered her appearance two days after DSS filed the petition. Neither April C. nor Attorney Smith on April C.'s behalf filed a notice of objection to the petition within the 30-day period after April C. was served, as provided by Maryland law. After expiration of the time period within which April C. could have objected, DSS withdrew its allegation that April C. was disabled. Attorney Smith then filed an untimely notice of objection, which DSS moved to strike. The juvenile court held a disability determination hearing and found that April C. was not disabled. The juvenile court then granted DSS's motion to strike April C.'s untimely objection. The failure to file a timely objection resulted in April C. being deemed to have consented to the petition for guardianship. The matter then proceeded on an uncontested basis and the juvenile court granted DSS's petition, which had the effect of terminating April C.'s parental rights.

April C. appealed to the Court of Special Appeals and asserted that she had been denied effective assistance of counsel. That court held that April C. had a right to effective assistance of counsel and, pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984), April C. was denied that right and entitled to a file a belated notice of objection on remand. DSS then petitioned the Court of Appeals for a writ of certiorari.

Ruling: Affirmed. The Court of Appeals held that April C. had a right to counsel rooted in Maryland Code (1999, 2006 Repl. Vol.), § 5-307(a) of the Family Law Article as well as Maryland Rule 9-105(b) because DSS had alleged that she was disabled. The right continued at least until the juvenile court made a disability determination. The right to counsel includes the right to effective assistance of counsel. Attorney Smith, who entered her appearance on behalf of April C., rendered ineffective assistance. She assumed that DSS agreed April C. was disabled and the court would ultimately find that April C. was disabled. Based on those unfounded assumptions, Attorney Smith failed to file a timely notice of objection to preserve April C.'s right to contest the petition for guardianship in the event that DSS withdrew its allegation of disability or the juvenile court found that April C. was not disabled. The conclusion that Attorney Smith rendered ineffective assistance of counsel was based on her clear and admitted failure to file the notice of

objection after she entered her appearance. The Court of Appeals, therefore, did not need to address the applicability of a *Strickland* analysis, as the intermediate court had done. April C. is entitled to file a belated notice of objection on remand.

FAMILY LAW — CHILD IN NEED OF ASSISTANCE — TERMINATION OF PARENTAL RIGHTS — FAMILY LAW ARTICLE §5-323 — FAMILY LAW ARTICLE §5-324 —FAMILY LAW ARTICLE §5-325

***In Re Adoption/Guardianship of Cross H.*, 200 Md. App. 142, *cert. granted,* 422 Md. 352 (2011)**

Facts: Cross H., a minor child, was born to appellants Virginia H. and Aaron R. on August 28, 2007. On October 3, 2007, Cross H. was adjudicated a Child In Need of Assistance ("CINA"). He was committed to the Department of Social Services ("the Department"), and was placed in foster care with Mr. and Mrs. B. Cross H. remained in foster care with Mr. and Mrs. B's family for approximately seven months, until the spring of 2008, when he was placed with Christopher D. and David A.. Appellant Aaron R. was determined to be Cross's biological father in January of 2009. Once paternity was confirmed, Cross H.'s permanency plan was changed to reflect the goal of reunification with his father. However, Aaron R. was unable to complete the necessary drug treatment and psychological examinations, and therefore, on April 29, 2009, based on Virginia H. and Aaron R.'s requests, the circuit court ordered that Cross's permanency plan be explored for placement with the paternal grandmother, and ordered the Department to conduct a home study and a bonding study. These studies resulted in negative findings regarding placement with Barbara J.

Based on these findings, on October 28, 2009, the juvenile master recommended that Cross's permanency plan revert to nonrelative adoption. Appellant Virginia H. filed a motion to intervene, with exceptions to the permanency plan, and the circuit court granted the motion. The court conducted an exceptions hearing on December 7 and 16, 2009 and on February 17 and 18, 2010. At the conclusion of the hearing, the circuit court delivered an extensive oral opinion, explaining the court's conclusion that neither Ms. H., nor Mr. R. were available as current placements for Cross H. Accordingly, the juvenile court entered an order on March 26, 2010, in which it dismissed the mother's exceptions, and ordered a permanency plan of non-relative adoption, affirming the master's recommendations. The mother filed an appeal to the CINA case in the Court of Special Appeals. While the CINA appeal was pending, in compliance with the circuit court's March 26th order, the Department filed a petition to terminate parental rights ("TPR petition"). Aaron R. filed a motion to stay the TPR proceedings in the juvenile court until the appeal of the CINA order had been resolved. The juvenile court denied the motion to stay and proceeded with the TPR hearing, which spanned a period of five days from September 28, 2010 until October 4, 2010. At the conclusion of the hearing, the court granted guardianship of Cross H. to the Department, and terminated the parental rights of Virginia H. and Aaron R.

Along with its appellate brief in the CINA appeal, the Department also filed a motion to dismiss the CINA appeal as moot, arguing that the court's October 4, 2010 order

terminating appellants' parental rights effectively ended the circuit court's jurisdiction in the CINA case. On January 11, 2011, the Court of Special Appeals denied the motion to dismiss, and affirmed the juvenile court's CINA decision, including the change in permanency plan. On February 9, 2011, appellant filed a petition for writ of certiorari to the Court of Appeals in the CINA case. The petition was denied on April 25, 2011. On October 22, 2010, Virginia H. noted her appeal of the TPR case, and on November 2, 2010, Aaron R. did the same. The parents argued that the circuit court erred in proceeding with the termination of parental rights hearing when the appeal of the CINA order was pending, that the circuit court erred in refusing to consider placement with the paternal grandmother, and that the circuit court erred in terminating their parental rights.

Ruling: The Court of Special Appeals held that the circuit court did not err in proceeding with the termination of parental rights hearing when the appeal of the CINA order was pending. The Court explained that, although a CINA adjudication is a relevant factor that a juvenile court may consider in deciding whether to terminate parental rights, they are independent legal actions, and the changing of the permanency plan from reunification, or adoption by a relative, to adoption by a non-relative, is not required before the Department can file a TPR petition. Thus, while related, the actions are independent of one another, and there is no prohibition against the initiation of TPR proceedings during the pendency of a CINA appeal. The Court also distinguished *Cross H.* from *In re: Emileigh F.*, 355 Md. 198 (1999), in which the Court of Appeals held that the circuit court erred in closing a CINA case while an appeal was pending.

The Court held that the juvenile court did consider placement of Cross H. with his paternal grandmother, and that it properly ruled against such placement, based on the results of a home study and a bonding study conducted by the Department, and on the testimony of the Department's social worker about the relationship between Cross H. and his grandmother.

Finally, the Court held that the juvenile circuit court properly considered the applicable statutory criteria for termination of parental rights, as set out in §5-323 of the Family Law Article, that ample evidence supported the court's factual findings, and that these findings provided clear and convincing evidence of parental unfitness with regard to Aaron R., and of the existence of exceptional circumstances with regard to Virginia H. This evidence was sufficient to overcome the presumption in favor of maintaining the natural parental relationships. Therefore, the Court concluded, the circuit court did not abuse its discretion in terminating the parental rights of Aaron R. and Virginia H.

FAMILY LAW - CINA - (1) DOES THE DEPARTMENT OF SOCIAL SERVICES SATISFY THE STATUTORY REQUIREMENT THAT IT MUST MAKE REASONABLE EFFORTS TO FINALIZE THE PERMANENCY PLAN OF REUNIFICATION WHERE A PARENT WAS REFERRED TO SERVICES PERTAINING TO SPECIFIC IMPEDIMENTS TO REUNIFICATION BUT NEVER RECEIVED THOSE SERVICES DUE TO LACK OF FUNDING? (2) WHERE PETITIONER HAD CONCEDEDLY FOLLOWED THROUGH WITH THE DEPARTMENT'S REFERRALS TO SERVICES IDENTIFIED BY THE JUVENILE COURT AS "CRITICAL" FOR EFFORTS AT REUNIFICATION WITH HER CHILDREN, BUT DID NOT RECEIVE THOSE SERVICES SOLELY BECAUSE OF A LACK OF FUNDING DID THE DEPARTMENT SATISFY ITS STATUTORY OBLIGATION TO MAKE REASONABLE EFFORTS TOWARD REUNIFICATION? (3) DID THE JUVENILE COURT ABUSE ITS DISCRETION WHEN IT CHANGED THE PERMANENCY PLANS FOR THE FOUR CHILDREN FROM REUNIFICATION TO ADOPTION?

***In Re: Shirley B., Jordan B., Davon B., and Cedric B.*, 419 Md. 1 (2011)**

Facts: Ms. B. is the biological mother of Shirley B., Davon B., Jordan B., and Cedric B. (collectively "the Children"). The Children were referred to the Department of Social Services (the "Department") following reports of neglect and sexual abuse. A subsequent psychological evaluation revealed that Ms. B. was cognitively impaired, and it was observed that the Children had special needs of their own. Perhaps due to her cognitive limitations, Ms. B. was largely unresponsive to the Department's assistance and she allowed vital benefits to lapse. She also permitted unauthorized adults to move into her home and exposed the Children to drug use and sexual activity. Finally, a violent altercation between Ms. B., the Children's father, and Shirley prompted the Department to remove the Children from Ms. B.'s care.

As the Children sat in foster care, the Department continued to offer services to Ms. B. in the hopes that she would be able to develop the parenting skills necessary for reunification with her Children. In addition to general parenting classes, the Department attempted to connect Ms. B. with services specifically tailored to meet her special needs through various State agencies and outside institutions. Yet, due to economic constraints, funding for these services was non-existent, leaving Ms. B. ineligible to receive them. The Department remained determined, however, and it continued to search in vain for other sources of funding or funded services. The Department also continued to offer Ms. B. numerous other services, including:

(1) funding and obtaining a necessary neuropsychological evaluation of Ms. B. in an effort to provide an evaluation that would have been provided by other sources;

(2) obtaining a family clinical interview with regard to the children;
(3) discussing with Ms. B. her medical issues;
(4) assisting Ms. B. in reactivating her medical assistance;
(5) arranging for and transporting Ms. B. for medical appointments, including a gynecological examination, as well as an examination to address issues of high blood pressure
(6) transporting Ms. B. to educational meeting and appointments affecting her daughter and assisting Ms. B. in understanding what was occurring and assisting her in questioning; and
(7) transporting Ms. B. to visits with the children.

By the Children's 2009 permanency plan hearing, the funding and services had not materialized. At this time, the Children had been in foster care for 28 months, and there was no end in sight. The Children's case worker believed that it was not in the Children's best interests to be returned to Ms. B., and was unsure whether they could ever be safe in Ms. B.'s care. At the hearing's conclusion, the juvenile court, concerned with the Children's welfare and need for stability, changed the goal of the Children's permanency plans from reunification to adoption. The Court of Special Appeals affirmed the juvenile court's decision.

Ruling: The Court of Appeals affirmed the Court of Special Appeals. Tracing the history of the "reasonable efforts" requirement, including examining its impetus, the Adoption and Safe Families Act, the Court held that the reasonable efforts requirement is case-specific, and must be considered in light of the services at the Department's disposal. Though the Department was required to make a good faith effort towards reunification, both Maryland and out-of-state caselaw established limits as to what the Department was required to do. Here, the Department's inability to connect the mother with specialized services was due to forces outside its control, and not for its lack of trying. Thus, the juvenile court did not err in finding that the Department satisfied its "reasonable efforts" requirement. Furthermore, as it was unlikely that the mother would be able to reunite with her children anytime in the foreseeable future, changing the permanency plans was in the children's best interests.

FAMILY LAW — PARENTAL DUTIES & RIGHTS — TERMINATION OF RIGHTS — INVOLUNTARY TERMINATION

***In re: Adoption/Guardianship of Amber R.,* 417 Md. 701 (2011)**

Facts: Petitioner Cathy F. ("Ms. F.") is the parent of Respondents Amber R. and Mark R. (the "Children"), who have each been adjudicated to be a Child in Need of Assistance by the Circuit Court for Baltimore City. Ms. F.'s long history of substance abuse and employment and housing issues led Respondent the Baltimore City Department of Social Services (the "Department") to intervene in her family situation. Ultimately, Ms. F. was unable to stabilize her home life, prompting the Department to pursue guardianship of the Children. The juvenile court, in evaluating Ms. F.'s fitness as a parent, found by clear and convincing evidence that she was an unfit mother, and that it would be in the Children's best interests to terminate her parental rights. The court took into account Ms. F.'s failure to comply with numerous case plans provided by the Department, including her refusal to attend parenting classes or suggested drug treatment programs. Even though Ms. F. claimed to have attended drug treatment on her own, she would not supply the Department or the juvenile court with any corroborating documentary evidence, and her testimony was conflicting as to how long she had been clean.

Ms. F. appealed the juvenile court's decision, and in an unreported opinion, the Court of Special Appeals affirmed. She then sought relief in the Court of Appeals. On appeal, Ms. F. both proposed that the Court superimpose a four-factor test onto the statutory scheme governing termination of parental rights and challenged the juvenile court's application of the existing scheme to her case.

Ruling: The Court of Appeals affirmed the decision of the intermediate appellate court. The Court rejected Ms. F.'s proposed test, explaining that the General Assembly's extensive list of factors, when considered in the light of the standing presumption favoring parental rights, reflect the spirit that termination is an alternative of last resort, and is not to be taken lightly. Thus, the Court concluded that, to the extent that Ms. F.'s test was designed to protect parental rights, those rights are adequately guarded by Section 5-323 of the Family Law Article. The Court also held that the juvenile court did not err in applying the existing statutory factors to this case, and that there was ample evidence to support its conclusions. Finally, the juvenile court also did not err in drawing inferences from Ms. F.'s failure to present evidence on her sobriety. While the Department maintained the burden of persuasion at trial, it was permissible to shift the burden of production to Ms. F., and to find against her when she could not produce the relevant evidence.

FAMILY LAW - TERMINATION OF RIGHTS - EVIDENCE - EXPERT TESTIMONY - RULE 5-702

***In re: Adoption/Guardianship of Tatianna B.*, 417 Md. 259 (2010)**

Facts: On December 8, 2009, a TPR hearing regarding the parental rights of Hyacinth M., as they pertained to her three-year-old daughter, Tatianna B., commenced in the Circuit Court for Montgomery County, sitting as a juvenile court. During the hearing, the Montgomery County Department of Health and Human Services asked the court to qualify Dianna McFarlane, a licensed clinical social worker, as an expert. Ms. McFarlane testified that she is licensed by the State of Maryland in the field of clinical social work, that she possesses a master's degree in the field of social work and has six years' experience working for the Department. As to her familiarity with the case, she stated that it was assigned to her in her role as a foster care worker, after Tatianna B. was adjudicated as a child in need of assistance. She, then, laid out the factors she considered in her assessment regarding the risk to Tatianna B., if she were to be placed back into the care of her mother. Ms. M.'s counsel objected to the admissibility of her testimony, arguing that Ms. McFarlane could provide expert testimony generally in relation to social work matters but that she could not opine regarding the risk of future harm to Tatianna B. were she to be returned to the care of Ms. M., i.e., a "risk assessment." The juvenile judge overruled Ms. M.'s counsel's objection. Thereafter, the juvenile judge issued a written order terminating the parental rights of Ms. M. for unfitness, determining that she "pose[d] an unacceptable risk to . . . [the] future safety" of Tatianna B. Ms. M. appealed the juvenile judge's ruling to the Court of Special Appeals, and the Court of Appeals granted certiorari on its own initiative prior to any proceedings in the intermediate appellate court.

In the Court of Appeals, Ms. M. argued that the juvenile judge erred "by accepting Ms. McFarlane as an expert witness capable of determining whether Ms. M. posed a risk to Tatianna [B.] . . . ." The State argued, conversely, that it was not an abuse of discretion to qualify a licensed clinical social worker as an expert in social work, with experience and training in risk assessment, permitting him or her to testify regarding the risk of future harm to a child in a household. The State contended, moreover, that "Ms. McFarlane was eminently qualified to testify as an expert witness in this case."

Ruling: The Court of Appeals affirmed. The Court first reviewed the statute governing the licensure of social workers in the State of Maryland. The Court noted that, under the statute, an individual must have extensive education and training in order to be licensed as a clinical social worker. The Court determined that, because of Ms. McFarlane's education, training and expertise as a licensed clinical social worker, it was not an abuse of discretion for the juvenile judge to qualify her as an expert in social work, a finding to which Ms. M.'s trial and appellate counsel conceded. The Court further determined that the juvenile judge did not abuse her discretion in permitting Ms.

McFarlane to opine regarding the risk of future harm to Tatianna B., because the case was assigned to Ms. McFarlane in her role as a foster care worker, which required her to "always assess for risk" and "always ensur[e] that the child is safe," as well as the fact that, to prepare for this, she had attended trainings and workshops regarding risk assessment, and that she had maintained an additional caseload, for which she had presented opinions regarding risk assessment in court. The Court noted, moreover, that Ms. McFarlane had experience with Tatianna B. and Ms. M, as well, in which she monitored the child's health and emotional well-being concomitant with monthly visits and had monthly contact with Ms. M., in which she interviewed Ms. M. and provided referrals to enable Ms. M. to seek appropriate treatment. The Court also observed that, once a child is adjudicated as a child in need of assistance, under the Code of Maryland Regulations, a social worker must thoroughly assess the risk of harm to the child in recommending a permanency plan involving whether the child does or does not return to the care of his or her parents.

FAMILY LAW – TERMINATION OF PARENTAL RIGHTS – FAMILY LAW ARTICLE§ 5-323 – "BEST INTERESTS OF CHILD" IS PARAMOUNT CONSIDERATION FOR JUVENILE COURT

***In re: Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90 (2010)**

Facts: In this termination of parental rights case involving a five-year-old girl, the juvenile court proceeded under the assumption that the Court of Appeals decision in *In re Adoption/Guardianship of Rashawn H. and Tyrese H.*, 402 Md. 477, 937 A. 2d 177 (2007), "changed the landscape" by requiring a finding of parental unfitness or exceptional circumstances before a court could order termination of parental rights, regardless of whether that course was in the best interest of the child. Thus, even though the court found that the mother was, at present, incapable of taking care of her child and that removing the child from her foster home would be detrimental to the child's best interests, the court decided not to terminate parental rights because it could not find that the mother was unfit or that exceptional circumstances existed that justified severance of the parental tie.

The court based its decision primarily on the finding that the Department had returned the child's older sister to her mother, and reasoned that if the home was suitable for one child, it must be appropriate for the other. In an unreported opinion, the Court of Special Appeals affirmed the juvenile court's decision, stating that "notwithstanding [the juvenile court judge's] colorful description of the holding in *Rashawn*, he remained focused on the appropriate legal standard and considered the relevant statutory factors." The Court also held that the juvenile court did not abuse its discretion as "a fair reading of the court's ruling discloses that the circuit court judge's puzzlement that [DSS] had returned appellant's sibling to her mother was not a decisive factor in his analysis[,]" and the court's finding that Ms. L. was presently unfit to be Ta'Niya's permanent custodian was not inconsistent with its finding that Ms. L. was not "so unfit as to lose parental rights." Ta'Niya petitioned the Court of Appeals for a Writ of Certiorari, which was granted.

Ruling: The Court of Appeals reversed. With the understanding that a juvenile court is authorized by statute to terminate parental rights upon certain conditions, and after certain findings are made, the Court recognized that, although the paramount consideration identified in the statute, as set forth in subsection (b), is the "best interests of the child," constitutional and common-law rights of parents require consideration of countervailing factors that can make the "best interest" analysis somewhat circuitous. Judge Wilner, writing for this Court in *In re Adoption/Guardianship of Rashawn H. and Tyrese H.*, 402 Md. 477, 937 A. 2d 177 (2007), undertook a comprehensive review of Termination of Parental Rights ("TPR") cases, as well as those involving claims by third parties to custody of children in an effort to reconcile some seeming inconsistencies in our decisions. *Id*. at 494, 937 A.2d at 189. He concluded that "our case law has been clear and consistent,

that, even in contested adoption and TPR cases . . . the best interest of the child remains the ultimate governing standard." *Id*. at 496, 937 A.2d at 189. The Court explained that this opinion was invaluable for achieving an understanding of the law in this area.

Yet, the Court also acknowledged that, in some of its prior decisions, it struggled to define how parental unfitness, exceptional circumstances and the child's best interest analyses relate to one another. *Compare Shurupoff v. Vockroth*, 372 Md. 639, 662, 814 A.2d 543, 557 (2003) (stating that the child's best interest is the "ultimate, determinative factor" in custody disputes) *with McDermott v. Dougherty*, 385 Md. 320, 418, 869 A.2d 751, 808 (2005) (stating that "the constitutional right [of the parent] is the ultimate determinative factor."). Ultimately, however, the Court concluded that a close examination of the law in this area, including *Rashawn*, confirmed that the child's best interest is the prevailing standard in these determinations.

FAMILY LAW – CHANGE OF PERMANENCY PLAN FROM REUNIFICATION TO "OPEN ADOPTION" – CONTINUED PATTERN OF PARENTAL NEGLECT

***In re: Adoption/Guardianship of Cadence B.*, 417 Md. 146 (2010)**

Facts: Following years of parental neglect by Petitioner, the juvenile court determined that it would not be in the best interests of Petitioner's three-year-old daughter to remain in foster care in the hopes that she might someday reunite with her father. Rather, after considering all of the requisite statutory factors, the court decided that changing the permanency plan to "open adoption" was in the daughter's best interest. Petitioner lost custody of his daughter when she was only four months old, after the Charles County Department of Social Services ("the Department") received reports that the daughter and her halfbrother were being neglected. Because of Petitioner's history of neglect, he had already lost custody to all five of his otherchildren and his parental rights as to three of those children were involuntarily terminated. Moreover, it seemed that Petitioner had not cured his neglectful behavior. Petitioner had moved into a home in Pennsylvania that was four hours away from his daughter and could not be monitored by the Department of Social Services, even though she and her five siblings all resided in Maryland. Also, despite the best efforts of the Department to facilitate visitation, Petitioner traveled to see his daughter only 18 out of 561 days. As a result, the juvenile court was faced with keeping the daughter in "foster care limbo"until Petitioner could prove that future neglect would not occur, or changing her permanency plan so that she could be openly adopted by the foster parents to whom she had bonded. Petitioner appealed to the Court of Special Appeals, and in an unreported opinion, the intermediate court affirmed the juvenile court. He then sought relief in the Court of Appeals.

Ruling: The Court of Appeals affirmed, holding that the juvenile court did not err in changing the child's permanency plan from reunification to "open adoption." It explained that the juvenile court considered all of the requisite factors, and the evidence clearly showed that Petitioner continued to willfully absent himself from any meaningful contact with his daughter. Despite Petitioner's expressed desire for reunification with his daughter, he chose to move out-of-state to a home that could not be monitored by the Department and rarely traveled back to this State to take advantage of Department sponsored visitation. The juvenile court understood that unless it changed the child's permanency plan, she would remain in foster care and could not achieve the permanence that it deemed to be in her best interest. The court needed to fashion an alternative plan, and "open adoption" would allow the child to be placed in a stable home, while still allowing parental visitation.

FAMILY LAW - CINA - COURTS ARTICLE § 3-813; CRIMINAL PROCEDURE ARTICLE § 16-204(b)(1)(v), RULE 11-106; CINA CASES; STATUTORY RIGHT TO COUNSEL; WAIVER OF RIGHT TO COUNSEL

***In re: Alijah Q.*, 195 Md. App. 491 (2010)**

Facts: In December 2008, the Prince George's County Department of Social Services (the "Department" or "DSS"), appellee, alleged that Alijah Q., appellee, the son of Lisa Q., appellant, and Antoine A., was a Child in Need of Assistance ("CINA"). Following a hearing in February 2009, Alijah was declared a CINA, and placed in the care and custody of his father. After a review hearing in May 2009, the juvenile master recommended that Alijah remain in Mr. A.'s care, with supervised visitation granted to appellant, and that the court terminate its jurisdiction. Unhappy with that recommendation, appellant noted her exceptions. The Circuit Court for Prince George's County held a de novo exceptions hearing on October 23, 2009.

Prior to the exceptions hearing, Ms. Q's attorney did not file a motion to withdraw her appearance, pursuant to Maryland Rule 2-132. Instead, at the outset of the hearing, she orally moved to be discharged, and the court granted that request. The following colloquy is relevant:

> [MS. GILHOOLY]: Good afternoon, Your Honor. Susan [Gilhooly], attorney from the Public Defender's Office. It was my intention, and I came here prepared to enter my appearance -- just give me a second here -- on behalf of Ms. [Q.], mother of the child. However, she's just most recently asked that I not represent her. Vicki [Wolfson] was the previous attorney, and that will be how the record stands.
>
> THE COURT: All right. So, you want to be excused, is that the case?
>
> [MS. GILHOOLY]: Please.
>
> THE COURT: All right. We'll excuse you, unless somebody objects.

The transcript did not reflect any objections. Evidence was presented, and the court overruled Ms. Q.'s exceptions on December 23, 2009. On appeal, Ms. Q. complained, *inter alia*, that the Court erred in discharging her counsel without first obtaining a valid waiver of her right to counsel. She argued, in part, that Md. Rule 11-106(b) applied to CINA cases.

Ruling: Reversed and Remanded. The Court of Special Appeals recognized that a parent in a CINA case has a statutory right to counsel, pursuant to C.J. § 3-813 and C.P. § 16-

204(b)(1)(v). However, it determined that the strict waiver of counsel provision set forth in Rule 11-106(b) does not apply to a parent in a CINA case. Therefore, the "voluntary, knowing, and intelligent" standard does not govern the parent's discharge of counsel in a CINA case. Nevertheless, given that the attorney in this matter did not file a motion to withdraw before the hearing, and instead, at the hearing, moved orally to withdraw, the Court concluded that the circuit court should have made some inquiry to the parent to verify that the parent wanted to discharge her attorney immediately before the hearing was about to begin.

CIVIL PROCEDURE – NOTING AN APPEAL – STANDING – RATIFICATION

***In re: Adoption/Guardianship of Darjal C.*, 191 Md. App. 505, *cert. denied*, 415 Md. 42 (2010)**

Facts: Ms. Dan'elle H. ("Ms. H") is the biological mother of Darjal C. and Khaylelle C. Ms. H. has given birth to eight children, none of whom are in her custody. On September 13, 2006, the Department of Social Services for Baltimore City filed a Petition for Guardianship with with respect to Darjal and Khaylelle. After a hearing lasting several days, the Circuit Court for Baltimore City, sitting as a juvenile court, terminated the parental rights of Ms. H. with respect to the two children.

Ms. H. appealed to the intermediate appellate court contending that the trial court erred in terminating her parental rights. According to Ms. H., the evidence was insufficient to support the termination of her parental rights. Additionally, Ms. H. argued that, even if the evidence was sufficient, the court erred in failing to make the required finding under *In re Rashawn H.*, 402 Md. 477 (2007) that Ms. H. was either unfit or exceptional circumstances existed to justify the termination of her parental rights. The Court of Special Appeals held that the trial court made no express finding of parental unfitness or the existence of exceptional circumstances that justified termination of Ms. H.'s parental rights and remanded the case to the trial court.

On remand the trial court scheduled a pre-trial hearing for January 23, 2009. At that hearing, Ms. H.'s counsel advised the court that she could not locate Ms. H. and requested a court order authorizing the use of the Parent Locator Service of the circuit court to find Ms. H. In an order signed on the same day, the trial court granted counsel's request to employ the Parent Locator Service in an effort to locate Ms. H. On March 24, 2009, the trial court held a hearing, but Ms. H. was not present at the hearing. Ms. H.'s counsel advised that she had attempted to locate Ms. H., but to no avail. Ms. H's counsel then moved for a continuance, which motion was denied. The parties proceeded to present argument from their respective counsel, no additional evidence being permitted by the trial court. At the conclusion of the hearing, the trial court reaffirmed its prior decision to terminate Ms. H.'s parental rights.

Ms. H.'s counsel filed a notice of appeal on behalf of Ms. H. on April 1, 2009. On October 23, 2009, the Court of Special Appeals issued an order for Ms. H.'s counsel to show cause in writing why the instant appeal should not be dismissed because the appeal was apparently noted without the knowledge and authorization of Ms. H. On November 3, 2009, Ms. H.'s counsel filed a response that he had contact with Ms. H. since the March 24, 2009 hearing. The response, however, did not affirmatively state that the current appeal was noted with the knowledge and express authorization of Ms. H. Furthermore, at oral argument before the Court of Special Appeals, Ms. H.'s counsel advised that he was unable to represent to the Court that express authorization had been obtained from Ms. H. prior to the noting of the

appeal, but stated that he had a conversation with Ms. H. in the summer of 2009 in which she stated that she wanted to continue to prosecute the instant appeal.

Ruling: Appeal dismissed. The Court of Special Appeals held that an attorney lacks standing to note an appeal unless he or she is expressly authorized to do so by the client. Moreover, the Court held that any ratification by the client of an unauthorized appeal must be made within the 30-day appeal period provided for by Rule 8-202(a). Therefore, appellant's counsel did not have standing to note an appeal on behalf of appellant, because appellant did not expressly authorize the appeal prior to its filing, and appellant failed to ratify the appeal until long after the expiration of the 30-day appeal period.

FAMILY LAW - CHILD IN NEED OF ASSISTANCE - TERMINATION OF PARENTAL RIGHTS

***In re: Adoption/Guardianship of Alonza D.*, 412 Md. 442 (2010)**

Facts: Petitioner, Alonza D., Sr. ("Mr. D.") was twenty-one years old and his girlfriend Lacole S. ("Ms. S.") was eighteen years old when Alonza D., Jr. ("Alonza") was born on March 13, 2000. The couple had a second child, Shaydon S. ("Shaydon") on July 14, 2001. Mr. D. and Ms. S. separated in 2001. The Baltimore City Department of Social Services became involved with the children shortly after the couple separated, having received a report that the children were neglected and living in squalor. Although the Department considered a placement with Mr. D., a "Home Health Report" conducted by the Department indicated that the home in which Mr. D. resided was in need of a lead abatement, which did not occur. The children were then placed in foster care with Cecilia B. ("Ms. B.") and were adjudicated children in need of assistance (CINA) on May 6,2002.

On March 17, 2004, the Department filed Petitions for Guardianship with the Right to Consent to Adoption, seeking termination of Ms. S's and Mr. D.'s parental rights. Ms. S. later consented to termination of her parental rights. At the time, Alonza was four years old, Shaydon was two years and eight months old, and both had lived with Ms. B. for over two years. After hearings conducted on November 2, 2006 and February 8, 2007, the Circuit Court for Baltimore City terminated Mr. D.'s parental rights, emphasizing the length of time the children had been in foster care as the determinative factor. Mr. D. filed an appeal to the Court of Special Appeals, which affirmed. The Court of Appeals granted certiorari and subsequently issued a per curiam order, *In re Adoption/Guardianship of Alonza Lynn D., Jr. and Shaydon Stevie S.*, 403 Md. 424, 942 A.2d 755 (2008), vacating the Court of Special Appeals' decision, and remanding the case to the Circuit Court for reconsideration in light of *In re Adoption/ Guardianship of Rashawn H. and Tyrese H.*, 402 Md. 477, 937 A.2d 177 (2007). The Circuit Court thereafter held a hearing as directed and once again terminated Mr. D.'s parental rights, reasoning that the length of time Alonza and Shaydon were in foster care constituted "exceptional circumstances" under the standard enunciated in *In re Adoption/Guardianship of Rashawn H*. The Court of Special Appeals affirmed.

In the Court of Appeals, Mr. D. argued that the Circuit Court and Court of Special Appeals erred in identifying the length of time Alonza and Shaydon had been in foster care and the children's apparent bond with Ms. B. as exceptional circumstances, warranting termination of his parental rights. He asserted that the Department failed to meet its evidentiary burden that continuation of the parental relationship would prove detrimental to the children's best interests, as required by *In re Rashawn H.* The Department countered that Mr. D. and his sons have been separated for nearly eight years, and that a "lengthy parent-child separation and a corresponding growth in ties between a child and his prospective adoptive parents, such that the child would suffer serious and lasting emotional or

psychological harm," constitutes exceptional circumstances.

Ruling: The Court of Appeals reversed. The Court reviewed statutory factors outlined in Section 5-313 of the Family Law Article, Maryland Code (1984, 2004 Repl. Vol.), governing termination of parental rights, prior decisions considering "exceptional circumstances," as well as decisions from other states, and determined that the Circuit Court failed to articulate any finding that a continued parental relationship with Mr. D. would prove detrimental to the best interests of the children, as required by *In re Rashawn H.* The Court further reasoned that in focusing primarily on the length of time the children were in foster care, the Circuit Court apparently overlooked the need to express findings regarding "the child's feelings toward and emotional ties with the child's natural parents" as required by Section 5-313. The Court vacated the judgment of the Court of Special Appeals and remanded the case to the Circuit Court for further proceedings in which detriment to the children be explored and explicit findings developed.

FAMILY LAW - INDIAN CHILD WELFARE ACT - "ACTIVE EFFORTS" - SUFFICIENCY OF THE EVIDENCE

***In re: Nicole B.*, 410 Md. 33 (2009)**

Facts: Wendy B., the mother of the children involved in this case, is a Native American and a registered member of the Yankton Sioux Tribe of South Dakota ("Tribe"). She gave birth to Max B. on July 20, 1999 and Nicole B. on February 28, 2002. Max B. is a registered member of the Tribe and Nicole B. is eligible for membership. John B., the father of the two children, is not a Native American.

On April 6, 2005, the Child Welfare Services Office of the Montgomery County Department of Health and Human Services ("the Department") received a report that Max B. and Nicole B. were being neglected by their parents. After an investigation, the Department placed the children in emergency shelter care on May 23, 2005. The Department filed a Child In Need of Assistance ("CINA") petition in the Circuit Court for Montgomery County the next day. The circuit court ordered, among other things, continued shelter care and placement of the children in the temporary custody of their paternal aunt, Denise P.

On June 20, 2005, a hearing was held in the circuit court. Pursuant to an agreement of the parties, the circuit court sustained the Department's allegations and determined the parents were unable and unwilling to care for their children. The circuit court found Max B. and Nicole B. were CINA, committed them to the Department under the jurisdiction of the court, and placed them with Denise P., who was appointed as their "limited guardian." The Department's permanency plan was reunification with a parent. The circuit court also included a number of additional requirements involving substance abuse treatment, drug screening, the securing of stable housing, and supervised visitation.

Additional review hearings were held on September 15, 2005, December 19, 2005, April 27, 2006 and July 21, 2006. In preparation for the September 15 hearing, the Department prepared a "Review Report" that detailed the lack of progress made by John B. and Wendy B. and the successes the children were having with Denise P. It also recommended, among other things, that the children remain committed to the Department under the jurisdiction of the court and placed with Denise P. and that John B. and Wendy B. receive treatment for their substance abuse. The circuit court adopted the Department's recommendations at the September 15 hearing. On November 21, 2005, the Department changed its permanency plan from reunification with a parent to placement with a relative based on John B. and Wendy B.'s continued failure to comply with its recommendations.

Subsequent "Review Reports" and hearings revealed that John B. and Wendy B. struggled to fulfill the Department's recommendations regarding drug and alcohol use, substance abuse treatment, child visitation and housing. The children, however, continued

to thrive with their aunt both physically and mentally. The Tribe, who learned of the CINA proceedings from the Department, attended the December 19, 2005 hearing and presented an improperly filed motion to intervene.

At the April 27, 2006 hearing, the circuit court granted the Tribe's re-filed motion to intervene but denied its motion to transfer to tribal jurisdiction. The Department asked the circuit court to leave the children with their aunt and close the case. After testimony from social workers, Denise P., and Wendy B., the circuit court decided to keep the case open while modifying the permanency plan to placement with a relative.

Before the final hearing on July 21, 2006, the Tribe submitted a written "objection," alleging that the Department was not complying with the federal Indian Child Welfare Act of 1978, which requires that "[a]ny party seeking to effect a foster care placement of, or termination of parental rights to an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful." The Tribe called on the circuit court to keep the case open and "direct the Department to make active and reasonable efforts to prevent the breakup of the Indian family."

At the July 21, 2006 hearing, evidence was presented that Wendy B. and John B. continued to abuse drugs and alcohol and failed to secure either stable housing or employment. The Tribe also argued that while the Department was providing some assistance in the case, it was not making "active efforts . . . as required by federal law." At the conclusion of the hearing, the circuit court left the children in the custody of Denise P. and closed the CINA case. Counsel for John B., Wendy B., and the Tribe objected that the circuit court's ruling was not in accordance with the Indian Child Welfare Act. An order consistent with the circuit court's ruling was entered on August 1, 2006.

Only John B. attempted to file a notice of appeal, which he achieved by a *pro se* filing of a "line" containing the handwritten word "Appeal," his signature and an address for John B. and Wendy B. The Court of Special Appeals denied the Department's motion to dismiss the appeal on behalf of Wendy B., vacated the closure of the CINA case, and remanded the case for the circuit court to determine whether the Department "made sufficient active efforts" to provide treatment for the parents. The Department filed a petition for a writ of certiorari, which the Court of Appeals granted.

Ruling: Reversed and Remanded. The Court of Appeals first held that the Court of Special Appeals erred by denying the Department's motion to dismiss Wendy B.'s appeal. The Court noted that Wendy B. neither filed her own notice of appeal nor signed John B.'s notice of appeal. Even if John B. intended to appeal on behalf of Wendy B., one spouse's signature on a pleading, standing alone, is insufficient to make the signing spouse an agent

of the non-signing spouse or to include the non-signing spouse. John B.'s signature on his notice of appeal did not make Wendy B. a party to the proceedings. Because John B. opposed the closure of the CINA case, he was aggrieved by the circuit court's decision and did not consent or acquiesce to its judgment. The Court thus concluded that John B. was entitled to appeal the circuit court's judgment.

The Court then held that the Department and the circuit court complied with the provisions of the Indian Child Welfare Act. The Court reasoned that, although the Department and the circuit court did not utilize the precise "active efforts" language found in the federal statute, the critical issues were whether the Department in substance made active efforts to prevent the breakup of the family, whether those efforts were unsuccessful, and whether the circuit court's findings reflected that active efforts were in fact made and were unsuccessful.

Upon examination of the record, the Court found that the Department offered numerous services to John B. and Wendy B. The Court stated that over the course of fourteen months, the Department produced five "Review Reports" and the circuit court held five hearings, all with the purpose of reunifying Nicole B. and Max B. with their parents, while protecting the children's stability and safety. The Department could not be faulted for John B. and Wendy B.'s repeated failure to use the help it offered. The Court ultimately concluded, in the language of the Indian Child Welfare Act of 1978, that the record shows "that active efforts" were "made to provide remedial services and rehabilitative programs designed to prevent the breakup of the" family in this case, "and that these efforts have proved unsuccessful."

FAMILY LAW – COURTS AND JUDICIAL PROCEEDINGS – PERMANENCY PLANNING REPORTS

***In re: Faith H.*, 409 Md. 625 (2009)**

Facts: Faith H. was adjudicated a child in need of assistance. Before her permanency planning review hearing, and pursuant to Section 5-525(b)(2) of the Family Law Article, Maryland Code (1984, 2006 Repl. Vol.) and Sections 3-823(d) and 3-826(a) of the Courts and Judicial Proceedings Article, Maryland Code (1974, 2006 Repl. Vol.), the Montgomery County Department of Health and Human Services ("the Department") timely filed three permanency planning reports, and the Reginald S. Lourie Center filed its court ordered bonding study. At the permanency planning hearing, the Department presented its case case-in-chief by offering into evidence its most recent status report and the Lourie Center Report in lieu of live testimony.

Both reports suggested a permanency plan of adoption by a non-relative and the judge admitted the reports into evidence. Faith's parents cross-examined the reports' authors, but did not take the stand or present any evidence on their own behalf. Faith's father, Mr. B., objected to the Department's mode of presentation, but never raised any objection regarding the admissibility of the reports. After the hearing, the judge filed a fourteen page opinion, in which he adopted the findings of the Department's reports, found that the witnesses testified credibly at the hearing, applied the factors set forth in Sections 5-525(e)(1) and 5-525(e)(2) of the Family Law Article, and concluded that it would not be in Faith H.'s best interest to remain in foster care indefinitely and ordered that Faith H.'s permanency plan be changed to a plan of adoption by a non-relative.

Mr. B. appealed the decision to the Court of Special Appeals, and before any proceedings in the intermediate appellate court, the Court of Appeals granted certiorari on its own initiative. On appeal, Mr. B. argued that he was entitled to a mode of presentation at the hearing that included live testimony, because he had a right to confront witnesses. He maintained that without in-person testimony, the judge had no way to assess witness credibility and demeanor. He also claimed that his due process rights were violated by the mode of presentation and that he was prejudiced by the lack of direct testimony by the authors of the reports. The State argued that the reports were admissible under Sections 3-823, 3-826, and 3-816 of the Courts and Judicial Proceedings Article, none of which, they argued, required them to present live testimony as a condition precedent to admissibility.
They also maintained that the parents were permitted to challenge the reports' findings through cross-examination of the reports' authors.

Ruling: The Court of Appeals reviewed the statutory scheme governing dispositional and review hearings in CINA cases and held that the reports were admissible under the

statutory scheme and that, once the reports were admitted into evidence, they became available for consideration for any purpose and could be accorded any weight by the court, depending on any extrinsic challenge of reliability by admission of other evidence. In affirming, the Court concluded that live testimony was not required to support the reliability of the admitted reports, and Mr. B.'s due process rights did not require the Department to present its case-in-chief through live testimony.

FAMILY LAW - CHILD WELFARE - TERMINATION OF PARENTAL RIGHTS - RIGHT TO WITHDRAW DEEMED CONSENT

***In re: Adoption/Guardianship of Audrey B.*, 186 Md. App. 454 (2009)**

Facts: Kellie B.,the mother of Audrey B., born on September 25, 1997 and Adriana H., born November 2, 1999, were placed in foster care and found to be Children In Need of Assistance ("CINA") in October 2004. About ten months later, on August 12, 2005, Eric H. was born and also found to be CINA and committed to BCDSS. On August 13, 2008, BCDSS filed TRP Petitions seeking guardianship of each of the children. Show Cause Orders were filed and personally served on Kellie B. on August 26, 2008, along with a copy of the Petitions and two Notice of Objection forms.

On September 30, 2008, 35 days after she was personally served, Kellie B. filed a Notice of Objection to the Petitions. On October 14, 2008, BCDSS filed a Motion to Strike Late Objection. Kellie later filed an answer to BCDSS's motion arguing that provisions in the Permanency for Families and Children Act of 2005 allowed her to withdraw her "volitional consent" within 30 days.

On December 9, 2008, the juvenile court held a motions hearing, at which BCDSS contended that Kellie B.'s Notice was untimely and should be stricken. Kellie B. conceded that the Notice of Objection was filed late, but suggested that, under the 2005 revisions to the Family Law Article, the failure to timely file an objection was not a "deemed consent." Accordingly, Kellie B. argued that, by filing her revocation more than 30 but less than 60 days after service with the show cause order satisfies the requirement of the Family Law Article and Maryland Rules of Procedure.

The court disagreed and found good cause to grant BCDSS's motion to strike the late objection. Kellie B. appealed the ruling to the Court of Special Appeals.

Ruling: Affirmed. The Court of Special Appeals held that as a matter of statutory construction, there remains no right to revoke a statutorily deemed consent entered by operation of law. The Court also held that the language in the applicable statutes was ambiguous in regards to failure to act after receiving the petitions. After reviewing prior case law and the legislative history of the statutes, the Court concluded that Kellie B.'s consent was irrevocable. The Legislature did not intend to permit revocation of consents entered by operation of law. Accordingly, the Court concluded that the juvenile court's construction of the 2005 revisions was legally correct, and that the court did not err in granting BCDSS's motion to strike Kellie B.'s untimely Notice of Objection.

FAMILY LAW – FAMILY PROTECTION & WELFARE – CHILDREN – PROCEEDINGS – RIGHT TO AN ADJUDICATORY HEARING.

***In re: Najasha B.*, 409 Md. 20 (2009)**

Facts: The Baltimore City Department of Social Services ("DSS"), appellee, filed a child in need of assistance ("CINA") petition with request for shelter care after five-year-old Najasha B. appellant, was found in her parents' home without adult supervision during a drug raid. The petition alleged that (1) attempts to locate Najasha B.'s parents were unsuccessful, (2) the police found marijuana throughout the home, and (3) there were no known relative resources willing to provide care for Najasha B. After an emergency shelter care hearing with Najasha B.'s parents in attendance, the parties agreed to the entry of an "order controlling conduct" with the following terms: (1) Najasha B. "shall not be left in the custody of anyone but the parents and or relatives"; (2) Najasha B.'s parents "shall not have any illegal substances in the home"; and (3) Najasha B.'s parents "shall allow DSS to have . . . visits to the home." At a subsequent hearing, the juvenile court scheduled an adjudicatory hearing and added a condition in its order that Najasha B.'s parents "shall ensure [Najasha B.] attends school on a regular basis[.]"

When the parties convened for the scheduled adjudicatory hearing before a master, DSS filed a motion requesting that the court dismiss the CINA petition. DSS informed the court that the "issues that brought this matter to the attention of the Court have been resolved and no further Court intervention is necessary at this time." Najasha B.'s counsel objected, arguing that school records showed that Najasha B. was not regularly attending school. Upon the master's recommendation, the court granted DSS's dismissal request. Najasha B. then filed a notice of exception, and the court held a *de novo* exception hearing. Najasha B. argued that the court was required to hold an adjudicatory hearing, under Maryland Code (1974, 2006 Repl. Vol., 2008 Supp.), Section 3-817(a) of the Courts and Judicial Proceedings Article ("CJP"), to determine whether the allegations in the petition were true. CJP Section 3-817(a) provides: "After a petition is filed under [CJP Title 3, Subtitle 8], the court shall hold an adjudicatory hearing." The juvenile court denied Najasha B.'s exception and dismissed the case, concluding that DSS had a right to dismiss the petition as the moving party. Najasha B. appealed and the Court of Appeals, on its own initiative,issued a writ of certiorari to consider whether the juvenile court was obligated to hold an adjudicatory hearing to consider allegations of neglect in a petition, notwithstanding DSS's request for dismissal, which was made with the consent of the child's parents.

Ruling: Vacated and remanded. The juvenile court erred in ruling that DSS, as the CINA petitioner, had a unilateral right to dismiss its petition, over the child's objection and hearing request. This ruling was error in light of CJP Title 3, Subtitle 8 ("the CINA Subtitle"); the rights of a child as a party to a CINA petition; and the inherent role of the court in protecting the rights of minors. The broad policy of the CINA Subtitle is to ensure that

juvenile courts (and local departments of social services) exercise authority to protect and advance a child's best interests when court intervention is required. While the CINA Subtitle places on local departments the initial responsibility of deciding whether to file a CINA petition upon receipt of a complaint, this responsibility does not carry with it a concomitant absolute right to withdraw its petition prior to an adjudicatory hearing when the child, through counsel, objects to its dismissal. The circuit court should have declined DSS's dismissal request and conducted an adjudicatory hearing on the petition's merits, in light of Najasha B.'s objection to dismissal and hearing request.

FAMILY LAW - CHILD WELFARE - MODIFICATION OF ORDER - JURISDICTION OF LOWER COURT

***In re: Deontay J.*, 408 Md. 152 (2009)**

Facts: Deontay J. was born on March 8, 2006. Deontay J. was placed in the care of the Baltimore City Department of Social Services ("DSS") after police found Deontay J.'s mother walking in traffic with Deontay J. in a stroller in a "zombie like state" in August 2006. Deontay J.'s five siblings had previously been found to be Children in Need of Assistant ("CINA")and were not in their mother's care. The Baltimore City Circuit Court placed Deontay J. first in DSS's custody, then later in the custody of his father Jeffrey J. However when Jeffrey J. moved into Deontay's J.'s mother's home, DSS removed Deontay J. from his care.

Between October 6,2006 and April 20, 2007, Deontay J. was the subject of several hearings and a settlement conference. At the conclusion of Contested Disposition Master's hearing, Deontay J.'s was committed to the department's custody. The Master's recommendations found, *inter alia*, that the father has cognitive limitations, poor insight, and he lacked judgment and decision making. Although the father was willing to care for Deontay J., he was unable to do so. On April 21, 2007, the Circuit Court entered the Master's recommended Order. Jeffrey J. did not move to vacate the Order, but filed a Notice of Exceptions four days later, which were denied at a hearing on September 7, 2007.

On September 20, 2007, Jeffrey J. filed an appeal to the Court of Special Appeals. In an unreported opinion, filed on May 15, 2008, the Court of Special Appeals affirmed the finding that Deontay J. is a CINA, but held that "[n]either the facts presented nor the concerns expressed by the trial court are sufficient to remove Deontay J. from his father's custody." On July 29, 2008, the Court of Appeals granted *certiorari*. While the appeal was pending, the circuit court granted Jeffrey J. custody of Deontay J. Jeffrey J. filed a motion to dismiss the appeal, arguing that the order modifying custody made the appeal moot. The lower court declined to take further action until instructed by the appellate court, unsure if its action would impermissibly "frustrate the actions of an appellate court."

Ruling: Affirmed in part, and Vacated in part. The Court of Appeals concluded that the appeal of the custody order entered on April 21, 2007 did not divest the Circuit Court of jurisdiction to decide the merits of a claim that, as a result of a material change in circumstances that had occurred after that order was entered, a change in custody was in Deontay J.'s best interest. The Court wrote that on remand the circuit court could not deny custody to Jeffrey J. just because Deontay J.'s siblings were found to be CINA; instead, it must make a specific finding that there is no likelihood that Jeffrey J. would neglect Deontay J.

The Court also held that a lower court is not divested of its jurisdiction to modify the custody order of a CINA because the order is being appealed or the next period review is months away.

The Court of Appeals distinguished between "prohibited action by the trial court that defeats the right of a party to prosecute an appeal" and permissible action by the lower court that "renders a case moot." The Circuit Court has a duty to modify a custody order when persuaded that a modification is necessary to protect the health, safety and well-being of a CINA child. This duty is not affected by the pendency of an appeal, or by the fact that the next periodic review hearing is not scheduled to be held for several months.

FAMILY LAW - INFANTS – DEPENDENT AND NEGLECTED CHILDREN – REVIEW – RIGHT OF REVIEW, PARTIES, AND DECISIONS REVIEWABLE. INFANTS – DEPENDENT AND NEGLECTED CHILDREN – REVIEW – DISMISSAL, HEARING, AND REHEARING – MOOTNESS.

***In re: Joseph N.*, 407 Md. 278 (2009)**

Facts: Representatives of Child Welfare Services ("CWS"), a division of the Montgomery County Department of Health and Human Services ("the Department"), visited the apartment of Petitioner Ms. N. After observing that the apartment was in poor condition and that Ms. N. had covered the heating vents with plastic sheeting to prevent emanations of imagined poisonous gas, Ms. N. was evaluated and diagnosed with "major depressive disorder with psychotic features." As a condition to retaining custody of her son Joseph N., she agreed to participate in a treatment program. However, in December 2006, ten-year-old Joseph N. was declared a child in need of assistance ("CINA") after CWS representatives observed that Ms. N. had not improved her living conditions, attended therapy, or taken her medication. Joseph N. remained in Ms. N.'s custody, but under the Department's supervision.

In March 2007, representatives of the Department visited Ms. N. and, noting the condition of her apartment, petitioned the juvenile court to place Joseph N. in emergency shelter care. Finding that Ms. N. was mentally unstable and incapable of caring for Joseph N., the court ordered that Joseph N. remain placed in foster care, granting temporary guardianship to the Department. In June 2007, the court moved Joseph N. from foster care to the custody of Joseph N.'s father, Mr. E. Ordering weekly visitation for Ms. N., the court reaffirmed the permanency plan of reunification. Under this order, the Department retained guardianship of Joseph N. and supervisory authority over his care.

Ms. N. appealed to the Court of Special Appeals ("CSA") and argued that the court abused its discretion by ordering that Joseph N. remain a CINA and be placed with Mr. E. While her appeal was pending, the juvenile court held another permanency planning hearing in December 2007 and ordered that Joseph N. remain a CINA in the care and custody of his father under the Department's protective supervision. The CSA dismissed Ms. N.'s appeal as moot because the juvenile court had decided at the subsequent hearing
that Ms. N. had not made sufficient progress to award her custody and the CSA's decision, if in her favor, would not provide her with any effective remedy.

In February 2008, the juvenile court granted full custody of Joseph N. to Mr. E. and terminated its jurisdiction and Joseph N.'s status as a CINA. The Court of Appeals issued a writ of certiorari to review the CSA's dismissal of Ms. N.'s appeal concerning the June 2007 order. While this appeal was pending, Ms. N. appealed the February 2008 order to the CSA, and the CSA affirmed.

Ruling: Reversed and remanded. As a preliminary matter, the Department challenged Ms. N.'s right to interlocutory appellate review of the June 2007 order under Maryland Code (1974, 2006 Repl. Vol., 2008 Supp.), Section 12-303(3)(x) of the Courts and Judicial Proceedings Article ("CJP"), which authorizes review of orders "[d]epriving a parent . . . of the care and custody of [her] child, or changing the terms of such an order[.]" Explaining that an interlocutory order that does not deprive a parent of care and custody of the child is only appealable if it changes the terms of care and custody to the parent's detriment, the Court held that the June order did, in fact, change the terms to Ms. N.'s detriment and was therefore appealable.

The Court explained that the juvenile court's reaffirmation of the permanency plan of reunification changed the status quo by introducing Mr. E. as a candidate for obtaining permanent custody of Joseph N., which implicitly changed the permanency plan from reunification with Ms. N. to reunification with Ms. N. or Mr. E. By recognizing Mr. E.'s availability, willingness, and provisional ability to care for Joseph N., the June order was appealable under CJP Section 12-303(3)(x) because it had the potential to facilitate and accelerate a grant of full custody to Mr. E. CJP Section 3-819(e) calls for the closing of a CINA case when there is a second parent who is able and willing to care for a child, even if the Department does not provide its full reunification services to the first parent. Furthermore, Joseph N.'s increased interaction with Mr. E. would strengthen the pair's bonding and attachment, a factor that the court would later consider in evaluating the permanency plan and awarding custody.

Turning to the issue of mootness, the Court held that a subsequent hearing did not render Ms. N.'s interlocutory appeal moot because the June 2007 hearing had long-term consequences for Ms. N. that may have influenced the December 2007 and February 2008 orders. Moreover, allowing a later hearing to render an earlier appeal moot would allow the juvenile court to "frustrate the actions of [the] appellate court." On remand, the Court directed the CSA to decide the June 2007 interlocutory appeal on the merits and reconsider its affirmance of the February 2008 appeal. The Court directed the CSA to remand the case to the juvenile court for further proceedings if the CSA found error in the juvenile court's June 2007 order.

FAMILY LAW - CINA - PERMANENCY PLAN - REASONABLE EFFORTS - BEST INTERESTS - RELATIVE PLACEMENT - C.J. § 3-823; F.L. § 5-525.

***In re: James G.*, 178 Md. App. 543 (2008)**

Facts: James was born on July 26, 1996, to Rhonda A. and appellant, Mr. G. In March of 2004, James moved from his mother's residence and began to live with appellant, because Ms. A.'s drug abuse prevented her from caring for James. On August 6, 2004, appellant was arrested for a violation of parole. He expected to be released from incarceration in October of 2004. On October 8, 2004, James was adjudicated a CINA, and the parties jointly recommended placement of James with his aunt, Joslyn B. Ms. A. did not participate in the various court proceedings.

After a review hearing on August 29, 2005, the court placed James with his paternal cousin, Angela C. The court also issued an Order on that date, establishing a permanency plan of "reunification with parent or guardian," to be achieved by August 29, 2006. A master for juvenile causes held a six-month review hearing on May 16, 2006. On May 24, 2006, pursuant to the master's recommendation, the court entered an Order continuing James's placement with his cousin, and continuing the permanency plan of reunification. However, it extended the target date for implementation until May 16, 2007.

At the next six-month review hearing, held by a master on December 12, 2006, the parties requested a "contested hearing" concerning the permanency plan. At that evidentiary hearing, held by a master on February 23, 2007, DSS sought to change James's permanency plan from parental reunification to placement with a relative for custody and guardianship.

Philomena Ukadike, a DSS case worker who had been assigned to the case since April 2006, was the sole witness for DSS. She recounted that, during the period between July 2006 and December 2006, she met with appellant on one occasion. In addition, she stated: [H]e came to the office once to see my supervisor." According to Ukadike, DSS and appellant had executed a "service agreement," which required appellant to obtain employment and housing, and to maintain contact with James and with the Department. However, the service agreement was not placed in the record, and no evidence was presented as to the Department's obligations, if any, under the agreement.

With regard to the Department's request to change James's permanency plan, Ukadike stated: "This child came into care in 2004. This is 2007. It's over 12 months and [appellant] hasn't provided documentation for employment or housing. . . . [W]e can't do reunification at this point." However, Ukadike conceded that, apart from appellant's unemployment and lack of housing, nothing else prevented James from being reunified with his father.

Counsel for James and appellant both opposed the Department's request for a change

in the permanency plan. James's attorney argued that the Department's single referral of appellant to an employment organization was "not. . . appropriate," and that the Department should provide further employment assistance to appellant. Appellant's lawyer echoed those arguments, stating: "We believe that the department has not made reasonable efforts to implement the permanency plan basically on the reasons she has stated." The master found that BCDSS had made reasonable efforts towards reunification. Therefore, he recommended a change in the permanency plan to placement with a relative for custody and guardianship.

Following a hearing on Exceptions on April 26, 2007, the court issued an order finding that BCDSS "has made reasonable, although certainly not exemplary, efforts to achieve reunification." It changed the permanency plan from reunification to placement with a relative for custody and guardianship.

Ruling: Reversed and Remanded. Maryland's statutory scheme for child protection derives from federal law. When a child is removed from the home for health or safety reasons, both federal and state law require local departments of social services, with exceptions not applicable here, to make "reasonable efforts" to accomplish parental reunification. Under the circumstances of this case, the circuit court erred in finding reasonable efforts in connection with a permanency plan that had a stated goal of parental reunification. Appellant's unemployment and lack of housing were his sole impediments to reunification. Yet, DSS made only one referral to appellant, for vocational assistance, which was unsuccessful.

The circuit court also erred or abused its discretion in terminating the permanency plan of parental reunification based on its erroneous finding of reasonable efforts, and because, among other things, it did not address child's best interests in changing the permanency plan. Instead, it focused almost entirely on the length of time the child had been out of the home. Although length of time is an important consideration, it does not compel a change in the permanency plan when, as here, the child was in care of a relative and DSS failed to make reasonable efforts towards reunification.

FAMILY LAW - CHILD IN NEED OF ASSISTANCE (CINA) – CHILD WELFARE: TERMINATION OF PARENTAL RIGHTS: REBUTTABLE PRESUMPTION

***In re: Adoption/Guardianship of Rashawn H.*, 402 Md. 477 (2007)**

Facts: Ms. F. lost her parental rights to two of her four children, Rashawn H., born November 1999, and his brother Tyrese, born November 2000, who were then six and five years of age, respectively. Ms. F.'s two other children, Mark and Richard Jr., both lived with relatives. Ms. F. had a myriad of problems, including an IQ of 66, life-long poverty, eviction from and apparent disqualification for Government assisted housing because of her drug-dealing mother, inability to maintain steady employment, a history of abusive relationships, and lack of a reliable support system. Ms. F. and the children moved 11 times in three years after being evicted from an apartment they shared with Ms. F.'s mother due to her mother's drug dealing activities. After exhausting all temporary housing possibilities, Ms. F. agreed to let the Frederick County Department of Social Services, ("DSS")place the children in shelter care. Soon after, they were declared to be Children in Need of Assistance ("CINA") by the juvenile court.

Despite DSS' assistance with housing and other services, Ms. F. was unsuccessful in locating a suitable residence. DSS eventually requested that Ms. F.'s parental rights be terminated, which the Frederick County Circuit Court found to be in the best interest of the children. The court determined that, upon evidence that the children had previously been found by the juvenile court to be CINA, and after considering the relevant factors then set forth in Maryland Code, § 5-313 of the Family Law Article, termination was in the best interest of the children. The court found that Ms. F. had been, was then, and likely would continue to be unable to care properly for them. The Court of Special Appeals upheld the termination.

Ms. F. sought review by the Court of Appeals. Apart from her attack on the constitutionality of the statute, which allows for termination of parental rights based on the best interest of the child, Ms. F.'s principal complaint was that DSS did not provide adequate services to her. She complained that she was "unable to secure housing without assistance" and that DSS "did not provide her with housing assistance." Ms. F. also complained that DSS refused to return the children to her, notwithstanding her lack of suitable housing and stable employment, and then made a point of the diminished contact and bonding between her and the children.

Ruling: Vacated and Remanded. The Court of Appeals held that(1)record supported finding that DSS provided Ms. F. with adequate assistance in obtaining suitable housing prior to seeking termination of her parental rights; (2)DSS properly refused to return children to mother after children had been found to be (CINA); and (3) trial court's failure to relate its findings as to the statutory factors to the presumption favoring a continuation of the parental

relationship or to any exceptional circumstance that would rebut that presumption required the order terminating parental rights to be vacated and case remanded for further proceedings.

The Court held that on remand, the circuit court would have to make clear and specific findings with respect to each of the relevant statutory factors and, to the extent that any amalgam of those findings led to a conclusion that exceptional circumstances existed sufficient to rebut the presumption favoring the parental relationship, the court must explain clearly how and why that was so.