Circuit Court for Frederick County
Case No. 10-1-16-021277

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 23

SEPTEMBER TERM, 2018

IN RE: H.I.

Graeff,
Shaw Geter,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: September 6, 2018

This appeal arises from a decision by the Circuit Court for Frederick County, sitting as a juvenile court, to change the permanency plan for H.I., a minor born on May 8, 2016, from reunification to adoption and to reduce weekly supervised visitation by H.I.'s biological mother, R.I.[1] The Frederick County Department of Social Services ("the Department") removed H.I. from her mother's care and placed her in shelter care two days after her birth.[2] In a Petition for Continued Shelter Care, the Department averred that H.I. was a Child in Need of Assistance ("CINA").[3] After a shelter care hearing on May 11, 2016, the juvenile court ordered continued shelter care pending an adjudication hearing and granted limited guardianship of H.I. to the Department. R.I. was granted supervised visitation a minimum of three times per week.

Subsequently, the Department filed an amended CINA petition and, thereafter, a second amended CINA petition. A contested adjudication and disposition hearing was held on August 29, 2016. The parties stipulated that the allegations contained in the second amended CINA petition supported a finding that H.I. was a CINA. On September 1, 2016,

[1] The record shows that R.I. has used various names in the past and changed her name during the course of this case, but for consistency we shall refer to her as R.I.

[2] Shelter care is the temporary placement of a child outside of his or her home at any time before a CINA determination. Md. Code (2013 Repl. Vol., 2016 Supp.) §3-801(y) of the Courts and Judicial Proceeding Article ("CJP"). That provision is currently codified at CJP (2017 Supp.) § 3-801(aa). The identity of H.I.'s father is unknown to the Department.

[3] A Child in Need of Assistance ("CINA") is a child who requires court intervention because he or she has been abused or neglected or has a developmental disability or mental disorder, and whose parents cannot or will not give proper care and attention to the child and the child's needs. CJP § 3-801(f) and (g).

the juvenile court entered a written order declaring H.I. to be a CINA and granted limited guardianship to the Department.

An initial permanency plan review hearing was held before a magistrate judge (hereinafter "the magistrate") on November 30, 2016. The magistrate issued a written report, recommendations, and a proposed order. No exceptions were filed and, subsequently, the court adopted the magistrate's proposed order. The court found that H.I. continued to be a CINA and continued limited guardianship of H.I. with the Department. The court established a permanency plan of reunification with R.I. and, among other things, granted R.I. supervised visitation a minimum of three times per week.

Review hearings were held on April 26, 2017 and September 27, 2017. After the April hearing, the court continued the permanency plan of reunification and supervised visitation a minimum of three times per week. After the September hearing, however, the magistrate recommended, *inter alia*, that the permanency plan for H.I. be changed from reunification to adoption and that R.I.'s visitation be reduced to one day per week. R.I. filed exceptions and a hearing was held before the juvenile court on January 31, 2018. By written order filed on February 2, 2018, the juvenile court denied R.I.'s exceptions and adopted the magistrate's proposed order, changed the permanency plan for H.I. to adoption, and reduced R.I.'s visitation with H.I. to one time per week. This timely appeal followed.

QUESTIONS PRESENTED

R.I. presents the following two questions for our consideration:

> I. Did the juvenile court properly exercise discretion in changing H.I.'s CINA permanency plan, after finding that R.I. remained unable to

demonstrate her ability to appropriately care for H.I., who had lived in foster care her whole life?

II. Did the juvenile court properly exercise discretion in reducing R.I.'s visitation as a result of her repeated failures to follow court-ordered requirements that she maintain a stable home and attend regular treatment sessions?

For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

Some information about R.I.'s background is helpful to a clear understanding of the facts of the instant case. R.I. was raised by adoptive parents in Oregon. R.I. claimed that her adoptive parents were physically and emotionally abusive toward her. R.I. earned a college degree, speaks several languages, and is fluent in Japanese and Spanish. At the age of 23, she left the United States to teach in Japan. While in Japan, she married a Japanese man and they had three children together. R.I. also claims that her husband was physically and sexually abusive to her and that she sustained a concussion after he struck her in the heard.

In 2008, R.I. traveled from Japan to Hawaii with her 3 children. There, she was observed living in an airport for 3 to 4 days. Child protective services in Hawaii removed the three children from R.I.'s care, but eventually returned them to her custody. Thereafter, R.I. took the children to Oregon. While there, she left the children unattended in a hotel room and one of the children was found sleeping in the hotel lobby at 3 a.m.

Child protective services in Oregon removed the children from R.I.'s custody and placed them in foster care until they were released to the custody of their father in Japan.[4]

Subsequently, R.I. gave birth to three other children, none of whom are in her custody. In 2010, child protective services in Oregon removed R.I.'s newborn son from her custody due to significant concerns about R.I.'s mental health and her ability to care for the infant. R.I.'s parental rights, and the rights of the child's father, were eventually terminated. A year later, child protective services in Oregon removed R.I.'s newborn daughter from her custody. Again, R.I. was observed to have serious mental health issues and the parental rights of R.I. and the child's father were terminated.

The instant case arose in May 2016, shortly after H.I.'s birth, when the Department received reports from health care providers at Frederick Memorial Hospital that R.I. appeared to be in an altered mental state, was exhibiting erratic behavior, and was not caring for H.I. in a safe manner. At the time R.I. arrived at the hospital, she was in an advanced state of pregnancy and had not received consistent prenatal care. R.I. reported that in the year before she came to Frederick, she had lived in 15 different states. R.I., who had high blood pressure, moved to Frederick about 3 weeks prior to H.I.'s birth to search for housing. She wandered around Frederick which "resulted in even more elevated blood pressure and exhaustion," until, on May 5, 2016, she was taken to the hospital by ambulance. Due to her high blood pressure, the hospital recommended that R.I. have a caesarian section, but R.I. refused. She also refused to take prenatal vitamins or to have a

[4] R.I. denies all allegations made against her by Oregon child protective services as contained in the Department's second amended CINA petition.

blood transfusion to treat her anemia. Eventually, R.I. agreed to a have caesarian section, and H.I. was delivered on May 8, 2016.

While in the hospital, R.I. refused to allow hospital staff to put H.I. in her crib even after R.I. twice fell asleep while holding the infant. On one occasion when R.I. fell asleep, H.I. nearly rolled off the bed. This caused the hospital to place a "sitter" in the room with R.I. at all times to ensure H.I.'s safety. Hospital personnel noted that R.I. continually practiced unsafe bed sharing while at the hospital. Nevertheless, R.I. blamed the fact that the baby nearly rolled off the bed on allegedly inadequate hospital bed rails. Hospital staff also noted that R.I.'s speech often did not appear oriented to time and space. When hospital staff advised R.I. that H.I. had not been fed in five hours, R.I. told them to stop telling her what to do and that the baby was fine and needed to be left alone to sleep. It was reported to the Department that R.I. was not meeting H.I.'s basic needs including "changing, bathing, [and] feeding[.]" A psychiatric evaluation of R.I. performed at the hospital resulted in a diagnosis of post-traumatic stress disorder ("PTSD") and the need to rule out bipolar disorder.

Two days after her birth, H.I. was removed from R.I.'s care and placed in shelter care. H.I. was subsequently declared to be a CINA and the Department was granted limited guardianship of her. The juvenile court granted R.I. supervised visitation and ordered, among other things, that R.I. obtain, maintain, and document stable and reliable employment and housing; engage in and successfully complete parent coaching services; complete neurological and neuro-psychological evaluations; and, engage in intensive

mental health therapy, follow all treatment recommendations, take prescribed medications, and provide the Department with medical consent releases.

The Department offered R.I. service agreements in November 2016, May 2017, and November 2017, but she refused to sign them. R.I. failed to secure stable employment or housing. She was terminated from a job at a Denny's restaurant and there was no evidence of any other employment. At one point, however, she received a social security disability payment of approximately $733 per month. R.I.'s housing was unstable almost uniformly since H.I.'s birth.. She lived in transitional housing, shelters, storage units, and her car. She maintained a gym membership to gain access to shower facilities and obtained food from a food bank.

Despite being referred to several different parent coaching providers, and having a family services aid provided by the Department, R.I. failed to engage in or successfully complete parent coaching services. She remained adamant that she did not need parent coaching and had no intention of using such services.

The Department referred R.I. to Family Partnership's Empowering Mothers Group for parent coaching, but she was terminated from that program because she did not accept and was not "open to the language, phrasing or concepts" upon which the class was based. Another provider, Mental Health Association of Frederick County, discontinued parent coaching services for R.I. because of her sporadic attendance and persistent "defensiveness, resistance, and contradictory behavior" that "created substantial difficulties in moving forward," and "prevented Parent Coach and client from establishing a Family Plan outlining her parenting goals." In a discharge letter dated March 25, 2017,

Cathy Russell, the parent coach for Mental Health Association, opined that R.I.'s mental health needs should "be addressed more fully in order for her to understand [H.I.'s] needs and parent more effectively." Ms. Russell wrote:

> [R.I.'s] challenging behaviors and level of resistance to accepting parent information created hesitance on the part of Parent Coach on bringing things up because of the reactions and argumentativeness that often followed. These behaviors greatly impacted [R.I.'s] progress and contributed to her release from the parent coach program.

The Department also provided R.I. services from its parent coach Katie Murphy, but R.I. was terminated from that program. In a memorandum dated August 29, 2017, Ms. Murphy wrote:

> On each occasion, [R.I.] made it clear that she did not agree with being referred for Parent Coaching services and had no intention of participating. [R.I.] stated several times that she is 'an excellent parent' and has 'nothing to learn.' The Parent Coach for the department explained that all parents no matter their skill level or experience always have room for improvement. [R.I.] continued to insist that her parenting skills were above that of Parent Coach and that parent coaching services would not be valuable use of her time. [R.I.] is unwilling to entertain any sort of information other than what she currently believes to be true, she has extreme difficulty listening to another's point of view, suggestions, comments, or advice. [R.I.'s] behavior is often unpredictable which causes concern for the Parent Coach in relation to [H.I.'s] safety and well being. Due to [R.I.'s] unwillingness to engage in Parent Coaching through the Department, the Parent Coach will be terminating services with [R.I.].

R.I. claimed that in September 2017 she began participating in parent coaching in Howard County, but the Department was not aware of that fact until about the time of the January 2018 hearing and there was no indication that R.I. had made progress in that program.

R.I. was interviewed on two occasions by licensed clinical psychologist L. Alexandra Mirabelli, who, in November 2016, prepared a written psychological evaluation and parenting capacity assessment. Dr. Mirabelli noted that R.I. arrived an hour late for her first appointment, but arrived several minutes early for her second appointment. At the time of the first appointment, R.I. reportedly lived with a woman from her church, but that did not work out and, at the time of the second appointment, R.I. was living in "a local business" that she was unwilling to name. According to Dr. Mirabelli, R.I. did not believe that H.I.'s "removal was warranted and did not accept personal responsibility for her current or past involvement with Social Services or Child Protective Services." When asked to identify her strengths and weaknesses as a parent, R.I. stated that she was

> working on "using my voice to make it more difficult for people to defraud me." She noted that "everything else is strengths, I'm the best parent you ever saw, I've done everything right." She identified her exceptional areas of strength as her ability to teach, show, and model appropriate behavior, her ability to discipline effectively by helping her children cultivate their talents, and that she is a hard worker.

R.I. acknowledged that she did not have a large support network and did not identify any close relationships that had been sustained over time. She expressed general skepticism of the motives of professionals and agencies, appeared reluctant to trust others, and "often referenced how others intentionally caused her harm or have been abusive to her." Dr. Mirabelli noted, however, that R.I. appeared adept at seeking support as she needs it and engaging with others on a short-term basis to meet her immediate needs for support.

R.I. reported that she had been diagnosed with acute PTSD "due to multiple traumas" and adjustment disorder "due to [her own] removal from a good [f]oster

placement during infancy and being placed in an abusive adoptive home." Dr. Mirabelli noted that psychiatric records from the Frederick County Health Department indicated the following diagnoses without any description of R.I.'s symptomatology or any discussion of how she meets the criteria: adjustment disorder with depressed mood; PTSD (chronic); depressive disorder, not elsewhere classified; and adjustment disorder with mixed anxiety and depressed mood. As part of Dr. Mirabelli's evaluation, R.I. was administered the Trauma Symptom Inventory, 2nd Edition ("TSI-2"), to evaluate the level of acute and chronic symptomatology associated with trauma. According to Dr. Mirabelli, R.I. did not appear to be experiencing clinically significant chronic or acute trauma symptoms that limited her function. Dr. Mirabelli also administered the Minnesota Multiphasic Personality Inventory – 2 ("MMPI-2"), to assess issues related to personality and emotional adjustment. With regard to the results of that test, Dr. Mirabelli reported that:

> Validity indicators show a tendency [for R.I.] to portray herself in an overly favorable manner. [R.I.] denied having minor flaws and shortcomings that most people readily acknowledge. While this is not necessarily unusual in parenting assessment protocols, her response style should be kept in mind when evaluating her results.
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> * * *
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> [R.I.] reported unusual sensory experiences and physical symptoms, and unusual thoughts. Her overall profile suggests she experiences paranoid delusions, particularly those of a persecutory nature. That is, she believes others are out to cause her harm, even without objectively sufficient information supporting her suspicion. Her profile is consistent with her report and history. [R.I.] often perceives the behavior of others as abusive, and describes the removal of her children as an effort to harm her personally. She views herself as disenfranchised and victimized by others. She believes her misfortune and her current situation is largely the result of mistreatment toward her, and does not acknowledge her own role. Individuals with profiles similar to [R.I.'s] profile are typically perceived by others as easily

> agitated, short-tempered, loud, and suspicious. The testing also suggests that [R.I.] is prone to depressive episodes.
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> Because [R.I.] feels targeted, she is suspicious of the motivations of others according to her profile. This, too, is consistent with her report, as she often referenced a lack of trust in others who have expressed a desire to help her. Her suspiciousness renders it difficult for her to form trusting relationships, resulting in a lack of a support system. Her inability to sustain relationships over time is likely a reflection of this personality trait. It will be difficult for her to engage in beneficial, long-term therapy, as she will have difficulty establishing and maintaining a trusting therapeutic bond. She is likely to terminate therapy prematurely, which appears to be consistent with her history.

Dr. Mirabelli "did not find any evidence that [R.I.] ha[d] PTSD or an Adjustment Disorder" or clinical depression. In addition, no manic or hypomanic episodes were reported and, as a result, R.I. did not display or report symptoms consistent with Bipolar Disorder. Dr. Mirabelli concluded:

> [R.I.] has an enduring personality pattern of distrust and suspiciousness that leads her to interpret the actions and motives of others as malevolent. She has a tendency to believe that others are attempting to exploit or harm her, without sufficient cause for the belief. It is reported and observed that she reads malevolent meaning into remarks that are meant to be benign. [R.I.] often perceives that she is being attacked, and is quick to react. Thus she becomes upset and angered easily when no slight was intended. Per her self report and the observation of others, she is reluctant to confide in others due to fears that the information will be used against her. Her personality patterns are consistent with a diagnosis of Paranoid Personality Disorder (301.0).
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> Current PTSD, Adjustment Disorder, and current Major Depressive Episode are ruled out. There is insufficient evidence to support a diagnosis of Bipolar Disorder. However this should be re-evaluated if a manic or hypomanic episode is reported or observed.

Dr. Mirabelli observed supervised visitation between R.I. and H.I. on two occasions. During both visits, R.I. engaged appropriately with H.I. and there were no safety concerns. With respect to reports by several providers regarding R.I.'s "strange and eccentric

beliefs," such as her beliefs about breastfeeding and her ability to communicate with H.I. beyond what is considered typical parent-infant communication, Dr. Mirabelli noted:

> Based on this evaluation, I do not believe [R.I.] has a thought disorder that is driving her belief system. Some of her defensiveness regarding her parenting practices is likely a result of her personality patterns, and there may be a delusional aspect to her belief that others wish to cause her distress. Some of her more atypical parenting practices are also likely to reflect her multicultural background, and her history of study in Social Linguistics. Her education and her experience is based upon the idea that cultural concepts are embedded in language, and she appears to view the world from a more broad and diverse perspective. As [R.I.] becomes conversational and fluent in more languages and different cultures, her views and practices, including parenting practices, are likely to become more diverse. While her views may seem eccentric and unusual, "delusional" parenting beliefs should be distinguished from those that are culturally-based. Many of the parenting practices and beliefs expressed by [R.I.] sound strange within her cultural context, but would not necessarily be considered unusual or eccentric in other cultures.

Dr. Mirabelli also noted, however, that there were "several risk factors and areas of vulnerability that will hinder [R.I.'s] ability to parent [H.I.] appropriately," including R.I.'s "struggles with organization and consistency in her own life," difficulty following through with plans and finding herself "a step behind," and "problems with [R.I.'s] ability to monitor herself and model appropriate behavior in front of [H.I.]." Dr. Mirabelli recommended, among other things, that supervised visitation continue, that R.I. obtain therapy from a therapist "experienced in personality disorders," and that R.I. complete a full physical examination.

Pursuant to Dr. Mirabelli's recommendation, on November 30, 2016, the Department referred R.I. to Salt and Light Counselling for outpatient psychotherapy with Sharon McClurkin, a licensed clinical professional counselor with experience in

counselling patients with personality disorders. R.I. began attending weekly therapy sessions and Ms. McClurkin found "clear evidence that [R.I.] suffer[ed] from chronic PTSD and Major Depressive Disorder, Moderate, Recurrent ('MDD')." R.I. did not attend any sessions after June 2017 and, as a result, was discharged. R.I. reengaged with Ms. McClurkin in September 2017, but she was discharged again in February 2018 due to cancellation and failure to attend 6 out of 9 scheduled appointments. Ms. McClurkin concluded that R.I. was "not a good candidate for therapy."

Meanwhile, on March 16, 2017, Advanced Behavioral Health conducted a psychiatric evaluation of R.I. and diagnosed her with PTSD. R.I. was prescribed medications but was unwilling to take them, stating that "she doesn't need them." The Department made a second referral to Advanced Behavioral Health "in hopes that [R.I.] may reconsider taking the prescribed psychotropic medications to address her mental health issues," but again she refused to take the prescribed medications.

In July and August 2017, R.I. was referred by the Department to psychiatrist Eric J. Lane for a neuropsychological evaluation. R.I. consistently claimed that, as a child, she was abused by her adoptive father, that she was abused by her husband in Japan, and that she suffered from traumatic brain injury. On the issue of traumatic brain injury, Dr. Lane noted that in March 2017, R.I. underwent a neurological consultation conducted by Francois Boller, M.D. at the George Washington University's department of neurology. During the course of Dr. Boller's evaluation, R.I. "allegedly sustained a concussion (mild traumatic brain injury) after a bicycle accident." Dr. Boller wrote that although R.I. indicated she was never officially diagnosed with traumatic brain injury, she believed that

it captured "her resultant symptomatology, which to various degrees and at various points in time continues to present, and includes the following: bladder problems, irregular thirst cue, disequilibrium, peripheral visual problems and deficits in sustained auditory attention." Dr. Boller found "little evidence of sequels of the alleged brain injury," and referred R.I. for neuropsychological testing and possible therapy for her psychological problems.

After considering Dr. Boller's conclusions and his own testing, Dr. Lane concluded that formulating an accurate diagnosis of R.I.'s psychiatric condition was "greatly complicated by her resistance to provide information." Nevertheless, he diagnosed R.I. with PTSD and major depressive disorder. Dr. Lane wrote:

> While there has been some evidence of a possible thought disorder and manic states, there did not exist enough information to assign either a psychotic or Bipolar Disorder diagnosis at this time, although future clinicians should remain vigilant. Additionally, while [R.I.] has previously been diagnosed with a personality disorder, the symptomatology driving that past diagnosis is best captured by the aforementioned post traumatic and depressive disorders symptomatology. The combination of depressive and posttraumatic symptomatology, which would appear to be chronic and quite extensive, has left [R.I.'s] sense of self and others, as well as overall level of functioning quite fractured.
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> Regardless of diagnosis, [R.I.] is under an extreme amount of stress, which would appear to be chronic and quite debilitating. Unfortunately, until she becomes compliant with recommended psychiatric and psychotherapeutic services, learns additional coping skills, and allows involved agencies to help her, she will likely remain symptomatic and her life circumstances will reflect it. In deciding when or if her youngest daughter should return to her care, the Frederick County DSS and the court should primarily consider [R.I.'s] psychiatric functioning, as this factor is likely the most salient factor. Other factors to consider would be her compliance with recommended services and overall environmental stability.

In December 2017, Sangeeta Verma, M.D. at Advanced Behavioral Health noted that R.I. did not feel she needed medications, "although she talks about how stressful and exhausting it is for her to keep her appointments and consequently unable to get a job." Dr. Verma concluded that

> [R.I.] is at high risk of continuing to have problems with homelessness, getting into abusive relationships, being sexually assaulted and not being able to take care of her daughter as she is unable to engage in treatment. I am unsure if it's because she cannot trust anybody due to her past or if she feels comfortable with her current lifestyle as she has mentioned she is "fine living in the shelter as long as she has social security."

Dr. Verma wrote that R.I. "might benefit from medication as she has mentioned feeling anxious, delusional and depressed in the past but at this present time she is unwilling to explore treatment with medications." Dr. Verma recommended that R.I. continue therapy and evaluate the need for treatment with medications. Notwithstanding Dr. Verma's recommendations, R.I. did not re-engage in psychotherapeutic services and did not agree to take medications.

With regard to supervised visitation, R.I. visited with H.I. on Thursdays from 9:15 to 11:00 a.m. and on Fridays from 9:15 to 10:30 a.m. Department workers reported that they accommodated R.I.'s request for a start time of 9:15 a.m. because it was "impossible" for her to get to visits by 9:00 a.m. due to her body's "clock" and because she "need[ed] her sleep." The Department also accommodated R.I.'s request to change the visits from Wednesdays to Thursdays. Notwithstanding these accommodations, R.I.'s visitation became inconsistent in August 2017. She canceled a visit on August 3rd because she said she had an accident that affected her eyesight and was not able to drive. The following

day, she contacted the social worker at 5:30 a.m. requesting a visit that was not accommodated due to the timing of the request. R.I. canceled a visit on August 10th because she was hospitalized for a self-reported traumatic brain injury obtained when she fell off a bicycle. R.I. also canceled a visit and an appointment with Dr. Lane on August 17th because she went to Ocean City despite being cautioned against the cancelations by a Department worker. Department workers reported that R.I. was "engaging and affectionate towards her daughter," that she worked hard to entertain her with various activities and read books to her, that she fed and changed her diaper as needed, and that they both appeared to enjoy their time together. On a few occasions, R.I. "attended visits appearing frazzled and disorganized, appearing unkempt, and often reporting the loss of her cell phone, forgetting bags, [and] getting lost while traveling to Frederick from Carroll County[.]"

On January 31, 2018, the juvenile court held a hearing on R.I.'s exceptions to the magistrate's recommendation that the permanency plan for H.I. be changed from reunification to adoption and that R.I.'s visitation be reduced to one visit per week. At the conclusion of that hearing, the court denied R.I.'s exceptions and entered an order changing the permanency plan for H.I. to adoption and reducing R.I.'s visitation to once per week. In reaching that decision, the judge observed that R.I. had not made contact with the court appointed special advocate ("CASA") since January 2017. With regard to R.I.'s visits with H.I., the court recognized that R.I. was "engaging and affectionate" towards her daughter, but that there were cancelled visits, including one when R.I. went to Ocean City, and a request for an unscheduled visit made at 5:30 in the morning.

With respect to R.I.'s therapy, the court took note that R.I.'s IQ was in "the superior range." However, she had missed numerous appointments with therapists, was unwilling to take recommended medications, and believed that medications were not necessary because she had other ways to cope. The court recognized that R.I.'s mental health symptoms were not alleviated by her self-coping and, as a result, "there is a void."

The judge also referred to R.I.'s belief that she does not need parenting education and her refusal to complete a parent coaching program. Although the judge acknowledged R.I. had enrolled in "some sort of parent education in Howard County" and had recently indicated her willingness to participate in parent coaching, he noted that it was with a different coach. The judge also took specific notice of the fact that a taxi cab company would no longer transport R.I. on behalf of the Department because there were "[t]oo many instances where she has cursed at our drivers and our office staff because she does not want to go where [the Department's] faxes say she's allowed to go[.]"

The judge reviewed "all of the reports, documents, and arguments" and, after weighing all of the issues, concluded that "stability is the factor that I need to look at." The court then denied R.I.'s exceptions, ordered the permanency plan changed to adoption, and reduced R.I.'s visitation to once per week.

As for H.I., she has lived with the same foster parents since she was two days old. By all accounts, the child is well cared for by her foster parents and is included in all family activities. With the exception of some reflux issues as an infant, H.I. has had no health problems, is meeting all developmental milestones, and is thriving in her foster home.

After the exceptions hearing, the juvenile court adopted the magistrate's proposed order, which included the following findings:

> FOUND, that the child is sixteen months old and has been in care since she was two (2) days old; and
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> FOUND, that Mother has five (5) other children, none of whom are in her care. Further she has been involved in dependency proceedings involving these children in other states.
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> FOUND, that Mother has been non-compliant with recommended psychiatric, psychotherapeutic, and other social services offered in the course of this matter. Further she has failed to follow through with various court ordered services; and
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> FOUND, that Mother is homeless and unemployed, as she has been throughout the history of this matter; and
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> FOUND, that Mother has been diagnosed with Post Traumatic Stress Disorder, Adjustment Disorder, with Depressed Mood, Adjustment Disorder with Mixed Anxiety and Depressed Mood, and
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> FOUND, that Mother simply lacks the intellectual, psychological, and intuitive resources to properly parent [H.I.], and
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> FOUND, that a permanency plan of Adoption is in the best interests of the child.

We shall include additional facts as necessary in our discussion of the issues presented.

STANDARD OF REVIEW

A parent's right to raise his or her children without undue interference by the State is a fundamental constitutional right that cannot be taken away "unless clearly justified." *In re A.N.*, 226 Md. App. 283, 306 (2015)(internal quotation marks and citations omitted). That right, however, is not without limitation, and must be balanced against the State's

interest in protecting the health, safety, and welfare of the child. *Id.* (citation omitted). The Court of Appeals has recognized that "the best interests of the child may take precedence over the parent's liberty interest in the course of a custody, visitation, or adoption dispute." *In re Mark M.*, 365 Md. 687, 706 (2001)(internal quotation marks and citation omitted).

In CINA cases where the child has been placed outside of the home, the Department's primary concern in the development of a permanency plan must be the best interests of the child. *See* Md. Code (2012 Repl. Vol., 2016 Supp.), § 5-525(f)(1) of the Family Law Article ("FL"). *See also In re Andre J.*, 223 Md. App. 305, 320 (2015)(in cases where CINA is placed outside family home, juvenile court must determine permanency plan consistent with child's best interests). The Department and the court must consider the following factors in determining the best interests of the child when creating a permanency plan:

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

FL § 5-525(f)(1).[5]

Once the circuit court establishes the permanency plan, the goal of the plan must be re-visited periodically to evaluate progress toward the permanency goal and to assess whether the permanency plan should be changed based on current circumstances. *In re Andre J.*, 223 Md. App. at 322 (citing *in re Yve S.*, 373 Md. 551, 582 (2003)); CJP § 3-823(h)(2). At the review hearings, the court must consider, *inter alia*, whether the commitment remains necessary and appropriate, and the extent of progress that has been made "toward alleviating or mitigating the causes" that necessitated commitment. *In re Yve S.*, 373 Md. at 581; CJP § 3-823(h)(2)(i) and (iii). The court must change the permanency plan "'if a change in the permanency plan would be in the child's best interest.'" *In re Yve S.*, 373 Md. at 581 (quoting CJP § 3-823(h)(2)(vi)). *See also In re Adoption/Guardianship of Cadence B.*, 417 Md. 146, 157 (2010)("if there are weighty circumstances indicating that reunification with the parent is not in the child's best interest, the court should modify the permanency plan to a more appropriate arrangement.").

At a permanency plan review hearing, the juvenile court must determine and document in its order whether "reasonable efforts have been made to finalize the permanency plan that is in effect." CJP § 3-823(h)(2)(ii). Whether reasonable efforts have been made is determined on a case-by-case basis, but the Court of Appeals has recognized

[5] A juvenile court's "failure to state each and every consideration or factor in a particular applicable standard does not, absent more, constitute an abuse of discretion." *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003).

that there are limits to what the Department is required to do. In *In re Shirley B.*, the Court recognized:

> The State is not obligated to find employment for the parent, to find and pay for permanent and suitable housing for the family, to bring the parent out of poverty, or to cure or ameliorate any disability that prevents the parent from being able to care for the child. . . . The State is not required to allow children to live . . . in temporary shelters . . . or to grow up in permanent chaos and instability, bouncing from one foster home to another until they reach eighteen and are pushed onto the streets as adults because their parents, even with reasonable assistance from [the Department], continue to exhibit an inability or unwillingness to provide minimally acceptable shelter, sustenance, and support for them.

In re Shirley B., 419 Md. 1, 26 (2011)(quoting *In re Adoption/Guardianship of Rashawn H. and Tyrese H.*, 402 Md. 477, 500-01 (2007)).

We review child custody cases under three "different but interrelated" standards of review. *In re Adoption/Guardianship of Cadence B.*, 417 Md. at 155. First, we review the juvenile court's factual findings under the clearly erroneous standard. *Id.* (citing *In re Yve S.*, 373 Md. at 586). Second, if it appears that the trial court erred in its determinations as a matter of law, we require further proceedings in the trial court, except in cases of harmless error. *Id.* Finally, "when reviewing a juvenile court's decision to modify the permanency plan, we 'must determine whether the court abused its discretion.'" *In re A.N.*, 226 Md. App. at 306 (quoting *In re Shirley B.*, 419 Md. at 18). "There is an abuse of discretion 'where no reasonable person would take the view adopted by the [juvenile] court,'" or when the court acts "'without reference to any guiding rules or principles.'" *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)(quoting *North v. North*, 102 Md. App. 1, 13 (1994)(internal citations omitted)). To warrant reversal, the juvenile

court's decision must "be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *In re Shirley B.*, 419 Md. at 19 (citation and quotation marks omitted).

DISCUSSION

I.

R.I. contends that the juvenile court erred in changing H.I.'s permanency plan from reunification to adoption because the Department failed to make reasonable efforts toward reunification. She argues that the services provided by the Department did not conform to the services recommended by Drs. Mirabelli and Lane and other professionals retained to evaluate her. Specifically, R.I. asserts that the court failed to comply with Dr. Mirabelli's recommendation that she receive consistent therapy to address symptoms and maladaptive behavior patterns associated with a paranoid personality disorder. In addition, she points out that Dr. Lane's report and recommendations were not provided to her or her attorney until the week prior to the magistrate's hearing on the Department's request for a change in the permanency plan. R.I. asserts that the Department failed to provide the specific services referenced by Dr. Lane including dialectical behavioral therapy and a support group that uses that model. Relying in part on the Americans with Disabilities Act[6], R.I.

[6] The Americans with Disabilities Act ("ADA"), is codified at 42 U.S.C. §12101 *et seq*. Although R.I. claims to be disabled, we note that there were no facts sustained by the juvenile court to establish that her mental health issues rise to the level of a disability. Even if there was such a determination, there is no authority to support R.I.'s assertion that the Department was required to continue offering her services while H.I. remained in foster care, pending R.I.'s recognition of her need for services and her willingness to engage in

(Continued…)

claims that, based on the reports of both Dr. Mirabelli and Dr. Lane, she needed to engage in therapy that would allow her to process the information that the Department believed was critical to teaching her parenting skills prior to providing parent coaching. Moreover, she required a therapist with appropriate cultural sensitivity to understand her non-traditional views as simply being different and not delusional. According to R.I., although the Department referred her to therapy and a parenting coach, those services were not tailored to meet the specific needs identified by Drs. Mirabelli and Lane and did not serve to ameliorate the impediments to reunification. We disagree and explain.

There is ample support in the record before us that the juvenile court considered the factors set forth in FL § 5-525(f)(1) and determined that changing the permanency plan from reunification to adoption was in H.I.'s best interest. At the time of the exceptions hearing, H.I. had been in foster care for 20 months and R.I. had made no progress toward being able to care for her. Although R.I. argues that the Department failed to make reasonable efforts toward reunification by failing to provide services more tailored to her specific needs, the record makes clear that the Department provided R.I. with extensive mental health and other support services to address her psychiatric symptoms and parenting deficits. R.I. refused to enter into service agreements with the Department, refused to take advantage of the services that were offered her, and denied that she had a need for them. R.I. refused to follow through with court-ordered therapy, denied the need for and refused

them. In *In re Adoption/Guardianship No. 10941*, the Court of Appeals made clear that "the Department need not go through the motions in offering services doomed to failure." 335 Md. 99, 117 (1994).

to take prescribed psychotropic medications, and declined to participate in parent coaching, in part because she believed herself to be "the best parent you ever saw[.]" R.I. remained homeless and unemployed.

The record shows that R.I. is not cognitively disabled and, in fact, her cognitive and intellectual functioning is in the superior range. Despite this fact, R.I.'s PTSD and depression symptoms remained chronic and extensive and left her overall social and psychiatric functioning "quite fractured." Although the Department offered R.I. assistance from Ms. McClurkin, a therapist who specialized in personality disorders and PTSD, R.I. repeatedly failed to participate in therapy and rejected the use of psychotropic medications despite psychiatric recommendations to take them. At no time did R.I. indicate an understanding of her parenting deficits and, according to Dr. Mirabelli, R.I.'s psychological profile made it difficult for her to achieve the stability she needed to parent H.I. in an appropriate manner.

R.I.'s statements that she neither needs nor wants certain services, and her repeated failures to follow through with specialized services and therapeutic recommendations to address her mental health needs, stand in stark contrast to her assertion that the Department should have provided her with additional particularized psychiatric services. The juvenile court recognized the futility of any additional efforts towards reunification in this case. R.I.'s prior denials that she needs services and her refusal to follow through with the services that were provided support the conclusion that she is not likely to benefit from more or different services in the foreseeable future. Moreover, offering additional services would leave H.I. adrift in foster care for an even longer period of time and deprive her of

permanency, contrary to her best interests. *See Yve S.*, 373 Md. at 576 ("The overriding theme of both the federal and state legislation is that a child should have permanency in his or her life."). For all these reasons, the juvenile court properly concluded that the Department had made reasonable efforts towards reunification and that any further efforts would be futile and contrary to the best interests of H.I.

II.

R.I. next contends that the juvenile court abused its discretion in reducing her visitation with H.I. to one visit per week. We disagree.

Decisions concerning visitation are generally within the sound discretion of the trial court and shall not be disturbed absent a clear abuse of discretion. *In re Mark M.*, 365 Md. at 705. Because decisions regarding visitation require the juvenile court to consider the best interests of the child, visitation may be restricted or even denied when the child's health or welfare is threatened. *Id.* at 706.

In the case at hand, H.I. had been in foster care for 20 months, yet R.I. still required supervised visitation. Although those supervised visits generally went well, R.I.'s attendance became sporadic and she canceled several visits in August 2017. Counsel for H.I. proffered to the juvenile court that reducing the visits to once per week served H.I.'s interests because as the permanency plan moved in the direction of adoption, it would be important for H.I. to begin that transition as well. In weighing all of the issues, the juvenile court stated that by January 2018, "stability [wa]s the factor that [it] need[ed] to look at." *See* CJP § 3-823(h)(3)(requiring juvenile court to make "[e]very reasonable effort . . . to effectuate a permanent placement for the child within 24 months after the date of initial

placement."). Accordingly, the juvenile court did not abuse its discretion in decreasing R.I.'s supervised visitation to once per week because that plan was consistent with the change in the permanency plan to adoption and served the best interests of H.I.

JUDGMENTS OF THE CIRCUIT COURT FOR FREDERICK COUNTY, SITTING AS A JUVENILE COURT, AFFIRMED; COSTS TO BE PAID BY APPELLANT.