Circuit Court for Montgomery County
Case No. 06-I-18-75

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 42

September Term, 2022

IN RE: N.A.

Wells, C.J.
Shaw,
Kenney, James A., III,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: October 24, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from the decision by the Circuit Court for Montgomery County, sitting as the juvenile court, to change the permanency plan for N.A., a minor, from a concurrent plan of reunification and custody and guardianship with a relative, to a plan of custody and guardianship with his Paternal Grandmother. Maternal Grandmother noted an appeal, presenting the following question for our review, which we have rephrased slightly:

> Did the juvenile court abuse its discretion in changing N.A.'s concurrent permanency plan of reunification and custody and guardianship with a relative to a plan of custody and guardianship with his Paternal Grandmother, and ordering a minimum of once monthly unsupervised visitation with Maternal Grandmother?

For the reasons explained herein, we shall affirm the judgment of the juvenile court.

BACKGROUND

N.A. was born in 2008. After the death of his mother in 2014, he resided with his Maternal Grandmother and his biological siblings, A.A. and C.A. In January 2018, Cynthia King, a Child Welfare Services social worker, began an investigation following the removal of N.A.'s older sibling, A.A., from Maternal Grandmother's care. It had been reported that N.A. had been missing the school bus and was exhibiting extreme behavioral, emotional and mental health concerns at school. N.A. had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), "anxiety and depression symptoms" and had an Individualized Education Program ("IEP").

On March 8, 2018, N.A. was emergently admitted to Washington Adventist Hospital after he attempted to choke himself with a cord. In March of 2018, Ms. King

made an additional referral for Crisis Stabilization, an intensive in-home support program. Crisis Stabilization worker Shavon Jordan was assigned to service the family. She performed an initial intake on March 26, 2018. Maternal Grandmother indicated to her that there were no issues with N.A. or the family and that people needed to "leave [N.A.] alone." After the initial intake, Maternal Grandmother did not allow Ms. Jordan to return to the home to see N.A.

In March of 2018, Maternal Grandmother also discontinued N.A.'s individual therapy with Mark Raspberry of Behavioral Health Partners, despite Mr. Raspberry's assessment that N.A.'s anger was worsening and his emotional/behavioral issues had increased. Maternal Grandmother indicated that N.A. had been working with Mr. Raspberry for a year and it was time to look for a new therapist.

On May 7, 2018, N.A. was sheltered and placed at Stonebridge Diagnostic Center. On May 30, 2018, the Montgomery County Department of Health and Human Services ("Department") filed a Child in Need of Assistance ("CINA")[1] petition on behalf of N.A.[2] and committed him to the temporary custody of the Department for placement at Stonebridge Diagnostic Center.

[1] A child in need of assistance ("CINA") is one who requires court intervention because the child has been abused or neglected, or has a developmental disability or mental disorder; and his or her "parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Md. Code (1974, 2020 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP") § 3-801(f).

[2] The CINA petition was also brought on behalf of N.A.'s brother, C.A., but C.A. is not involved in this appeal.

On May 30, 2018, the Department located N.A.'s putative father, Mr. H. He was on parole and detained at the CSOSA Re-entry and Sanctions Center in Washington, D.C. For that reason, he was not available as a placement for N.A.

At the adjudication and disposition hearing on May 30, 2018, the parties agreed to the allegations in the First Amended CINA petition. The court sustained a finding of CINA and continued N.A.'s placement at Stonebridge. Maternal Grandmother's psychological evaluation revealed that she suffered from borderline intellectual functioning, persistent depressive disorder, and other specified trauma/stress related disorders. Maternal Grandmother, however, was continuing to care for N.A.'s sibling, C.A., who was nonverbal with significant cognitive deficiency. The court permitted Maternal Grandmother visitation with N.A., and ordered the Department to provide her with transportation to that facility at least monthly. The court ordered Maternal Grandmother to participate in parenting education and family therapy with N.A.

The court conducted a permanency plan review hearing on October 10, 2018. The court determined that N.A. was "safe and secure at Stonebridge where he receive[d] 24-hour supervision in a therapeutic, structured environment" as well as weekly individual and group therapy. The court noted that "[m]any of the problematic behaviors that [N.A.] was displaying prior to his placement at Stonebridge have not been observed" and that he had "responded positively to the predictable schedule, consistency and nurturing the program provides." The court found that Maternal Grandmother had made minimal progress with the case plan and that she was resistant to "outside intervention." Maternal

Grandmother remained unemployed and had limited resources, social and emotional support, though she had been attending monthly visits with N.A. The court ordered Maternal Grandmother to participate in parenting services as recommended, work with the Department to develop a personal budget and engage in unsupervised monthly visitation with N.A., with the option to move from community visits to home visits when recommended. The court continued N.A.'s plan of reunification and his placement at Stonebridge.

At the permanency planning hearing on April 2, 2019, the court noted that DNA paternity testing had confirmed Mr. H as N.A.'s biological father (hereinafter "Father"). Father was living in Washington, D.C. and seeking stable, long-term employment. He reported that he had been working as a contractor. Father strongly expressed his desire that N.A. be placed in his care. The court noted that the Department was working closely with Father to determine the appropriate resources to assist him in becoming a full-time parent. The court ordered Father to complete a drug and alcohol assessment, attend appropriate treatment, obtain employment and provide paystubs for verification, complete parenting classes, and undergo a psychological evaluation. Father's parents also notified the Department of their willingness to be "secondary/step-down resources" for N.A.

The court concluded that N.A. could not be safe and healthy in the home of Maternal Grandmother, as she continued to have limited financial and social support resources. Maternal Grandmother remained resistant to the Department's help and she

resisted efforts to collaborate with N.A.'s paternal family members. In addition, Maternal Grandmother was providing care for C.A. N.A. continued to do well at Stonebridge. He thrived with the structure and stability provided at Stonebridge and incidents of verbal or physical aggression were rare. The court continued N.A.'s permanency plan of reunification with a parent or guardian, and continued N.A.'s placement at Stonebridge.

During the summer of 2019, N.A. visited with his Paternal Grandmother, A.S., and her husband, E.S., and the visits went well. N.A. completed his program at Stonebridge in August, 2019, and the court placed him in kinship care with his Paternal Grandmother.

At the permanency plan review hearing on September 17, 2019, the court reaffirmed reunification with a parent or guardian as the permanency plan, but noted that reunification efforts with N.A.'s Maternal Grandmother continued "to be a difficult and slow process" and that "[m]inimal progress has been made[.]" The court ordered Maternal Grandmother to develop a personal budget, participate in parenting education, complete a psychological evaluation and participate in appropriate mental health treatment and attend monthly visits with N.A. The court continued N.A.'s placement in kinship care with his Paternal Grandmother.

On March 2, 2020, the court reaffirmed the permanency plan of reunification with a parent or guardian. The court determined that, though Father and Maternal

Grandmother had visited with N.A., neither had made necessary progress towards reunification during the review period.

On July 30, 2020, the court reaffirmed the permanency plan of reunification with a parent or guardian. During the COVID-19 pandemic, Paternal Grandmother was able to work from home and supervise N.A. at home. The court found that Paternal Grandmother had participated in N.A.'s schooling, attended to his needs and that N.A. was safe in her care. Father had not fully complied with the court-ordered services and Maternal Grandmother had participated in some, though not all, of the Department's services.

At the February 26, 2021 permanency planning review hearing, the court changed N.A.'s permanency plan to a concurrent plan of reunification and custody and guardianship with a relative. The court found that N.A. continued to thrive in his Paternal Grandmother's care, and that she was providing "a stable, safe environment and a structured routine that [was helping N.A.] with regulating his emotions and behavior." N.A. was "respectful and polite, and closely bonded to his [Paternal Grandmother]." He was receiving twice weekly tutoring and had achieved "straight A's" in school.

The court found that neither Father nor Maternal Grandmother had made notable progress towards reunification. Father had visited with N.A. virtually and communicated with Paternal Grandmother, but the Department's efforts to schedule virtual visits with Maternal Grandmother were unsuccessful. None of the times suggested by the Department were convenient to her, and the visit times she requested were late in the

evening, resulting in "little to no progress." The Department requested that Paternal Grandmother develop a visitation plan for N.A. and Maternal Grandmother. Paternal Grandmother suggested visits on Saturdays, arranged through Maternal Grandmother's son, however, those visits had not occurred.

According to the mental health treatment notes submitted by the Department, Maternal Grandmother was receiving weekly individual therapy, but she struggled to keep her appointments and had made no progress toward her treatment goals. She was also unsuccessful in coordinating with the Department for virtual visits with N.A. N.A. had been able, however, to maintain contact with Father, Maternal Grandmother, and A.A. using his cell phone.

The Department reported that, during a visit with N.A. on May 20, 2021, Maternal Grandmother's behavior required the intervention of emergency services personnel. The incident concerned the Department because Maternal Grandmother was scheduled to begin overnight visits with N.A. the following weekend. To address these concerns, the Department required Maternal Grandmother to sign a safety plan. Although visitation improved temporarily, Maternal Grandmother canceled an August 2021 visit without explanation while Paternal Grandmother was en route with N.A., and issues arose concerning drop-off and pick-up locations for subsequent visits.

In advance of a permanency plan review hearing on December 10, 2021 and January 26, 2022, the Department recommended changing the concurrent permanency plan to a sole plan of custody and guardianship with a relative. At the hearing, the court

reviewed the history of N.A.'s case, noting that N.A. had been out of the home for almost four years (forty-four months) and in care for twenty-nine months.

The court found that there were exceptional and compelling circumstances that demonstrated that reunification with Father was not in N.A.'s best interest. The court determined that Father could not be a resource due to his failure to consistently participate in services. Father consented to the court awarding custody and guardianship of N.A. to Paternal Grandmother. The court also determined that reunification with Maternal Grandmother was not in N.A.'s best interest. She had remained inconsistent in accepting services and had failed to improve her circumstances during the time that N.A. was not in her care.

The court found that N.A. had thrived in the care of his Paternal Grandmother. He had progressed from being in a special needs school to attending public middle school with supportive services. His teachers reported that he was intelligent and doing well, and that he had no issues with aggression, self-harm, or acting out. He was participating in extracurricular activities, playing basketball, and making friends. The court concluded that it would be "extremely detrimental" to transfer N.A. to another school in an area where he had not been for forty-four months, and it would effectively "jeopardiz[e] all the progress that he has made."

At the conclusion of the hearing, the court changed N.A.'s permanency plan from a concurrent plan of reunification and custody and guardianship with a relative to a plan of sole custody and guardianship with a relative, Paternal Grandmother. The court

ordered that Maternal Grandmother and Father have unsupervised visitation with N.A., at a minimum of once monthly. The court also ordered supervised visitation between N.A. and his siblings, at a minimum of once monthly. Maternal Grandmother noted an appeal.

STANDARD OF REVIEW

We review child custody cases under three "different but interrelated" standards of review. *In re Adoption of Cadence B.,* 417 Md. 146, 155 (2010). First, we review factual findings under the clearly erroneous standard. *Id*. (citing *In re Yve S*., 373 Md. 551, 586 (2003)). Second, we review matters of law de novo, and, unless the error is harmless, further proceedings will be required if the trial court erred as a matter of law. *Id.* Finally, "when reviewing a juvenile court's decision to modify the permanency plan for the children, this Court 'must determine whether the court abused its discretion.'" *In re A.N.*, 226 Md. App. 283, 306 (2015) (quoting *In re Shirley B.,* 419 Md. 1, 18 (2011)). A court abuses its discretion when its decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable." *In re Ashley S*., 431 Md. 678, 704 (2013) (quotation marks and citation omitted).

DISCUSSION

Maternal Grandmother contends that the juvenile court abused its discretion by changing N.A.'s permanency plan from reunification to custody and guardianship with a relative and awarding her one overnight visit per month. She argues that the court did not adequately consider the evidence of the steps she had taken "to ensure she remain a stable

and constant figure in [N.A.'s] life" after the loss of his mother and the impact that her limited access to N.A would have on him.

The Department contends that the circuit court did not abuse its discretion in changing N.A.'s permanency plan, and the court's decision to award custody and guardianship to Paternal Grandmother was well supported by evidence in the record. In its view, the court acted in N.A.'s best interest by implementing the visitation plan.

Counsel on behalf of N.A. submitted a brief supporting the Department's position that the trial court appropriately determined that granting custody and guardianship to Paternal Grandmother was in N.A.'s best interest. With respect to visitation, counsel points out that Maternal Grandmother is not limited by the court in her ability to visit N.A., as the court ordered a minimum of one visit per month, and allowed overnight visits.

I.

Change in Permanency Plan

When a juvenile court adjudicates a child as CINA and commits the child to the custody of a local department of social services, the department is required to develop a permanency plan that is in the child's best interests. Md. Code (1999, 2019 Repl. Vol.) § 5-525(f)(1) of the Family Law Article ("FL"); *see In re Andre J.,* 223 Md. App. 305, 320 (2015); *In re Shirley B.*, 191 Md. App. 678, 707 (2010). In developing a permanency plan, the circuit court is required to use the following factors set forth in FL § 5-525(f)(1) as a guide in determining a child's best interests:

(i) the child's ability to be safe and healthy in the home of the child's parent;

(ii) the child's attachment and emotional ties to the child's natural parents and siblings;

(iii) the child's emotional attachment to the child's current caregiver and the caregiver's family;

(iv) the length of time the child has resided with the current caregiver;

(v) the potential emotional, developmental, and educational harm to the child if moved from the child's current placement; and

(vi) the potential harm to the child by remaining in State custody for an excessive period of time.

A juvenile court must hold a permanency plan hearing to review the plan "at least every six months until commitment is rescinded or a voluntary placement is terminated." Md. Code (1974, 2020 Repl. Vol.) § 3-823(h) of the Courts and Judicial Proceedings Article ("CJP"). At every permanency plan review hearing, the court must: (1) determine whether the commitment remains necessary and appropriate; (2) determine whether reasonable efforts have been made to finalize the current plan; (3) determine the amount of progress that has been made "toward alleviating or mitigating the causes necessitating commitment;" (4) project a reasonable date for the child to be returned home, placed in a pre-adoptive home or placed under a legal guardianship; (5) evaluate the child's safety and take steps to ensure the protection of the child; and (6) change the plan if a change in plan "would be in the child's best interest[.]" CJP § 3-823(h)(2).

The court considered the factors set forth in CJP § 3-823(h)(2) and determined that N.A.'s "needs" and his "situation" had changed and that commitment was no longer

necessary. The court recounted the reasonable efforts the Department had made to achieve the permanency plans of reunification and custody and guardianship, including, but not limited to: monitoring N.A.'s placement with his Paternal Grandmother; collaborating with educational staff, CASA, and N.A.'s attorney; completion of a guardianship home study of Paternal Grandmother; maintaining contact with Father and monitoring N.A.'s visits with Father; coordinating with both grandmothers to develop a visitation plan; monitoring Paternal Grandmother's progress in individual therapy; utilizing the Department's VOCA services to support Paternal Grandmother and provide "culturally competent case management and education[.]"

With respect to determining the amount of progress that had been made toward resolving the problems that had endangered him, the court found that Maternal Grandmother had made some progress and had finally begun receiving therapy. N.A., however, had progressed tremendously. He no longer had outbursts at school, his threats to self-harm had subsided, he had friends, and had "moved in a positive direction."

The court reviewed the factors set forth in FL § 5-525(f)(1) to determine whether a change in permanency plan was in N.A.'s best interest. The court made clear that it did not find Maternal Grandmother to be unfit, but it determined that N.A. could not be safe in Maternal Grandmother's home. The court also noted that, although Maternal Grandmother had made progress in the previous nine months, she had been inconsistent in receiving services and did "not have a good track record" of communicating with N.A.'s schools, which, in the court's view, was "vital" to his success. The court

indicated that it did not have confidence that Maternal Grandmother would be up to the challenge of ensuring N.A.'s success in a new school, continuing his therapy, and facilitating visits with Father. Because N.A. was "safe, comfortable, thriving, and happy living with [Paternal Grandmother,]" the court concluded that "removing him would endanger all those things[.]"

The court addressed N.A.'s "strong emotional attachment" to Father, with whom he wished to reside. N.A. also continued to be bonded with his siblings, A.A. and C.A., who had been placed elsewhere. The court noted that N.A. has a strong relationship with both grandmothers. The court recognized that, when N.A. was at Stonebridge, he had indicated a desire to live with Maternal Grandmother, but noted that his situation had changed since that time. It was now also clear to the court that N.A. also desired to have a relationship and regular visitation with Father, and it was unlikely that visitation would happen if he was removed from Paternal Grandmother's home.

With respect to N.A.'s current placement, the court noted that Paternal Grandmother had acted as a "surrogate mother, providing for [N.A.'s] needs" for over twenty-nine months. In that time, N.A. had "thrived." He listened to her and received necessary support and guidance from her. He had progressed from attending a special needs school to attending public school, was participating in extracurricular activities, and his teachers spoke highly of him.

Finally, the court described the potential emotional, developmental, and educational harm to N.A. if moved from his current placement as "extremely

detrimental" and a "disaster". The court determined that Paternal Grandmother was providing the support and structure that N.A. needs by setting boundaries and fostering his independence and self-reliance. "She has made sure that he is medically up to date, educationally on track, involved in his IEP, all while providing emotional support and stability." The court further explained that if N.A. was removed from Paternal Grandmother, he would have to change schools and move to an area where he had not lived for almost four years, "jeopardizing all of the progress that he has made." It would also remove him from his two basketball teams and be detrimental to his physical activity, as well as the relationships he has fostered, his self-esteem, and his identity. In addition, and "[m]ost importantly," it would disrupt his "frequent and cherished contact with his father[.]" The court concluded that "[u]prooting [N.A.] at this critical juncture in his teenage years would be contrary to his best interest" and "wreak havoc on [his] world."

In addressing the length of time in the care of the State, the court indicated that it is in the child's best interest to be placed in a permanent home and to spend as little time as possible in the custody of the Department, and that N.A. had been in care for forty-four months. The court noted that the CINA system is designed to be temporary because a child deserves permanency in his or her life; specifically, having constant and loving parents, knowing that one's home will remain his home, that his siblings will be near, and his neighborhood and schools are a familiar place.

In applying the statutory factors to the facts of the case, the court quoted from *In re M.*, 251 Md. App. 86, 127-28 (2021):

> [P]ermanency planning requires examination of the child's actual lived experience in the world by considering the child's point of view, valuing the child's current emotional attachments, recognizing that time has an effect on the child, and recognizing that removing a child from a placement where the child has formed emotional attachments can cause potential emotional, developmental, and educational harm to the child[.]

(Quotation marks and citation omitted.)

The juvenile court carefully considered the "tremendous amount of progress" N.A. had made during his placement with Paternal Grandmother. He was excelling in school, participating in extracurricular activities, and socializing with friends. With Paternal Grandmother's supervision, support, and encouragement, he showed no signs of behavioral, emotional, or mental health issues.

In addition, the court considered the importance of N.A.'s relationship with Maternal Grandmother, and recognized the efforts she had made toward reunification. Documentation submitted to the court indicated that "in the last nine months" Maternal Grandmother had made progress with her mental health issues and was participating in therapy. Nevertheless, the court did not believe that she was "up to [the] challenge" of meeting N.A.'s needs if he was uprooted from his current placement. Moreover, the fact remained that N.A. had been out of Maternal Grandmother's home for almost four years and he required a permanent placement. *See* CJP § 3-823(h)(5) (requiring the 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").

The juvenile court "is in the unique position to marshal the applicable facts, assess the situation, and determine the correct means of fulfilling a child's best interests." *In re Adoption Nos. J9610436 and J9711031*, 368 Md. 666, 696 (2002) (quotation marks and citation omitted). In this case, the court credited N.A.'s progress to the stability provided by Paternal Grandmother, and the importance of that factor was considered in determining whether a change in permanency plan was in N.A.'s best interest. We are persuaded, on this record, that the decision to change N.A.'s permanency plan to custody and guardianship with Paternal Grandmother was in his best interest and was not an abuse of discretion.

II.

Visitation Order with Maternal Grandmother

Decisions regarding visitation are generally within the sound discretion of the trial court and will not be disturbed absent a showing of a clear abuse of discretion. *In re Mark M.*, 365 Md. 687, 704 (2001). The controlling factor in making a determination as to visitation is the best interest of the child. *Id.* at 705-06.

Here, the court's order of unsupervised visitation with Maternal Grandmother, at a minimum of once monthly, was a continuation of the visitation order that had been in effect during the concurrent reunification permanency plan. Maternal Grandmother asserts that the court ignored her testimony that Paternal Grandmother does not "get along" with her and had denied her access to N.A. With respect to Maternal Grandmother's visitation, the court noted that "visitation facilitated or involving

[Maternal Grandmother] is complex." In response to Maternal Grandmother's concerns regarding the difficulties with her visitation, the court instructed the parties that N.A. "needs all the support" they can offer and expressed the hope that "the adults in his life figure out a way that they can be involved on a regular basis moving forward" because "[i]f they put him first and what's in his best interest, what comes after that will be easy."

We conclude that the juvenile court's determination that unsupervised visitation between N.A. and Maternal Grandmother, a minimum of once monthly, was in N.A.'s best interest, and its order to that effect in the custody and guardianship order was not an abuse of discretion.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.