

Circuit Court for Baltimore County  
Case No.: C-03-JV-22-727

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 130

September Term, 2023

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In Re: T.M.

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Wells, C.J.,  
Nazarian,  
Storm, Harry C.,  
(Specially Assigned),

JJ.

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Opinion by Storm, J.

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Filed: October 11, 2023

\*This is an unreported opinion. It may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

## **Introduction**

This case, on appeal from the Circuit Court for Baltimore County (sitting as a Juvenile Court), arises from a child in need of assistance (CINA) proceeding.<sup>1</sup> In early October 2022, the Baltimore County Department of Social Services (“Department”), one of the appellees here, removed T.M. (then age 16) from the care of his biological mother, the appellant (“Mother” or “Appellant”) due to allegations of abuse and neglect. T.M. was placed in the temporary care of his biological father (“Father”), another of the appellees herein.<sup>2</sup> At the shelter care hearing several days later, the court awarded temporary custody of T.M. to the Department but authorized T.M.’s placement with Father, if appropriate. T.M. remained in Father’s care throughout the pendency of the case, with Mother having liberal, supervised visitation as arranged by the Department.

An adjudication and disposition hearing was held in March 2023. At that time, the court found that Mother had abused, neglected and harmed T.M. while he was in her custody. The court also found that Father was not involved in the abuse/neglect and that Father was able and willing to care for T.M. The court awarded sole legal and physical custody of T.M. to Father, granted Mother reasonable visitation at Father’s discretion, and

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<sup>1</sup> A “[c]hild in need of assistance” is defined as a child who requires court intervention because “[t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder” and “[t]he child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” Md. Code Ann., Cts. & Jud. Proc. § 3-801(f).

<sup>2</sup> Father did not reside with Mother. It is undisputed that Father’s involvement with T.M. was limited prior to the Department placing T.M. in his care.

dismissed the case and terminated the court’s jurisdiction. *See* Md. Code Ann., Cts. & Jud. Proc. (“CJP”) § 3-819(e) (2020 Repl; 2022 Supp.).

Mother noted a timely appeal and raises two questions for our review, which we have rephrased as follows:

1. Did the juvenile court abuse its discretion in granting father sole legal and physical custody of T.M.?
2. Did the juvenile court improperly delegate its judicial authority when it granted father sole discretion for determining visitation?

We answer the first question in the negative; however, because we answer the second question in the affirmative, we will vacate that portion of the court’s Order related to visitation and remand the case to the juvenile court for further proceedings consistent with this opinion.

### **Background**

On October 7, 2022, the Department received a report from law enforcement about Mother hitting T.M.’s younger sister (“T.W.”) with a frying pan and making the statement that she should have killed T.W. when she was younger.<sup>3</sup> At the time, the Department was already in the process of investigating another incident that had been reported in September 2022 regarding multiple unexplained bruises on T.M., who is autistic, with limited verbal skills.<sup>4</sup> The Department’s investigation revealed additional concerns about the condition of

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<sup>3</sup> This appeal relates only to T.M.

<sup>4</sup> Mother had expressed concern to the Department in September 2022 about her ability to manage T.M.’s behaviors, and had asked that he be placed temporarily outside of

Mother’s home, which was observed to have “maggots all over the food, the kitchen not looking workable, and trash on all four floors...” In addition, there was “medication on the floor within reach of [T.M.]” Police described the condition of Mother’s home as “unsanitary and unsafe,” “horrible,” and in a condition in which no child should have to live. The condition of the home was captured on law enforcement body camera footage.

In addition to the September and October 2022 reports, the record showed that the family had a lengthy history with the Department dating back to 2008, with on-going concerns about physical abuse and neglect related to all of Mother’s children. The sustained allegations in the amended CINA petition (filed by the Department on March 9, 2023 but dated March 10, 2023), which the parties agreed the Department could prove by a preponderance of the evidence, included among other things and in addition to those mentioned above, that in early September 2022 when law enforcement and a Department social worker visited Mother’s home they observed red welts on T.M.’s wrists; that when Mother was asked about the marks, she yelled and cursed before taking T.M. into the house and then refused to come out and speak; and, that there was an indicated finding of neglect in July 2022 concerning Mother failing to protect T.M. from an adult sibling who was seen on video “viciously beating up [T.M.] and threaten[ing] to leave him outside.” Mother was also found guilty in 2011 “for confining unattended child.”<sup>5</sup>

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her home. According to the Amended Petition, “due to [T.M.] being part of the Autism Waiver Program he was not eligible for voluntary placement.” The Autism Waiver Program is a Maryland state home-and-community-based services program for children with autism spectrum disorder. COMAR 10.09.52.01(B)(2).

<sup>5</sup> The family’s lengthy history with the Department included instances where Mother was “indicated” for neglect, as well as instances where the allegations were deemed

After receiving the abuse allegation related to T.W. on October 7, 2022, the Department sheltered T.M. with Father who, notwithstanding his limited prior involvement with T.M., agreed to care for him on a temporary basis. At a shelter hearing held on October 11, 2022, the juvenile court continued T.M. in shelter care in the custody of the Department, while permitting the Department to place T.M. with his Father if the Department deemed it appropriate. Mother was granted liberal and supervised visitation with T.M. as arranged by the Department.

Throughout the pendency of the case, T.M. continued to reside with Father who, with the assistance of T.M.’s paternal grandmother, provided care for T.M. During that time, Father or T.M.’s grandmother made certain that T.M. was taken to school and to medical appointments, that he was current with and taking his prescribed medications, and that follow-up lab work was completed. Father also actively participated with T.M.’s therapist and behavioral technician. Importantly, the record showed that T.M. made great strides while living with Father, and that the two of them bonded. According to Father, he had no concerns about managing T.M.’s behaviors and he found T.M. to be responsive to

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“unsubstantiated,” or where the Department chose an “alternative response.” “Indicated” means “a finding that there is credible evidence, which has not been satisfactorily refuted, that abuse, neglect or sexual abuse did occur.” Md. Code Ann., Fam Law (“FL”) § 5-701(m) (2022 Supp.). “Unsubstantiated” means “a finding that there is an insufficient amount of evidence to support a finding of indicated or ruled out.” FL § 5-701(aa). “Alternative response” refers to a “component of the child protective services program that provides for a comprehensive assessment” including the risk of harm to the child, the family’s strengths and needs and the provision of or referral to services. FL § 5-706(a). While Mother has sought to minimize the seriousness of certain aspects of the investigations in these categories, they were nevertheless part of the child welfare history that the juvenile court had before it.

limits and structure. Father’s home was observed by the Department to be tidy and well kept.

The Department’s Court Report dated February 22, 2023 indicated that Father facilitated “frequent contact between [T.M.] and [Mother], allowing her liberal but supervised contact with T.M. in their home. In that same report, however, the Department expressed “ongoing concerns that if [T.M. were] to return to his mother’s care he would return to a dirty and chaotic environment with physical restraints, threats, and verbal abuse.” It was the Department’s recommendation that custody and guardianship of T.M. be granted to Father.

### **Adjudication and Disposition**

An adjudication hearing was held on the amended CINA petition on March 10, 2023. At that hearing, the juvenile court found “that the allegations in the CINA petition [were] proven by a preponderance of the evidence” (as the parties agreed they could be) and that all the facts as alleged in the amended petition dated March 10, 2023 were sustained. The court made detailed findings about “the allegations of abuse, neglect, or harm [which] all occurred while in the mother’s custody.” The court noted, but discounted Mother’s claim that Father had little to no involvement with the child prior to the sheltering, observing that since that time “there has been involvement by the father with the assistance of the mother to make sure that the father is able to have the child’s needs met.” The court found evidence that Father “was willing and able to provide proper care for the child . . . .” Moreover, the court found that father [was] able to provide a stable home and that the child ha[d] not been harmed in the father’s care.”

Elaborating, the Court stated:

Again, the court finds the child has a diagnosis of autism, is nonverbal, and unable to self-report harm or neglect.... that there have been ongoing concerns of physical abuse that were sustained by the mother ... that there have been multiple, unexplained injuries ... that [there] are pending charges for an assault by a sibling on the child ... that there has been an extensive history of concerns with the department in the mother’s care including this child and other children born to the mother ... that there are allegations of abuse or neglect that have been previously considered and either indicated or dismissed in the mother’s home with other members of persons related to the mother ... that there has been an indication for neglect of both [Mother] and [older sibling] ... And there has been what has been sustained pursuant to the petition what has been described as a vicious beating of the child. For those reasons, the court finds that not only has there been neglect by mother, but there’s been a failure to protect consistently by mother of T.M. ....

Continuing, the court explained that notwithstanding father’s prior limited involvement,

...since in father’s care as a temporary placement until today and the date of the hearing, the child is doing well, the father is engaged with schooling and therapy... the father has attempted to co-parent with the mother whom father agrees has been somehow helpful in getting him, as he stated, to a starting point and that the court finds that the school reports the child’s behavior, appearance, and hygiene have improved greatly [in] the home of the father and the father is able to protect the child and is fit and proper parent at this time to parent the child and he has a proper home. He is employed. And, he has the assistance of another adult in the home, which is the paternal grandmother, which is able to assist and care for the child.

Reiterating that “there were no allegations of abuse or harm that were sustained against this father,” that he was “a fit and proper person,” that there were “grave concerns” about whether the child could be safe in the mother’s home,” and that it would be contrary

to T.M.’s welfare to be returned there, the court awarded sole legal and physical custody of the child to Father, finding that it was in T.M.’s best interest to do so. The court then determined pursuant to FL § 9-101 “that there [was] no further likelihood that abuse or neglect would occur with custody and visitation rights as articulated by this court.”<sup>6</sup>

As for visitation, the court stated that it “adopt[ed] the position of the child’s counsel, the department, and father’s counsel over the objection of mother”<sup>7</sup> and ordered that Mother would have a “right to reasonable visitation as determined by the parties and arranged by the parties at the approval of father who is the sole custodian.” The court then clarified its ruling as to visitation, stating that “again, father has sole discretion – I said by agreement of the parties, but it’s actually at the discretion of father for visitation.”

The juvenile court having determined that Father was willing and able to care for the child, T.M. was not deemed to be a child in need of assistance. Rather, pursuant to CJP § 3-819(e),<sup>8</sup> the court granted custody to Father and ordered the case closed, with the court’s jurisdiction terminated.

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<sup>6</sup> FL § 9-101(a) provides that “[i]n any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.” Under subpart (b), “[u]nless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.”

<sup>7</sup> The court had also noted Mother’s objection to the court ruling earlier in its discussion.

<sup>8</sup> Subsection (e) of 3-819 “provides a juvenile court with express authority to make an award of custody as between the child’s parents, if the statutory prerequisites are met, notwithstanding that the child (1) cannot be determined to be in need of assistance and (2)

This appeal followed.

### **Standard of Review**

“In child custody disputes, [including CINA proceedings,] Maryland appellate courts simultaneously apply three different levels of review.” *In re Shirley B.*, 419 Md. 1, 18 (2011). *First*, we review the juvenile court’s factual findings for clear error, *In re J.R.*, 246 Md. App. 707, 730 (2020), and we “do not disturb the juvenile court’s findings of fact unless they are clearly erroneous.” *In re C.E.*, 456 Md. 209, 216 (2017).<sup>9</sup> *Second*, “[w]hether the juvenile court erred as a matter of law is determined ‘without deference[.]’” *In re J.R.*, 246 Md. App. at 730-31. “[I]f an error is found, we then assess whether the error was harmless or if further proceedings are required to correct the mistake[.]” *Id.* at 731. “Finally, we give deference to the juvenile court’s ultimate decision to award custody to Father for abuse of discretion.” *In Re Yve S.*, 373 Md. 551, 586-87 (2003). “[A]n abuse of discretion exists ‘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

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therefore cannot be subject to ongoing court intervention.” *In Re T.K.*, 480 Md. 122, 136 (2022). If the juvenile court exercises its authority to award custody, pursuant to CJP 3-804(c)(1), the custody order “[r]emains in effect even ‘[a]fter the court terminates jurisdiction[.]’” 480 Md. at 136.

<sup>9</sup> “A [juvenile] court’s findings are ‘not clearly erroneous if there is competent or material evidence in the record to support the court’s conclusion.’” *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019) (quoting *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)). “In determining whether the [juvenile] court was clearly erroneous, this Court must ‘give due regard to [the juvenile court’s] opportunity to judge the credibility of the witnesses.’” *In re Joseph G.*, 94 Md. App. 343, 347 (1993) (quoting *In re Appeal No. 504*, 24 Md. App. 715, 723 (1975)).

principles.” *In re Andre J.*, 223 Md. App. 305, 323 (2015) (quoting *In re Yve S.*, 373 Md. at 583).

### **Discussion**

1. *The court did not err in granting custody to Father*

Mother acknowledges that she “did not dispute before the juvenile court that (1) the sustained petition findings could merit a CINA finding as to her and (2) father was an appropriate caretaker, authorizing the court to then decide whether to transfer custody under CJP § 3-819(e).” Appellant Br., p. 12. Rather, Mother claims that the court erred in its decision to grant Father sole legal and physical custody of T.M. before closing the case. In her view, neither of these determinations was in T.M.’s best interests because Father’s prior involvement with T.M. was limited and the juvenile court gave exaggerated weight to the child welfare history. *See* n.5, above.

The decision to award custody is one that is within the “sound discretion of the chancellor” to be made “according to the exigencies of each case.” *Davis v. Davis*, 280 Md. 199, 125 (1977). We find nothing clearly erroneous in the juvenile court’s factual findings here, particularly when the sustained facts underpinning the court’s decision were acknowledged by Appellant as facts that the Department could prove. Moreover, the court correctly applied the law and acted well within its discretion in awarding custody, both physical and legal, to Father. We will not disturb the juvenile court’s custody decision, which the evidence supported convincingly.

2. *The juvenile court improperly delegated its judicial authority when it granted father sole discretion for determining visitation*

Mother next argues that the juvenile court erred as a matter of law when it ordered that Mother’s “reasonable visitation” with T.M. was to be at Father’s sole discretion. Father did not address this issue. The Department argues (i) that the issue was not properly preserved for appellate review and (ii) even if it were preserved, the juvenile court did not abuse its discretion under the circumstances. Appellant has the better argument.

First, we find that the issue was adequately preserved. The court mentioned at least twice in its decision that its action was being taken over Mother’s objection. Under the circumstances this was sufficient to preserve the issue for our review. *See* n. 7, *supra*.

Turning next to the merits of Appellant’s argument, the Supreme Court of Maryland<sup>10</sup> has made clear that a juvenile court “may not delegate judicial authority to determine the visitation rights of parents to a non-judicial agency or person.” *In re Mark M.*, 365 Md. 687, 704 (2001) (citing *In re Justin D.*, 357 Md. 431, 447 (2000)); *see also In re Caya B.*, 153 Md. App. 63, 81 (2003). The question of whether the lower court’s order “constitutes an improper delegation of judicial authority to a non-judicial agency or person,” is one of law, “to be reviewed *de novo*.” *In re Mark M.*, 365 Md. at 704-05.

In *In re Justin D.*, 357 Md. 431 (2000), the Court found that the juvenile court’s order leaving it to the Department of Social Services to determine the appropriate number of the mother’s additional visits and the conditions for those visits was too broad,

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<sup>10</sup> At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. R. 1-101.1(a).

explaining that “the court may not delegate its responsibility to determine the minimal level of appropriate contact between the child and his or her parent or other guardian” and that the court must determine, “at least, the minimal amount of visitation that is appropriate . . . as well as any basic conditions that it believes, as a minimum, should be imposed.” *Id.* at 449-50.

The juvenile court’s order in *In re Mark M.*, 365 Md. 687 (2001) , also a CINA case, involved an order mandating that “[v]isitation will not occur until [the child’s] therapist recommends it.” *Id.* at 703. The Supreme Court found that this was an improper delegation of the court’s responsibility to make a determination under FL § 9-101(b) before granting visitation and that “[t]he court cannot delegate this determination to a non-judicial agency or an independent party.” *Id.* at 708.

In *In re Caya B.*, 153 Md. App. 63 (2003), a juvenile court granted custody and guardianship to the child’s maternal aunt and uncle and closed the case. *Id.* at 73. Regarding visitation, the court stated that “visitation could ‘be done in some unofficial way,’” *id.*, which essentially left the matter of visitation to the aunt and uncle. *See id.* at 81. Applying the principles established in *In re Justin D.* and *In re Mark M.*, this Court held that the juvenile court erred, reasoning:

Although the [juvenile] court was authorized to close the case absent a finding of good cause not to do so, the closure did not affect [the mother]’s parental rights. The [juvenile] court had discretion either to order formal visitation or to deny visitation as no longer appropriate. It did not have discretion to leave the matter in the hands of [the aunt and uncle].

*In re Caya B.*, 153 Md. App. at 81-82 (citation omitted).

In accord with the above-discussed cases, we hold that the court improperly delegated its authority to Father when it left the issue of Mother’s visitation to Father’s sole discretion. While visitation may have been working well during the pendency of the CINA case, once it determined that the case should be closed with custody granted to Father, the court was required to determine “at least, the minimal amount of visitation that is appropriate . . . as well as any basic conditions that it believe[d], as a minimum, should be imposed.” *In Re Justin D.*, 357 Md. at 449-50.

**Conclusion**

In conclusion, while we affirm the court’s award of custody to Father, we vacate the portion of the court’s Order that granted visitation to Mother at Father’s discretion. We remand the case for the juvenile court to review the issue of Mother’s visitation, including the imposition of any conditions on visitation which the juvenile court finds appropriate, consistent with this opinion.

**THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY ON THE ISSUE OF CUSTODY IS AFFIRMED. THE COURT’S VISITATION ORDER IS VACATED AND THE CASE IS REMANDED FOR RECONSIDERATION OF THAT ISSUE CONSISTENT WITH THIS OPINION. COSTS TO BE EVENLY DIVIDED BETWEEN THE PARTIES.**