Circuit Court for Cecil County
Case Nos. C-07-JV-18-39, 40, 41

CHILD ACCESS

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 364

September Term, 2021

IN RE: D.J., H.J., AND P.J.

Leahy,
Reed,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: November 5, 2021

In 2019, the Circuit Court for Cecil County, sitting as a juvenile court, modified the permanency plans for D.J. (born January 2006), H.J. (November 2007), and P.J. (March 2012) (collectively, the "Children"), from reunification to adoption by a non-relative. The parents, Mr. and Mrs. J., appealed. After we vacated and remanded all three orders, the juvenile court conducted further proceedings to address the factors specified in Maryland Code (1984, 2019 Repl. Vol.), Family Law Article ("FL"), § 5-525(f)(1) per our instructions. On April 1, 2021, the juvenile court issued a memorandum opinion and orders addressing the factors specified in FL § 5-525(f)(1) and modifying the permanency plan for D.J., H.J., and P.J., once again, from reunification to adoption by a non-relative.[1]

Mr. and Ms. J. appeal from the orders and present two issues for our review:

> "1. Whether the trial court's findings in support of changing the permanency plan from reunification to adoption by a non-relative were clearly erroneous.
>
> 2. Whether the trial court's findings related to the continued suspension of the parents' visitation with the subject minor children were clearly erroneous."

We hold that the juvenile court's findings in support of its decision to change the permanency plan were not clearly erroneous. Consistent with its statutory obligations, the juvenile court focused its determinations on the best interests of the Children and, as its detailed factual findings reflect, appropriately considered the requisite factors under FL

[1] The judge who conducted the proceedings on September 15, 2020 was unable to prepare a written memorandum and order due to medical issues. On January 29, 2021, the administrative judge for the Circuit Court of Cecil County assigned another judge to review the matter and issue the necessary orders.

§ 5-525(f)(1). Second, we conclude that the juvenile court's findings regarding continued suspension of visitation were not clearly erroneous. Accordingly, we affirm the judgments of the juvenile court.

BACKGROUND

We begin with the relevant facts and procedural background as recited in our prior unreported opinion, *In re D.J., H.J., and P.J.*, No. 1886, September Term 2019 (filed May 14, 2020) (*In re D.J., H.J., and P.J. I*):

> On February 26, 2018, the Cecil County Department of Social Services ("CCDSS") filed three separate Juvenile Petitions, stating that it had removed D.J., H.J., and P.J. from the home of their parents, Mr. and Mrs. J. According to its Emergency Shelter Care Report, at approximately 12:30 A.M. on February 22, 2018, police officers observed D.J., then a twelve-year-old boy, walking in the street. D.J. told the police he had been kidnapped from South Dakota and had been walking for six hours. The officers observed that although D.J. was wearing a long-sleeved shirt and sweatpants, he was not wearing shoes over his "wet and muddy" socks. D.J. provided the officers with minimal identifying information.
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> The report explained that, at 10:00 A.M., CCDSS determined D.J.'s identity, but that Cecil County Police had received no reports that he was missing. A Child Protective Services Assessor and a detective with the Maryland State Police then went to Mr. and Mrs. J.'s home and spoke with Mrs. J., who stated that D.J. was not missing, but instead was home sleeping in his bed. Mrs. J. did not appear concerned for D.J.'s welfare.
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> While at D.J.'s home, the investigators observed conditions which caused them concern. The first concern came when Mrs. J. showed the investigators D.J.'s "bed." The report described the bed as a '"box approximately 6 ½ by 4-5 ft, completely enclosed with plywood on three sides with a peg board top with holes approximately 1 cm each, the front of the box was enclosed with a green board with duct tape and Velcro." Mrs. J. explained that D.J. would enter the bed each night and she and her husband would close him inside.

Id. at 1-2. After discovering the plywood box in which D.J. was enclosed to sleep each night, the investigators turned to examine the living arrangements for D.J.'s ten-year-old sister, H.J.

> They observed that "she was sleeping in a master closet with a bed." The investigators interviewed H.J. and her younger sister P.J., who was nearly six years old at the time. While speaking with the J.s and the children at their home, the investigators developed concerns regarding "inappropriate discipline, inappropriate sleeping arrangements and withholding of food and schooling." For example, Mr. and Mrs. J. reported that D.J. only drank "shakes" made up of formula and water, and that he had to be force fed. H.J. and P.J. also disclosed that the children in the household would be confined to the bathroom as a form of punishment, and that they had scratched and defaced the walls of the bathroom during their punishment. The report also indicated that "[a]ll school-age children in the [J.] residence are home schooled adding to their vulnerability."

Id. at 2. On February 26, 2018, the Cecil County Department of Social Services ("CCDSS") filed separate CINA petitions for D.J., H.J., and P.J. The juvenile court held a shelter care hearing the next day and placed the three children in the custody of CCDSS. Following the shelter care hearing, the Harford County Department of Social Services ("HCDSS") took over management of the CINA case. On June 26, 2018, the court held an adjudication hearing:

> At this hearing, the parties agreed to submit on the facts contained in the CINA petitions and a HCDSS report dated June 15, 2018, although the J.s denied all allegations contained therein. The June 15, 2018 report explained that Mr. and Mrs. J. had adopted all three children, and further recounted troubling incidents regarding the J.s that the children revealed to Cecil County Protective Services and the Cecil County Child Advocacy Center. D.J. reported that he would be locked in the bathroom as punishment, and that there were times when he was forced to sleep in the tub in the bathroom. D.J. explained that he was also forced to sleep in a box that the J.s built, which was enclosed with plywood on three sides, a peg board top, and enclosed with a green board sealed with duct tape and Velcro.

> Additionally, H.J.'s bedroom was "the closet in her parents' bedroom." There were no windows in H.J.'s room, and Mrs. J. controlled the light to the room with an application on her phone. Apparently, because H.J. frequently misbehaved, the J.s punished her by forcing her to spend most of the day in her room. The J.s would also lock H.J. in the bathroom as a form of punishment.
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> The report indicated that since the shelter care hearing on February 26, 2018, D.J. had been placed at St. Vincent's Villa in the Diagnostic Unit. Psychological evaluations indicated that D.J. met the criteria for autism, and also suffered from intellectual disability, mild ADHD, anxiety disorder, and post-traumatic stress disorder. When D.J. first arrived at St. Vincent's Villa, the J.s reported that D.J. "had numerous food allergies and issues eating." St. Vincent's Villa, however, indicated D.J. tested negative for all food allergies and was eating a regular diet without displaying any vomiting or intestinal issues.
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> Regarding H.J. and P.J., the June 15, 2018 report indicated that they had remained in placement with foster parents since their removal on February 23, 2018. Although the J.s claimed that both H.J. and P.J. suffered from numerous food allergies, both girls were "eating a normal diet with no major issues." Although H.J. "was very loud" at first, her foster parents indicated that her behaviors appeared normal for her age. Dr. Peggy Hullinger diagnosed H.J. with post-traumatic stress disorder with delayed expression, anxiety disorder, and intermittent explosive disorder. Dr. Hullinger diagnosed P.J. with post-traumatic stress disorder with delayed expression, and separation anxiety disorder. P.J. indicated that she wanted to return home to the J.s, and was initially reluctant to try new foods, believing herself to be allergic. After trying new foods, P.J. had no allergic reactions.
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> The June 15, 2018 report also indicated that all three children were now enrolled in school. Troublingly, the report reflected that a member of St. Vincent's Diagnostic Unit expressed doubt that D.J. actually received homeschooling prior to his arrival. Additionally, the report revealed that, prior to their removal, none of the children had been registered "with Cecil County Public Schools or an umbrella program[.]"

Id. at 3-5 (footnote omitted).

Pertinent to this appeal, the report indicated that, although HCDSS spoke with the J.s on "multiple occasions regarding those observations as well as concerns which led to

the children's removal from the home," the J.s "seem[ed] to lack insight into their circumstances and minimize[d] any concerns that are discussed." The report stated:

> The true concerns lie in the fact that both Mr. and Mrs. J[.] are educated and trained in dealing with children with special needs. Despite their education and training, however, they have exhibited very poor judgment in their parenting style, justify their actions, and fail to see why the decisions that they made demonstrate a complete lack of empathy. Their actions are all about "behavior control" and they explain them based on the "good of the others in the household", including the foster children that they used to have. Their presentation is one of rigidity and control.

At the hearing, the parties submitted on the facts contained in the CINA petitions and the report, although the J.s denied the allegations contained therein. *In re D.J., H.J., and P.J. I* at 5. HCDSS recommended a permanency plan of reunification. *Id.* The court determined that the Children were CINA and continued custody with HCDSS, while allowing the J.s supervised visitation. *Id.*

Criminal Indictment

On August 28, 2018, before the next review hearing, the "State's Attorney filed criminal charges against Mr. and Mrs. J. related to D.J. and H.J. The State ultimately charged Mr. J. with second-degree child abuse, second-degree assault, two counts of neglect, and two counts of contributing to rendering a CINA. Mrs. J. was charged with two counts of neglect, and two counts of contributing to rendering a CINA." *Id.*

December 18, 2018 Review Hearing

Although the next review hearing was scheduled for September 25, 2018, it was rescheduled twice, and ultimately took place on December 18, 2018. In preparation for the review hearing, the HCDSS prepared a report on September 17, 2018. The report

continued to express concerns that the parents "still seem[ed] to lack insight into their circumstances and minimize[d] any concerns that [we]re discussed." While the parents had visits with the Children, "their responses to their children are not always therapeutic."

In lieu of the September 25 hearing, the court interviewed the Children. As we summarized in *In re H.J., P.J., and D.J. I*:

> At the December 18 hearing, the children's attorney read into the record her notes from the September 25 interview. P.J. indicated that she was eating various kinds of foods, but offered little information regarding the CINA and reunification proceedings. H.J. stated that she was enjoying school, making friends, and participating in cheerleading. She stated that she was attending supervised visits with the J.s and preferred them to remain that way for the time being. She admitted that while part of her wanted to stay with her new foster family, part of her also wanted to return home to the J.s. D.J. indicated that he was still at St. Vincent's Villa in the Diagnostic Unit. D.J. was eating various foods without issue, and was participating in visits with his sisters and the J.s, which were "going good."

Id. at 5-6. Another HCDSS report indicated that D.J. was discharged into foster care and that the J.s "criminal charges [] need to be addressed prior to any reunification."

At the hearing on December 18, 2018, the juvenile court heard testimony from Mr. and Mrs. J. Mr. J. described behavioral issues with each of his children and described that he was "not abusing or neglecting these kids, but we weren't at our best." While Mr. J. testified that the J.s "have done everything [HCDSS has] asked" and "have given everything we could," he did not see HCDSS "giving us the tools and rights to get our kids back."

Mrs. J. echoed that she and her husband "ha[d] done everything [HCDSS] asked us to do in spades." Regarding the contention that the Mr. and Mrs. J did not show empathy,

Mrs. J. testified "I don't think anything can be further from the truth" and that she understood "all of [her Children's] needs." Mrs. J. testified that the problems identified by CCDSS and HCDSS were either common practices among children with autism, suggested by others and blessed by doctors, or only tried for a brief period of time.

The adult children of Mr. and Mrs. J as well as the babysitter testified that, among other things, that the J.s were a close-knit family. They related the behavioral issues of H.J., D.J., and P.J., and their parents' efforts to treat them.

Michell Sayre—H.J.'s therapist—testified as a rebuttal witness for HCDSS. She explained that she was working with H.J. to allow her to express her emotions. Ms. Sayre related that H.J. viewed "herself as bad and evil initially" and that Ms. Sayre was working with her to shift her focus "from an internal locus of control that 'I'm bad' to externally to 'Some things bad happened to me.'" She testified that H.J. "needs an environment where her feelings can be acknowledged and validated" and was concerned that Mr. and Mrs. J.'s testimony was "perhaps a minimization of the impact" of their actions.

At the conclusion of the December 18, 2018 hearing, the juvenile court concluded "[t]he parents have done their training in Nurturing Parenting, but [the court] still [did not] think they have an understanding, nor empathy of the trauma that [H.J] and [D.J.] ha[d] been subjected to." The court maintained the permanency plan as reunification but continued custody with HCDSS.

June 18, 2019 Review Hearing

As we summarized in our prior opinion,

> The next review hearing occurred on June 18, 2019, where the court focused on visitation. The court again spoke with the children. H.J., then eleven years old, indicated that she was generally happy in her new foster home, and that she did not want to return home. She explained that she liked being allowed to go camping, that she could now eat whatever she wanted without getting sick, and that she enjoyed playing outside in the yard at her foster home—things she could not do at the J. residence. H.J. concluded her interview by indicating that she wanted the juvenile court to decide whether to continue with supervised visits.
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> The court next interviewed P.J., who was then seven years old. P.J. indicated that things were "good" at her foster home, and that her supervised visits with the J.s were also going "good."
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> Lastly, the court interviewed D.J., who was thirteen years old at the time. D.J. stated that he was attending school, which he enjoyed. Regarding the J.s, he indicated that he was not attending supervised visits because his school doctor understood that D.J. was scared of them. D.J. stated that he "[didn't] want to see their faces no more." D.J. told the juvenile court that he wanted to continue living with his "new mom[,]" because he felt safe there. He appreciated there being no box on his bed, and that he was allowed to walk around, play with toys, play video games, and go outside and go on vacation. D.J. told the court, "I just want my parents [the J.s] to get out of my life[.]" Finally, D.J. told the court "make sure [H.J. and P.J.] don't go to the visits no more. They can't go to those visits. Yeah, that's everything."

Id. at 6-7. After consulting with the children, the juvenile court heard testimony from each of the Children's therapists.

Dr. Kaufman, a professor at the Kennedy Krieger Institute, Center for Child and Family Traumatic Stress at Johns Hopkins University, testified as an expert in the fields of "clinical psychology as well as child abuse and neglect." Dr. Kaufman performed a diagnostic assessment of D.J. and derived a recommended treatment plan. According to Dr. Kaufman, D.J. "met diagnostic criteria for post-traumatic stress disorder secondary to his experiences that he reported when he was living with his adopted family." His

"recurrent thoughts of the different things that happened" while he was living with the J.s affected his concentration and ability to trust people and feel safe.

Among the experiences that D.J. related was sleeping in a box that he referred to as a "coffin," physical abuse, and food deprivation. However, as Dr. Kaufman testified, "D[.J.] does not have food allergies, and there was no medical reason for denying him those foods; and the food deprivation was a source of traumatic stress for him[.]" Dr. Kaufman testified that these experiences would be a reasonable basis for post-traumatic stress disorder and that she received "corroboration that these were investigated and there was external evidence for the things that he was reporting." Dr. Kaufman further indicated that D.J. did not meet "diagnostic criteria for autism spectrum disorder." D.J. articulated to Dr. Kaufman that he was "adamant about not wanting to have any current contact or future contact" with the J.s out of concern for his "safety." Dr. Kaufman could not "imagine any context in which it would make sense for" D.J. to return and live with his parents. During cross-examination, Dr. Kaufman opined that "if there's criminal convictions . . . I think that we move forward with a permanency plan which is towards adoption," that visitation should be suspended, and that "[i]t would be [] detrimental for him to see either of [his] adoptive parents at this time."

Next, Ms. Sayre, a licensed counselor and clinical social worker, testified as an expert in social work with an emphasis on abused and neglected children. Ms. Sayre had been seeing H.J. for individual therapy since August 2018. Ms. Sayre opined that H.J. met the criteria for post-traumatic stress disorder and "had great difficulty" understanding her

feelings. Ms. Sayre explained "[i]f children live in a home where [their] feelings are not . . . acknowledged and validated, if they're not accepted to people around them, then the child cannot internalize those [feelings]." H.J. reported to Ms. Sayre that she "had been told that she was bad, and that the consequences were that she was placed in this closet, her bedroom, all day." H.J. relayed to Ms. Sayre that she would not be allowed out and would "sometimes scratch at the bottom of the floor and yell and scream."

In contrast to the alleged tantrums that resulted in this punishment, Ms. Sayre testified that "since working with her [] last August[,] there have been no problematic issues, behavioral issues reported, either in the foster home or reports from school. She's excelling in school, in fact. . . [S]he's doing remarkably well." By "the end of May," H.J. reported that she did not want to visit her parents or return to their home. Ms. Sayre opined that she could not "render an opinion on custody" but "would have concerns" to ensure that the Children's "experiences in the home and their feelings in the home can be acknowledged, validated, and we need to make sure these kids are safe before they go home." Regarding family therapy, Ms. Sayre explained that, if the parents could not acknowledge that they had traumatized their Children, it would indicate that family therapy "might not be a safe place for these children" and, without this remorse, would be "very concerning."

Finally, Carrie Reichart, a licensed professional counselor, testified as an expert in the area of counseling. The J. family was referred to her for family therapy. She testified that she had been working with the Children to "feel safe enough to express their feelings

in front of others, and not only express it but understand that others have feelings as well, and to accept other's feelings." Ms. Reichart opined that the Children were not "in a place where they feel safe enough to express their feelings about what has happened to them[.]"

During a session with the parents, Mrs. J. stated "that D[.J.] had grandiose thoughts, and H[.J.] has a history of lying." In Ms. Reichart's opinion, she did not find these statements "very validating and acknowledging of what they've gone through and how they feel about what they've gone through." By contrast, Ms. Reichart did not have reason to doubt the Children's concerns. According to Ms. Reichart, Mr. and Mrs. J. never indicated that it could have been traumatic for H.J. to be locked in a dark room for an extended period of time.

After the three therapists testified, Mr. and Mrs. J. called Melissa Wetters, a social worked at HCDSS. She testified regarding the contents of the HCDSS's report. Ms. Wetters testified to an incident in which D.J. did not want to see his parents and indicated that D.J. explained that he "did not want to be alone with his dad." Ms. Wetters testified that she "would have serious concerns about any unsupervised contact at this time" because "there are serious allegations" and a "pending criminal case where [the Children] are witnesses." Ms. Wetters further noted that she had no assurances that Mr. and Mrs. J. would alter their behavior if the Children returned to their care because they did not think that they did anything wrong.

Mr. J. then testified that visitation was generally going well and that he wanted his Children returned. According to Mr. J., the State had "nothing in this criminal [case]" and

"very little substantial evidence, any evidence at all to say that we did this." While Mr. J. clarified that "[w]e never said we didn't do anything to these kids," he attributed various factors, resulting in a "perfect storm" in which the Children were "traumatized." Mr. J. highlighted that he and his wife had done everything asked by HCDSS.

Due to time constraints, the June 18, 2019 visitation hearing continued on July 2, 2019 with Mr. J.'s cross-examination. Next, Mrs. J. testified. According to Mrs. J., she and her husband performed everything asked by HCDSS and scored very high on a parenting test, which provided "quantitative data as to our ability to handle, do, understand, implement, empathy-based parenting[.]" Mrs. J. explained that she had already had "lot of the basics" of parenting and that the parenting class was a reiteration of things that Mr. and Mrs. J. already knew.

Mrs. J. testified that D.J. was a "behavioral vomiter" and used vomiting "as a manipulation behavior tool." Forcing him to eat in the bathtub was, therefore, a disciplinary action and "an action to protect the sanitary environment for the entire family." Mrs. J. asserted that none of the Children were ever abused in her home. Regarding D.J.'s statement to Dr. Kaufman that he did not want to visit Mr. and Mrs. J., Mrs. J. expressed her concern "that no attempts are being made to work with his anxiety and deal with the anxieties so that he understands that we love him, that we care for him, that we have always been there to help him and support him. It raises concerns that instead of helping him with his anxiety, that the answer is for him not to visit us at all."

The court terminated supervised visitation at the conclusion of the July 2 hearing, pending resolution of Mr. and Mrs. J.'s criminal trials.

Criminal Convictions

"On October 11, 2019, Mr. and Mrs. J. were each convicted of: 1) two counts of neglect of a minor (D.J. and H.J.); and 2) two counts of rendering a CINA (D.J. and H.J.)." *In re D.J., H.J., and P.J. I* at 8. Mr. and Mrs. J. received executed sentences of six months in jail. Both Mr. and Mrs. J. appealed their convictions, contending, among other things, that the evidence was insufficient. This Court affirmed their convictions in an unreported opinion in February 2021.

October 22, 2019 Permanency Plan Review Hearing

Before the hearing, HCDSS submitted a report, dated October 8, 2019. As we summarized in our prior opinion:

> This report recounted the history of the case, and explained the efforts the J.s had made to have their children returned. These efforts included removing the box from the top of D.J.'s bed, and creating a new bedroom for H.J. in the basement. The report also indicated that HCDSS had provided the J.s with the opportunity to participate in a Nurturing Parenting program, which the J.s accepted. The initial screenings for this program demonstrated that while the J.s possessed "knowledge of empathy based parenting[. . .] their need for control, especially in chaotic situations prevented them from demonstrating the skills." The report further noted that the children had been out of the J.s' home for nineteen months, and that HCDSS did "not believe that [D.J., H.J., and P.J. could] safely return to the care of" the J.s.

Id. at 8 (alterations in original). Next, we summarized the testimony provided at the hearing:

> [T]he J.s called Shelly Wilson, a court-appointed special advocate. Ms. Wilson testified that prior to the termination of supervised visits, the J.s

> "[n]ever missed a visit except maybe a snow storm and I think the flu at one point." She further testified that the parents had complied with all service agreements required of them, and that despite recommendations for family therapy sessions, HCDSS had not allowed any to take place. Ms. Wilson indicated that D.J.'s foster mother wished to adopt him, but that H.J. and P.J.'s foster parents were not willing to adopt them.
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> Mrs. J. testified next. She stated that she and Mr. J. had "done everything [they had] been asked to do" by HCDSS. She further denied minimizing the seriousness of the allegations against her and her husband, but admitted overreacting to D.J.'s eating issues. On cross-examination, Mrs. J. struggled to concede that D.J.'s bed was not beneficial to him, but admitted she had overreacted by requiring him to eat in the bathtub. Regarding the fact she would strap D.J. into a chair to eat, Mrs. J. admitted that it "was not the best parenting decision." She further testified that she learned to lock H.J. in the closet from a parenting class, but denied locking her in the closet for twenty-four hours at a time despite H.J. reporting this to multiple people. Mrs. J. also denied locking D.J. in the bathroom, and when confronted with D.J.'s report to numerous people that she locked him in the bathroom to the point that he was scratching holes in the door, Mrs. J. dismissed the statements as "false memory problems."
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> Mr. J. also testified at the hearing. He admitted that he and his wife "made a lot of mistakes." He explained that they should have asked for more help, that they "were in over [their] head[s]," and admitted that they "traumatized these kids." Although he conceded to making "bad mistakes" and wrong choices," Mr. J. insisted that they never tried to intentionally hurt the children.

Id. at 8-9 (alterations in original).

Modification of Permanency Plan

At the conclusion of the hearing, the juvenile court modified the permanency plan from reunification to adoption by a non-relative. In explaining its reasoning from the bench, the juvenile court focused on the best interests of the Children and their ability to be safe in the care of their parents. The court concluded that the Children had suffered "severe harm" and that "they [should] stay in care [of HCDSS] and do the best to heal."

On November 1, 2019, the juvenile court issued three substantively identical Permanency Planning/Review Findings and Orders consistent with its bench decision, and Mr. and Mrs. J. timely noted an appeal.

First Appeal

In our earlier opinion in *In re: D.J., H.J., and P.J. I*, filed on May 14, 2020, we held "that the court failed to properly consider mandatory statutory factors in rendering its decision to modify the permanency plan." *Id.* at 1. Because the court failed to make "these requisite findings and considerations," we could not determine "whether the court erred in modifying the [permanency] plan" and, therefore, vacated the permanency plan orders and remanded for the court to consider the necessary factors.

As we explained, neither the court's explanation from the bench nor its written order made explicit findings related to FL § 5-525(f)(1). *Id.* at 14-15. Specifically,

> Although the court thoroughly considered FL § 5-525(f)(i)—the child's ability to be safe and healthy in the home of the child's parent--the court failed to even mention most of the other statutory factors. For instance, FL § 5-525(f)(iii) requires the court to consider "the child's emotional attachment to the child's current caregiver and the caregiver's family," but the court never addressed the children's attachment to their respective caregivers. Likewise, the court failed to identify "the length of time the child has resided with the current caregiver" as required by FL § 5-525(f)(iv). Here, D.J. had initially been placed at St. Vincent's Villa and then transferred to his current foster placement, yet the court made no finding in that regard (nor did the court expressly consider the length of time H.J. and P.J. had been with their caregivers). In weighing the statutory factors, FL § 5-525(f)(v) mandates consideration of "the potential emotional, developmental, and educational harm to the child if moved from the child's current placement[,]" but we see no acknowledgement of this factor by the court. To be sure, the court adequately addressed the inability of the children to return to their parents' home, *see* FL§ 5-525(f)(i), but FL § 5-525 (f)(v) requires the court to examine the potential harm to the children if moved

> from their current placements. And the court made no mention of "the potential harm to the child by remaining in State custody for an excessive period of time" as required by FL § 5-525(f)(vi). As to this factor, the record reflects that D.J.'s caregiver expressed a desire to adopt him, but H.J. and P.J.'s caregivers did not want to adopt them. Thus, because it is reasonable to conclude that H.J. and P.J. would likely be in State custody for a longer period of time, the court should have articulated the potential harm, if any, which may result from an extended State placement. Finally, as to FL § 5-525(f)(ii), "the child's attachment and emotional ties to the child's natural parents and siblings[,]" we recognize that the court was aware that the older children, D.J. and H.J., did not want to return to their parents' home. Thus, we can infer that the children's "attachment and emotional ties" to their parents was not significant. Nevertheless, the court never addressed the children's emotional ties to one another, a factor that has some relevance in this case because all three children are not in the same foster home.

Id. at 15-16 (alterations in original). We further recommended that the court "may make its consideration" of the factors in Maryland Code, (1973, 2013 Repl. Vol., 2019 Supp.), Courts and Judicial Proceedings Article ("CJP"), § 3-823(h)(2) "more explicit" and ensure that the court evaluate "the relevant statutory factors as to each child to the extent that a child's circumstances may be unique to his or her siblings." *Id.* at 18 n.7.

Proceedings on Remand

Motion to Reinstate Visitation

On June 19, 2020, Mr. and Mrs. J. moved to reinstate visitation. In their motion, they averred that "[i]t serves the best interests of the minor children in this matter, as well as the goal of reunification, that visitation be reinstated." According to Mr. and Mrs. J., the testimony before the court "related only to D.J. and was premised on incomplete information." Also, the J.s argued that HCDSS did not comply with various COMAR

regulations requiring that all information be used in family planning and that notice must be given to a child's parents before evaluative care.

In response, on July 2, 2020, counsel for the Children broadly denied Mr. and Mrs. J. 's contentions. Counsel averred that the court "found that the psychological trauma the minor children endured necessitated the suspension of visitation" and that it was "in the [b]est [i]nterest of the minor children." Likewise, HCDSS denied the majority of Mr. and Mrs. J.'s contentions and asserted that "the therapists for the minor children recommended no contact with the parents" and that "sufficient evidence was presented to indicate that reunification is not in the children's best interests."

September 15, 2020 Hearing

On September 15, 2020, the juvenile court conducted further proceedings as directed in our May 14, 2020 opinion. Prior to this hearing, HCDSS submitted a report on September 4, 2020. The report recounted that, for the crimes against D.J., Mr. and Mrs. J. were both sentenced to three years in jail, all but six months suspended; and for their crimes against H.J. they were sentenced to one year in jail, all but three months suspended, and three years' supervised probation. Mrs. J. was incarcerated until March, when she was "released due to her underlying health conditions and COVID 19." Mr. J. was incarcerated until May of 2020. At the parents' request, HCDSS investigated family therapy again, but noted that "[a]ll three children were no longer in individual therapy as they were doing well and were not in need of it." The report concluded: "The children have now been in out of

home care for 31 months. At this time, the [HCDSS] continues to recommend that the permanency plan be changed to Adoption."

At the outset of the hearing, the court noted that before it for consideration was the permanency plan on remand from this Court and the motion to reinstate visitation. Counsel for HCDSS requested that the court "simply make those findings [required by FL § 5-525] based on the evidence that has already been presented." Counsel reasoned that the court had "heard numerous testimony, which has included the J.[s] on more than one occasion, . . . every adult J[.] child on more than one occasion, [and] therapists for the children on at least two occasions[.]" Counsel then recited the evidence in support of each factor.

Counsel for the Children agreed and told the judge that she "had the benefit of presiding over [the case] since the shelter care hearing, so you could rely on court reports, your extensive notes. All of these observations that are unique to all of these hearings, you have that documented." Counsel for the Children noted that D.J. and H.J. both have considered judgment but P.J. does not. Counsel averred that "[b]ecause of the harm done to H[.J.] and D[.J.], obviously the [c]ourt found that it was appropriate to remove all the children." Counsel summarized that the Children "clearly benefited from . . . not having visitation with the J[.s]. They have benefited from having a home that they are secure in, safe in. They have benefitted from knowing that they don't have a fear of not being allowed to eat certain foods, or being told they couldn't eat a food, or being punished for something that they may or may not have done." Counsel for the Children then argued that the J.s

have always asserted that the Children were problematic and "never changed their feelings about what happened" or "took responsibility."

Counsel for the J.s argued that, after the case was remanded, the HCDSS did not reinstitute services or otherwise work towards reunification. He then asserted that "[t]he timeline of this case cause[d] me concern" because HCDSS initially only sought to suspend visitation with D.J. However, according to counsel, the therapist was "not provided with all of the data that she would need to make [a] diagnoses." Counsel claimed that the parents had "been hammered repeatedly about failing to show empathy, failing to take ownership of their actions, failing to understand the effect of what happened on these children," despite never being "afforded an opportunity to sit in a room with their children in a therapeutic environment and air all of this out." According to counsel, the HCDSS "woefully withheld" information from an expert witness and then "relied on her conclusion to shut down any contact" between the parents and their children.

Counsel for the J.s then asserted that D.J. was "an unreliable narrator," a "fabulist," and that the jury in their criminal trial did not believe him. Because D.J. "presents with a host of complications," counsel argued that he did not have sufficient capacity "to be able to discern his own best interest to such a degree that he would be deemed to have considered judgment."

While counsel asserted that the parents knew that they had made mistakes, he surmised that "[t]he goal this entire time has been to get these kids away from the J[.s], to

get them out of the house, and to get them adopted to somebody else." Counsel contended the parents "have done absolutely everything that was asked of them."

In response to the parents' contention that the Court was being asked to make a determination without all of the facts, HCDSS counsel stated that the only fact missing was family therapy:

> But again, we have the recommendations of every therapist that's involved that family therapy was not in the best interest of the children. So the logic, as I follow it, is we just - - we either find someone who says that it is, or we completely disregard the opinion of the experts and we force these children into family therapy, which their therapists have repeated over and over would traumatize them.

At the conclusion of the argument, the court stated that it would issue an order for each child. Unfortunately, because of medical issues, the judge who presided over the September 15, 2020 remand hearing as well as the previous hearings was unable to prepare a written opinion. By administrative order dated January 28, 2021, another judge was appointed to review and issue an opinion and orders in these CINA cases.

Memorandum Opinion

On April 1, 2021, the juvenile court entered a memorandum opinion. After summarizing the facts and the requisite legal standards, the court then examined the factors set forth in FL § 5-525(f)(1). Regarding the first factor, the court concluded that the Children could not "be safe and healthy in the home of Mr. and Mrs. J." The court noted that "a jury determined that Mr. J. and Mrs. J. were guilty of criminal child neglect and rendering children in need of assistance due to their treatment of D.J. and H.J." While the court found that the parents "have made significant changes in the home such as removing

the sides and top of D.J.'s bed and providing a space for H.J. to sleep in the basement" and "entered and completed a Nurturing Parent program," the "overarching question is the risk to the children if returned to the home of the J.s in terms of their safety and health." The court recognized the Children's diagnoses for anxiety and post-traumatic stress disorder and found that "[a]ll of [the Children's] therapists have recommended continued commitment of all three children with the Department of Social Services *with no contact with Mr. and Mrs. J*." (Emphasis in original). The juvenile court referenced potential retaliation against D.J. and H.J.:

> In the course of the criminal proceedings, D .J. and H.J. were called to testify in the trial of their parents on October 9, 2019. Both were extensively cross-examined by counsel for the parents and were accused of not being truthful about the way they were treated by their parents. The Parents have accused D.J. of being dishonest and maintain that he made up all the things he has said about what they did to him. If returned to the home of Mr. and Mrs. J. there is a substantial likelihood that there will be retaliation against D.J. and H.J. for providing testimony that led to the jury conviction of the Mr. J. and Mrs. J. and, of course, their subsequent jail sentences for offenses against the children.

The court concluded that "when safety and health concerns are measured objectively against the conduct of the parents that led to the CINA determinations in [j]uvenile [c]ourt and the guilty verdicts of criminal child neglect, it must be reasonably concluded that the potential risk is far too great to return the children to the home of Mr. and Mrs. J."

Regarding the second factor, the court noted that the Children had "had no contact with the parents for over 20 months." Concerning D.J., the court noted that he "feels safe" with his foster parent and "clearly has no wish to ever see Mr. and Mrs. J. again." H.J. has "made it clear that she wants to be placed individually and does not wish placement with

her sister, P.J. As with D.J., she has also made it clear that she does not want to live with Mr. and Mrs. J., and has no wish to see them." Concerning P.J., the juvenile court noted that"[i[t is not entirely clear whether she holds further attachment or emotional ties to Mr. and Mrs. J." The court concluded "[i]t is evident that D.J. and H.J. have considered judgment and hold no attachment or emotional ties to Mr. J. and Mrs. J., and only minimal ties to their siblings."

Regarding the third factor, the court found that D.J. was "firmly bonded" to his current caregiver. H.J. also "respects and loves her new family and is very attached emotionally to" them. The court noted that P.J. seems to be adjusting and is working on some behavioral issues. While the court found that P.J. was doing well, "[i]t will be important to determine how well P.J. is progressing as well as the status of her relationship with Mrs. L[.] at the next review hearing."

Regarding factor four, the court noted:

> As of the last hearing, D.J. had been with [his caregiver] for over two years. He is doing extremely well as stated above. Also, P .J. is with [her caregiver] and has been there since July 17, 2020 and is continuing to adjust. Likewise, H.J. has resided with [her caregiver] since July 2020 and is bonding and doing well there.

Regarding factor five, the court concluded that the Children wish to be adopted and are adjusting well in their current placements. "Any change in the current placement of the three children at this point would be extremely harmful to them emotionally, developmentally and educationally."

Finally, the court found "the circumstances surrounding D.J., H.J. and P.J. have warranted their remaining" in the custody of HCDSS. The court referenced the appellate process and the outcome of the appeal of the parent's criminal convictions, as well as the "medical disability of the judge, who has been with these children from the outset," as sources of delay. Regardless, the delay "has not been harmful to the children" but resulted in placements which are "clearly in the best interests" of the Children.

After considering these factors "as well as the overarching issue of the best interest of the children, it is the decision of the [c]ourt that the permanency plan for D.J., H.J., and P.J. shall be changed from reunification to adoption by a non-relative."

In addition, the court denied visitation, determining that "any visitation should be professionally 'therapeutically-based' and, at this point, no therapist has suggested that family therapy or visitation would be appropriate."

Mr. and Mrs. J. noted a timely appeal.

STANDARD OF REVIEW

Maryland courts utilize "three different but interrelated standards of review" in child custody disputes:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of Rule 8-131(c) applies. Second, if it appears that the court erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the court founded upon some legal principles and based upon factual findings that are not clearly erroneous, the court's decision should be disturbed only if there has been a clear abuse of discretion.

In re Adoption/Guardianship of C.E. (*In re C.E.*), 464 Md. 26, 47 (2019) (brackets omitted) (quoting *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 100 (2010)). The Court of Appeals explained, in *In re Yve S.*, the deference that we accord the juvenile court:

> It is within the sound discretion of the [juvenile court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion. Such broad discretion is vested in the [juvenile court] because only [the juvenile judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [the juvenile judge] is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.

373 Md. 551, 585-86 (2003) (quoting *Davis v. Davis*, 280 Md. 119, 125 (1977)). A juvenile court's decision concerning a permanency plan is reviewed for an abuse of discretion. *In re Ashley S.*, 431 Md. 678, 704 (2013). Our review of the juvenile court's determination of a plan is, correspondingly, "limited." *Id.* at 715. "Because the overarching consideration in approving a permanency plan is the best interests of the child, we examine the juvenile court's decisions to see whether its determination of the child's best interests was 'beyond the fringe' of what is 'minimally acceptable.'" *Id.* (quoting *In re Yve S.*, 373 Md. at 584). Accordingly, because custody and visitation decisions "generally lie[] within the sound discretion of the trial judge," they are "rarely disturbed on appeal." *In re Adoption/Guardianship of Rashawn H.* (*Rashawn H.*), 402 Md. 477, 495 (2007).

DISCUSSION

I.

Permanency Plan

A. Parties' Contentions

Mr. and Mrs. J. contend that the "trial court's factual findings regarding the change in the permanency plan are unsupported by the record." While Mr. and Mrs. J. concede that the "court's memorandum opinion certainly addresses the statutory factors," they aver that the court's findings are not supported by substantial and credible evidence and, consequently, are "clearly erroneous." Specifically, according to Mr. and Mrs. J., the court's memorandum impermissibly references their convictions and the testimony adduced at their criminal trial because the transcripts were not offered into evidence. They assert that findings predicated on the criminal trial constitute "clear error, as there is no 'credible evidence in the record' . . . from which such findings could derive."

Turning to the statutory factors of FL § 5-525, Mr. and Mrs. J. aver that the children could be safe in their home because Mr. and Mrs. J. had made "significant changes in the home such as removing the sides and top of D.J.'s bed and providing space for H.J. to sleep in the basement." They assert that there is no support for the court's conclusion that there is a risk of retaliation if the children are returned to their care. According to Mr. and Mrs. J, there also is no support for the court's finding that the children's therapists recommend no contact with them. Finally, they contend that there is no evidence that D.J. had considered judgment or that he is doing well in his current placement.

In response, HCDSS asserts that "the juvenile court acted in the children's best interests and within its discretion when it changed their permanency plans." According to HCDSS, "[i]n light of [Mr. and Mrs. J's] inability to admit the significant trauma they inflicted upon the children, the juvenile court revised the children's permanency plans in accordance with their best interests." Regarding Mr. and Mrs. J's contention that the court impermissibly relied on evidence from their criminal case, HCDSS asserts that they invited the court to consider this evidence and waived their challenge. Further, the "juvenile court did not err in taking judicial notice of its own records" and, in any event, because the "CINA record contained similar evidence as that in the criminal trial, . . . any claimed error [was] harmless." According to HCDSS, the "juvenile court made proper findings based on the juvenile record" which included testimony of confinement for H.J. and D.J. for long periods of time as punishment, reports of Mr. J. hitting the children with objects and his hands, and that Mr. J.'s depression and burdens created the '"perfect storm of bad things.'"

HCDSS avers that the children cannot be returned to Mr. and Mrs. J. and that contact with them would be harmful. HCDSS contends that "prior testimony of the therapists supports the court's finding" and that "the children's need for therapy ceased when visits with the J.s stopped." Further, "[g]iven [Mr. and Mrs. J's] past conduct and failure to recognize the significant harm and trauma they caused with their punishments, the juvenile court properly inferred that they would continue to punish the children for what they perceived to be lies."

The Children, through counsel, echo HCDSS's contentions and aver that the "trial court's factual findings regarding the change in permanency plan were fully supported by an abundance of evidence contained within the record." In addition to raising similar averments, the Children argue that she "conducted a full investigation and an assessment as to considered judgment [of D.J. and H.J.] and stated her findings on the record[.]" Counsel for the Children concludes:

> [Mr. and Mrs. J.] locked a special needs child in a coffin-bed, on a daily basis, with no air circulation other than the holes in the pegboard which completely enclosed the top. This act and the other acts of neglect including seclusion and food deprivation were egregious to say the least and resulted in the [J.s] being criminally convicted. However, as horrendous as the actions of the [J.s] were, their actions alone are not the only basis for a change in permanency; rather, it is their complete lack of understanding and accountability as to how their harmful actions impacted these children's well-being that makes reunification not a viable permanency plan.

B. Parents' Fundamental Right and the Family Law Scheme

Parents have a fundamental right, guaranteed by the Fourteenth Amendment to the United Stated Constitution, "to raise their children free from undue and unwarranted interference on the part of the State[.]" *Rashawn H.*, 402 Md. at 495. Consistent with this principle, a parent's liberty interest in raising a child "cannot be taken away unless clearly justified." *In re Yve S.*, 373 Md. at 566. The Court of Appeals has explained, however, that this right is not absolute:

> That fundamental interest, however, is not absolute and does not exclude other important considerations. Pursuant to the doctrine of *parens patriae*, the State of Maryland has an interest in caring for those, such as minors, who cannot care for themselves. We have held 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." That which will best promote the

> child's welfare becomes particularly consequential where the interests of a child are in jeopardy[.]

In re Mark M., 365 Md. 687, 705-06 (2001) (citations omitted). Maryland courts harmonize the parents' fundamental rights to raise their own children with the children's best-interest standard through application of the "substantive presumption . . . of law and fact [ ] that it is in the best interest of children to remain in the care and custody of their parents." *Rashawn H.*, 402 Md. at 495. The State can rebut this presumption when "weighty circumstances" dictate otherwise. *In re Ashley S.*, 431 Md. at 687.

"[A] permanency plan is intended to 'set the tone for the parties and the court' by providing 'the goal toward which [they] are committed to work.'" *In re D.M.*, 250 Md. App. 541, __, 252 A.3d 1, 12 (2021) (cleaned up) (quoting *In re Damon M.*, 362 Md. 429, 436 (2001)). "In this regard, the permanency plan is an integral part of the statutory scheme designed to expedite the movement of Maryland's children from foster care to a permanent living, and hopefully, family arrangement."' *Id.* (quoting *In re Adoption of Jayden G.*, 433 Md. 50, 55 (2013)).

In *In re Ashley S.*, the Court of Appeals explained the statutory framework for review of a permanency plan. 431 Md. at 686. First, "[i]n developing a permanency plan, the juvenile court is to give primary consideration to the 'best interests of the child.'" *Id.* To "guide the analysis," the statute specifies certain factors:

> (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 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.

FL § 5-525(f)(1).

This statutory scheme is designed to "conserve and strengthen the child's family ties and to separate a child from the child's parents only when necessary for the child's welfare." CJP § 3-802(a)(3). "The statute presumes that, unless there are compelling circumstances to the contrary, the plan should be to work toward reunification, as it is presumed that it is in the best interest of a child to be returned to his or her natural parent." *In re Yve S.*, 373 Md. at 582.

Accordingly, a permanency plan is decided in a "descending order of priority": (1) reunification with a parent or guardian; (2) placement with a relative for adoption or custody and guardianship; (3) adoption by a nonrelative; (4) custody and guardianship by a nonrelative; or (5) another planned permanent living arrangement for a child at least 16 years old. CJP § 3-823(e).

The juvenile court is tasked with determining whether progress has been made toward the implementation of the permanency plan. A juvenile court must hold a permanency plan hearing "at least every six months until commitment is rescinded or a

voluntary placement is terminated." CJP § 3-823(h). At each review hearing, the juvenile court is required to:

> (i) Determine the continuing necessity for and appropriateness of the commitment;
>
> (ii) Determine and document in its order whether reasonable efforts have been made to finalize the permanency plan that is in effect;
>
> (iii) Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating commitment;
>
> (iv) Project a reasonable date by which a child in placement may be returned home, placed in a preadoptive home, or placed under a legal guardianship;
>
> (v) Evaluate the safety of the child and take necessary measures to protect the child;
>
> (vi) Change the permanency plan if a change in the permanency plan would be in the child's best interest; and
>
> (vii) For a child with a developmental disability, direct the provision of services to obtain ongoing care, if any, needed after the court's jurisdiction ends.

CJP § 3-823(h)(2). "Once set initially, the goal of the permanency plan is re-visited periodically at hearings to determine progress and whether, [because of] historical and contemporary circumstances, that goal should be changed." *In re Andre J.*, 223 Md. App. 305, 322 (2015) (quoting *In re Yve S.*, 373 Md. at 582); *see* CJP § 3-823(h)(1)-(2). A juvenile court is required to "[c]hange the permanency plan if a change . . . would be in the child's best interest." CJP § 3-823(h)(2)(vi). Consequently, "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." *In re Adoption of Cadence B.*, 417 Md. 146, 157 (2010).

Further, "[e]very reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement." CJP § 3-823(h)(4). If the juvenile court determines that the plan should be altered to adoption by a nonrelative, the court "shall: (1) [o]rder the local department to file a petition for guardianship . . . within 30 days or, if the local department does not support the plan, within 60 days; and (2) [s]chedule a TPR [termination of parental rights] hearing instead of the next 6-month review hearing." CJP § 3-823(g).

C. Analysis

The juvenile court's findings in support of its decision to change the permanency plan are supported by the evidence and were not clearly erroneous. Consistent with its statutory obligations, the juvenile court focused its determination on the best interests of the Children. As its detailed factual findings reflect, the court appropriately considered the requisite statutory factors.

Concerning the Children's "ability to be safe and healthy in the home of the" J.s, FL § 5-525(f)(1)(i), the juvenile court considered, among other things: 1) Mr. and Mrs. J.'s criminal convictions for child neglect and rendering a child a CINA due to their treatment of D.J. and H.J.; 2) the Children's diagnoses for anxiety and post-traumatic stress disorder due to Mr. and Mrs. J's conduct; 3) the living conditions in which the Children were found at Mr. and Mrs. J.'s home; and 4) the therapist's recommendations. While the court noted

that Mr. and Mrs. J. had made "significant changes" to their home and competed a parenting program, the court concluded that the "potential risk is far too great" to return the Children to their parents.

Concerning FL § 5-525(f)(1)(ii), the court found that the Children had not had contact with their parents for over 20 months and analyzed each child's attachment and emotional ties. Specifically, the court noted that D.J. and H.J. have no desire to see their parents. The court concluded "[i]t is evident that D.J. and H.J. have considered judgment and hold no attachment or emotional ties to Mr. J. and Mrs. J., and only minimal ties to their siblings." Regarding P.J., the court noted it was "not entirely clear" whether she holds further attachment to Mr. and Mrs. J.

Next, the court considered the Children's emotional attachment to their current caregivers and their families, as well as the length of time spent with their caregivers. FL § 5-525(f)(1)(iii), (iv). The court found that D.J. was "firmly bonded" and that H.J. is "very attached emotionally to" her "new family." Although the court found that P.J. was doing well, it noted that her progress should be monitored and the status of her relationship with her caregiver reviewed at the next hearing. The court noted that D.J. had been with his caregiver for over two years, whereas P.J. and H.J. had only resided with their caregiver since July 2020. In considering FL § 5-525(f)(1)(v), the court concluded that, given its findings regarding the other factors "[a]ny change in the current placement of the three children at this point would be extremely harmful to them emotionally, developmentally and educationally." Finally, the court concluded that the Children's circumstances

"warranted their remaining" in State custody, FL § 5-525(f)(1)(vi), and that the delay did not result in any harm.

Although Mr. and Mrs. J. recognize that the juvenile court analyzed the required factors, they contend that in so doing, the court made four errors that rendered its findings erroneous.

1. References to Criminal Trial

Mr. and Mrs. J. assert that the court's memorandum impermissibly referenced their convictions for child neglect and rendering a child in need of assistance and the testimony adduced at their criminal trial, because the transcripts were not offered into evidence. This challenge fails for several reasons.

First, the juvenile court did not err by referring to Mr. and Mrs. J.'s criminal case because they expressly invited the court to consider this evidence. "Under the 'invited error' doctrine, 'a defendant who herself invites or creates error cannot obtain a benefit—mistrial or reversal—from that error.'" *Molina v. State*, 244 Md. App. 67, 144 (2019) (cleaned up) (citation omitted); *see also Murdock v. State*, 175 Md. App. 267, 294 n.8 (2007) (referencing invited error doctrine in context of testimony elicited by defense counsel and noting that defendant could not "benefit from an error he invited").

At the September 15, 2020 hearing, counsel for Mr. and Mrs. J. made multiple references to the testimony in Mr. and Mrs. J.'s criminal case. For example, when arguing that there was no evidence related to P.J, counsel asserted that "all of the testimony, all of the evidence in this case and in the criminal case, rightfully the focus has been on [D.J.]

and on [H.J.]" Consistent with this assertion, counsel for Mr. and Mrs. J. argued, extensively, that D.J. was not believed by either the court or the jury in the criminal trial:

> And this is after young D[.J.], compelled to take the stand, offered voluminous testimony about the beatings that he suffered night and day with wood that was laying around, with fists, with belts. Judge Whelan heard it all, the jury heard it all, and quite frankly, they didn't believe him.

Although, now on appeal, Mr. and Mrs. J. ask us to conclude that any reference to the criminal trial was impermissible, we determine that this issue was waived, and any error was invited.

Even so, we observe that because the criminal trial was directly related to the underlying CINA cases, the court would not have erred in taking judicial notice of the court's own records and analyzing the criminal case for its limited purpose. Pursuant to Maryland Rule 5-201, a court may take "judicial notice of adjudicative facts" which are either "(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Md. Rule 5-201(a), (b). A court may take judicial notice "at any stage of the proceeding," "whether requested or not." Md. Rule 5-201(c), (f). "Included among the categories of things of which judicial notice may be taken are 'facts relating to the . . . records of the court.'" *Lerner v. Lerner Corp.*, 132 Md. App. 32, 40 (2000) (citation omitted).

Mr. and Mrs. J. contend that they had no notice that the trial court was taking judicial notice of the criminal proceedings, but they do not contend that the court's references to the criminal case and, specifically to D.J.'s testimony therein, are inaccurate. Moreover,

Mr. and Mrs. J. have not articulated how they were prejudiced by the court's few references to the criminal case. The juvenile court's findings rested primarily on the CINA record, which included testimony of beatings, neglect, and confinement for H.J. and D.J. for long periods of time as punishment. The testimony referenced by the circuit court—that the J.s believe D.J. and H.J. were untrustworthy and dishonest—was cumulative of evidence and testimony introduced in the CINA cases. *See In re H.R.*, 238 Md. App. 374, 407 (2018) (holding that error admitting documents was harmless because evidence was cumulative of other testimony subject to cross-examination). Accordingly, even if Mr. and Mrs. J. did not invite the alleged error, it was harmless.

2. Retaliation

Mr. and Mrs. J. contend that there is no support for the court's conclusion that there is a risk of retaliation if the Children return home because "the record in this matter corroborates the J.'s position that D.J. is an unreliable narrator." We determine that the juvenile court did not err in concluding that there was a substantial likelihood that Mr. and Mrs. J. would retaliate given their troubling record of employing a variety of retaliatory punishments, and the record reflected that they continued to believe that D.J. provided false testimony.

In evaluating whether a substantial risk of harm exists, the court has "a right—and indeed a duty—to look at the track record, the past, of [a parent] in order to predict what her future treatment of the child may be." *In re J.J.*, 231 Md. App. 304, 346 (2016), *aff'd*, 456 Md. 428 (2017) (quoting *In re Dustin T.*, 93 Md. App. 726,735 (1992)). Without

revisiting the entire history of harm and trauma that Mr. and Mrs. J. inflicted upon their Children, their convictions for neglect of a minor and rendering a CINA substantiate that their conduct was unreasonable and posed a substantial risk of harm to the Children. Significantly, their past conduct encompassed retaliatory punishments, including confining D.J. in a bed that he referred to as a "coffin" as a form of seclusion; withholding food; and locking H.J. in a dark closet for extended periods as a form of punishment. While the court credited, among other things, changes that Mr. and Mrs. J. made to their home, the court concluded that "their need for control, especially in chaotic circumstances, prevents them from demonstrating [parenting] skills." The "hard evidence" of Mr. and Mrs. J.'s past conduct that resulted in their convictions corroborated the reasonable and substantial risk of future harm if the Children were to return to their care. *See In re Jertrude O.*, 56 Md. App. 83, 100 (1983) (noting that fear of harm "must be a real one predicated upon hard evidence").

Further, we observe that the juvenile court found that there is a "substantial likelihood" that the J.s will retaliate against D.J. and H.J. for providing testimony in the criminal case that the J.s believe to have been false, and which led to the J.s' convictions. Now, instead of recognizing the full extent of the harm and trauma that they caused with their punishments, Mr. and Mrs. J. continue to accuse D.J. of being dishonest. By doing so, they only confirm the juvenile court's concern that they have a motive to retaliate against D.J.—and possibly H.J.—for giving testimony that led to their convictions and jail sentences. Accordingly, in conjunction with Mr. and Mrs. J.'s past conduct, we conclude

that the juvenile court did not abuse its discretion in concluding that there would be a substantial likelihood that the J.s would retaliate against D.J. and H.J. for providing testimony against them.

3. Therapists' Recommendations

Mr. and Mrs. J. contend that there is no support for the court's finding that the Children's therapists recommend no contact with them. In support, Mr. and Mrs. J. contend that at the time of the September 15, 2020 permanency plan hearing "H.J. had just restarted therapy and D.J. and P.J. were not even enrolled." They further aver that H.J.'s therapist advocated for family therapy and that the "family therapist testified that she did not have concerns about visitation."

A review of the record, however, supports the court's contrary finding. Each of the Children were diagnosed with post-traumatic stress disorder, alongside a variety of other conditions. Over two years after substantial involvement by CCDSS and HCDSS, the September 4, 2020 report concludes that the "three children were no longer in individual therapy as they were all doing well and were not in need of it." Without visitation with Mr. and Mrs. J., the children's need for therapy evidently ceased. Each of the Children's therapists raised concerns regarding potential contact with Mr. and Mrs. J. and the potential trauma to the Children that could result.

First, at the June 18, 2019 review hearing, Dr. Kaufman—D.J.'s therapist and an expert in clinical psychology—testified that D.J. met "diagnostic criteria for post[-]traumatic stress disorder secondary to his experiences that he reported when he was living

with his adopted family." D.J. explained to Dr. Kaufman that he did not wish to have any current contact or future contact with his parents out of concern for his "safety." Dr. Kaufman concluded that she could not "imagine any context in which it would make sense for" D.J. to return and live with them and that it would be detrimental for D.J. to see his parents. Both D.J.'s High Road School psychiatrist and Dr. Kaufman wrote letters recommending that D.J. not have contact with Mr. and Mrs. J. D.J.'s school therapist "recommended honoring D[.J.]'s request for no contact at the current time" and recommended a formal evaluation "to determine the appropriateness of future contact." In Dr. Kaufman's letter, she opined that prior visits "create[d] sever tension and anxiety for [D.J.]" and that the "visits are counterproductive for his mental health and should be terminated."

Second, Ms. Sayre, H.J.'s therapist and a licensed counselor and clinical social worker, consistently opined that family therapy or visitation could further traumatize the Children unless Mr. and Mrs. J. developed the proper remorse and could acknowledge and validate the Children's feelings. Specific to H.J., at the December 15, 2018 hearing, Ms. Sayre opined that H.J. "needs an environment where her feelings can be acknowledged and validated" and was concerned that Mr. and Mrs. J.'s testimony was "perhaps a minimization of the impact" of their actions. Ms. Sayre repeated these concerns at the June 2019 hearing. She opined that the J.s would not be able to "acknowledge and validate the children's feelings and be able to move forward." Ms. Sayre clarified that if the parents could not acknowledge that they had traumatized their Children, it would indicate that

family therapy "might not be a safe place for these children" and, without this remorse, would be "very concerning."

Third, during therapy, H.J. reported that she "had been told that she was bad" and would be placed in a closet or bedroom "all day" and would "scratch at the bottom of the floor and yell and scream." While H.J. was in therapy—and not in her parents' care—Ms. Sayre testified that there had been no problematic issues reported and that H.J. was excelling in school. By "[t]he end of May," H.J. reported that she did not want to visit her parents or return to their home.

Finally, Ms. Reichart, a licensed counselor who received the referral for family therapy, opined at the June 2019 hearing that the Children were not "in a place where they feel safe enough to express their feelings about what has happened to them[.]" Ms. Reichart referenced a session in which Mrs. J. "reported that D[.J.] had grandiose thoughts, and H[.J.] has a history of lying." In Ms. Reichart's opinion, she did not find these statements "very validating and acknowledging of what they've gone through and how they feel about what they've gone through." Ms. Reichart further noted that Mr. and Mrs. J. never indicated that it could have been traumatic for H.J. to be locked in a dark room for an extended period.

Mr. and Mrs. J. have cherry-picked statements from the therapists, but the record establishes that each therapist either recommended that the children have no contact with Mr. and Mrs. J., or that any visitation or family therapy be conditioned on the parents' ability to acknowledge the significant trauma and abuse that they inflicted on their

Children. None of the therapists concluded that Mr. and Mrs. J. were willing to hear and acknowledge the Children's concerns. Accordingly, the juvenile court did not abuse its discretion in concluding that the therapists recommended that visitation or contact be terminated.

4. Considered Judgment of D.J.

Finally, Mr. and Mrs. J. assert that the "court's finding that D.J.'s considered judgment is evident is clearly erroneous." While they concede that "children with disabilities may be deemed to have considered judgment," they assert that "myriad cognitive, physical, behavioral, and psychological deficits presented in D.J." as well as his "fertile imagination" do not support that D.J. had considered judgment.

A child who is the subject of a CINA petition is a "party" and "is entitled to the assistance of counsel at every stage of any proceeding[.]" CJP §§ 3-801(u)(1)(i), 3-813(a). We have previously advised: "A ***child's counsel*** should advocate a position consistent with the child's wishes in the appeal if the child has considered judgment; or, if the child does not have considered judgment, a position that ***counsel believes*** to be in the child's best interest." *In re Sophie S.*, 167 Md. App. 91, 94 n.3 (2006) (emphasis added).

In determining whether the child's attorney should advocate the child's position or a position in the child's best interest, the Maryland Foster Care Court Improvement Project developed "Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings." Maryland Rules, Appendix 19-C. The Guidelines provide, in relevant part:

The attorney should advocate the position of a child unless the attorney reasonably concludes that the child is unable to express a reasoned choice about issues that are relevant to the particular purpose for which the attorney is representing the child. If the child has the ability to express a reasoned choice, the child is regarded as having considered judgment.

a. To determine whether the child has considered judgment, the attorney should focus on the child's decision-making process, rather than the child's decision. The attorney should determine whether the child can understand the risks and benefits of the child's legal position and whether the child can reasonably communicate the child's wishes. The attorney should consider the following factors when determining whether the child has considered judgment:

   (1) the child's developmental stage:

      (a) cognitive ability,

      (b) socialization, and

      (c) emotional and mental development;

   (2) the child's expression of a relevant position:

      (a) ability to communicate with the attorney, and

      (b) ability to articulate reasons for the legal position; and

   (3) relevant and available reports such as reports from social workers, psychiatrists, psychologists, and schools.

b. A child may be capable of considered judgment even though the child has a significant cognitive or emotional disability.

c. At every interview with the child, the attorney should assess whether the child has considered judgment regarding each relevant issue. In making a determination regarding considered judgment, the attorney may seek guidance from professionals, family members, school officials, and other concerned persons. The attorney should also determine if any evaluations are needed and advocate them when appropriate. At no time shall the attorney compromise the attorney-client privilege.

Maryland Rules, Appendix 19-C, Guideline B1. Assessing Considered Judgment. In making this determination, if the attorney determines that a "child does not have considered judgment, the attorney should advocate for services and safety measures that the attorney believes to be in the child's best interests, taking into consideration the placement that is the least restrictive alternative." Maryland Rules, Appendix 19-C, Guideline B2. Best Interest Standard. When an attorney fails to follow the Guidelines, a court "may encourage compliance" by (1) alerting the individual attorney; (2) alerting relevant agencies or firms; (3) altering "the entity(ies) responsible for administering the contracts for children's representation"; and/or (4) appointing another attorney for the child. Maryland Rules, Appendix 19-C, Guideline G. Role of the Court.

In reviewing the Guidelines, it is evident that considered judgment is a determination primarily made by the children's attorney—not the court. A court does not find or review whether a child has "considered judgment." Rather, as the Guidelines direct, a court's role generally is limited to encouraging compliance when an attorney fails to follow the Guidelines.[2]

Returning to our case, Mr. and Mrs. J. misconstrue both the concept of considered judgment and its import to a juvenile court's determination in a CINA case. First, as we note above, whether a child has considered judgment is a determination made by a child's attorney in assessing whether the child's counsel should advocate the child's preference or

[2] However, a court maintains other mechanisms, including other provisions under the Maryland Rules, to regulate attorneys and the legal profession.

a best interest standard. When the juvenile court expressed in its Memorandum Opinion that "[i]t is evident that D.J. and H.J. have considered judgment," the court was not making a legal determination based on the record but merely agreeing with the Children's counsel that D.J. and H.J. have the ability to express their desires.

Further, if a determination of whether a child had considered judgment were considered by the court, the record supports that D.J. had considered judgment to weigh his legal options and communicate his desires to his counsel. At the September 15, 2020 hearing, D.J. was fourteen years old. Throughout the entirety of time in the State's custody, D.J. has maintained that he does not want to return to his parents. While Mr. and Mrs. J. assert that D.J. has a "myriad [of] cognitive, physical, behavioral, and psychological deficits," his counsel concluded that D.J. is "a very bright young boy." While a member of St. Vincent's Diagnostic Unit expressed doubt that D.J. actually received homeschooling prior to his arrival, the HCDSS's September 4, 2020 report notes that D.J. performed well in a high school with an individualized education program and "earned straight A's last year." D.J.'s counsel reported to the court that D.J. was "very comfortable talking to me and saying that he wants to stay, he wants to be adopted." As the record reflects, Children's counsel conducted a thorough investigation, consistent with the Guidelines, in concluding that D.J. has the "ability to express a reasoned choice."

More fundamentally, regardless of whether counsel argues the child's position or the child's best interest, the paramount focus of a CINA proceeding and its governing standard is the best interests of the child. *In re Blessen H.*, 163 Md. App. 1, 15 (2005),

aff'd, 392 Md. 684 (2006); *see also A.A. v. Ab.D.*, 246 Md. App. 418, 422, *cert. denied*, 471 Md. 75 (2020) (holding in child custody case that "[c]hildren have an indefeasible right to have their best interests fully considered"). The juvenile court did not change the permanency plan pursuant to a finding that D.J. had considered judgment but rather by determining the best interest of each child and by appropriately considering the requisite factors set forth in FL § 5-525(f)(1).

II.

Visitation

A. Parties' Contentions

Mr. and Mrs. J. assert that the "court's findings regarding continued suspension of visitation are clearly erroneous." According to the J.s, the court's findings that the children are safe and that they are not attached to them is not supported by the record and, therefore, cannot support its decision to decline to reinstate visitation.

HCDSS and the Children respond that Mr. and Mrs. J.'s challenge to the order restricting visitation is not before this Court. Specifically, because the April 1, 2021 orders continued to prohibit their contact with the Children and did not change the prior July 15, 2019 orders, "there is no right to appeal."

Alternatively, if we reach the merits, HCDSS and the Children assert that the juvenile court did not abuse its discretion in continuing to deny visitation. According to the Children's counsel, the court's decision to deny visitation was "based on the safety and health of the children which is the appropriate and the guiding principle in child welfare

cases." Counsel concludes: "[t]hese children have progressed because they have been removed" from their parents' care and "found love and nurturing in supportive environments."

B. Analysis

We will assume that the issue of continued suspension of visitation is properly before us as it was encompassed as part of the April 1, 2021 orders on appeal. Still, we hold that Mr. and Mrs. J. are not entitled to the relief they seek.

Visitation, although an "important, natural and legal right . . . is not an absolute right[.]" *Roberts v. Roberts*, 35 Md. App. 497, 507 (1977) (citation omitted). Rather, "[b]ecause the trial court is required to make such determinations in the best interests of the child, visitation may be restricted or even denied when the child's health or welfare is threatened." *In re Billy W.*, 387 Md. at 447.

Where a child or children have been declared CINA because of abuse or neglect, the juvenile court is "constrained further by the requirements of Section 9-101 of the Family Law Article when setting the conditions of visitation." *Id.* Section 9-101 prohibits the court from granting visitation to a party who has abused or neglected a child unless the court specifically finds that there is no likelihood of further abuse or neglect. The statute provides:

> (a) In 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.

> (b) Unless 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.

"The burden is on the parent previously having been found to have abused or neglected his or her child to adduce evidence and persuade the court to make the requisite finding under § 9-101(b)." *In re: Yve S.*, 373 Md. 551, 587 (2003).

Here, the juvenile court's order suspending visitation was consistent with FL § 9-101. As detailed above, the juvenile court concluded that it was in the Children's best interest to alter the permanency plan because the Children could not be safe and healthy in Mr. and Mrs. J.'s care. Consistent with this determination, the court "concur[red] with counsel for the [C]hildren that any visitation should be professionally 'therapeutically-based[.]'" Because the Children's therapists did not recommend family therapy or visitation, the juvenile court reasonably concluded that visitation would not benefit the Children and recognized that visitation or forced family therapy could risk further traumatization. Accordingly, the juvenile court court's findings regarding continued suspension of visitation were not clearly erroneous.

JUDGMENTS OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0364s21cn.pdf