Circuit Court for Anne Arundel County
Case No: C-02-JV-21-000050

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 373

September Term, 2022

IN RE: L.B.

Leahy,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: November 7, 2022

In the Circuit Court for Anne Arundel County, a family law magistrate recommended a permanency plan of placement with a relative for custody and guardianship of L.B. Appellant J.W. ("Mother") filed an exception. Following a *de novo* hearing, the circuit court denied Mother's exception and adopted the magistrate's recommendations.

Mother appeals and presents the following question:

> Was the court's adoption of an initial permanency plan of custody and guardianship to a relative in lieu of a plan of reunification to mother an abuse of discretion?

Finding neither error nor abuse of discretion, we shall affirm.

BACKGROUND and PROCEEDINGS

In December of 2020, the Anne Arundel County Department of Social Services ("DSS") received a referral regarding caregiver substance abuse and domestic violence in the home of Mother and E.B. ("Father").[1] L.B. was then five years old. DSS interviewed the family, and Mother denied that she and Father used illegal substances.

One month later, Mother, Father, and Mother's father (L.B.'s maternal grandfather) were arrested after a physical altercation at the home in which L.B. was present. At that time, L.B. was placed in the care of a family friend but removed less than a week later due to DSS's discovery that the friend was using non-prescribed medication. L.B. was thereafter placed in the care of his maternal aunt, A.W. ("Aunt"), where he has remained since. A safety plan was developed which provided, in part, for Mother and Father's

[1] Father did not oppose the permanency plan and is not a party to this appeal.

supervised weekly visits with L.B. in public places. DSS attempted to provide in-home services to Mother and Father but noted that "[a]ttempts to engage the family have been difficult due to [Father's] volatile behavior and [Mother's] substance issues."

On February 23, 2021, Aunt contacted DSS and indicated that she no longer felt safe caring for L.B. due to harassment and threats from Father and inconsistent communication from Mother and Father. DSS filed a petition with a request for shelter care,[2] asserting that L.B. was a child in need of assistance ("CINA").[3] On March 26, 2021, the court held a hearing and found L.B. to be a CINA due to neglect and failure of the parents to provide proper care and attention. Approximately five months later, the court held a CINA review hearing and determined that L.B. continued to be a CINA and should remain in Aunt's care.

On February 24, 2022, the court held an initial permanency plan hearing before a family law magistrate, who determined that L.B. continued to be a CINA, reaffirmed L.B.'s placement with Aunt, and determined that L.B.'s permanency plan should be custody and guardianship to a relative. The court explained that while Mother had made "some

[2] "Shelter care" under Md. Code Ann., Courts & Judicial Proceedings ("CJP") § 3-801(bb), is a "temporary placement of a child outside of the home at any time before [a child in need of assistance] disposition."

[3] A CINA is defined under CJP § 3-801(f) as "a child who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs."

progress," it did not believe that ordering L.B.'s reunification with Mother was appropriate at that time:

> That does not mean that the plan can't change when there is evidentiary support for a good and solid track record. The concern is that, although today there is some progress, which everyone has acknowledged mother has made, the track record does not -- when you balance the track record against the current progress, there isn't enough stability to be able to recommend a plan of reunification with parent. It is simply not appropriate at this time, but it doesn't mean that it can't be in the future. Changes in plans are certainly appropriate in certain circumstances.

Following a hearing on Mother's *de novo* exception to the magistrate's findings, the court adopted the magistrate's recommendations, and ordered a permanency plan of custody and guardianship by a relative. Mother filed this timely appeal.

STANDARD OF REVIEW

Child custody determinations typically involve three "interrelated" standards of review: "(1) a clearly erroneous standard, applicable to the juvenile court's factual findings; (2) a *de novo* standard, applicable to the juvenile court's legal conclusions; and (3) an abuse of discretion standard, applicable to the juvenile court's ultimate decision." *In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. 30, 45 (2017). Thus, when the trial court's decision is "founded upon sound legal principles and based upon factual findings that are not clearly erroneous," it "should be disturbed only if there has been a clear abuse of discretion." *Davis v. Davis*, 280 Md. 119, 126 (1977). This Court "will reverse the juvenile court's order as an abuse of discretion only if we determine the order is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of

what that court deems minimally acceptable.'" *In re D.M.*, 250 Md. App. 541, 566 (2021) (quoting *In re Shirley B.*, 419 Md. 1, 18-19 (2011)).

DISCUSSION

Mother asserts that the court erred by failing to consider reunification as the priority permanency plan as provided for under Md. Code Ann., Courts and Judicial Proceedings ("CJP") § 3-823(e)(1)(i), and by misapplying the Md. Code Ann., Family Law ("FL") § 5-525(f)(1) factors. DSS and counsel on behalf of L.B. respond that the court properly considered the evidence and relevant statutory factors before adopting the magistrate's recommendation regarding L.B.'s permanency plan.

The CINA statute provides "detailed requirements for a CINA petition and the types of hearings required at each stage of [CINA] proceedings." *In re M.H.*, 252 Md. App. 29, 42 (2021); *see generally* CJP §§ 3-801–830. One such requirement provides that "[w]hen a child is declared a CINA, [DSS] must develop a 'permanency plan' that is 'consistent with the best interests of the child.'" *In re D.M.*, 250 Md. App. at 560 (quoting CJP § 3-823(e)(1)(i)). It further provides that when "developing a permanency plan for a child in an out-of-home placement, [DSS] shall give primary consideration to the best interests of the child[.]" FL § 5-525(f)(1). The following factors shall be considered:

> (i) the child's ability to be safe and healthy in the home of the child's parent;
>
> (ii) the child's attachment and emotional ties to the child's natural parents and siblings;
>
> (iii) the child's emotional attachment to the child's current caregiver and the caregiver's family;
>
> (iv) the length of time the child has resided with the current caregiver;

> (v) the potential emotional, developmental, and educational harm to the child if moved from the child's current placement; and
>
> (vi) the potential harm to the child by remaining in State custody for an excessive period of time.

Id.

Thereafter, a hearing for the court to determine a child's permanency plan shall take place "[n]o later than 11 months" after that child is found to be a CINA. CJP § 3-823(b)(1)(i). At the permanency planning hearing, the court decides the child's permanency plan under the following "descending order" of priorities:

> 1. Reunification with the parent or guardian;
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> 2. Placement with a relative for:
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> A. Adoption; or
>
> B. Custody and guardianship under § 3-819.2 of this subtitle;
>
> 3. Adoption by a nonrelative;
>
> 4. Custody and guardianship by a nonrelative under § 3-819.2 of this subtitle; or
>
> 5. For a child at least 16 years old, another planned permanent living arrangement[.]

CJP § 3-823(e)(1)(i). Critically, the statute provides that a child's permanency plan shall be considered in descending order of priority "to the extent consistent with the best interests of the child[.]" *Id.*

The Court of Appeals has explained that "[t]he 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." *In re Damon M.*, 362 Md. 429, 436 (2001). A permanency plan both "sets the tone" and "provides the goal

toward which the parties and the court are committed to work." *Id.* Further, "because it may not be changed without the court first determining that it is in the child's best interest to do so, the permanency plan must be in the child's best interest." *Id.*

Here, the court reviewed the magistrate's findings and found that there were "no clearly erroneous factual findings[,]" and that the magistrate's recommendation was "supported by the evidence." The record reflects that the court considered each of the FL § 5-525(f)(1) factors and the priorities under CJP § 3-823(e)(1). Specifically, considering L.B.'s ability to be safe and healthy in Mother's home under FL § 5-525(f)(1)(i), the court stated:

> Your living situation, I appreciate that you're hoping to get to this sober house, that that's the plan and that that has the ability for you to have [L.B.] with you. But that's not a permanent situation. And it doesn't inspire faith or confidence in this Court that it's going to be stable for him or that he is going to be safe at this point. When I couple that with the fact that there still needs to be therapy engaged, there still needs to be parenting classes taken, you still need to deal with the domestic violence aspect. All of those things that you have been ordered to do aren't in place yet. And until they're in place -- maybe you're just beginning. But you haven't gotten them done. You haven't finished them. And until you finish them you are not -- candidly, your track record of following through is not inspiring confidence in this Court. So until they are done this Court does not feel that [L.B.] has an ability to be safe and healthy in the home of his mother.

Further, the court found that under FL § 5-525(f)(1)(ii) and (iii), the attachment between L.B. and Mother "has suffered as a result of [Mother's] addiction and as a result of [her] inconsistent follow-through with [L.B.] at this point[,]" and that regarding L.B.'s attachment with his Aunt, that, "[L.B.] is very attached and is beginning to thrive." Regarding Mother's history with addiction, the court explained that:

> The issue is with mom, as I indicated, consistency. And mom I recognize that you are battling a -- it's a life and death battle for yourself that you are waging right now. Addiction is an awful, awful thing. And you are struggling. And you are doing what you're supposed to do. You are trying to build your life back. And the only way that you are ever going to be of help or be able to be what you want to be for [L.B.] is for you to continue down this path that you have just barely begun recently.
>
> And I understand you've been struggling and you've been working. But as I look at the evidence that was presented to me about the number of attempts of trying to get treatment, of voluntarily checking yourself out, of the continued use, the continued admissions, the continued positive tests it all gives the Court concern about where you are in your recovery process right now.

Looking to FL § 5-525(f)(1)(v), regarding potential harm if L.B. is moved from his current placement, the court stated:

> Candidly, I think [L.B.] when he first got [to his Aunt's] was really suffering. And the testimony that I hear is that he is making progress. And I have no doubt, no reason to doubt that [L.B.] was suffering when he got there and not suffering because he got there. Contrary to what [Mother's attorney] was attempting to argue to this Court I don't believe that that argument is supported by the evidence. I think that [Aunt] has been working with as many resources as possible and I think to rip him away from her consistency, her follow-through, would do great harm to [L.B.]

Lastly, addressing FL § 5-525(f)(1)(iv) and (vi), the court considered the potential harm to L.B. by remaining in state custody "for an excessive time[,]" and noted that at that time, L.B. had already been with Aunt for nearly sixteen months. The court concluded that, "when I evaluate all of those factors I do believe that the best interests of [L.B.] is [sic] that this permanency plan and the permanency plan that was set in place by Magistrate Howell should be adopted."

Although Mother asserts that that the court "failed to consider reunification as the priority permanency plan[,]" the record indicates the contrary. The court plainly

considered L.B.'s reunification with Mother as the first priority but noted that "it's to which extent consistent with the best interests of the child[:]"

> The Court is aware of the statute of 3-823 of Court and Judicial Proceedings and I am aware of the priority at a permanency planning hearing. But it's to which extent consistent with the best interests of the child, may be, in descending order of priority.
>
> And so it's not an absolute reunification with the parent as an obligation under the statute. It is my job to evaluate which one of those is consistent with the child's best interests.

We agree with the circuit court that the priority of reunification is not "absolute" and that under CJP § 3-823(e)(1), it must be consistent with the best interests of the child. As this Court recently explained, "[a]lthough [permanency] planning begins with the presumption that reunification with parents is in a child's best interests, that presumption may be rebutted" if "the court determines, after considering the statutory factors in FL § 5-525(f)(1), that 'weighty circumstances' dictate that a different plan is in the child's best interests." *In re M.*, 251 Md. App. 86, 123 n.10 (2021) (citations omitted).

The record before us reflects that the court weighed FL § 5-525(f)(1) and the evidence before it before determining that placement with a relative for custody and guardianship was in L.B.'s best interests. It made that determination after noting that Mother had, at that time, tested positive on drug tests "as recently as about a month ago[,]" lacked permanent housing, and had failed to take court-ordered parenting and domestic violence classes. We cannot say that this decision was "well removed from any center mark imagined" by this Court. *In re D.M.*, 250 Md. App. at 566 (quotation marks and citation omitted).

Mother also asserts that the court's FL § 5-525(f)(1) "analysis was insufficient[,]" because it "only considered [M]other's circumstances in the moment[,]" and that the "plan of custody and guardianship to a relative was premature and contrary to L.B.'s best interests." The record, however, reflects that the court considered both Mother's current circumstances and past conduct in reaching its decision. The court pointed to Mother's "number of attempts of trying to get treatment, of voluntarily checking [her]self out, of the continued use, the continued admissions, the continued positive tests" to explain that Mother's past conduct – as well as her current circumstances – were factors relevant to its decision. *See In re Adriana T.*, 208 Md. App. 545, 570 (2012) (holding that "[r]eliance upon past behavior as a basis for ascertaining the parent's present and future actions directly serves the purpose of the CINA statute").

This Court has explained that "[i]t has long been established that a parent's past conduct is relevant to a consideration of the parent's future conduct." *Id.* The court found that Mother's past and current circumstances did not "inspire faith or confidence" that a permanency plan with Mother was "going to be stable for [L.B.] or that he is going to be safe at this point[,]" and we disagree that this was an abuse of discretion. *See also In re Shirley B.*, 419 Md. at 7 (holding that mother's "limitations prevented her from providing a safe home for her children in the foreseeable future; thus, the juvenile court did not abuse its discretion when it determined that changing the [c]hildren's permanency plans was in their best interests").

Lastly, Mother asserts that she needed "more time" to work towards reunification but does not cite any support for the position that this indicates an abuse of discretion on

behalf of the circuit court. The court was required to conduct a permanency planning hearing "no later than 11 months" from L.B.'s CINA determination; L.B.'s permanency planning hearing occurred approximately 9 months after L.B. was determined to be a CINA.[4] Further, at the date of the court's hearing on Mother's exception, L.B. had been in the care of Aunt for nearly 16 months. Thus, L.B.'s permanency plan was consistent with both the timeline set forth under CJP § 3-823(b)(1)(i) and with the statute's goal of obtaining "timely, permanent placement for the child consistent with the child's best interests[.]" CJP § 3-802(a)(7).[5] *See also In re D.M.*, 250 Md. App. at 569 (citation omitted) (holding that "the juvenile court did not abuse its discretion because the change to the permanency plan is well-aligned with the goal of achieving 'a timely, permanent placement for the child consistent with the child's best interests'").[6] We recall the trial court's statement that:

[4] Although the court found L.B. to be a CINA during the hearing on March 26, 2021, the corrected order was not entered until April 20, 2021.

[5] Further, although Mother asserts that the court's assertion that the plan may change was "disingenuous[,]" we disagree. We made clear in *In re Caya B.* that:

> [i]f the permanency plan calls for custody and guardianship by a relative but does not contemplate adoption, the court may issue a decree of guardianship to the relative and may then close the case. *See* [CJP] § 3-823(h)(iii)(1). Parental rights are not terminated in such a situation: the parents are free at any time to petition an appropriate court of equity for a change in custody, guardianship, or visitation.

153 Md. App. 63, 78 (2003).

[6] Nor is Mother's assertion that the court erred by failing to consider CJP § 3-823(h) persuasive. As DSS points out, CJP § 3-823(h) deals with hearings which review a (continued…)

> The Court is aware of [its statutory obligation] and I am aware of the priority at a permanency planning hearing. But it's to which extent consistent with the best interests of the child, may be, in descending order of priority.
>
> And so it's not an absolute reunification with the parent as an obligation under the statute. It is my job to evaluate which one of those is consistent with the child's best interests.

We agree with the court's assessment and, therefore, are not persuaded that the court's decision was "'beyond the fringe of what that court deems minimally acceptable.'" *In re D.M.*, 250 Md. App. at 566 (citation omitted).

For these reasons, we shall affirm.

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

permanency plan once implemented, not the initial permanency plan hearing conducted in this case.