Circuit Court for Montgomery County
Case Nos. 06-I-19-179, 06-I-19-180 & 06-I-19-181

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 403

September Term, 2021

IN RE: L.M., Z.M. & L.M.

Nazarian,
Friedman,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Zarnoch, J.

Filed: November 12, 2021

L.M. ("Father") appeals from an order of the Circuit Court for Montgomery County, sitting as a juvenile court, which reaffirmed the permanency plan of reunification for L.M. (born 3/17) and Z.M. (born 1/18), children adjudicated in need of assistance ("CINA"),[1] but reduced Father's supervised visitation with the children from a minimum of twice per week to a minimum of once per week.[2] In his timely appeal, Father asks us to consider whether the juvenile court erred in reducing his minimum visits to once per week and continuing to require that the visits be supervised.[3,4]

[1] A "child in need of assistance" means "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." Md. Code, § 3-801(f) of the Courts & Judicial Proceedings Article ("CJP").

[2] Pursuant to CJP § 12-303(3)(x), an interlocutory order must affect parental rights detrimentally to be appealable. An order reducing visitation infringes upon a parent's opportunities to interact with, and care for, his or her children and is appealable. *In re Billy W.*, 387 Md. 405, 425-26 (2005).

[3] A.B., the children's mother ("Mother"), is not a party to this appeal.

Subsequent to the filing of Father's appeal, the juvenile court granted the Department's petition for guardianship of Li.M. (born 12/18) and closed her CINA case. Father therefore dismissed his appeal of the court's order relating to Li.M. only, by line of dismissal dated July 29, 2021.

[4] We have consolidated the issues presented by Father. The issues, as set forth in his brief, are:

I. Whether the court erred in reducing Father's minimum visits to once per week.
II. Whether the court erred in requiring that Father's visits continue to be supervised.
III. Whether the juvenile court erred in ordering visitation terms contrary to the recommended and ordered permanency plan.

(Continued…)

For the reasons that follow, we affirm the order of the juvenile court.

FACTS AND LEGAL PROCEEDINGS

On October 29, 2019, the Montgomery County Department of Health and Human Services ("the Department") filed a CINA petition relating to L.M., Z.M., and Li.M. Therein, the Department detailed that it had conducted risk of harm assessments of Mother in October and November 2018, after it learned that, while pregnant with Li.M., Mother was depressed and had thoughts of strangling Z.M. Mother was diagnosed with post-partum depression and agreed to inpatient psychiatric care, but only for a short period of time.

Mother, who reportedly suffered from a bulging disc and fibromyalgia for which she had been prescribed opioids, went to the hospital in November 2018 to detox from pain medication after suffering a "four-day blackout." She, however, denied that she abused her prescribed medications. She further denied thoughts of harming the children. Mother agreed to participate in an outpatient detox program.

Mother and Father entered into safety plans with the Department, agreeing that Mother would not be left unsupervised with the children while Father was at work and that Mother would take her medication as prescribed, engage in mental health treatment, and undergo a drug screening. The Department concluded its initial involvement with the family in January 2019.

IV. Whether the juvenile court erred in failing to articulate whether and how the best interests of the children were served by reducing Father's visits and requiring said visits to be supervised.

In May 2019, the Department initiated another risk of harm assessment when it learned that Mother and Father had no stable housing and were living with the three children and two dogs in a hotel room. Mother was found "nodding off" when feeding the children. Mother indicated she had a history of substance abuse, but she denied taking any unprescribed medications and declined to complete a drug screen urinalysis. Father recently had been charged criminally with possession of a controlled dangerous substance.

Both parents refused to cooperate with the risk of harm assessment and to complete a substance abuse evaluation. The Department closed the case in July 2019 when all efforts to engage Mother and Father failed. At the time, the Department social worker had no immediate safety concerns about the children.

The Department initiated a child abuse and neglect investigation after Mother and Father called 911 on October 25, 2019, when 10-month-old Li.M. suffered a seizure—alleged to be the result of a high fever—and was breathing abnormally. Although the infant was initially transported to Adventist HealthCare Shady Grove Hospital, she was transferred to Children's National Medical Center ("CNMC") for further in-patient treatment in the Pediatric Intensive Care Unit when her seizures would not abate. On October 28, 2019, Mother offered an alternative explanation for Li.M.'s condition—that the child had wedged herself between her crib mattress and bumper.

The treating doctor determined that Li.M.'s seizures were secondary to an anoxic brain injury, meaning a lack of oxygen to the brain. Father reported that Mother had suffered intrusive thoughts about injuring herself and Li.M. and had recently been discharged from an inpatient psychiatric hospital for treatment of post-partum psychosis.

Given Father's report, the doctors at CNMC expressed concern that the trauma to Li.M. may have been inflicted intentionally, as "[n]o metabolic etiology has been identified to account for her condition." To the doctors, the child's prolonged hypoxia "also raises a concern for neglect either medical or supervisional."[5]

The Department asked Mother and Father to undergo a drug screening. Father tested positive for marijuana. Mother tested positive for Fentanyl, Norfentanyl, and Oxycodone/Oxymorphone and was advised she was at "high risk of overdose."

The three children were placed in shelter care on October 28, 2019, due to the severity of Li.M.'s physical condition and Mother and Father's explanation for her seizures, which did not align with that of the doctors at CNMC. On October 29, 2019, the juvenile court issued a shelter care order and granted the Department limited guardianship of the children. The court granted Mother and Father supervised visitation with L.M. and Z.M., at a minimum of once per week, and liberal supervised visitation of Li.M. at the hospital, if permitted by hospital staff.

Following a two-day mediation in November 2019, Mother and Father agreed to permit the family magistrate to sustain the allegations in the amended CINA petition and to waive any exceptions to the juvenile court. The magistrate found that the children had been neglected by Mother and Father, determined that they were CINA, and authorized

[5] Later, the Department learned that Mother had told a relative that: Li.M. would not stop crying; Mother wanted to put Li.M.'s head in a toilet; Li.M. was fat and ugly; and Mother would not be able to stop herself from hurting the child. Mother denied having made those comments.

their placement in foster care.

Mother and Father sought increased visitation with the children—at least twice a week—as more visits would support bonding. The children's attorney agreed with the requested frequency of two visits per week. The magistrate, however, expressed concern that Mother had recently tested positive for Fentanyl use and that Fentanyl could adversely affect the children through simple contact with Mother. Mother's attorney countered that Mother had "adamantly stated that she's no longer using Fentanyl."

The magistrate granted Mother and Father supervised visitation at a minimum of twice weekly, for a minimum of one hour, so long as Mother presented a negative urinalysis for Fentanyl and the hospital staff permitted visitation with Li.M. The magistrate further "strongly encourage[d]" the Department to increase the frequency as it explored kinship providers to supervise the visits. The magistrate also ordered Mother and Father to undergo psychological and substance abuse evaluations.

The juvenile court set a review hearing for March 19, 2020. The hearing was later postponed until August 18, 2020, due to COVID-19 pandemic-related court closures.

Before the hearing was postponed, the Department submitted its report to the juvenile court, detailing that L.M. and Z.M. had been placed together in a foster home after the children's aunts and a potential fictive kin provider were found not to be placement resources. The two older children were thriving in their placement, but they were "always very excited to see their parents and do well during visits." Li.M. had been released from the hospital into a specialized foster care tailored to her continuing medical needs.

Following Mother's January 2020 psychiatric intake, she had been diagnosed with

PTSD and Major Depressive Disorder, along with other personality and stress disorders. The Department therefore recommended intensive clinical services to improve Mother's level of functioning before reassessing her parenting capabilities.

The Department's main concern with Father's psychological evaluation was his almost daily use of marijuana and its possible impact on his parenting behavior. The psychologist's report also raised concerns about Father's insight and judgment.

Although it was clear that Mother and Father "care very much about their children and are dedicated to engaging in mandatory services to work towards reunification[,]" the Department requested that the children remain in foster care, as Mother and Father were only "slowly making progress on providing a safe and stable home for their children." Moreover, they continued to insist that neither of them had caused any harm to Li.M., despite the Department's determination that Mother was responsible for the child's brain injury.[6]

Before the August 2020 hearing, the Department's updated report detailed that Mother and Father had moved around a lot during the review period and did not have stable housing or employment. As a result, they were not able to care for the children full-time. In addition, Mother had not begun her recommended outpatient treatment for substance abuse, and Father had not completed his substance abuse assessment or begun individual therapy.

[6] Mother had an indicated finding of abuse, and Father had an indicated finding of neglect related to Li.M.'s injuries. Mother and Father did not appeal the indicated findings, but neither parent was criminally indicted.

The Department acknowledged that L.M. and Z.M. enjoy visiting with their parents and are closely bonded with each other. Unfortunately, they had not been able to visit in person with their parents, or with Li.M., between March and July 2020 due to COVID-19 restrictions, but they had participated in video visits twice weekly. When outdoor visits resumed in July 2020, they went well; the children were excited to see their parents, and Mother and Father interacted appropriately with the children and attended to their needs during visitation.

At the August hearing, Father explained that he had obtained an apartment and a job in Pennsylvania, and Mother was staying with a friend in Hagerstown. It was their intention to live together in Hagerstown once they had amassed enough money to get their own home. After months of no in-person visitation with the children due to COVID-19, Father requested twice weekly visits.

The juvenile court found that L.M. and Z.M. were safe and doing well in their placement and that Mother and Father were "working through their issues they need to address, their housing, financials, substance abuse and mental health." The court maintained the children's status as CINA, committed to the custody of the Department. The court ordered loosely supervised visitation with L.M. and Z.M. at a minimum of two times per week, and once per week with Li.M., subject to pandemic-related adjustments. The court further ordered that Mother participate in therapy and undergo another substance abuse evaluation and that Father attend individual therapy.

By the time of the next hearing on November 24, 2020, Father was still employed and living in stable housing in Pennsylvania but was looking for housing in Maryland.

Mother was "technically homeless" in Hagerstown but frequently stayed at a friend's house or visited Father in Pennsylvania. The lack of stable housing caused the Department to recommend a continued CINA finding for the children.

In addition, Mother had not completed services to address her substance abuse issues. And, Father had not begun therapy and had only recently completed his substance abuse evaluation, for which he had been referred in December 2019. After a year, the Department found "the lack of progress with services [ ] concerning." Moreover, Father continued to state that Mother had not harmed Li.M., which raised concerns for the Department because if he "minimizes or denies [Mother's] mental health issues, he may not be as vigilant as he will need to be if the children return to his care."

The Department, aware that the juvenile court was "uneasy" with the parents' lack of progress, admitted that "the next six months [are] incredibly crucial in order for the Department to recommend this continued plan of reunification," but it requested "one more review period to work with the parents towards reunification services." The court responded that, "if it were up to me, I would be changing the [permanency] plan today, right now, because I have seen minimal progress, minimal." Nonetheless, the court gave the parties "one more period, and if there's no progress, I'm changing the plan."

The court maintained the children's status as CINA and their permanency plan of reunification and ordered supervised visitation with L.M. and Z.M. at a minimum of twice weekly and with Li.M. at a minimum of once weekly. The court further ordered both Mother and Father to submit to a weekly random urinalysis for a drug screening.

Ahead of the April 22, 2021 permanency plan review hearing, the Department

reported that Mother and Father were staying with friends in Burtonsville, Maryland, and still did not have stable housing appropriate for the children. Moreover, the Department remained worried about Mother's substance use; every urinalysis she had completed had been positive for illicit substances, including cocaine, but she and Father continued adamantly to deny substance abuse. And, Father had just begun his substance abuse treatment and individual therapy to address his anger and judgment issues.

The Department expressed concern that "[t]he family is in a very similar position they were in last year" and was "still addressing the concerns that first brought them to the attention of the Department in 2019." Nonetheless, the Department continued to recommend reunification as the permanency plan for L.M. and Z.M., as Mother and Father had engaged in mental health treatment and completed all assessments required of them, while maintaining a strong bond with the children.[7]

According to the Department, once weekly in-person visitation with L.M. and Z.M. had been "semi-consistent" during the review period, in part because of several COVID-19 exposures that required quarantine, but once weekly video visits had taken place. The boys enjoyed visiting with Mother and Father and appeared to be bonded with them. Mother and Father behaved appropriately during visitation and ensured that the children's needs were met.

At the contested hearing, Mother and Father requested more, and unsupervised, in-

[7] The Department sought to change Li.M.'s permanency plan to adoption by a non-relative, based on her continued medical and developmental needs and the parents' lack of accountability. Both parents objected, arguing that the lack of in-person visitation had precluded them from developing a bond with her.

person visits with L.M. and Z.M.[8] The Department social worker averred that unsupervised visitation with the boys was "not appropriate with positive urinalysis screens" for Mother and a dearth of urinalysis test results for Father. Moreover, the boys had reported that Father had promised them, during visitation, that he would do everything in his power to have them come home, despite the Department's requests not to make such inappropriate comments that confused the children. Finally, Father continued to express disbelief that Mother had physically harmed Li.M. The children's attorney agreed that the idea of unsupervised visitation "is scary to me."

In closing, Mother and Father reiterated their desire that visits with the boys revert to at least twice weekly and that they move from loosely supervised to unsupervised. They also urged the court to reaffirm a permanency plan of reunification for all three children.

The Department agreed that L.M. and Z.M.'s permanency plan should remain reunification to "give the parents a little bit more time on services," but it did not "feel comfortable" with unsupervised visitation. The children's attorney agreed that Mother's positive cocaine test "just a few weeks ago" rendered unsupervised visitation "flat out scary." Counsel also asserted that she did not believe "that reunification is going to work for the boys" and asked that their plan be changed to adoption.

The juvenile court held the matter *sub curia* and issued written orders on April 28, 2021. Therein, the court reaffirmed the permanency plan of reunification for L.M. and Z.M. and ordered that visits with the boys "be loosely supervised, minimum once weekly,

[8] Father explained that visits with the boys had been reduced to once a week, from twice a week, "because apparently COVID went on the rise again for a little bit."

not to include overnights, subject to COVID-19 protocols[.]"[9]

DISCUSSION

Father contends that the juvenile court erred in reducing his minimum visits with the children from twice per week to once per week, and in requiring that the visits remain supervised. He argues that, in light of the continued permanency plan of reunification, the reduction in visitation hinders his ability to bond and build stronger relationships with the children. He further claims that the juvenile court should not have made its decision without an express determination that it was in the best interest of the children.

Generally, "decisions concerning visitation are 'within the sound discretion of the [juvenile] court,' and we accordingly will not disturb such decisions 'unless there has been a clear abuse of discretion.'" *In re G.T.*, 250 Md. App. 679, 698 (2021) (quoting *In re Billy W.*, 387 Md. 405, 447(2005)). And, "in reviewing a visitation order, we must give 'due regard . . . to the opportunity of the [juvenile] court to judge the credibility of the witnesses[.]'" *Michael Gerald D. v. Roseann B.*, 220 Md. App. 669, 687 (2014) (quoting *In re Yve S.*, 373 Md. 551, 584 (2003)).

Visitation, although an "important, natural and legal right . . . is not an absolute right[.]" *Roberts v. Roberts*, 35 Md. App. 497, 507 (1977) (quotations and citation omitted). In a CINA case, it is up to the juvenile court to decide the appropriate amount of visitation, with input from the Department about conditions that the agency believes should

[9] The court changed Li.M.'s permanency plan to adoption by a non-relative and noted that because Li.M. "is extremely susceptible to COVID-19 and per the advice of her doctors, visits shall continue to be virtual[,]" at a minimum of every other week.

be imposed. *In re Justin D.*, 357 Md. 431, 450 (2000). Because the juvenile 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 J.J.*, 231 Md. App. 304, 347 (2016), *aff'd*, 456 Md. 428 (2017).

When the child or children have been declared CINA because of abuse or neglect, the juvenile court is constrained by the requirements of Md. Code, § 9-101 of the Family Law Article ("FL"), which expressly prohibits the court from granting visitation, except for supervised 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. *In re Yve S.*, 373 Md. at 587. If the court determines, as an exception, that supervised visitation is appropriate, the court must assure, at a minimum, that such visitation will not jeopardize the safety and well-being of the child. Section 9-101 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. at 587.

The juvenile court is not required to base its decision regarding visitation solely on FL § 9-101. The Court of Appeals has explained:

> Even without regard to § 9-101 [of the Family Law Article], if the court concludes that there is a likelihood of a party subjecting a child to abuse or neglect, whether that conclusion is drawn from evidence of past abuse directed against the child whose custody or visitation is at issue or against another child, it has been authorized to deny custody to and limit visitation with that party.

In re Adoption No. 12612 in Cir. Ct. for Montgomery Cty., 353 Md. 209, 238 (1999).

Here, Father's claim that the juvenile court erred in declining to order unsupervised visits must fail. The juvenile court had before it evidence that Li.M. had been abused by Mother and neglected by Father and that L.M. and Z.M. had suffered medical neglect at the hands of their parents (both children were considerably behind on pediatrician visits and immunizations when sheltered), and the court did not specifically find that there was no likelihood of further abuse or neglect.[10]

Nor did Father meet his burden of persuading the court there was no likelihood of further abuse or neglect. In the weeks leading up to the April 2021 review hearing, Mother consistently tested positive for illicit substances, including cocaine, and Father, instead of accepting her test results, decried them as false positives. Father, himself, assured the court that he had begun his substance abuse program, but he was unable to produce any evidence of having attended a single session, and he had not submitted to urinalysis, as ordered. In addition, Father had made inappropriate comments to the children during visitation, despite

[10] "[N]eglect or abuse of a child in the past refers to the abuse or neglect of *any* child in the past, not only the child at issue in the current proceeding." *In re Billy W.*, 387 Md. at 451 (emphasis in original).

having been asked by the Department not to do so. And neither parent had taken any responsibility for the injury to Li.M., despite the Department having indicated Mother for abuse and Father for neglect.

All of Father's actions indicated a continuing lack of judgment and insight. Under these circumstances, worried that Mother and Father had not made sufficient progress toward reunification after more than a year, and considering a change in permanency plan to adoption after the next review period, the juvenile court did not abuse its discretion in ordering that Father's visitation with L.M. and Z.M. continue to be loosely supervised.

Likewise, the juvenile court did not abuse its discretion in reducing Father's visitation with the children from a minimum of twice weekly to a minimum of once weekly. Again, having found past abuse and neglect, and failing to find no likelihood of further abuse or neglect, the court had the discretion to limit visitation. Even so, the court's order did not rule out the possibility of more frequent visitation; indeed, the Department agreed that if Mother and Father were to make more progress toward reunification, the transition plan would include "an increase in visitation, unsupervised visitation, weekend visitation, and overnight visits." Moreover, to assure the safety of the children, it was reasonable for the court to limit in-person visitation while the COVID-19 pandemic was still raging. There is nothing in the court's order to suggest that it intended to limit unnecessarily Father's visitation with the children or that visits could not be increased as circumstances improved.

Finally, we perceive no merit in Father's claim that the court erred by failing to articulate whether and how its visitation order served the best interests of the children.

Father presents no authority to support his argument that any such consideration must be made expressly on the record. In the absence of such a requirement, we presume that the juvenile court understood its role and determined that its visitation order was in the best interest of the children. *See Zorich v. Zorich*, 63 Md. App. 710, 717 (1985) ("Because trial judges are presumed to know the law, not every step in their thought process needs to be explicitly spelled out.") (citations omitted).

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