Circuit Court for Cecil County
Case No.: CJ-07-JV-17-000039

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 406

September Term, 2018

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IN RE: G.W.

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Fader, C.J.,
Nazarian,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Nazarian, J.

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Filed: January 22, 2019

P.S. ("Mother") and E.W. ("Father") appeal from the Circuit Court for Cecil County's order modifying the permanency plan for G.W., their two-year-old child. They point primarily to the court's ruling from the bench and contend that the court failed to consider the full range of factors in changing the plan. After reviewing the hearing transcript, the court's written order, and the record as a whole, we hold that the circuit court acted within its discretion and affirm.

## I. BACKGROUND

On the night of March 5, 2017, Mother called 911 seeking immediate medical attention for G because, she claimed, someone had spiked G's bottle with heroin. When first responders arrived, Mother fought and prevented them from examining G. That same night, Mother took G to the hospital. An officer at the scene reported Mother appeared to be "under the influence, currently manic, and having hallucinations." G was admitted for medical examination and tested negative for all substances.

After receiving a report of child abuse from the Cecil County Sheriff's Office, an on-call worker for the Cecil County Department of Social Services ("CCDSS") arrived at the hospital to investigate G's situation. The CCDSS worker interviewed Mother. Mother's responses were incomprehensible and gave no information about others who could care for G.[1] Mother remained in the hospital, underwent a psychiatric evaluation, and was diagnosed with bipolar disorder, schizophrenic tendencies, and paranoia. CCDSS later

[1] The CCDSS emergency shelter care report notes that G was born substance-exposed and was hospitalized "for approximately ten days to monitor withdrawal symptoms for tremors, excessive crying, poor sleep, and [to] increase muscle tone."

located Father at Cecil County Detention Center. Father reported to CCDSS that he was willing to take custody of G after he was released, which was scheduled to occur in a matter of days.

CCDSS filed a Child in Need of Assistance ("CINA") petition on March 6, 2017. The following day, the circuit court issued a shelter care order that found Mother lacked the ability "to properly care for the child" and needed "mental health services," and directed that G remain in CCDSS custody. At a review hearing on April 4, 2017, the circuit court found that Mother's mental state had caused her to neglect G, and the court found G a CINA. The court permitted visitation for both parents, but also ordered them to complete substance abuse treatment, parenting classes, and psychological evaluations.

Even before the CINA finding, Father and Mother had their first supervised visit with G. And in April, Father transitioned from onsite visits with CCDSS to supervised visits at his home. On April 26, 2017, CCDSS conducted a family involvement meeting to discuss conditions under which Father could become G's caregiver.[2] But two days later, Father was arrested for failing to provide a urine sample while attending drug court. And once detained, Father was found to be in possession of crack cocaine, and was charged and re-incarcerated.

In May, Mother, who had voluntarily admitted herself to the hospital in late March, began participating in an intensive outpatient drug treatment program. She also completed

[2] At the family involvement meeting, the parties agreed that Father would receive support, including financial support to complete driver's education classes and, pending CCDSS approval, childcare from his mother.

parenting and psychological evaluations, as well as a mental health assessment, which recommended that she attend bi-weekly therapy sessions. But during June 2017, Mother consistently tested positive for marijuana.

On July 18, 2017, the court held a hearing to establish a permanency plan. CCDSS's report to the court noted that Mother had attended eight of the ten scheduled supervised visits with G and that during those visits, Mother "frequently [brought G] toys to play with and spen[t] time working on her development skills." At the close of the hearing, the court ordered a primary permanency plan of reunification with G's natural parents, and a secondary plan of custody and guardianship and placement with a relative. The court also ordered Mother and Father to continue treatment and counseling.

In the months that followed, though, Father remained incarcerated and Mother struggled. CCDSS reported that Mother had trouble finding employment, refused drug tests, and missed appointments for her therapy and treatment services. She did pass a drug screen on October 13, 2017, but was discharged from the drug treatment program shortly thereafter for failing to attend.

On January 23, 2018, the court conducted a hearing review and made no changes to the permanency plan. Less than three months later, on April 17, 2018, the court held another permanency plan hearing, at which the court was able to observe G and hear from all of the parties, including counsel for G, CCDSS, Mother, and Father.

In advance of the April 2018 hearing, CCDSS submitted an updated report. This report stated that Mother was enrolled in another drug treatment program and that she had

attended four of seven appointments with a mental health provider since January 16. The report noted that Father remained incarcerated, was expected to be released in July 2018, and had been sending G weekly letters, including Christmas and birthday cards.

CCDSS and the parents asked the court to keep the permanency plan in place, but G's counsel asked the court to modify the primary plan from reunification with a parent to guardianship and adoption by a non-relative. The court decided to keep reunification as part of the plan, but as a secondary option, and ordered guardianship and placement with adoption by a non-relative as the primary goal:

> **The Court:** As noted, the Court saw G. this morning earlier. She'll be two in July. She's been with the foster mother almost a year. She colored happily the entire time she was there. Again, I was impressed with her fine motor skills.
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> She has had some issues, health issues, and those have been addressed by the Department and by the foster mom. And now she has need for a further evaluation. Infants and Toddlers is coming back in a different role to see how she's doing.
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> But she's, what, 20 months old and she's been in care 13 of those 20 months. And its – again, [G's counsel] is right. There is no point in waiting another six months for stability on the part of the parents. The stability that needs to occur is that of the child. The parents are not available at this time, and the Court will change the permanency plan to – [G's counsel], are you asking for a relative placement first?
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> **[G.W.'s counsel]:** No. Actually I was asking for the Department to file for a guardianship –
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> **The Court:** For guardianship adoption?
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> **[G.W.'s counsel]:** Correct.
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> **The Court:** The Court notes also that the foster mother is willing to be a long-term resource, a very long-term resource, and that would be appropriate, with reunification as a secondary plan. Any questions about that?

> **[G.W.'s counsel]:** No, Your Honor.
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> **The Court:** And, again, that's in the best interest of G. G.W., also known as G.S. And the Court will sign that order.

In its written order the court found, among other things, that: (1) G could not be safe and healthy in the home of either parent because Father was incarcerated and Mother had not made substantial progress toward treatment; (2) G had little to no attachment or emotional ties to Father, who was incarcerated at the time of removal, or to Mother, who regularly used crystal meth during a large portion of G's life; (3) G would "suffer emotional, developmental and educational harm if moved from the current placement"; and (4) G "would be subjected to harm by remaining in state care for an excessive period of time."

## II. DISCUSSION

The questions[3] before us boil down to whether the circuit court abused its discretion when it changed G's primary permanency plan from reunification to non-relative adoption.[4]

[3] Father's brief listed one Question Presented phrased in the same way as this sentence. Mother's brief asked the same core question and then supplemented it with two more granular questions:

> 1. Did the court err by failing to consider the factors set forth by Family Law § 5-525(f), as required by Courts & Judicial Proceedings § 3-823?
>
> 2. Are the court's findings concerning G.W.'s relationship with her parents and the potential harm of remaining in state care clearly erroneous?

[4] Citing Maryland Rule 2-517(c), G argues because Mother and Father did not object to the circuit court's oral ruling after it was made, they failed to preserve that decision for our

In child custody cases, we conduct a tripartite review:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard . . . applies. [Secondly,] [i]f it appears that the [juvenile 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 [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [juvenile court's] decision should be disturbed only if there has been a clear abuse of discretion.

*In re Yve S.*, 373 Md. 551, 586 (2003) (emphasis and citations omitted).

We review the "juvenile court's ultimate decision to modify the [] permanency plan[]" under an abuse of discretion standard. *In re Shirley B.*, 419 Md. 1, 18–19 (2011). And we reverse "[a] trial court's exercise of discretion in changing a permanency plan . . . if the court's decision 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 Andre J.*, 223 Md. App. 305, 323 (2015) (cleaned up). In other words, we find an abuse of discretion "where no reasonable person would take the view adopted by the trial court, or

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review. That Rule provides, though, that it is enough for the objecting party either to tell the court what it wanted or to object to what it did:

> For purposes of review by the trial court or on appeal of any other ruling or order, it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take ***or*** the objection to the action of the court.

Md. Rule 2-517(c) (emphasis added). From the hearing transcript, we can see that—despite the court's ultimate decision—Mother and Father advocated for reunification to remain the primary plan with custody and guardianship to a relative as a secondary option. That's enough for us to get to the merits.

when the court acts without reference to any guiding rules or principles." *In re Yve S.*, 373 Md. at 583 (cleaned up). We may also find an abuse of discretion if the trial court's ruling clashes with "the logic and effect of facts and inferences before the court." (*In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (internal citations omitted).

**a. The Court Considered the Factors in FL § 5-525(f)(1)**

The factors that the court considers when creating or altering a child's permanency plan, *see* Cts. & Jud. Proc. ("CJP") § 3-823(e)(2), are listed in Maryland Code (1999 Repl. Vol., Cum. Supp. 2018), § 5-525(f)(1) of the Family Law Article ("FL"):

> (i) the child's ability to be safe and healthy in the home of the child's parent;
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> (ii) the child's attachment and emotional ties to the child's natural parents and siblings;
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> (iii) the child's emotional attachment to the child's current caregiver and the caregiver's family;
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> (iv) the length of time the child has resided with the current caregiver;
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> (v) the potential emotional, developmental, and educational harm to the child if moved from the child's current placement; and
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> (vi) the potential harm to the child by remaining in State custody for an excessive period of time.

Mother and Father argue that the circuit court failed to consider all of these factors. G and CCDSS point both to the court's oral findings at the permanency planning hearing and the language in the court's subsequent written order. G argues as well that the circuit court was not required to acknowledge each of the FL § 5-525(f)(1) factors expressly "so long as the record supports a reasonable conclusion that appropriate factors were taken into account in

the exercise of discretion," and cites *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003). Although *Cobrand* was not decided in the family law context (we affirmed a circuit court's decision to grant a motion to transfer venue in a negligence case), the principle applies here as well. A juvenile court need not "recite the magic words of a legal test[]" to reflect adequate consideration of the FL § 5-525(f)(1) factors in a decision to terminate parental rights. *In re Adoption/Guardianship of Darjal C.*, 191 Md. App. 505, 532 (2010). Even so, we have reviewed the permanency planning hearing transcript and the court's written order in the context of FL § 5-525(f)(1)(i)–(vi), and we agree with G and CCDSS that the court considered the appropriate factors and that its orders reflect as much.

The court considered the *first* factor, FL § 5-525(f)(1)(i), "the child's ability to be safe and healthy in the home of the child's parent," in paragraph seven of its written order:

> The court finds that the child can not be safe and healthy in the home of either parent. The father is incarcerated, and the mother has not yet made substantial progress on the tasks of her service agreement.

The court considered the *second* factor, FL § 5-525(f)(1)(ii), "the child's attachment and emotional ties to the child's natural parents," in paragraph eight of its written order:

> The court finds that the respondent minor child has little to no attachment or emotional ties to the natural parents. The child was removed at nine months of age, and the father was incarcerated at the time of removal. The mother self reported that she was on a six month daily drug binge using crystal meth, and had been smoking meth around the clock.

The court considered the *third* factor, FL § 5-525(f)(1)(iii), "the child's emotional attachment to the child's current caregiver and the caregiver's family," and the *fourth*

factor, FL § 5-525(f)(1)(iv), "the length of time the child has resided with the current caregiver," at the close of the hearing:

> [G]'s been with the foster mother almost a year. She colored happily the entire time she was [in the court's presence]. Again, I was impressed with her fine motor skills. She has had some issues, health issues, and those have been addressed by the Department and by the foster mom. . . . But she's, what, 20 months old and she's been in care 13 of those 20 months. . . . There is no point in waiting another six months for stability on the part of the parents. The stability that needs to occur is that of the child.

The court considered the *fifth* factor, FL § 5-525(f)(1)(v), "the potential emotional, developmental, and educational harm to the child if moved from the child's current placement," in paragraph nine of its written order:

> The court finds that the child would suffer emotional, developmental and educational harm if moved from the current placement, which is a foster home where the child has been placed for over a year, and clearly identifies as a loving home.

The court considered the *sixth* factor, FL § 5-525(f)(1)(vi), "the potential harm to the child by remaining in State custody for an excessive period of time," in paragraph ten of its written order:

> The court finds that the respondent minor child would be subjected to harm by remaining in state care for an excessive period of time.

The record, although not voluminous, adequately supports the court's findings. G was not even two years old at the time of the hearing, and had been in foster care for most of her life. Mother was working on her mental health issues, but continued to struggle; Father made progress during the brief period of time he wasn't incarcerated, but his

addiction landed him back in jail quickly. In the meantime, G was doing well in her foster placement, and her counsel made a viable case for changing the permanency plan. The record reflects that the court considered the FL § 5-525(f)(1) factors, and we find no abuse of discretion.

**b. The Court's Findings of Fact Were Not Clearly Erroneous**

Mother also argues that the circuit court erred in making its findings concerning the *second* factor, that G had "little to no attachment or emotional ties to the natural parents," and the *sixth* factor, that G "would be subjected to harm by remaining in state care for an extended period of time." FL §§ 5-525(f)(1)(ii) & (vi). She asserts that both findings could not have been made without a more detailed record and further explanation. Our review of the record and the relevant case law reveals otherwise.

In *In re Adoption of Cadence B.*, the Court of Appeals affirmed a more drastic change in the permanency plan—a modification from reunification to open adoption—on a similar record. 417 Md. 146, 163 (2010). Cadence and her seven-year-old brother went into State custody after the Department of Social Services received a complaint that the children were left unattended while their parents engaged in drug activity. *Id.* at 150–52. During part of the time she was in foster care, her father was incarcerated first in Maryland, then in Pennsylvania, and once released he chose to remain in Pennsylvania. *Id.* The Department of Social Services reported that he "had irregular and limited contact with Cadence," but that "the two interact[ed] well" during visits and he sent cards, letters, gifts and emails to Cadence's foster mother. *Id.* at 153. Based on the record, the Court affirmed

the juvenile court's finding—concerning the *second* factor—that "following testimony and its own observations during the hearing, Mr. B. was more in the position of a beloved uncle . . . than a father." *Id.* at 162 (cleaned up). And, with regard to the *sixth* factor, the Court affirmed the juvenile court's finding "that Cadence 'needed permanence' and that adoption was 'necessary in order to move towards permanency.'" *Id.* at 163.

In this case, CCDSS's permanency plan hearing report reflects that Mother had attended most of her scheduled visits and that she was "appropriate, engaged, and attentive to [G]'s needs," and that she "play[ed] with [G], [fed] her snacks and lunch, and chang[ed] her diaper." But Mother failed to comply with her service agreement, demonstrated continued drug use, unemployment, and her mental health issues remained largely untreated. Similarly, Father had positive interactions with G during the brief time he was not incarcerated, and had graduated from onsite visits to supervised visits in his own home where "he played with [her] and performed basic care." But although he was on track for reunification, he was incarcerated again, and had not, despite his undoubtedly genuine intentions, demonstrated that he had the ability to care for her. On this record, we cannot say that the circuit court's findings in these regards were clearly erroneous.

**c. The Court Properly Applied the Best Interest of the Child Standard**

*Finally*, Mother and Father both challenge the circuit court's application of the best interest of the child standard in deciding to change G's permanency plan. And Father contends that the court failed to make specific findings about his "potential ability to care for G.W. after his release from incarceration." Again, we disagree.

In Maryland, "we examine the juvenile court's decision [ordering implementation of a permanency plan] to see whether its determination of the child's best interests was 'beyond the fringe' of what is 'minimally acceptable.'" *In re Ashley S. & Caitlyn S.*, 431 Md. 678, 715 (2013) (*quoting In re Yve S.*, 373 Md. at 583–84). Since G entered State custody, neither Father nor Mother has been able to provide a stable home for her, and the court's findings across the § 5-525(f)(1) factors combined with G's improvement while in state care support its overall conclusion that her best interests are served by a new permanency plan. Of course, a plan is a plan, and Mother and Father retain the opportunity to demonstrate that G's interests would be even better served by reunification. As hopeful as they or we might be for that possibility, however, the court's decision to modify the plan was altogether reasonable and amply supported by the record to this point.

**JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED. APPELLANT TO PAY COSTS.**