

Circuit Court for Montgomery County
Case No.: 6i2069

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0487

September Term, 2021

IN RE: N.P.

Reed,
Ripken,
Battaglia, Lynne, A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: November 23, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In these appeals,¹ brought by the father, B.B.,² and the mother, J.P.,³ we are asked to determine whether the juvenile court judge, the Honorable Cynthia Callahan, of the Circuit Court for Montgomery County, sitting as the juvenile court,⁴ abused her discretion when she changed, in May of 2021, the goal of a permanency plan for a child declared in need of assistance, N.P., who was eighteen months old at the time, from reunification with her parents to custody and guardianship of the maternal grandparents, F.P. and C.P., with whom N.P. had previously been in kinship care.⁵

¹ Rule 8–421(b) provides that, “[a]ll appeals on the same record, whether in the same action or in two or more actions consolidated in the lower court, shall be docketed as one action on appeal.”

² We refer to the child, parents, and grandparents by their initials, pursuant to Rule 8–121(c), which provides:

(c) **Confidentiality.** The name of the child, and any parent or guardian of the child, other than their initials, shall not be used in any opinion, oral argument, brief, record extract, petition, or other document pertaining to the appeal that is generally available to the public.

³ In the record, Mother’s last initial is identified as either “A” or “P.” In the Permanency Plan Hearing Order, issued in May of 2021, from which she appeals, Mother’s last initial is identified as “P,” which we use when referring to Mother.

⁴ In proceedings pertaining to a child in need of assistance, the Circuit Court for Montgomery County sits as the juvenile court. *See* Maryland Code (1973, 2020 Repl. Vol.), Section 3–801(i) of the Courts and Judicial Proceedings Article.

All references to the Courts and Judicial Proceedings Article in this opinion are to Maryland Code (1973, 2020 Repl. Vol.).

⁵ Section 5–501(e) of the Family Law Article, Maryland Code (1984, 2019 Repl. Vol.), defines kinship care as “continuous 24-hour care and supportive services provided for a minor child placed by a child placement agency in the home of a kinship parent or kinship caregiver, as those terms are defined in § 5–534 of this subtitle.

(continued . . .)

Mother poses the following question:

Based on the totality of the circumstances, including the ongoing pandemic, did the juvenile court abuse its discretion and err as a matter of law when it changed the child’s permanency plan away from parental reunification only 10 months after the CINA^[6] case began?

(. . . continued)

A kinship parent is

an individual who is related by blood or marriage within five degrees of consanguinity or affinity under the civil law rule to a child who is in the care, custody, or guardianship of the local department and with whom the child may be placed for temporary or long-term care other than adoption.

Maryland Code (1984, 2019 Repl. Vol.), Section 5–534(a)(3) of the Family Law Article.

A kinship caregiver is an individual

(i) with whom a child who is in the care, custody, or guardianship of the local department may be placed for temporary or long-term care other than adoption; and

(ii) who is approved by the local department under subsection (e) of this section.

Maryland Code (1984, 2019 Repl. Vol.), Section 5–534(a)(2) of the Family Law Article.

All references to the Family Law Article in this opinion are to Maryland Code (1984, 2019 Repl. Vol.).

⁶ The acronym “CINA” refers to a child in need of assistance. Maryland Code (1973, 2020 Repl. Vol.), Section 3–801(g) of the Courts and Judicial Proceedings Article. The term is defined in another subsection of the statute, 3–801(f), which provides:

(f) *Child in need of assistance.* — “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.

Father presents the following questions:

- 1) Did the trial court err in changing the established permanency plan of reunification to custody and guardianship to a relative during the COVID Pandemic when this incarcerated father was due to be released prior to the established target reunification date of October 31, 2021, and was unable to get any services?
- 2) Did the Department fail to provide evidence of reasonable efforts during the COVID Pandemic to assist this actively engaged but incarcerated father with any in-person and/or virtual services to reunify with his infant daughter?
- 3) Did the Court fail to properly consider the best interest of child factors under Family Law § 5-525?

Prior to the Permanency Plan Hearing, which occurred in May of 2021, the Montgomery County Department of Health and Human Services (“the Department”) submitted a report to the court, in which it recommended that the goal of N.P.’s permanency plan be changed from reunification to custody and guardianship of her maternal grandparents. According to the Department, “Reunification with Mother will not be in N.P.’s best interest as [she] is still working on how to be consistent with her own care and gaining stability. Reunification with Mother will lead to inconsistencies and instability with N.P.’s basic care.” At the hearing, at which both Mother and Father were represented, a caseworker for the Department, as well as Mother, testified.

In her opinion, Judge Callahan, initially, made findings regarding N.P., Mother, and Father, and how the Department became involved in N.P.’s life:

1. **THAT** prior to removal, N.P. was residing with her mother, via safety plan, in the home of the maternal grandparents.

2. **THAT** J[.]P. (Mother) is currently living in a homeless shelter.
3. **THAT** [B.]B. (Father) is currently detained at the Montgomery County Correctional Facility.
4. **THAT** N[.P.] was born on October 21, 2019 (18 months old).
5. **THAT** Mother was involved in a 2014 neglect investigation regarding a two-year-old child⁷ who ingested some of her psychotropic medication, which she left unattended and accessible. This resulted in the child being placed in a medically induced coma. Mother was not initially forthcoming with paramedics about the child ingesting the pills.
6. **THAT** on March 5, 2020, Mother arrived at MedStar Montgomery Medical Center with N.P. to report that N[.P.] had been poisoned by someone in the home. MedStar physicians examined the child and found her to be in good health.
7. **THAT** MedStar physicians in the emergency department were concerned with Mother's mental health after she showed signs of paranoia and other psychiatric issues, resulting in inpatient psychiatric treatment. Mother had a diagnosis of Bipolar Disorder and had not been taking her psychotropic medication. She did, however, test positive for amphetamines, and reported that she had been prescribed medication in relation to her Attention Deficit Hyperactivity Disorder (ADHD) diagnosis.
8. **THAT** N[.P.] was found to be a Child in Need of Assistance (CINA) on July 17, 2020.
9. **THAT** Father has an extensive criminal history. He is currently incarcerated.

* * *

21. **THAT** Mother testified that Father helped her with N[.P.] for the first six months of N[.P.'s] life. She admitted that Father was using heroin at the time, but stated he never used drugs around her or N[.P.] Mother admitted that she was aware of Father's substance use and still allowed him around

⁷ The child described by Judge Callahan is not identified in the record.

N[P.]

* * *

23. **THAT** the Department has been working with Mother since March, 2020. The Department provided Mother with services prior to opening a CINA case.

* * *

Judge Callahan also made findings related to Mother's and Father's efforts to achieve reunification, after N.P. was declared in need of assistance in July of 2020:

* * *

10. **THAT** Mother completed a psychological evaluation with Dr. Katherine Martin in September, 2020. [She was diagnosed] with Bipolar Disorder I, Stimulant Use Disorder (Adderall), Cannabis Use Disorder (In Early Remission), Language Disorder, and Other Specified Personality Disorder (With Borderline and Narcissistic Traits). Mother disagrees with Dr. Martin's findings and is only being treated for Attention Deficit Hyperactivity Disorder (ADHD). She receives medication management services from a nurse practitioner, Olatuniji Folawewo.
11. **THAT** Mother has not completed the Court-ordered psychiatric evaluation.
12. **THAT** Mother has been offered parenting education classes, but has decided to find her own program online. The Department reported that Mother's preferred parenting class is reading online modules, not in-person parenting practice.
13. **THAT** Mother stopped participating in therapy with Nicole Twaafhoven in January, 2021. Mother testified that she is in the process of finding a new therapist.
14. **THAT** Mother has started working a part-time job as a cashier for a Habitat for Humanity store. She earns \$350 dollars per paycheck, and also receives social security (\$1,030).
15. **THAT** Mother has been inconsistent with urinalysis. In January, 2021,

Mother attended 2 out of 8 appointments. In March, 2021, Mother attended 6 out of 8 appointments. In April, 2021, she attended 2 out of 8 appointments. Since December, 2020, Mother has tested positive for alcohol on 8 of the 10 tests. At the hearing, Mother testified that she missed urinalysis appointments because public transportation takes too long for her to get to the appointment and get to work on time.

16. **THAT** in February, 2021, Mother re-engaged with substance abuse treatment at Maryland Wellness and Recovery Center. Mother attends two sessions a week.
17. **THAT** Mother has been accepted into a Rapid Re-Housing Program. Mother testified that this program will help her get an apartment.
18. **THAT** Mother has consistently attended visits with N[P.] Mother and N[P.] are bonded.

* * *

20. **THAT** Father is incarcerated. The Department testified that no services are occurring at MCCF due to the COVID-19 pandemic. The Department has had difficulties finding a psychologist willing to travel to MCCF to do a psychological evaluation. His expected release date is September, 2021.

* * *

22. **THAT** the Department has reviewed Mother's services with her multiple times, a fact which Mother denies.

With respect to N.P.'s progress in the wake of having been declared a CINA and been placed in kinship care with her maternal grandparents, Judge Callahan found:

* * *

19. **THAT** N[P.] is doing well in her placement. She is up-to-date on all her medical needs and participating in the Infants and Toddlers Program. She is being monitored by her pediatrician for her motor skills, and she was recently enrolled in developmental therapy.

* * *

26. **THAT** N[.P.'s] Progress Under Supervision includes, but is not limited to:
- a. Being up-to-date on her medical appointments; and
 - b. Participating in the Infants and Toddlers Program.

* * *

Judge Callahan, finally, made numerous findings relevant to her determination of an appropriate permanency plan for N.P.:

24. **THAT** in determining the best permanency plan for N[.P.], the Court has considered the factors set out in Family Law Article § 5–525(f).^[8]

i. **The child's ability to be safe and healthy in the home of the child's parent(s)**

N[.P.] cannot be safe in Mother or Father's homes. Mother is not in therapy, nor has she been psychiatrically evaluated. Substance abuse remains and issue, as Mother tested positive for alcohol on 8 occasions.

Father is presently incarcerated. He has been unable to obtain a

⁸ The relevant portion of Section 5–525(f) of the Family Law Article provides:

(f)(1) In developing a permanency plan for a child in an out-of-home placement, the local department shall give primary consideration to the best interests of the child, including consideration of both in-State and out-of-state placements. The local department shall consider the following factors in determining the permanency plan that is in the best interests of the child:

(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.

psychological evaluation, or any services while incarcerated. However, his substance abuse remains a concern, as Mother testified he used heroin while he was caring for N[.P.]

- ii. **The child's emotional attachment and emotional ties to the child's natural parents and siblings**
N[.P.] is bonded to Mother and the maternal grandparents. She does not have a bond with Father.
- iii. **The child's emotional attachment and emotional ties to the children's current caregiver and the caregiver's family**
N[.P.] is bonded to her maternal grandparents. She turns to them for care and support.
- iv. **The length of time the child has resided with the current caregiver**
N[.P.] has resided with her maternal grandparents since June, 2020.
- v. **The potential emotional, developmental, and educational harm to the child if moved from the child's current placement**
N[.P.] is receiving excellent care from her grandparents. She has been in their care for at least half of her life. They ensure that she is up-to-date on all her medical and developmental needs.
- vi. **The potential harm to the child by remaining in State custody for an excessive period of time**
At the young age of 18 months, N[.P.] does not realize she is in state custody. She has ample support from her grandparents and the Department.

Judge Callahan found that the Department had made the following reasonable efforts:

27. **THAT** at this has made Reasonable Efforts including, but not limited to:
 - a. Conducting monthly face-to-face visits with N[.P.];
 - b. Supervising visits between Mother and N[.P.];
 - c. Reviewing the Court Order with Mother to help her understand her responsibilities;
 - d. Providing Mother with resources (i.e. psychiatric, parents classes) needed to complete her Court-ordered services;
 - e. Maintaining contact with the maternal grandparents;

- f. Maintaining contact with the Infants and Toddlers program;
- g. Contacting Mother's psychiatric nurse practitioner;
- h. Ensuring that all of N[.P.'s] medical, developmental and emotional needs are met;
- i. Providing Mother with urinalysis schedule;
- j. Contacting Father's case managers at MCCF to discuss Court-ordered services;
- k. Discussing permanency plan options with maternal grandparents; and
- l. Participating in a permanency plan informational meeting with the maternal grandparents.

In her order, Judge Callahan also required Mother to:

- a. Follow all treatment recommendations from her psychological evaluation;
- b. Continue participating in substance abuse treatment in Maryland Wellness and Recovery Center;
- c. Submit to a psychiatric evaluation, and follow all treatment recommendations for medication management;
- d. Twice weekly urinalysis testing;
- e. Participate in psychotherapy and follow all treatment recommendations;
- f. Participate in parenting education; and
- g. Sign releases for providers, upon review by counsel, all under the direction of the Department.

Judge Callahan further ordered Father to:

- a. Upon his release from prison, present himself to the Department for service planning;
- b. Submit to a psychological evaluation and follow all treatment recommendations;
- c. Submit to a substance abuse assessment and follow all treatment recommendations;
- d. Provide twice weekly urinalysis;
- e. Participate in the Abused Persons Program; and
- f. Participate in the Responsible Father's Program, all under the direction of the Department.

Judge Callahan, finally, ordered that the permanency plan be changed from

reunification to custody and guardianship of the maternal grandparents⁹ :

25. **THAT** at this hearing, the Department recommended that N[.P.'s] permanency plan be changed from Reunification to Custody and Guardianship to the maternal grandparents, C[.P.] and [F.]P. Mother and Father requested that the permanency plan remain Reunification. Given the circumstances in which Mother and Father find themselves and the testimony in the record, the Court finds it is in N[.P.'s] best interests to change the permanency plan to Custody and Guardianship to the maternal grandparents.

* * *

28. **THAT** the Department's Reasons for Recommendations include, but not limited to:

- a. Mother is homeless and has not engaged in mental health treatment;
- b. Father is incarcerated; and
- c. N[.P.] is doing well in her kinship placement.

Mother and Father each timely appealed the juvenile court's decision.

The proceedings related to N.P. were initiated in June of 2020 when the Department filed a Petition, in the Circuit Court for Montgomery County, to have N.P.

⁹ Where the goal of a permanency plan for a child in need of assistance is adoption, guardianship, or custody and guardianship of a relative, resources are offered, pursuant to COMAR 07.02.11.26(E), which provides:

E. The local department shall assist the relatives with necessary preparations for the child's placement and shall assist the relatives with:

(1) Getting those services that may be needed to sustain their family, such as:

- (a) Child care;
 - (b) Temporary Cash Assistance (TCA);
 - (c) Emergency Assistance to Families with Children (EAFC);
 - (d) Medical Assistance; or
 - (e) The Maryland Children's Health Choice Program (MCHCP);
- (2) Locating appropriate school placement; and
- (3) Locating and appropriate medical care provider for the child.

declared a CINA. In the Petition, the Department provided additional history for N.P., whose paternal parentage was initially in dispute, but resolved to be the Appellant, B.B. The initial placement of N.P. in kinship care with her maternal grandparents was the result of Departmental intervention in March of 2020:

- d. [T]he Department sought shelter^[10] of N.P. on March 6, 2020, but dismissed the CINA petition on March 12, 2020, following a successful Family Involvement Meeting (FIM)^[11] (CINA Petition No. 06-I-20-39). Mother agreed to participate in the following services, as recommended by the Department and Mother’s treating MedStar clinicians at the FIM: stepdown Partial Hospitalization Program (PHP), psychotropic medication management, individual and family therapy (with the maternal grandparents), and the Abused Persons Program (APP). Mother also agreed to provide the maternal grandparents with guardianship of N.P., to reside in their home with N.P., to refrain from leaving the residence with N.P., and to receive CWS In-Home Family Preservation Services. Mother signed a service agreement later that month which stipulated that the maternal grandparents would supervise all contact between Mother and child.

¹⁰ Shelter care is “a temporary placement of a child outside of the home at any time before disposition.” Section 3–801(bb) of the Courts and Judicial Proceedings Article.

¹¹ The Maryland Department of Human Resources Social Services Administration, Office of Children & Family Services, defined a family involvement meeting as:

A family involvement meeting is a casework practice forum to convene family members during key child welfare decision points. The purpose of the FIM is to establish a team to engage families and their support network to access the needs and develop service plans. The goal is to develop service plan recommendations for the safest and least restrictive placement for a child while also considering appropriate permanency and well-being options for that child.

Department of Human Resources Social Services Administration, Policy Directive SSA # 10–08, available at <https://perma.cc/HXE3-4XFY>.

4. Continued mental health/substance abuse concerns and attempted services:

- a. The case was transferred to CWS In-Home Family preservation social worker, Shahla Abdi on March 26, 2020, for further assessment and monitoring of safety and risk factors.
- b. On April 1, 2020, Mother prematurely requested discharge from MedStar Montgomery Medical Center’s partial hospitalization program (PHP). Mother had only attended three days of treatment and noted that she was drowsy while receiving services because of her withdrawal from Adderall, though she was actively making efforts to fill this prescription at the time. She was unsuccessfully discharged from MedStar’s program. MedStar’s diagnoses for Mother at the time of discharge included Bipolar I Disorder, moderate, with mania, Cannabis Use Disorder (which had ceased since inpatient treatment began), and ADHD. Mother also self-reported daily alcohol use.
- c. On April 17, 2020, Mother left the home for the weekend to stay with a friend and brought N[.P.] with her in violation of the previous service agreement. One of Mother’s friends was under the influence of alcohol and become physically aggressive towards Mother and another friend, in the presence of N[.P.], during their time unsupervised outside of the home.
- d. On April 22, 2020, CWS Family Preservation social worker, Shahla Abdi, engaged Mother in a safety plan which stipulated that the maternal grandparents supervise all contact between Mother and child, and also reiterated the requirement that Mother comply with the previously recommended mental health treatment and psychotropic medication management.
- e. To date, Mother maintains her prescription medication as it relates to her mental health diagnoses and is seen by Greater Washington Psychiatry and Counseling for medication management. In addition, the maternal grandparents report that Mother withdrawals [sic] large amounts of cash from her bank account, sometimes for the procurement of additional Adderall (an amphetamine), at approximately twenty dollars per pill in one hundred dollar increments, when she “runs out” or needs to “double up.” Mother has no explanation for these large cash withdrawals when CWS makes inquiries.
- f. The maternal grandparents further reported that Mother recently slept through an entire weekend and habitually sleeps until the afternoon and cannot be roused to provide care for N[.P.] during morning hours.

- g. Mother has been referred to several therapists but has not yet engaged in individual therapy, citing that she cannot afford her health insurance copays.
- h. On June 23, 2020, Ms. Abdi initiated a referral for Mother to participate in twice weekly urinalysis and substance use treatment. Services have not yet begun.
- i. On June 28, 2020, Mother left the maternal grandparents' home with N.P. a second time, unsupervised, following a family conflict, and the grandparents were unsuccessful in persuading her to return home with the child. Ms. Abdi spoke with Mother who wanted to reside with a family friend, but this friend was not offering themselves, nor were they an appropriate resource to supervise contact between Mother and child. Ms. Abdi met Mother at the friend's home at which point N[P.] was sheltered with the maternal grandparents.

With respect to B.B., N.P.'s father, the Petition included the following allegations:

6. Fathers and paternity:

* * *

- b. The maternal grandfather reports that B[.]B. has criminal and drug history. Mother inconsistently alleged in March 2020 that there had been some domestic violence, and the pair appear to be a couple currently.
- c. B[.]B. is currently detained at Montgomery County Correctional Facility (MCCF) in relation to several criminal charges in active cases including the following: December 2019 and January 2020 Theft \$1,000 - \$25,000 charges, February 2020 Assault – Second Degree charges (Mother is the complainant), and March 6, 2020 charge of CDS Possession – Not Marijuana. B[.]B. has a hearing on June 30, 2020, in the District Court for Montgomery County related to his recent theft charges (Case No. 6D00407182).
- d. B[.]B. has extensive criminal history including the following convictions: 2010 Assault – Second Degree, 2020 Violation of Probation (VOP), 2013 Assault – Second Degree (two counts), 2013 Conspiracy Burglary – First Degree, and 2019 CDS Possession – Not Marijuana. A final peace order was granted against Father in 2010.

An Emergency Shelter Hearing occurred on June 30 and July 1, 2020, at which

Mother was present and Father was represented by counsel, after which the court issued an order, which provided:

ORDERED, that Interim Shelter Care of N[.P.] is **GRANTED** pending further court order; and it is further

ORDERED, that N[.P.] shall be placed in the temporary care and custody of the Montgomery County Department of Health and Human Services (“the Department”) for continued placement in kinship care with her maternal grandparents, F[.P.] and C[.P.].; and it is further

ORDERED, that **LIMITED GUARDIANSHIP** of N.P. hereby is, and shall be, **GRANTED** to Lisa Merkin, Director of Child Welfare Services of the Montgomery County Department of Health & Human Services, and/or her designee, for educational, travel and medical purposes, (including dental, mental health and psychiatric services); and it is further

ORDERED that **LIMITED GUARDIANSHIP** of N[.P.] hereby is, and shall be, **CONCURRENTLY GRANTED** to F[.P.] and C[.P.]. for educational, travel and medical purposes, (including dental, mental health and psychiatric services); and it is further

ORDERED, that visitation between Mother and N[.P.] shall be supervised, twice weekly, for one hour, under the direction of the Department. Daily phone calls and virtual visits are permitted, at the grandparents’ discretion

Following the placement of N.P. in shelter care, the court, on July 17, 2020, held a hearing pertaining to the Department’s Petition to have N.P. declared a CINA. Following that hearing, at which both parents were represented by counsel, N.P. was declared to be a CINA, placed under the jurisdiction of the juvenile court, and committed to the Department, for placement in kinship care with her grandparents.¹²

¹² Mother was ordered, in an Adjudication and Disposition Order, issued on July 21, 2020, to undertake much of the same efforts as those ordered in the order under review:

- a. Submit to a psychological evaluation and follow all treatment recommendations;

(continued . . .)

The court scheduled a hearing to review N.P.’s status for December of that year, and a hearing to review the child’s permanency plan¹³ for May of 2021, which resulted in

(. . . continued)

- b. Submit to a psychiatric evaluation, and follow all treatment recommendations for medication management
 - c. Submit to assessment for substance use disorder and follow all treatment recommendations;
 - d. Provide regular urinalysis through the Urine Monitoring Program (UMP) to Behavioral Health. Mother shall submit to testing twice per week for the first month. If consistently negative, scheduled testing will continue based on clinical recommendations and at random;
 - e. Participate in individual therapy and follow all treatment recommendations;
 - f. Participate in family therapy with the maternal grandparents and follow all treatment recommendations; and
 - g. Participate in parenting education,
- all under the direction of the Department[.]

The same order imposed all of the requirements upon Father, as included in the order under review:

* * *

- b. Upon his release from prison, present himself to the Department for service planning;
 - c. Submit to a psychological evaluation and follow all treatment recommendations;
 - d. Submit to a substance abuse assessment and follow all treatment recommendations;
 - e. Provide twice weekly urinalysis through UMP;
 - f. Participate in the Abused Persons Program; and
 - g. Participate in the Responsible Father’s Program,
- all under the direction of the Department[.]

¹³ Section 3–823 of the Courts and Judicial Proceedings Article, which governs child placements, in relevant part, provides:

(b)(1) The court shall hold a permanency planning hearing to determine the permanency plan for a child:

(continued . . .)

the order under review here.

Mother asserts that, with respect to the order, Judge Callahan erred in changing the permanency plan to custody and guardianship less than one year after N.P. was declared to be a CINA. According to Mother, the statutory framework “contemplate[s]” that a parent will usually receive *at least* 12 to 15 months of reunification services.” (italics in original). Mother also asserts that the totality of the circumstances, including her recent progress toward satisfying her obligations under the court’s previous orders and the pandemic, should have led Judge Callahan to retain reunification as the goal of N.P.’s permanency plan.

Father asserts that the juvenile court’s change to the permanency plan was premature, because he had been unable to obtain any of the court-ordered services, as a result of his imprisonment. He also argues that the court’s finding that the Department had made reasonable efforts toward reunification was erroneous, because the pandemic obviated the ability of the Department to provide any services. Finally, Father asserts that

(. . . continued)

(i) No later than 11 months after a child committed under § 3-819 of this subtitle or continued in a voluntary placement under § 3-819.1(b) of this subtitle enters an out-of-home placement; or

(ii) Within 30 days after the court finds that reasonable efforts to reunify a child with the child's parent or guardian are not required based on a finding that a circumstance enumerated in § 3-812 of this subtitle has occurred.

(2) For purposes of this section, a child shall be considered to have entered an out-of-home placement 30 days after the child is placed into an out-of-home placement.

(3) If all parties agree, a permanency planning hearing may be held on the same day as the reasonable efforts hearing.

Judge Callahan improperly considered the fact that he was incarcerated in her findings regarding the factors in Section 5–525(f)(1) of the Family Law Article because, he asserts, Judge Callahan should have applied the statutory factors as if he were not imprisoned. The Department and N.P., both Appellees, assert that the juvenile court acted within its discretion in changing the permanency plan to custody and guardianship.¹⁴

The State has an interest and a responsibility, under the doctrine of *parens patriae*, to protect the health, safety, and welfare of children. *In re Yves S.*, 373 Md. 551, 569 (2003). A child in need of assistance “requires court assistance because he or she has been abused or neglected, or has a developmental or mental disability, and there is no caretaker to give proper attention to the child’s needs.” *In re O.P.*, 470 Md. 225, 235 (2020) (citing Section 3–801(f) and (g) of the Courts and Judicial Proceedings Article).

A trial court’s responsibilities regarding a petition to have a child declared to be a CINA are contained in Subtitle 8 of Title 3 of the Courts and Judicial Proceedings Article, Maryland Code (1973, 2020 Repl. Vol.). Following the submission, by the Department of such a Petition, a court must hold an Adjudicatory Hearing, pursuant to Section 3–817 of the Courts and Judicial Proceedings Article, in order “to determine whether the allegations in the petition, other than the allegation that the child requires the court’s intervention, are true.” Section 3–801(c) of the Courts and Judicial Proceedings

¹⁴ At the Permanency Plan Hearing, counsel for N.P. requested that the goal of N.P.’s permanency plan remain reunification. N.P., through her counsel, subsequently adopted the position that the court’s order changing the permanency plan should be affirmed.

Article.

A Dispositional Hearing is held, thereafter in order “to determine: (1) Whether a child is in need of assistance; and (2) If so, the nature of the court’s intervention to protect the child’s health, safety, and well-being.” Section 3–801(m) of the Courts and Judicial Proceedings Article. The Dispositional Hearing should be held on the same day, absent good cause, pursuant to Section 3–819(a) of the Courts and Judicial Proceedings Article.

Once a child has been declared a CINA and the appropriate interventions determined, the court must conduct a Review Hearing at least every six months,¹⁵ during which the child’s status, as well as the progress toward correcting the issues which had

¹⁵ Section 3–816.2(a) of the Courts and Judicial Proceedings Article, which governs Child in Need of Assistance (CINA) Review Hearings, in relevant part, provides:

(a)(1) Except as provided in subsection (b) of this section, the court shall conduct a hearing to review the status of each child under its jurisdiction within 6 months after the filing of the first petition under this subtitle and at least every 6 months thereafter.

(2) At a review hearing under this section, the court shall:

- (i) Evaluate the safety of the child;
- (ii) Determine the continuing necessity for and appropriateness of any out-of-home placement;
- (iii) Determine the appropriateness of and extent of compliance with the case plan for the child;
- (iv) Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating the court's jurisdiction; and

(v) Project a reasonable date by which the child may be returned to and safely maintained in the home or placed for adoption or under a legal guardianship.

led to the child being declared in need of assistance, is assessed. Section 3–816.2(a) of the Courts and Judicial Proceedings Article.

The court is required to establish a permanency plan for a child in an out-of-home placement,¹⁶ within twelve months. Section 3–823 of the Courts and Judicial Proceedings Article.¹⁷ The statute governing permanency planning expressly states that, “[e]very reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement.” Section 3–823(h)(4) of the Courts and Judicial Proceedings Article.

The Court of Appeals, in *In re Damon M.*, 362 Md. 429, 436 (2001), explained that “[t]he permanency plan is an integral part of the statutory scheme designed to

¹⁶ Section 5–501(i) of the Family Law Article defines “out-of-home placement” as “placement of a child into foster care, kinship care, group care, or residential treatment care.”

¹⁷Section 3–823 of the Courts and Judicial Proceedings Article, which governs permanent child placements, in relevant part, provides:

(b)(1) The court shall hold a permanency planning hearing to determine the permanency plan for a child:

(i) No later than 11 months after a child committed under § 3-819 of this subtitle or continued in a voluntary placement under § 3-819.1(b) of this subtitle enters an out-of-home placement; or

(ii) Within 30 days after the court finds that reasonable efforts to reunify a child with the child's parent or guardian are not required based on a finding that a circumstance enumerated in § 3-812 of this subtitle has occurred.

(2) For purposes of this section, a child shall be considered to have entered an out-of-home placement 30 days after the child is placed into an out-of-home placement.

(3) If all parties agree, a permanency planning hearing may be held on the same day as the reasonable efforts hearing.

expedite the movement of Maryland’s children from foster care to a permanent living, and hopefully, family arrangement.” The permanency plan “not only ‘provides the goal toward which the parties and the court are committed to work,’ it determines the ‘[s]ervices to be provided by the local social service department and commitments that must be made by the parents and children[.]’” *In re Shirley B.*, 191 Md. App. 678, 706 (2010) (quoting *In re Joseph N.*, 407 Md. 278, 285 (2009)) (first alteration in original).

The court is required to make various determinations at a permanency plan hearing:

(e) Determinations to be made at hearing. — (1) At a permanency planning hearing, the court shall:

(i) Determine the child’s permanency plan, which, to the extent consistent with the best interests of the child, may be, in descending order of priority:

1. Reunification with the parent or guardian;
2. Placement with a relative for:
 - A. Adoption; or
 - B. Custody and guardianship under 3–819.2 of this subtitle; or
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 that:
 - A. Addresses the individualized needs of the child, including the child’s educational plan, emotional stability, physical placement, and socialization needs; and
 - B. Includes goals that promote the continuity of relations with individuals who will fill a lasting and significant role in the child’s life[.]

* * *

(2) In determining the child’s permanency plan, the court shall consider the factors specified in § 5–525(f)(1) of the Family Law Article.

Section 3–823(e) of the Courts and Judicial Proceedings Article. Maintenance or a change in the permanency plan is determined by the child’s best interest. Section 3–823(h)(2)(vi) of the Courts and Judicial Proceedings Article.

The Department of Social Services, during the process, is, generally, required to “make ‘reasonable efforts’ in support of a permanency plan of parental reunification.” *In re Shirley B.*, 191 Md. App. at 708 (citing *In re James G.*, 178 Md. App. 543, 570 (2008)). Section 3–801(w) of the Courts and Judicial Proceedings Article defines “reasonable efforts” as “efforts that are reasonably likely to achieve the objectives set forth in § 3–816.1(b)(1) and (2)^[18] of [the Courts and Judicial Proceedings Article].” For children who have been placed in State custody, the statute requires that the court find that efforts have been made “to prevent placement of the child into the local department’s custody,” Section 3–816.1(b)(1) of the Courts and Judicial Proceedings Article, to “[f]inalize the permanency plan in effect for the child,” Section 3–816.1(b)(2)(i) of the

¹⁸ Section 3–816.1(b)(1) and (2) of the Courts and Judicial Proceedings Article, in relevant part, provide:

(1) In a hearing conducted in accordance with § 3–815 [shelter care hearing], § 3–817 [adjudicatory hearing], § 3–819 [dispositional hearing], or § 3–823 [permanency plan hearing] of this subtitle, the court shall make a finding whether the local department made reasonable efforts to prevent placement of the child into the local department’s custody.

(2) In a review hearing conducted in accordance with § 3–823 of this subtitle or § 5–326 of the Family Law Article, the court shall make a finding whether a local department made reasonable efforts to:

- (i) Finalize the permanency plan in effect for the child; and
- (ii) Meet the needs of the child, including the child’s health, education, safety, and preparation for independence[.]

* * *

Courts and Judicial Proceedings Article, and to “[m]eet the needs of the child, including the child’s health, education, safety, and preparation for independence,” Section 3–816.1(b)(2)(i) of the Courts and Judicial Proceedings Article.

Our appellate review of CINA cases has been defined in *In re Yves S.*, 373 Md. at 586, in which the Court of Appeals stated: “For cases involving the custody of children generally, our precedents establish a three part review of the decisions of the lower courts, addressing findings of fact, conclusions of law, and the determination of the court as a whole.” We review the juvenile court’s factual findings for clear error. *Id.* The lower court’s conclusions of law are reviewed *de novo*. *Id.*

We will uphold the decision of the juvenile court, unless it represents an abuse of discretion. *In re Yves S.*, 373 Md. at 586. We evaluate whether the trial court abused its discretion by asking whether the decision is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Id.* at 583-84 (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312-13 (1997)).

In the instant case, after presiding over a hearing at which both parties were represented by counsel, at which Mother testified, and during which a Department caseworker testified regarding the bases for the recommendation to change the goal of N.P.’s permanency plan, Judge Callahan made specific factual findings as to each of the statutorily enumerated factors in Section 5–525(f)(1) of the Family Law Article, which she explicitly recited in the Permanency Plan Order. The findings of fact were supported

in the record and are not clearly erroneous.

In considering factor one, N.P.’s ability to be “safe and healthy” in the homes of her parents, Judge Callahan’s finding that N.P. could not be safe in Mother’s home was based on evidence that Mother had failed to meet most of the requirements of the court’s previous orders, which was contained in the Department’s Report, which had been admitted into evidence, as well as in testimony taken during the hearing. With respect to Father, Judge Callahan’s conclusion that N.P. could not be safe in his home was based on evidence that he was incarcerated and had not been able to secure any court-ordered services. Judge Callahan’s finding that Father’s drug use was a concern, was based in Mother’s testimony at the hearing.

With respect to factor two, N.P.’s attachment to her natural parents, Judge Callahan’s finding that N.P. had a bond with Mother and her grandparents, but not with Father, was based in the Department’s Report, as well the caseworker’s testimony at the hearing.

As to factor three, N.P.’s attachment to her current caregivers, Judge Callahan’s finding that N.P. was bonded to her grandparents was based in the Department’s Report, as well as testimony of the caseworker, in which she elaborated on N.P.’s relationship with her grandparents.

Judge Callahan’s finding, regarding the fourth factor, the length of time N.P. has resided with her grandparents, was based on the Department’s Report, which recounted that N.P. was originally sheltered with her grandparents in June of 2020.

Regarding factor five, the potential emotional, developmental, and educational harm to N.P. if she were to be removed from placement with her grandparents, Judge Callahan found that her grandparents were providing N.P. with excellent care and that they were attending to her needs. This information was relayed to the court in the Department’s Report and through the testimony of the caseworker during the hearing.

As to the final factor, the potential harm to N.P. of remaining in the State’s custody, Judge Callahan’s finding that N.P., “at the young age of 18 months,” would not be harmed by remaining in the State’s custody due to the support she had been receiving from the Department and her grandparents.

With respect to the six statutory factors, Judge Callahan adhered to the prerequisites of Section 5–525(f)(1) of the Family Law Article and did not abuse her discretion in changing the permanency plan from reunification to custody and guardianship of the grandparents, based on her ultimate determination that the change would be in the child’s best interest. In this, Judge Callahan did not err.

Mother, nonetheless, argues that, in her consideration of the Section 5–525(f)(1) factors, Judge Callahan failed to attach sufficient weight to her recent progress toward obtaining court-ordered services, all of which, she asserts that she “was entitled to have reunification remain N.P.’s permanency plan.”

Judge Callahan’s analysis, while finding that Mother had made some progress, appropriately focused on N.P.’s best interest. *In re D.M., J.M.*, ____ Md. App. at ____, No. 0998, Sept. Term 2020, slip. op. at 25 (filed May 25, 2021) (citing *In re Adoption of*

Ta’Niya C., 417 Md. 90, 116 (2010)). Judge Callahan found that Mother was homeless and also had failed to comply with the majority of terms in the court’s previous orders. While she found that Mother had made some progress in her parenting ability, she also found that she failed to comply with most of the court’s prior orders. Judge Callahan’s determination that N.P.’s best interest would be afforded by being in the custody and guardianship of her maternal grandparents was not an abuse of discretion, based upon her assessment of the statutory factors, and she did not err.

Mother asserts, nevertheless, that the permanency plan change should not have occurred at all, because, she avers, permanency plan hearings should not be held before twelve months after out-of-home placement. Mother initially, cites Section 3–823(b) of the Courts and Judicial Proceedings Article, to support her assertion, but that sub-section requires that a court must hold a permanency plan hearing “*no later than 11 months after a child . . . enters an out-of-home placement[.]*” Section 3–823(b) of the Courts and Judicial Proceedings Article (emphasis added). Section 3–823 of the Courts and Judicial Proceedings Article also expressly allows for permanency plan hearings to occur at any time subsequent to a child obtaining CINA status:

(c) *Permanency plan hearing.* — (1) On the written request of a party or on its own motion, *the court may schedule a hearing at any earlier time* to determine a permanency plan or to review the implementation of a permanency plan for any child committed under § 3-819 of this subtitle.

Section 3–823(c)(1) of the Courts and Judicial Proceedings Article (second italicization added).

Mother also relies on Section 5–525.1(b)(1)(i) of the Family Law Article, which obligates the Department to petition for the termination of parental rights of the parents of a child who “has been in an out-of-home placement for 15 of the most recent 22 months[.]” The statute, however, is inapt, because termination of parental rights is not in issue.

Mother also directs us to COMAR 07.02.11.16(A)(7), which defines circumstances that obligate the Department to “give serious consideration to implementing the permanency plan other than reunification,” including when

(7) The child has been continuously out of the custody of the parents or legal guardian, and in out-of-home placement with the local department for at least a year, and the local department has documented that:

(a) The conditions which led to the child's placement still persist, or similar conditions of a potentially harmful nature still exist;

(b) There is little likelihood that the conditions which led to the child's placement will be remedied at an early date to make it possible for the child to be returned to the family in the immediate future;

(c) Continuation of the parent-child relationship diminishes the child's prospects for early integration into a stable and permanent family; and

(d) The parents or legal guardian have failed to implement a plan for resumption of care which would provide adequately for the child's physical, mental, or emotional health and development, or to maintain regular interest or contact with the child.

Nothing, however, in the regulation supports Mother's assertion that it requires a year period of reunification, but only that, under certain documented circumstances, serious consideration should be given to a goal other than reunification. In the instant case, the

need for the change was necessitated by Judge Callahan’s findings.¹⁹

Mother misconstrues another regulation, COMAR 07.02.11.03(B)(63), which defines “Time-Limited Reunification Services”:

(63) Time-Limited Family Reunification Services.

(a) “Time-limited family reunification services” means the services and activities that must be made available to the parents or legal guardian to facilitate the reunification of the child during the first 15 months of out-of-home placement.

In fact, reunification services had been the function of the Department’s efforts, which were specifically found to be reasonable. The regulation, though, does not constitute a time bar for permanency planning.

Lastly, when Mother asserts that changing the goal of N.P.’s permanency plan during the pandemic was “fundamentally unfair,” she ignores the fact that “the task of the juvenile court is not to remedy unfairness to the mother, but to weigh any unfairness in light of the best interests of her children.” *In re Ashley S.*, 431 Md. 678, 712 (2013). In other words, “in balancing fairness to the parent and fulfilling the needs of the child, the child prevails.” *Id.* at 719. Judge Callahan, who acknowledged the exigencies of the pandemic, as well as the limited steps that had been taken by Mother, found that Mother had failed to meet much of the terms of the court’s orders during the ten months since N.P. had been found to be in need of assistance and that it would be in N.P.’s best interest to change the permanency plan, which would provide services not only to the Mother and

¹⁹ It should be noted that the Department began rendering services to N.P. four months prior to the Shelter Care Hearing.

Father, but the grandparents as well.

Father, who, like Mother, suggests that Judge Callahan should have emphasized parental interests in determining N.P.’s permanency plan, asserts that Judge Callahan erred in her reliance on the fact that he was incarcerated in her consideration of the factors enumerated in Section 5–525(f)(1), because he he anticipated being released from jail within five months. Therefore, Father asserts, Judge Callahan should not have changed N.P.’s permanency plan.

Judge Callahan was required “to assess the reality of the children’s circumstances and make findings accordingly.” *In re Ashley S.*, 431 Md. at 711. She also was required to focus on N.P.’s best interest at the time of the Permanency Plan Hearing, not what could happen. *In re D.M., J.M.*, ____ Md. App. at ____, No. 0998, Sept. Term 2020, slip. op. at 25 (filed May 25, 2021) (citing *In re Adoption of Ta’Niya C.*, 417 Md. 90, 116 (2010)). Judge Callahan made specific findings that Father was incarcerated, that he had “an extensive criminal history,” that he had used heroin in front of N.P., and that “his substance abuse remains a concern.” She appropriately exercised her discretion to consider Father’s current situation and past conduct to determine that it was in N.P.’s best interest to change the permanency plan to custody and guardianship of the maternal grandparents.

As explained previously, Judge Callahan was required to focus on N.P.’s best interest at the time of the Permanency Plan Hearing, not that of her parents. *In re D.M., J.M.*, ____ Md. App. at ____, No. 0998, Sept. Term 2020, slip. op. at 25 (filed May 25,

2021) (citing *In re Adoption of Ta’Niya C.*, 417 Md. 90, 116 (2010)). In so doing, it was within her discretion to consider Father’s current situation and past conduct in her determination that it would be in N.P.’s best interest to change to custody and guardianship.

We are similarly unpersuaded by Father’s assertion that, because he has been in jail since N.P. was declared to be a CINA and that services were largely unavailable to him due to the pandemic, the judge erred in finding that the Department had made reasonable efforts in securing him services. In *In re Shirley B.*, 191 Md. App. at 718, we held that in situations where reunification services are unavailable, the Department’s efforts toward reunification may, nonetheless, be determined to be reasonable.

In *In re Shirley B.*, a mother, of a CINA, Ms. B., challenged the juvenile court’s findings related to the Department’s reasonable efforts toward reunification. *Id.* at 713. We began our analysis by observing that the statutory definition of “reasonable efforts” was “amorphous.” *Id.* at 710 (citing Section 3–816.1(b)(1) and (2)). As a result, we continued, “each case must be decided based on its unique circumstances.” *Id.* at 711.

In Ms. B’s case, she asserted that the agency’s failure to provide specific reunification services to her evidenced the agency’s failure to make reasonable efforts toward reunification. *Id.* at 708. The Department, in its attempts to secure services for Ms. B., discovered that some of them were simply not available and the Department, therefore, was unsuccessful in providing those services to her. *Id.* at 715. We declined to hold the Department responsible for providing services that were not available to Ms. B.,

explaining

That the Department’s efforts to connect Ms. B. with services for parenting and basic living skills were unsuccessful, because the services were not available, does not mean that the Department’s actions did not satisfy the ‘reasonable efforts’ requirement. Indeed, the Code of Maryland Regulations (“COMAR”) provides that the Department shall provide, “[t]o the extent that funds and other resources are available, a range of services that will facilitate or maintain reunification of the child” The Department certainly must make good faith efforts to provide services to achieve reunification, It cannot provide services, however, if they are not available.

Id. at 716 (internal citations omitted) (alterations and emphasis in original).

In the present case, Judge Callahan found that the Department had contacted Father’s case managers to discuss the availability of court-ordered services and attempted to locate a psychologist who would be willing to perform a psychological evaluation on Father in the prison in which he was incarcerated. Judge Callahan, while acknowledging that such services were unavailable to Father while he was incarcerated, concluded that the Department had, nonetheless, made reasonable efforts to assist Father in complying with the terms of the court’s order.

In conclusion, Judge Callahan did not err or abuse her discretion in deciding that it was in N.P.'s best interest to change the goal of her permanency plan from reunification to custody and guardianship of her grandparents.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. [COSTS TO BE DIVIDED
EQUALLY BETWEEN APPELLANTS.]**