UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0677

September Term, 2015

IN RE: COURTLAND C. & COURTNEY C.

Woodward,
Friedman,
Thieme, Raymond, G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: December 3, 2015

Cynthia C. ("Ms. C.") is the natural mother of fraternal twins Courtland C. and Courtney C., (collectively "the children"), born April of 2004.[1] In August of 2008, Courtland, Courtney, and their siblings were removed from their home by the Prince George's County Department of Social Services ("the Department") following Cynthia C's hospitalization for psychiatric treatment after she threatened to kill herself and her children. On September 30, 2008, the Circuit Court for Prince George's County, sitting as a juvenile court, determined that Courtland, Courtney, and their siblings were Children in Need of Assistance ("CINA"),[2] and committed them to the temporary care and custody of the Department for placement in foster care. Courtland and Courtney remained in out-of-home placements with a plan of reunification for almost seven years, until April 7, 2015, when, following a permanency planning hearing, the court changed Courtland and Courtney's permanency plans to concurrent goals of guardianship or adoption. Cynthia C. filed a timely appeal of the circuit court's order, raising a single question for our consideration:

> Did the court err in changing the permanency plan from reunification to a concurrent plan of non-relative adoption or custody and guardianship?

[1] Courtney C. is also the mother of twins Jared C. and Jordan C. born May of 2005, son Darius C., born May of 1999, and daughter Alexis C., born October 1993. Courtland and Courtney's father, Paul E., is not involved in their life and is not a party in the instant appeal.

[2] "CINA" is defined as "one who requires court intervention because he or she has been abused, neglected, and/or has a developmental disability or mental disorder, and his or her parent, guardian, or custodian are either unwilling or unable to provide proper care and attention to the child and the child's needs." Md. Code (2001, 2013 Repl. Vol.) § 3-801(f) and (g) of the Courts and Judicial Proceedings Article ("CJP").

Discerning no error or abuse of discretion, we shall affirm the judgments of the circuit court.

FACTS

Courtland and Courtney were four-years-old when they were removed from Ms. C's care due to neglect. Both children were diagnosed with adjustment disorders for which they receive psychological counseling. Courtney also suffers from attention deficit hyperactivity disorder and oppositional defiant disorder, for which she is prescribed medication and therapy.

For much of time they have been in foster care,[3] the children resided in the therapeutic foster home of the W's, whom they call Grandma and Grandpa. For financial reasons, the W's were not able to adopt or accept guardianship of Courtland and Courtney. In an effort to effectuate a permanent placement, beginning in September of 2013, Courtland and Courtney began spending weekends with Michael and Wendell H, who had become foster parents with the goal of adoption. In June of 2014, the children were transitioned to the care of the H's, but they still have frequent visitation and phone contact with the W's. They also have regular visitation with their other siblings.

The H's want to adopt Courtland and Courtney. The children are healthy and doing well socially, in school, and in extracurricular activities. Both Courtland and Courtney are well bonded with the H's. Courtland and Courtney, now age eleven, are amenable to being

[3] Courtland and Courtney were briefly placed with relatives in North Carolina, but the placements were unsuccessful and the children were returned to Maryland.

adopted by the H's, so long as they can continue to maintain contact with their siblings and Ms. C.

At the time her children were removed from her custody, Ms. C. was using illegal drugs and suffering from severe mental health issues that rendered her unable to care for the basic needs of her children. After the children were committed to the custody of the Department, Ms. C. continued to struggle with her mental health problems, drug abuse, homelessness, and the inability to obtain employment, despite the intervention of the Department. In April of 2011, without notifying the Department, Ms. C. moved out of state—first to Washington D.C. and then to North Carolina. In 2012, Ms. C. was approved to receive social security disability benefits because of her diagnosed mental health problems. For the last three years, Ms. C. has lived in a one-bedroom apartment in North Carolina.

While she still resided in Maryland, Ms. C. was granted liberal visitation with Courtland and Courtney. After she moved to North Carolina, the in-person visits became much less frequent. In the two years preceding the April 7, 2015 hearing, Ms. C. had visited with Courtland and Courtney two or three times. Except for those periods when she was hospitalized, however, Ms. C. maintained regular contact with the children by phone. Since she moved to North Carolina, Ms. C. has participated in permanency planning meetings by telephone.[4] Ms. C. has expressed that she does not want Courtland and Courtney to be adopted by the H's, who are both men.

[4] Originally, Courtland and Courtney's permanency planning hearing was set to occur on February 26, 2015. Ms. C. requested a continuance so that she could safely travel

ANALYSIS

Ms. C. contends that the circuit court "erred in changing the permanency plan from reunification to a concurrent plan of non-relative adoption and custody and guardianship." In reviewing the decision of a juvenile court, we apply "three different but interrelated standards of review." *In re Adoption/Guardianship of Cadence B.*, 417 Md. 146, 155 (2010). We review the circuit court's findings of fact for clear error, affording "due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8–131(c); *In re Shirley B.*, 419 Md. 1, 18 (2011). The juvenile court's legal conclusions are subject to plenary review. *See In re Michael G.*, 107 Md. App. 257, 265 (1995) (explaining appellate review of purely legal issues is expansive). Finally, we review the juvenile court's ultimate disposition for abuse of discretion to determine "whether its determination of the child's best interest was beyond the fringe of what is minimally acceptable." *In re Ashley S. & Caitlyn S.*, 431 Md. 678, 715 (2013) (internal citation and internal quotation marks omitted); *In re Yve S.*, 373 Md. 551, 585–86 (2003).

I. Court's Decision to Change Goals of Permanency Plans

Ms. C. contends that the circuit court applied the wrong standard to determine the best interest of Courtland and Courtney. She asserts that the trial court was required to determine whether there was any likelihood of future harm or neglect if Courtland and Courtney were returned to her care. Ms. C. concludes that the court's ultimate decision to change the children's permanency plans to concurrent goal of either adoption or custody

to Maryland to attend the hearing in person. On April 7, 2015, however, Ms. C. again chose to participate in the hearing by telephone.

and guardianship constituted an abuse of discretion and therefore, the court's order must be vacated.

It is well established that in CINA cases where a child had been removed from the family home, the juvenile court is required to conduct "a permanency planning hearing to determine the permanency plan for a child." Md. Code §3–823(b) of the Courts and Judicial Proceedings Article ("CJP"). Once the initial permanency plan is established, the court is obliged to conduct periodic hearings and "change the permanency plan if a change in the permanency plan would be in the child's best interest." CJP § 3-823(h)(2)(vi); Md. Code § 5-525(f)(1) of the Family Law Article ("FL"). Among the factors the court may consider in determining what plan is in a child's best interest are:

> (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.

FL § 5-525(f)(1).

Ms. C. points out that in cases where prior abuse or neglect were proven at adjudication, before allowing the parent to regain custody of his or her children, the court

must expressly consider whether there is "sufficient evidence that further abuse or neglect [is] unlikely." *Cadence B.*, 417 Md. at 157 (citation omitted); FL § 5-901 (directing courts to deny custody or visitation rights unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party). In such cases, the parent seeking reunification with his or her children bears the burden of proving that the detrimental past conduct is not likely to be repeated. *Cadence B.*, 417 Md. at 157; *Yve S.*, 373 Md. at 586. Ms. C. asserts that the juvenile court failed to engage in the necessary analysis under FL § 9-101.

In this case, because the court did not change the terms of Ms. C's custody or visitation, deciding that placing Courtland and Courtney in the care and custody of their mother was not an immediate option and would not be an option in the foreseeable future, the court was not required to expressly consider whether there was any potential likelihood of future abuse or neglect as required by FL § 9-101. Such a determination would have been premature under the circumstances presented. Instead, the juvenile court was required to consider the factors articulated in FL § 5-525(f)(1) to determine what plan would best serve Courtland and Courtney's best interests. CJP § 3-823(e)(2).

In rendering its determination in this case, the juvenile court clearly articulated that its "primary focus … is the welfare and best interest of each of the respondents," who had been removed from their mother's care due to neglect. The court acknowledged that in the past few years Ms. C. had apparently "done a commendable job" of addressing her mental health problems and "managing her life[.]" There was evidence, however, that earlier this year, Ms. C was criminally charged with "hit-and run, leaving the scene of an accident,

property damage, simple assault, and reckless driving" related to an accident that occurred in January of 2015. Moreover, although Ms. C. testified that she continues to engage in mental health treatment and take her prescribed medication, it is clear in the record that she has consistently resisted and delayed signing consent forms and waivers necessary for the Department to actively monitor her compliance with substance abuse and mental health treatment or her progress in obtaining appropriate housing. Nor did Ms. C. proffer any evidence to reassure the court that her mental health problems have abated to such a degree that future non-compliance and relapse are unlikely or that she is mentally and emotionally prepared to concurrently manage both her own mental health problems and effectively parent her children, both of whom have special needs. As the court noted, despite the fact that housing has been a key barrier to reunification for the last seven years, Ms. C. has consistently failed to take the necessary steps to obtain a larger residence that could accommodate herself and her children. Based on all of the testimony and record evidence, the court concluded that "the prospects are just not reasonable" that Ms. C. would be "able to provide for either of the Children in a reunified circumstance[.]" FL §5-525(f)(1)(i). The court determined, however, that it was necessary for Courtland and Courtney's continued well-being that they be permitted to maintain a relationship with Ms. C. and their other siblings. FL §5-525(f)(1)(ii).

The court acknowledged that Courtland and Courtney had been out of their mother's care for more than seven years, which in the court's words, was "too long." FL § 5-525(f)(1)(vi). For the last several years, Ms. C's contact with her children had been primarily accomplished through weekly telephone calls. In the two years preceding the

April 7, 2015 hearing, Ms. C. had seen Courtland and Courtney only two or three times, each time for less than three hours. Ms. C. has not had an unsupervised overnight visit with her children since they came into care in 2008.

For more than a year, the children had been in the care of their foster fathers who wanted to adopt them. FL §5-525(f)(1)(iv). The children have bonded with their foster family, are healthy, and are doing well emotionally, socially, in school, and in their respective extracurricular activities. FL § 5-525(f)(1)(iii) and (v). Courtland and Courtney have indicated that they would consent to being adopted by the H's, so long as they can continue to maintain contact with their siblings and Ms. C. FL § 5-525(f)(1)(ii).

The court ultimately recognized that maintaining the goal of reunification in Courtland and Courtney permanency plans would not be in their best interests. Based on its findings, the court concluded that it is in "the best interests of Courtney and Cortland that permanency would be with Michael and Wendell H[.]" either through custody and guardianship or adoption. The court encouraged the parties to move ahead with whatever counseling or mediation was necessary to assist the children, the H's, and Ms. C. to achieve permanency and define a mutually acceptable continuing role for Ms. C. in Courtland and Courtney's lives.

We are persuaded that the juvenile court adequately considered all of the available evidence before carefully crafting a plan that would offer Courtland and Courtney the best chance at a safe and stable future. Discerning no error in the court's factual determinations, we conclude that the juvenile court's decision to change the goals of Courtland and Courtney's permanency plans from reunification or guardianship to guardianship or

adoption was in the children's best interest, and, therefore, did not constitute an abuse of discretion.

II. Reasonableness of Department's Efforts toward Reunification

We shall next address Ms. C's assertion that the juvenile court's finding that the Department made reasonable efforts to facilitate her reunification with her children was clearly erroneous. Ms. C. contends that the only remaining barrier to her reunification with Courtland and Courtney is her lack of adequate housing and asserts that the Department has failed to provide any services to assist her in ameliorating that barrier.[5] Ms. C's argument ignores, however, the extensive efforts the Department has made over the last seven years to address the issues that brought the children into care, including continuously monitoring Ms. C's progress toward reaching the goals of the children's permanency plans, and, when appropriate, referring Ms. C. for services to address her mental health problems and substance abuse, in addition to her lack of adequate housing. Based on the documents in the record and the testimony presented at the permanency planning hearing, we are not persuaded that the juvenile court's factual determination was clearly erroneous.

Where the goal of a permanency plan is reunification with a parent, the Department is required to make "reasonable efforts … to preserve and reunify" the family to the extent that is possible, while ultimately protecting the child's health and safety. FL § 5-525(e)(1). The services provided by the Department should be tailored to the individual needs of the

[5] As we discussed at greater length above, the record indicates that there continue to be concerns regarding Ms. C's mental health that also weigh against her reunification with Courtland and Courtney.

family, including services calculated to "ameliorate factors … that would inhibit a parent's ability to maintain the child safely at home[.]" *In re James G.*, 178 Md. App. 543, 579 (2008). To effectuate a plan of reunification, the Department must offer a "reasonable level of ... services, designed to address both the root causes and the effect of the problem." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 500 (2007). The Department, however, "is not obliged to find employment for the parent, to find and pay for … housing for the family, to bring the parent out of poverty, or to cure or ameliorate any disability." *Id*. Where, despite the intervention and services of the Department, a parent "continue[s] to exhibit an inability or unwillingness to provide minimally acceptable shelter, sustenance, and support" for their children, the Department must seek alternate routes to achieving permanency. *Id*. at 501. "Reasonable efforts" must be determined on a case-by-case basis. *In re Shirley B.*, 419 Md. 1, 25 (2011).

Prior to the permanency planning hearing on April 7, 2015, the goals of Courtland and Courtney's permanency plans included concurrent goals of reunification and custody and guardianship. The juvenile court accepted the Department's report listing the efforts the Department had taken to achieve those goals since the last review hearing. The Department's efforts to assist Ms. C. in overcoming the barriers to her reunification with her children over the preceding six years were also well documented in the record.

Specifically, regarding the adequacy of Ms. C's housing in North Carolina, the Department had conducted a home health assessment to determine if it was appropriate for either visitation or reunification; communicated with Ms. C's rental agency to ensure that necessary repairs were made to her apartment; called the Durham County Department of

Social Services for assistance in facilitating visitation between Ms. C. and her children; provided a letter to the housing authority in Durham regarding the permanency plans for Courtland and Courtney, and offered to provide monetary resources to Ms. C. to help her obtain a larger apartment including money to purchase furniture. The Department has continued to indicate that it is willing to provide any information or documentation necessary to assist Ms. C in her efforts to obtain a residence that could accommodate her and her children.

In her brief, Ms. C suggests that the Department should have sought a waiver of the departmental policy requiring larger housing. There is no indication in the record, however, that Ms. C. ever requested a waiver of the Department's regulations governing what constitutes adequate housing for a family like Ms. C's. Instead, our review indicates that Ms. C. consistently stated that she preferred to visit with her children in Maryland and that it was her intention to find a larger apartment to permanently accommodate her family. Because it was never the intention of either Ms. C. or the Department for reunification to occur in Ms. C's one-bedroom apartment, the Department was not required to act on its own initiative to grant a waiver of its regulations or to assist Ms. C. in reconfiguring her existing living space to better accommodate her children.

For the last year or more, the Department's efforts to assist Ms. C. to obtain a larger residence have been largely thwarted by Ms. C's continued failure to reapply for housing assistance. In the seven years the Department had been involved with the C. family, Ms. C. has consistently failed to take the necessary steps to obtain adequate housing. We are persuaded that the persistent inadequacy of Ms. C's residence was primarily the result of

her own failure to initiate a change. The Department could not force Ms. C. to do more or to try harder. It could only provide referrals, resources, and information to supplement Ms. C's own efforts.

Moreover, we are persuaded that Ms. C. has made the Department's obligation to provide services and make reasonable efforts exponentially more challenging by choosing to leave Maryland and reside in North Carolina. As the juvenile court opined at the permanency planning hearing, the Department's ability and responsibility to assist Ms. C. was limited due to her decision to reside in a different State. Ultimately, the juvenile court determined that the Department had made reasonable efforts to provide assistance and concluded that "nothing more can be expected of the Department."

For all the foregoing reasons, we conclude that the juvenile court's determination that the Department had made reasonable efforts to facilitate Ms. C's reunification with her children was not clearly erroneous.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; APPELLANT TO PAY COSTS.