Circuit Court for Kent County
Case No. C-14-JV-17-000015

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 791

September Term, 2020

IN RE: K.L.

Fader, C.J.,
Beachley,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: April 6, 2021

The Circuit Court for Kent County, sitting as a juvenile court, denied a motion by D.K. ("Father"), the appellant, for unsupervised visitation with K.L., his son.[1] Father argues that the juvenile court erred when it authorized him to have only supervised visitation with K.L. Finding no error or abuse of discretion by the court, we will affirm.

BACKGROUND

Factual Background

K.L., now three years old, is a medically fragile child who was born with a congenital heart condition that necessitated extensive surgery. In October 2017, when K.L. was three months old, he was taken from the custody of his mother, B.L. ("Mother"), and placed into emergency shelter care by the Kent County Department of Social Services (the "Department").[2] The Department's rationale for placing K.L. in shelter care was that he needed to gain weight to be eligible for surgery, he was losing weight in Mother's care, and Mother had "fail[ed] to follow up with doctor's appointments for weight checks." Mother was also unable to provide requested documentation showing K.L.'s feeding schedule.

The juvenile court ordered that K.L. stay in shelter care through the planned surgery, which was scheduled for the following month. The court found that allowing K.L. to remain in Mother's custody would be contrary to K.L.'s welfare, that Mother was unable to provide for K.L.'s basic needs, and that the identity of K.L.'s father had not yet been

[1] For the privacy of the parties, we will use their initials.

[2] Mother, who has been incarcerated for much of K.L.'s life, is not a party to this appeal.

determined. The initial permanency plan proposed by the Department for K.L. was reunification with his natural parents.

Father's paternity was established in December 2017, after the shelter care proceedings.

After K.L.'s surgery, the court placed him in the custody of Ms. St. and Mr. and Mrs. Sm., the mother and grandparents, respectively, of the man Mother originally believed was K.L.'s father. In February 2018, the Department proposed a permanency plan of reunification with Mother and Father, with a concurrent guardianship with Mr. and Mrs. Sm., and noted that both parents agreed to placement with the Sms. "until another appropriate placement is found." In May 2018, the court entered an order finding that K.L. was a Child in Need of Assistance ("CINA").[3] The court determined that K.L. had been neglected, that Mother was "unable to provide care to the child," and that Father was "either unwilling or unable to provide care." The court also noted that Father had visited K.L., was supportive of his placement with Mr. and Mrs. Sm., and was willing "to be a resource, but not a primary caregiver." The court continued the existing permanency plan of reunification and set Mother's visitation with K.L. for once a month, supervised. The CINA order was silent regarding the level of access to be afforded to Father.

[3] A "Child in Need of Assistance" is a child who requires court intervention because (1) the child has been abused, neglected, has a developmental disability, or has a mental disorder, and (2) the child's parents or guardians are unable or unwilling to give proper care and attention to the child and the child's needs. Md. Code Ann., Cts. & Jud. Proc. § 3-801(f) (2020 Repl.).

K.L. has remained in the custody of Mr. and Mrs. Sm. since his release from the hospital. During most of that time, Father has had supervised visitation with K.L. once a month and had spoken by video with him several times a week. The juvenile court noted in various orders reviewing the permanency plan that Father "visit[ed K.L.] regularly, and provide[d] financial assistan[ce]" to K.L.'s foster parents, but was "not able to be a resource as far as day to day parenting is concerned."

In August 2018, the Department and the Court-Appointed Special Advocate for K.L. ("CASA") recommended that the permanency plan be changed from reunification with one of K.L.'s natural parents to adoption by Mr. and Mrs. Sm. The court declined to do so, stating that although the situation had been "bad . . . from the beginning," it was too soon to change the permanency plan. However, the court indicated that it would revisit the question at the next permanency plan review hearing. The court also noted in its order continuing the existing permanency plan that Father's attorney had advised that Father did not fully understand the proposed changes in the plan and so did not agree or disagree with it.

On May 6, 2019, the court ordered that the reunification plan be changed to adoption. Both the Department and the CASA had again recommended this change. The juvenile court's order following the review hearing stated that "Father's attorney reports that the Father has no objection to the change in plan, that the Father has a good relationship with the Sm[s.], and that he is grateful to them." The hearing sheet from the April review hearing stated that Father "does not obj[ect] to adoption plan. Wants continued involvement w[ith] child & future overnights."

From late 2019 to early 2020, Father's visits became more sporadic. Apparently attributable at least in part to the COVID-19 pandemic, visits outside of court appear to have occurred only twice between January 2020 and August 2020.[4]

During a review hearing in March 2020, Father's counsel reported that Father was no longer in agreement with the plan of adoption. Father's counsel at that time suggested that Father objected because he was "from Liberia and I don't know how familiar he is with some of the terms" that surround the adoption process. No change was made to the permanency plan at that time.

The Motion for Visitation

On September 2, 2020, Father, represented by new counsel, filed a motion for unsupervised visitation with K.L.[5] The court entertained argument on the motion the next day at a permanency plan hearing, during which the parties agreed that no order had previously been entered establishing visitation for Father. Counsel for K.L. and for the Department asked that the court enter an order establishing supervised visitation with Father once a month, which reflected the frequency of Father's past visits with K.L. Father requested liberal, unsupervised visitation.

[4] The parties dispute the regularity of visitation prior to the pandemic. At the September 2020 hearing, counsel for the Department and for K.L. both claimed that Father's visits were irregular from August 2019 to early 2020, but Father's counsel argued that although there had been some cancellations, the visits were largely steady.

[5] During the hearing, Father's counsel stated that the motion had been filed earlier, in mid-August, but that it was mistakenly filed in a companion case. Father's counsel asserted that the Department had received and opened the motion on August 17. Counsel re-filed the motion in the proper case on September 2.

At the review hearing, in addition to his request for unsupervised visitation, Father also raised for the first time a series of arguments challenging the proceedings and the then-applicable permanency plan. Among other things, Father: (1) claimed that the CASA had not been communicating with his counsel and requested an order directing the CASA to speak with his attorney; (2) requested that the permanency plan be immediately changed from adoption to reunification with Father; (3) claimed that Father's due process rights had been violated throughout the CINA process; (4) claimed there had been "an issue with [Father's prior] counsel and his representation"; (5) argued that the Department had infringed on Father's "constitutional right to the care, custody, and control of his child"; and (6) requested that K.L.'s status as a CINA be revoked. The court, noting that these allegations had been raised "for the first time" at the permanency plan hearing, found good cause to continue the review hearing, and stated it would schedule a "full day to fully adjudicate or take evidence on these matters[.]" The court then ordered that Father would have one supervised visit a month.

On September 18, 2020, the court entered a written order implementing its oral ruling. In the order, the court stated that "the minimum visitation between [K.L.] and his parents has not been articulated in previous permanency plan review orders[.]" Accordingly, it ruled that "supervised visitation between [K.L.] and his Father shall occur once a mo[n]th[.]" This timely appeal followed.

DISCUSSION

"Decisions concerning visitation generally are within the sound discretion of the trial court, and are not to be disturbed unless there has been a clear abuse of discretion."

In re Billy W., 387 Md. 405, 447 (2005). We will not overturn the juvenile court's decision unless we find that the juvenile court has acted without reference to any guiding rules or principles, that no reasonable person would take the view adopted by the juvenile court, or that the court's decision is "well removed" from what this Court "deems minimally acceptable." *Michael Gerald D. v. Roseann B.*, 220 Md. App. 669, 686 (2014) (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994)).

Visitation, although an "important, natural and legal right . . . is not an absolute right[.]" *Roberts v. Roberts*, 35 Md. App. 497, 507 (1977) (quoting *Radford v. Matczuk*, 223 Md. 483, 488 (1960)). The State of Maryland has an interest in caring for minors who cannot care for themselves, *In re Mark M.*, 365 Md. 687, 705 (2001), and "the best interests of the child may take precedence over the parent's liberty interest in the course of a custody, visitation, or adoption dispute," *id.* at 706 (quoting *Boswell v. Boswell*, 352 Md. 204, 219 (1998)). Accordingly, in cases where visitation may be harmful to a child, trial courts have discretion to restrict or even deny visitation. *Boswell*, 352 Md. at 221; *see also In re Mark M.*, 365 Md. at 706 ("[V]isitation may be restricted or even denied when the child's health or welfare is threatened.").

In CINA cases, juvenile courts are guardians of the welfare of children.

> When there is evidence that the child has been abused or neglected, or is in some danger of abuse or neglect, . . . the court's role is necessarily more pro-active. Together with other agencies, it does then have a greater responsibility to assure the child's safety and well-being and is not concerned merely with deciding a dispute between the parties.

In re Justin D., 357 Md. 431, 448 (2000). A trial court is in the "unique position to marshal the applicable facts, assess the situation, and determine the correct means of fulfilling a child's best interests." *In re Mark M.*, 365 Md. at 707.

In considering whether the juvenile court abused its discretion in awarding supervised visitation during the September review hearing, we consider the following:

- Although no prior visitation order had been entered, apparently in an oversight, Father's prior visitation had been supervised visitation once a month;
- K.L. was medically fragile and had been well-cared-for by the Sms. since his release from the hospital as an infant;
- Reports to the court had consistently stated that Father was unable to care for K.L. on a day-to-day basis and that he had been supportive of K.L.'s placement with the Sms.;
- The permanency plan had been changed to adoption 16 months earlier, and Father's attorney at the time had conveyed that Father was supportive of that plan;
- Father had not filed the motion for unsupervised visitation in the correct case until one day before the review hearing at which it was entertained; and
- At that same review hearing, Father had raised—for the first time and apparently without advance notice—a host of serious issues that required more time to address than the time the court had allocated for the review hearing.

The juvenile court determined that K.L.'s welfare would be best served by continuing monthly supervised visits until the court was able to schedule a longer hearing to address more fully the issues that Father had raised. Under the circumstances, we cannot say that the decision to order monthly supervised visitation, thus maintaining at least temporarily the status quo that had existed for the past 30 months, constituted an abuse of discretion. To the contrary, that decision appears to have been eminently reasonable.

On appeal, Father's argument to the contrary is premised on the operation of § 9-101 of the Family Law Article (2019 Repl.). The crux of Father's argument appears to be that the court was required to authorize unsupervised visitation because the juvenile court had never made an affirmative finding that Father neglected K.L. We do not read the statute that way.

Section 9-101 provides that:

> (a) In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.
>
> . . . .
>
> (b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

The statute thus precludes a juvenile court from awarding unsupervised visitation to a party previously found to have abused or neglected a child absent a finding "that there is no likelihood of further child abuse or neglect[.]" *Id.*; *see, e.g.*, *In re Adoption of Cadence B.*, 417 Md. 146, 157 (2010) (stating that if "there is a proven history of abuse or neglect, 'the proper issue before the hearing judge [is] whether there was sufficient evidence that further abuse or neglect [is] unlikely'" (quoting *In re Yve S.*, 373 Md. 551, 593 (2003))).

Contrary to Father's argument, § 9-101 does not mandate that a juvenile court authorize unsupervised visitation in the absence of a prior finding of abuse or neglect. To the contrary, in that circumstance, visitation decisions are committed to the sound discretion of the juvenile court. *See In re Billy W.*, 387 Md. at 447. For the reasons set

forth above, we hold that the juvenile court did not abuse its discretion here. Accordingly, we will affirm the judgment of the juvenile court.

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