Circuit Court for Howard County
Case Nos. C-13-JV-19-000016, C-13-JV-19-000017,
and C-13-JV-20-000022

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 793

September Term, 2023

IN RE: SU.N., SA.N., & SO.N.

Berger,
Arthur,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: January 18, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal arises from a judgment, entered in the Circuit Court for Howard County, sitting as the juvenile court, altering the permanency plans of three children, all of whom had been previously declared children in need of assistance ("CINA"), from reunification with the parents (referred to individually as "Mother" and "Father") to adoption by a relative. Mother noted an appeal from that judgment, presenting several questions for our review.[1] For clarity, we have rephrased and consolidated those questions into a single question:[2]

> Whether the juvenile court erred in changing the children's permanency plan from reunification to adoption.

Finding no error, we affirm.

BACKGROUND

Mother and Father are the parents of three children: Su.N., born in June 2016; Sa.N., born in December 2017; and So.N., born in January 2020. In June 2018, the police and

[1] Father is not a party to the instant appeal.

[2] Mother phrased the questions as:

1. Did the juvenile court err when it changed the children's permanency plans to adoption?

    a. Did the unfair and/or unlawful restrictions on mother's in-person visitation warrant extension of the reunification period?

    b. Did DSS fail to present adequate updated evidence to the court and did the court fail to make all necessary findings?

    c. Were many of the court's factual findings erroneous?

    d. Did the totality of the circumstances merit keeping reunification the plans?

Child Protective Services ("CPS") responded to Mother's home after receiving a report that Su.N. and Sa.N. were being tied to their beds. A safety plan was put into place, and Mother was informed that she could not tie the children to their beds. The family received follow-up services until November 2018.

February 2019 – Su.N. and Sa.N. declared CINA

On January 15, 2019, the Howard County Department of Social Services (the "Department") received a report that Su.N. had been "tied tightly to the bed, her arms behind her back, with a cloth around her arms and torso." Mother later stated that she "was swaddling the child" because the child "doesn't sleep well at night." On January 16, 2019, CPS responded to the home and found Su.N. "bound and tied in an elaborate knot work on the bed." The child "was on her stomach and had a blanket over her head." Sa.N. was also found bound and in bed. It was noted that the home "was very cluttered" and had "no smoke detectors"; that Mother had occasion to leave the children alone and unattended in the home; and that Mother had been feeding the children unscreened breastmilk that had been given to her. It was also noted that Mother and Father had a history of domestic violence and that Mother had obtained a protective order against Father, which caused Father to become homeless.

Shortly thereafter, the Department filed petitions in the juvenile court requesting that Su.N. and Sa.N. be declared CINA based on the above allegations.[3] In February 2019,

[3] Section 3-801(f) of the Courts and Judicial Proceedings Article ("CJP") of the Maryland Code defines "child in need of assistance" as "a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child's parents, guardian,

the court sustained the Department's allegations and found the children to be CINA. The children were subsequently placed in foster care. The parents thereafter began visiting with the children for supervised visits two times per week.

In or around May 2019, Mother was charged criminally with child abuse and neglect based on the allegations that she had tied the children in their beds. As a result of those charges, Mother was prohibited from having in-person contact with the children. Mother was also prohibited from leaving the State except for employment purposes.

June 2019 – Review hearing

In June 2019, the parties returned to court for a review hearing. The court found that the parents had made some progress in eliminating the need for Departmental involvement. The court ordered that the children's permanency plan be one of reunification with the parents. The court found that the Department had made reasonable efforts to eliminate the need for removal of the children.

July 2019 – Su.N. and Sa.N. move to California

In July 2019, the children relocated to California to live with their maternal aunt, Ms. B., and her husband, Mr. B. Mother and Father agreed with the relocation. A social worker in California was assigned to the case and was responsible for sending monthly reports to the Department. Due to the no-contact order in her criminal case, Mother's

or custodian are unable or unwilling to give proper care and attention to the child and the child's needs."

contact with the children was thereafter limited to video calls, and the children were made available for those calls every weekday.

November 2019 – Review hearing

In November 2019, the parties returned to court for a review hearing. The court noted that, although the children had moved to California, all parties agreed that the permanency plan should remain one of reunification with the parents. The court found that the Department had made reasonable efforts to finalize the children's permanency plan. The court also found that the children were doing well in Mr. and Ms. B's care.

January and February 2020 – So.N. born and declared CINA

In January 2020, the Department received a report that Mother had given birth to a child. The Department contacted Mother and Father about the report, but neither parent was willing to cooperate with the Department. A subsequent investigation revealed that Mother had in fact given birth to a child, So.N. The Department learned that Mother had left the State of Maryland, despite her pending criminal charges, and given birth to So.N. in Louisiana in an attempt to have the child not be under the authority of the Department.

Upon learning of So.N.'s birth, the Department filed a petition requesting that the child be declared a CINA and that the parents be ordered to produce the child. At the hearing that followed, the parents refused to disclose the child's location. Under threat of contempt, the parents ultimately revealed that the child had been placed with relatives in California (not Mr. and Ms. B). So.N. was eventually located, and a CINA hearing was held. In February 2020, So.N. was declared CINA and placed with Mr. and Ms. B.

June and September 2020 – Review hearings

In June and September 2020, the parties returned to court for review hearings. Following those hearings, the court ordered that the permanency plan remain one of reunification. The court found that the Department had made reasonable efforts to finalize the children's permanency plan.

Up to that point, the parents had been engaging in video calls with the children, but the frequency of those calls had diminished. In or around September 2020, the parents stopped contacting the children for video calls.

March 2021 – Review hearing

In March 2021, the Department requested that all three children's permanency plans be changed from reunification to adoption by a relative. A hearing was held before a Magistrate, and, following that hearing, the Magistrate recommended granting the Department's request. Mother and Father filed exceptions to the Magistrate's recommendation regarding a change in the children's permanency plan.

In May 2021, Mother was acquitted of all criminal charges related to her binding Su.N. and Sa.N. in their beds. In August 2021, the parents traveled to California to visit with the children, but the visits did not occur. The parents went to California again in November 2021 and had several visits with the children. Around the same time, the parents resumed having regular video calls with the children.

December 2021 – Exceptions hearing

In December 2021, the juvenile court held the first of several evidentiary hearings on Mother's and Father's exceptions to the Magistrate's recommendation that the children's permanency plan be changed from reunification to adoption. At that hearing, Markeita Matthews, a social worker for the Department, testified that she had been working with the family since July 2019. Ms. Matthews stated that, when she took over the case, the record contained several service agreements, but none of those had been signed by either parent. Ms. Matthews testified that she subsequently drafted and provided to the parents a service agreement in September 2019, September 2020, November 2020, January 2021, and May 2021. Ms. Matthews stated that neither parent signed any of those service agreements. Ms. Matthew testified that, despite the lack of an executed service plan, the Department provided, and planned to continue to provide, various services to the parents, including travel assistance for the parents' visits to California.

According to Ms. Matthews, the most recent service plan included the following items/tasks: that all visits between the parents and the children be supervised; that Mother complete a parenting evaluation and take parenting classes; that Mother complete a psychiatric evaluation and participate in mental health therapy; and that the parents engage in couples therapy to address incidents of domestic violence. Ms. Matthews confirmed that, as of the date of the hearing, Mother had completed some of those items/tasks, including engaging in therapy, taking parenting classes, and taking domestic violence classes. Ms. Matthews testified that the Department was nevertheless still concerned about

Mother's parenting capabilities. Ms. Matthews stated that the Department's concerns were due in large part to the fact that Mother "did not see anything wrong with the way she was caring for the children – the tying them down and the events that led up to their removal from the home."

As to the children's relationship with Mr. and Ms. B., Ms. Matthews testified that the interactions were "very good," that the children "love them and adore them," and that the children were "very bonded with [them]." Ms. Matthews noted that the two elder children had been diagnosed with some developmental disabilities and had been receiving therapy and other services to address them. Ms. Matthews stated that Mr. and Ms. B. were "involved" in those programs and that the children's providers had no concerns about either child's well-being. Ms. Matthews testified that there were no concerns about the youngest child's development, either.

Ms. Matthews testified that, over the previous two years, the contact between the parents and the Department had been "off and on." Ms. Matthews stated that, at times, the parents were "willing to talk" and that, at other times, they would refuse to communicate directly with the Department, insisting instead that all communications "go through their counsel."

January 2022 – Exceptions hearing

In January 2022, the parties returned to court for a continuation of the exceptions hearing. At that hearing, Ms. B., the children's caregiver, testified that, when Su.N. and Sa.N. first came into her care in 2019, the "hope" was that the children would eventually

return to their parents' care. Ms. B. stated that, at some point thereafter, she and Mother stopped communicating because Mother had become "emotionally abusive." Ms. B. testified that she and Mother did not communicate for "maybe a year." Ms. B. added that she and Mother eventually reconciled and began communicating again in August 2021. Ms. B. explained that Mother and Father had driven to California in August 2021 and had contacted her to arrange a visit with the children. Ms. B. stated that she tried to coordinate a visitation schedule, but the visits never occurred, in part due to issues related to COVID-19 and the parents' vaccination statuses. Ms. B. testified that the parents returned to California in November 2021 and visited with the children at a local CPS facility.

Ms. B. testified that Su.N. and Sa.N. were both receiving trauma therapy. Ms. B. stated that she had recently tried to get Su.N. vaccinated for COVID-19 but that the parents had refused to give permission. Ms. B. testified that both Su.N. and Sa.N. had recently been diagnosed with autism and that, for a time, both children had "sleep issues" which caused them to "wake up in the middle of the night multiple times, screaming just bloody murder." Ms. B. stated that the children's sleep issues had since improved "quite a bit."

June 2022 – Exceptions hearing

In June 2022, the parties returned to court for a continuation of the exceptions hearing. At that hearing, Mother testified that she initially agreed to the children living with Mr. and Ms. B. because she had concerns about the children being in foster care and believed that her family would take better care of the children. Mother stated that her ability to see the children was severely limited until May 2021, which is when her criminal

case was resolved. During that time, Mother's contact with the children was restricted to video calls. Mother admitted that she was reluctant to engage in those calls because she and the children "didn't watch T.V." and she did not "want to be so hypocritical to just pop up on a screen." Mother also claimed that, for a time, she felt "uncomfortable" engaging in video calls because of "emotional issues" stemming from her relationship with Mr. and Ms. B. Mother testified that she resumed visiting and having video calls with the children following the resolution of her criminal case. Mother stated that she travelled to California in August 2021 but did not see the children. Mother testified that she went back to California in November 2021 and visited with the children several times.

Mother testified that she believed she had done everything the Department wanted her to do for reunification. Mother noted that she had received a psychiatric evaluation, engaged in therapy, completed parenting classes, and obtained marital and domestic violence counseling.

On cross-examination, Mother admitted that she did not have a permanent address and was living in her car. When asked about the circumstances that led to Su.N. and Sa.N.'s removal from her care, Mother stated that they had been removed "because the Department does not agree that I can swaddle my kids at the ages that I did." Mother insisted that she never did anything to jeopardize the children's safety. Mother added that she did not believe that her practice of swaddling the children was dangerous or harmful. Mother was then asked if she had engaged in any services since 2019, which is when Mother had purportedly engaged in parenting classes and various therapies. Mother could not confirm

that she had engaged in any additional services since 2019. Mother did confirm that she had stopped receiving counseling because her counselor had told her that she no longer needed it.

October 2022 – Exceptions hearing

In October 2022, the parties returned to court for a continuation of the exceptions hearing. At that hearing, the attorney for the children asked the juvenile court to instruct the parents to "not harass" Mr. and Ms. B. during video calls with the children. Counsel also reported that the parents had allegedly filed several CPS reports against Mr. and Ms. B. Following that proffer, the court heard from Mr. B., who proffered that the parents had made multiple allegations against him and Ms. B. Mr. B. also proffered that the parents had, on at least one occasion, shown up unannounced at the children's school. Based on those proffers, the court ordered that the parents' in-person visitation rights be suspended until the next review hearing, which was to be held in January 2023.

The parents thereafter noted a timely appeal of the court's order to this Court. On May 16, 2023, this Court issued an unreported opinion reversing the court's order to limit the parents' access. We held that the court could not suspend visitation without holding an evidentiary hearing, which Mother had requested. We also reversed the court's order "to the extent that it purports to make factual findings based on the statements made by Mr. B."

January 2023 – Exceptions hearing

Meanwhile, in January 2023, the parties returned to court for another exceptions hearing. At that hearing, Mother testified that she and Father were expecting to receive a large settlement and that they had recently purchased a car. When asked about her current living arrangements, Mother stated that she and Father were "staying with someone [who] was not interested in sharing their address."

The juvenile court also received into evidence a "Psychological Evaluation Report" that had been compiled by a licensed psychologist in April 2022 concerning Mother. The report included a psychological assessment, social history, education and employment history, parental assessment, and interview notes. Per that report, Mother and Father had a history of transience and domestic violence. After Su.N.'s birth in 2016, the parents "moved frequently," at times living "in their car, in a hotel, or in a shelter." In 2019, Mother obtained a protective order against Father following an incident of domestic violence. Mother stated that, although there was no subsequent history of physical abuse, Father had been verbally aggressive and had ongoing anger problems. As of the date of the report, Mother had no stable housing and no permanent address. Mother recognized that the Department required her to obtain adequate housing before the children could be returned to her care, yet Mother remained "unwilling to do so" unless the children are returned to her care. Mother did not report having consistent employment.

The report revealed that the parents had travelled to California three times to visit with the children. Mother stated that her entire family lived in California and that she

would stay with one of her brothers when visiting the state. Mother stated that her brother had offered to allow her to move in with him "in order to achieve stability." Mother declined the offer, stating that she planned to remain in Maryland "in order to sue CPS and the Police Department for entering her home illegally."

The report also discussed the circumstances surrounding Su.N. and Sa.N.'s removal from the parents' care in 2019. When asked about those circumstances, Mother responded that Father had shared "some private information with their pastor," who, along with the family's babysitter, "conspired to make up something that was not true, so the kids would be removed." Mother ultimately admitted that she had been "swaddling the children in a way that was deemed to be inappropriate by the Department." Although Mother agreed not to engage in such behavior in the future, she did not believe that the behavior was dangerous or harmful to the children. Mother also insisted that Ms. B. was "the only barrier to her reunification with the children." Mother did not identify her housing or income as barriers, and she did not see the value in addressing either issue until after she is reunified with the children.

As to Mother's interactions with the children, the report indicated that, during visits, Mother was responsive and interactive. The report noted "some evidence of a bond" between Mother and the children. There were, however, "some concerns regarding the dynamic between the parents during visits." The report stated that Father was "easily frustrated and irritated" and that Mother made "efforts to appease or pacify him." The

report also noted that the parents arrived on time for visits "about half the time" and that, on multiple occasions, they had canceled or tried to reschedule visits.

The report concluded with some opinions and recommendations from the authoring psychologist. The psychologist believed that, while Mother had "a number of strengths," she also had "some areas of vulnerability that are likely to impact her ability to safely and effectively parent her children." First, the parents' "chronic homelessness and lack of stability" represented a major barrier, and Mother's failure to show "any initiative, plan, or progress" in achieving greater stability exacerbated the problem. Second, Mother's "lack of insight into her own limitations, behavior, and her role in the current situation" constituted a "significant barrier," as Mother's "firm adherence to her current belief system" put her "at greater risk for similar parenting practices in the future." Mother was also "reluctant to acknowledge her shortcomings or to accept responsibility for her actions that have resulted in negative consequences for her." Lastly, "the marital dynamic" and Father's unaddressed anger issues suggested "an increased risk of domestic abuse." The psychologist concluded that, until Mother "is able to make sufficient progress toward greater stability, and to acknowledge and accept responsibility for the concerns that brought her children into care, her ability to provide a safe and appropriate environment for her children is diminished." The psychologist explained that, while Mother should continue to enjoy visits with the children, the Department should "continue to explore alternatives to reunification in support of permanency for the children."

At the conclusion of the hearing, after the court had received all evidence, counsel for the Department informed the court that the eldest child, Su.N., had been receiving educational support services through her school in California but that those services had recently been stopped because the parents had refused to provide the necessary consent. Counsel asked the court to appoint a parent surrogate for the children so that the services could resume. The court deferred ruling on the matter.

The following week, the parties returned to court for closing arguments. At the conclusion of the hearing, the court stated that it would issue a written decision at a later date.

May 2023 – Juvenile Court's ruling

In May 2023, the juvenile court entered an order changing the children's permanency plan from reunification to adoption and making various findings based on the evidence and testimony presented at the previous exceptions hearings. In that order, the court noted that, while Mother and Father had completed some of the tasks recommended by the Department, neither parent had signed a service agreement, despite the fact that at least five service agreements had been sent to the parents and their counsel in 2020 and 2021. The court also noted that, according to Ms. Matthews, the Department had "a history of difficult communications and cooperation by the parents."[4]

[4] Mother contends that this finding was clearly erroneous. We disagree. Ms. Matthews testified that, on numerous occasions, the parents refused to speak directly with the Department. Ms. Matthews also testified that both parents had consistently refused to sign a service agreement.

The court found the parents' history of visitation to be "problematic." The court noted that, while Mother's in-person contact was limited by her criminal case, she had the opportunity for nightly virtual visits, yet she failed to avail herself of those visits. The court noted that Father did not visit with the children at all, even though he was not restricted from seeing them. The court found that both parents had "willingly gone long periods of time without contacting the children" and had "not taken advantage of opportunities to stay near the children." The court noted that, on multiple occasions, the Department had provided financial assistance to the parents so they could travel to California to exercise visitation and that, on at least one occasion, the parents had traveled to California but failed to visit with the children.

The court found that the parents still posed a risk to the children and that "the lack of insight by the parents is a barrier to reunification and to providing a safe and stable environment for the children." The court noted that neither parent had recognized any wrongdoing regarding the children's care and treatment. The court found that Mother blamed everyone but herself for the children being removed from her care, and the court concluded that Mother's "lack of acknowledgment of inappropriate care toward the children demonstrates that the children are still at risk if they are returned to her care." The court noted that both parents were homeless even though Mother had an opportunity for housing in California with her brother. The court also noted that Mother had refused to provide the name and address of the person with whom she was currently staying. The court found that neither parent had obtained stable employment or a consistent source of

income. The court noted that both parents had refused to consent to Su.N. receiving educational support services. The court found that Father had been consistently uncooperative with the Department, that he was "clearly hostile," and that he exhibited "aggressiveness" and a "propensity for lashing out."

The court found that Mr. and Ms. B., on the other hand, had remained committed to caring for the children and had provided a safe and stable home. The court noted that the children were doing well in their current placement and that their needs were being met. The court noted that the two eldest children had been in Mr. and Ms. B's care for approximately four years, while the youngest child had been in their care for approximately three years. The court found that the children had developed a strong bond with Mr. and Ms. B. and each other.

The court concluded that it was in the children's best interest that their permanency plan be changed to adoption. In reaching that conclusion, the court cited "the totality of [the] case," the "incident that caused the children to come into care," the "lack of consistent visitation," the "failure to acknowledge inappropriate conduct," and the "lack of insight by the parents."

This timely appeal followed. Additional facts will be supplied as needed below.

DISCUSSION

Parties' contentions

Mother contends that the juvenile court erred in changing the children's permanency plan from reunification to adoption. In support of that contention, Mother raises several

claims. First, Mother argues that the "unfair and/or unlawful denial of [her] in-person visitation warranted extension of the reunification period." Second, Mother argues that the Department failed to provide updated evidence regarding its efforts to reunify the family and that the court failed to make the requisite findings as to, among other things, the Department's reunification efforts. Third, Mother contends that the court made "numerous erroneous factual findings." Lastly, Mother contends that, "[a]ccounting for the court's erroneous factual findings and other issues discussed above, the totality of the case circumstances warranted reunification remaining the permanency goals."

The Department insists that the juvenile court did not err in changing the children's permanency plan from reunification to adoption. The Department contends that the court appropriately determined that the children could not be safe and healthy in their parents' care. The Department contends that the court also properly considered the children's attachments and emotional ties, the length of time the children had resided with their current caregivers, and the potential impact on the children if they were to remain in State custody or removed from their current care.

Standard of Review

Appellate review of a juvenile court's decision regarding child custody involves three interrelated standards. First, any factual findings made by the juvenile court are reviewed for clear error. *In re Yve S.,* 373 Md. 551, 586 (2003). Second, any legal conclusions made by the juvenile court are reviewed *de novo*. *Id.* Finally, if the court's factual findings and legal conclusions are not erroneous, the court's ultimate conclusion

will be disturbed only if there is an abuse of discretion. *In re J.J.*, 231 Md. App. 304, 345 (2016). "A court abuses its discretion when 'no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding rules or principles.'" *In re K.L.*, 252 Md. App. 148, 185 (2021) (quoting *Santo v. Santo*, 448 Md. 620, 325-26 (2016)).

Analysis

When a child is declared CINA and removed from the care of a parent, the juvenile court is required to hold a hearing to determine a permanency plan for the child. CJP § 3-823(b)(1). "The permanency plan is intended to 'set the tone for the parties and the court' by providing 'the goal toward which they are committed to work'" *In re D.M.*, 250 Md. App. 541, 561 (2021) (quoting *In re Damon M.*, 362 Md. 429, 436 (2001)). Ordinarily, a permanency plan prioritizes reunification with the parent or guardian, but the plan could include placement with relatives, custody or adoption by an approved family, or other appropriate living arrangement. CJP § 3-823(e)(1)(i); *see also In re Ashley S.*, 431 Md. 678, 686 (2013).

In determining a permanency plan, the court must give primary consideration to the best interest of the child. *Id.*; *see also* Maryland Code, Family Law Article ("FL") § 5-525(e)(1). In addition, the court must consider the factors outlined in FL § 5-525(f)(1). CJP § 3-823(e)(2). Those factors are:

> (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.

FL § 5-525(f)(1).

Following its implementation of a permanency plan, the juvenile court is required to conduct a review hearing "every 6 months until commitment is rescinded or a voluntary placement is terminated."[5] CJP § 3-823(h)(1)(i). At each review hearing, the juvenile court is required to:

> (i) Determine the continuing necessity for and appropriateness of the commitment;
>
> (ii) Determine and document in its order whether reasonable efforts have been made to finalize the permanency plan that is in effect;
>
> (iii) Determine the appropriateness of and the 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 commitment;

[5] The statute contains some exceptions to this rule. Notably, however, these exceptions are not applicable in the instant case. CJP § 3-823(h)(1)(i).

> (v) Project a reasonable date by which a child in placement may be returned home, placed in a preadoptive home, or placed under a legal guardianship;
>
> (vi) Evaluate the safety of the child and taken necessary measures to protect the child;
>
> (vii) Change the permanency plan if a change in the permanency plan would be in the child's best interest; and
>
> (viii) For a child with a developmental disability, direct the provision of services to obtain ongoing care, if any, needed after the court's jurisdiction ends.

CJP § 3-823(h)(2).

As the above statute mandates, a juvenile court must change a permanency plan if doing so would be in the child's best interest. As with an initial permanency plan determination, a juvenile court must consider the factors set forth in FL § 5-525(f)(1) when changing a permanency plan. *In re Ashley S.*, 431 Md. at 714-19. If, upon considering those factors, the court finds that "there are weighty circumstances indicating that reunification with the parent is not in the child's best interest, the court should modify the permanency plan to a more appropriate arrangement." *In re Adoption of Cadence B.,* 417 Md. 146, 157 (2010). In all cases, "[e]very reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement." CJP § 3-823(h)(5).

Against that backdrop, we hold that the juvenile court did not abuse its discretion in changing the children's' permanency plan from reunification with the parents to adoption. Going through each of the factors set forth in FL § 5-525(f)(1), we are convinced that there

was ample evidence presented at the various exceptions hearings to support the juvenile court's decision.

A. The children's ability to be safe and healthy in the parents' home

As to this factor, the record makes plain that neither parent showed even the slightest ability or willingness to provide acceptable shelter or support for the children. Both parents had a history of transience and homelessness, and neither parent was able to obtain stable housing or income in the years leading up to the final exceptions hearing. In fact, Mother affirmatively refused to secure appropriate housing unless the children were returned to her care. Instead, Mother chose to live in her car or with undisclosed individuals, despite repeated offers from her brother to stay with him in California. Although the parents' lack of housing was not, by itself, sufficient to justify changing the children's' permanency plan, it was, under the circumstances, a significant factor. *See In re Ashley S.*, 431 Md. at 716 (noting that a "key consideration" in determining whether a change in permanency plan is justified is "whether the parent exhibits an ability or willingness to provide minimally acceptable shelter, sustenance, and support") (quotations omitted).

In addition, and perhaps most importantly, neither parent appeared willing to accept responsibility or admit wrongdoing for the circumstances that led to Su.N. and Sa.N. being declared CINA. It is beyond cavil that Mother's act of binding Su.N. and Sa.N. in their beds was detrimental to their health and safety. Mother was informed of this in 2018, and yet she continued the practice until January 2019, at which point the children were removed from her care. In the years that followed, Mother was asked repeatedly about the practice,

and at no point did Mother admit that the practice was harmful. To the contrary, Mother insisted that she never did anything to jeopardize the children's safety and that her practice of "swaddling" the children was not dangerous.

To be sure, Mother claimed that she would not bind the children if they were returned to her care. But, her willingness to continue the behavior after being warned and her inability to recognize the dangerousness of the practice after all this time suggests a lack of sincerity on Mother's part. At the very least, it indicates that the children were at risk of future harm. *See In re Nathaniel A.*, 160 Md. App. 581, 596-97 (2005) (noting that a court, in determining whether a child is at risk of future harm, may look at a parent's past behavior and "need not wait until [the child] is actually harmed").

B. The children's attachment and emotional ties to their natural parents, siblings, current caregivers, and the caregivers' family

As to these factors, there was some evidence of a bond between Mother and the children, and there was some evidence that the parents' visits with the children were positive. There was, however, other evidence suggesting a lack of a bond. Su.N. and Sa.N. were two years old and one year old, respectively, when they were removed from their parents' care in 2019, and So.N. was less than a month old when he was removed in 2020. Subsequent to those removals, the parents went a significant period of time – approximately two years – without having any in-person contact with any of the children. Although the parents engaged in regular video calls with the Su.N. and Sa.N. in the months following their removal, those calls ceased completely in September 2020 and did not resume until November 2021. Given that lack of contact and communication, and given

the children's ages when they were removed, the court could have easily concluded that the children's bond with their parents was, at best, tenuous.

The evidence of the children's bond with each other and with Mr. and Ms. B., on the other hand, was clear and largely unrefuted. That evidence established that the children loved Mr. and Ms. B. and had a strong relationship with them. The children were doing well in Mr. and Ms. B's care, and Mr. and Ms. B. were committed to being a long-term resource for the children.

C. The length of time the child has resided with the current caregiver

When the court entered its order in May 2023, all three children had been in Mr. and Ms. B.'s care for a significant amount of time. Su.N. and Sa.N. had been in their care for approximately four years, while So.N. had been in their care for over three years.

D. The potential emotional, developmental, and educational harm to the child if moved from the child's current placement, and the potential harm to the child by remaining in State custody for an excessive period of time

As the court found, Mr. and Ms. B. had remained committed to caring for the children and had provided a safe and stable home for several years. The children were doing well in their current placement, their needs were being met, and they had developed a strong bond with Mr. and Ms. B. and each other. The two eldest children had been recently diagnosed with autism and were receiving therapy. Given those facts, a reasonable inference could be made that moving the children from their current placement would cause severe emotional, developmental, and educational harm.

Likewise, a reasonable inference could be drawn that keeping the children in State custody any longer could cause severe harm. As noted, the statutory scheme governing permanency plans 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." CJP § 3-823(h)(5). All three children had been in their current placement for much longer.

Summary

In sum, the evidence was more than sufficient to support the juvenile court's decision to change the children's permanency plan. That is, the juvenile court had before it "weighty circumstances" indicating that reunification with the parents was not in the children's best interest. *In re Adoption of Cadence B.,* 417 Md. at 157. As such, we cannot say that the court abused its discretion in reaching that decision.

Mother's contentions

As discussed, Mother raises several contentions in support of her claim that the juvenile court erred in reaching its decision. We will discuss each contention below.

A.

Mother first contends that her in-person visits were "unfairly frustrated" for years by the no-contact order in her criminal case, the COVID-19 pandemic, and the court's improper suspension of her in-person visitation in October 2022. Mother argues that the court should have extended the reunification period to account for those hinderances to her meaningful interactions with the children.

We are not persuaded by Mother's arguments. Although we do not agree with Mother's claim that the various hindrances to her in-person visits were categorically "unfair," we need not belabor the point because the fact remains that, while Mother was faced with some obstacles to visitation and reunification that were beyond her control, she failed to address, in any significant way, the primary obstacles to reunification that were in her control, none of which had anything to do with in-person visitation. As discussed above, those obstacles included Mother's failure to acknowledge inappropriate conduct, *i.e.*, binding the children, and her refusal to secure appropriate housing and means for supporting the children.

Even if we agreed that Mother should be given some credit for the restrictions on her in-person visitations, we fail to see how the children's best interests would be served by extending the reunification period. Regardless of the reasons, the reality is that Mother did not have in-person contact with the children for years, which likely weakened her bond with the children, which in turn favored changing the children's permanency plan. The court was under no obligation to extend the reunification period simply because Mother's in-person contact with the children had been restricted, unfairly or otherwise. Rather, the court was required to consider that factor in conjunction with all the other factors and with an eye toward the best interest of the children. *See In re Ashley S.*, 431 Md. at 712 ("[T]he 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."). That is precisely what the court did here.

B.

Mother next claims that the juvenile court did not actually consider the relevant statutory factors or make specific findings based on the evidence with respect to each factor. Mother asserts that the court's error was exacerbated by the fact that the Department "presented no new evidence to the juvenile court after January 2022," particularly as it related to the Department's efforts toward reunification. Finally, Mother claims that the court failed to make an express "reasonable efforts" finding in its May 2023 order, as required by CJP § 3-816.1.

We disagree with Mother's contentions. Aside from a "reasonable efforts" finding, which we will discuss in greater detail below, the court was not required to make any express findings regarding any of the statutory factors. Rather, the court merely needed to *consider* those factors, and the court's May 2023 order clearly demonstrates that the court considered all relevant factors in light of the evidence presented.

The court's May 2023 order also demonstrates that the court did receive updated evidence regarding the Department's efforts toward reunification. In that order, the court noted that the parents visited with the children several times between November 2021 and October 2022 and that the Department had provided financial assistance to the parents so they could exercise that visitation. Mother does not dispute that finding.

Nevertheless, the lack of evidence regarding the Department's "reasonable efforts" after January 2022 is understandable given the status of the case at that time. By January 2022, the Department had already attempted to provide services via a service agreement

on at least five separate occasions, and each time both parents refused to sign the agreement. Moreover, Mother insisted that she had already completed all required tasks and that nothing more was required of her in order to effectuate reunification. Given those facts, and given Mother's consistent refusal to obtain stable housing or admit wrongdoing for binding the children, which represented two of the biggest obstacles to reunification, additional efforts by the Department would have almost certainly been futile. *See In re James G.*, 178 Md. App. 543, 601 (2008) (noting that the Department "need not expend futile efforts on plainly recalcitrant parents").

As to the court's duty to make an express "reasonable efforts" finding, we agree that the lack of such a finding is problematic. CJP § 3-816.1 provides, in relevant part, that, when conducting a permanency plan review hearing for a child under the age of 18, "the court shall make a finding whether a local department made reasonable efforts to … finalize the permanency plan in effect for the child [and] meet the needs of the child, including the child's health, education, safety, and preparation for independence[.]" CJP § 3-816.1(b)(2). It does not appear that the juvenile court made any such finding.

Nevertheless, reversal is unwarranted because any error the court may have made in omitting that finding was harmless. *See In re Yve S.*, 373 Md. at 586 ("[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.") (quoting *Davis v. Davis*, 280 Md. 119, 126 (1977)). In a civil case, a complaining party has the burden of showing error and prejudice. *Id.* at 616. An error that does not prejudice a party is harmless

error. *Id.* An error is prejudicial if it significantly affects the complaining party's interests. *Id.* at 617. "It is not the possibility, but the probability, of prejudice which is the object of the appellate inquiry." *Id.* (quoting *Md. Deposit Ins. Fund Corp. v. Billman*, 321 Md. 3, 17 (1990)).

Here, we are not convinced that the lack of a "reasonable efforts" finding was prejudicial. As we have held, the Department's efforts were reasonable under the circumstances, and it was clear that the court considered those efforts in reaching its decision. That the court did not expressly state as much was, under the circumstances, inconsequential, and Mother has presented no compelling argument to suggest otherwise.

C.

Mother next claims that the juvenile court made "numerous erroneous factual findings" in its May 2023 order. Mother highlights at least ten different factual findings that she claims were erroneous.

We have reviewed the record and have found no support for Mother's claims. For each of the claimed errors, Mother has either mischaracterized the court's finding or ignored competent, material evidence in support of that finding. *See Velicky v. Copycat Bldg. LLC*, 476 Md. 435, 445 (2021) ("A trial court's findings are not clearly erroneous 'if any competent material evidence exists to support the trial court's factual findings.'") (quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013)). Mother has therefore failed to carry her burden of showing error. *See Christian v. Maternal-Fetal Medicine Assocs. of Md.,*

LLC, 459 Md. 1, 21 (2018) ("The burden of demonstrating that a court committed clear error falls upon the appealing party.")

D.

Mother's final claim is that, "[a]ccounting for the court's erroneous factual findings and other issues discussed above, the totality of the circumstances warranted reunification remaining the permanency goals." Mother goes on to highlight various items of evidence that support her claim.

We remain unpersuaded. We have already addressed Mother's claims of error and have found virtually no merit to any of those claims. The fact that the court was not persuaded by Mother's cherry-picked evidence is of no moment. In sum, the record overwhelmingly supports the court's decision to change the children's permanency plan from reunification to adoption.

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