

Circuit Court for Cecil County  
Case No. C-07-JV-21-000028

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 810

September Term, 2023

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IN RE: K.H.

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Beachley,  
Albright,  
Harrell, Glenn T., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Harrell, J.

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Filed: December 18, 2023

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

This appeal is from an order by the Circuit Court for Cecil County, sitting as a juvenile court, which changed the permanency plan for K.H. (born in May 2012), adjudicated previously to be a child in need of assistance (“CINA”)<sup>1</sup> and placed in the custody of the Cecil County Department of Social Services (“the Department”). Appellant, D.P. (“Grandmother”), the maternal grandmother and legal guardian of K.H., noted timely an appeal of the juvenile court’s order, asking us to consider whether the court erred or abused its discretion “in changing the permanency plan from a concurrent plan of reunification and guardianship/custody with a non-relative to a primary plan of adoption and a secondary plan of guardianship/custody with a non-relative[.]”<sup>2</sup>

For the reasons that follow, we shall affirm the order of the juvenile court.

### **FACTS AND LEGAL PROCEEDINGS**

On 7 April 2021, the Department filed a CINA petition after removing K.H. from the care and custody of Grandmother, who, along with her then-husband L.P., had cared for the child since birth due to severe developmental disability of the child’s mother, C.H.

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<sup>1</sup> Pursuant to Md. Code, § 3-801(f) of the Courts & Judicial Proceedings Article (“CJP”), a “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.”

<sup>2</sup> An order changing a permanency plan for a child adjudicated CINA is an appealable interlocutory order. CJP § 12-303(3)(x); *see also In re Damon M.*, 362 Md. 429, 434 (2001).

(“Mother”).<sup>3</sup> The Department asserted that the police had been called to Grandmother and L.P.’s home 11 times in the previous month, related to acts of domestic violence between them, some of which were witnessed by K.H.

In its petition, the Department explained further that, in March 2021, Grandmother fled the home with K.H. in tow, and after being dismissed from a domestic violence shelter for non-compliance with its rules, went to stay with Mother in Delaware. When Delaware social workers located Grandmother at Mother’s home, she was intoxicated. Department workers had received previously reports of Grandmother’s substance abuse, including at least two instances of her driving under the influence of alcohol that resulted in vehicular accidents. There was also concern that K.H. and Grandmother had, on at least one occasion, slept in Grandmother’s car when she was too intoxicated to drive.

Following a hearing on 8 April 2021, the juvenile court granted temporary custody of K.H. to the Department, along with a temporary shelter care order. At the time, however, K.H.’s whereabouts were unknown, and the hearing was held *in absentia*.

K.H. was located at Grandmother’s mother’s home in Elkton, Maryland, on 15 April 2021. Grandmother’s mother and other family members expressed to the Department workers that K.H. should not be in Grandmother’s care. K.H. was removed from Grandmother’s care based on “extreme concerns” for his safety and placed in foster care

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<sup>3</sup> Grandmother was granted legal and physical custody of K.H. in May 2013. Mother, who was diagnosed with schizoaffective disorder, bipolar type, was never a resource for K.H. and has had virtually no involvement with the Department after K.H. was removed from Grandmother’s care. The Department learned in September 2021 that N.P. was K.H.’s father, but it was unable to locate him. By all accounts, he had no contact with K.H. since the child’s birth.

with the E. family.

The juvenile court held a CINA adjudication/disposition hearing on 1 June 2021. The court found that K.H. was unsafe with Grandmother, due to her alcohol consumption and domestic violence in her home. The court determined further that K.H. was CINA, having been neglected by Grandmother, and placed him in the custody of the Department, with limited guardianship. Grandmother was granted supervised visitation once weekly at a minimum.

An October 2021 psychological evaluation found that Grandmother had likely “minimally adequate parenting capacity[,]” but that her denial of alcohol abuse placed her at risk of dysfunctional parenting and neglect. The evaluating psychologist recommended individual psychotherapy to address her reported anxiety and character disorder. The prognosis for improvement in Grandmother’s neurocognitive abilities was considered “fair.”

In advance of a 23 November 2021 review hearing, the Department conducted its initial review to assess Grandmother’s progress toward reunification with K.H. Grandmother had maintained contact with the Department and was “fairly responsive” to the Department’s suggestions and requests. She signed a service agreement with the Department in October 2021, which required her to: (1) remain sober; (2) participate in a substance abuse program and psychotherapy for mental health treatment; and (3) obtain and maintain safe and drug/alcohol-free housing and employment.

K.H., diagnosed with autism spectrum disorder, was doing well with his foster family, and was bonded with them. Prior to and following visits with Grandmother,

however, K.H. exhibited anxiety and distress and had been referred to counseling to help him cope.

Although no relative resource for K.H. had come forward yet, the Department recommended a primary permanency plan of reunification with Grandmother, with a concurrent plan of custody/guardianship with a relative, because Grandmother had only recently begun engaging with services and was not yet ready for reunification.

Following the 23 November 2021 review hearing, the juvenile court continued K.H.’s status as CINA and maintained Grandmother’s weekly supervised visitation.

Ahead of an April 2022 permanency plan review hearing,<sup>4</sup> K.H.’s Court-Appointed Special Advocate (“CASA”) reported that K.H. continued to do well with his foster family. He disclosed to the CASA that Grandmother had hit and pinched him. He needed reassurance that supervised visits with her were safe. K.H. said he enjoyed his visits with Grandmother, which had increased to twice weekly, but he did not want to live with her. The CASA recommended a continued finding that K.H. was CINA and that he remain in his foster placement with the E. family, with a goal of a gradual transition to reunification with Grandmother.

In its report in advance of the hearing, the Department recognized the progress Grandmother had made under her service agreement, but noted that she continued to exhibit poor insight into her past alcohol abuse and its impact on K.H. In addition, K.H.

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<sup>4</sup> The hearing was postponed to 21 June 2022, so Grandmother could obtain the services of a public defender. The hearing was postponed again so the court could determine whether Mother should be appointed a guardian. The hearing occurred ultimately on 6 September 2022, after J.H., Mother’s father, was appointed her guardian.

continued to express extreme anxiety and fear about visitation or returning to Grandmother's care. Following visitation with Grandmother, K.H. exhibited increased physical and emotional symptoms and regressive behaviors upon return to his foster home, including rocking, pulling his hair, and having trouble sleeping. Because the Department could not recommend reunification at that time, it recommended a continued permanency plan of reunification, with a concurrent plan of custody/guardianship with a non-relative.

In June 2022, visits between K.H. and Grandmother changed from in-person twice weekly, to in-person once weekly, to virtual once weekly, at the request of the Department, because of K.H.'s extreme anxiety before and after visitation, including vomiting, upset stomach, crying, and inability to sleep. Switching to telephonic visitation alleviated K.H.'s stress and the physical manifestations of that stress.

At the 6 September 2022 permanency plan review hearing, the juvenile court heard testimony that K.H., who had completed fourth grade, was on a kindergarten through second grade level in most subjects. His special education teacher testified as to the numerous times K.H. came to school either "extremely upset" or distracted. During more than one conversation, K.H. told the teacher that Grandmother hit him. He said further that he did not want to go back to live with Grandmother because he was scared. To the teacher, K.H. expressed a strong desire to stay with his foster family.

L.E., K.H.'s foster mother, testified that, when K.H. first came to her home, he "had very little speech" and was not understandable. In the 14 months he was in her care, however, he learned to speak in full sentences and express himself. K.H. stated to L.E. "almost every single day" that he did not want to return to Grandmother's house to live.

K.H. continued also to tell L.E. that he did not want to go to visits with Grandmother, becoming very emotional, pulling his hair to the point of creating a bald spot, and having toileting accidents the nights before scheduled visitation. On one occasion in June 2021, K.H. refused to get out of the car at a visit. Thereafter, visits, which had increased to twice weekly, were halted and switched to phone calls, after which L.E. noticed a “100 percent improvement” in K.H.’s emotional state. L.E. confirmed that she would be a long-term placement resource for K.H. if the court changed his permanency plan with that goal.

K.H.’s therapist testified that the child disclosed to her that Grandmother hit him and drank a lot of beer while he had been living with her, which he did not like. K.H. told the therapist that it made him “nervous and sad” to go to in-person visitation with Grandmother because he worried she would hit or be mean to him again; he described having such severe stomach aches before visits that he sometimes defecated in his pants. K.H. made clear also to the therapist that he did not wish to return to Grandmother’s home, expressing instead a desire to remain with L.E.

The therapist explained that she convened three family sessions with K.H. and Grandmother in February and March 2022, but K.H. said he did not want to continue family therapy, preferring instead individual therapy. Even when the therapist offered a once monthly family session, K.H. said no, and she did not wish to force him into treatment.

K.H.’s foster care social worker confirmed that K.H. had “a lot of distrusting emotions” relating to his time in Grandmother’s care and exhibited “anxiety and distress” in response to the relationship. In contrast, he bonded with, and integrated into, his foster

family. K.H. told the social worker that he wanted to stay with the E. family and that, although he enjoyed phone calls with Grandmother, he did not want to see her in person. In the worker's view, continued virtual visits were in the best interest of K.H.'s mental health. Although Grandmother completed the tasks on her service agreement, including remaining sober, the Department remained concerned about K.H.'s mental health. Therefore, it continued to recommend a permanency plan of reunification with a concurrent plan of guardianship and custody with a non-relative.

Grandmother, then living with her parents, denied ever hitting K.H. She acknowledged, however, that the child witnessed domestic violence between her and her ex-husband, whom she had left and against whom she filed for a protective order. Having done everything the Department asked her to do under the service agreements, she was hoping the court would order progressively more visitation and a sole permanency plan of reunification with K.H.

At the conclusion of the hearing, the juvenile court announced a concurrent permanency plan of reunification and custody/guardianship with a non-relative. Grandmother appealed the juvenile court's order adding a concurrent plan to the existing plan of reunification. In an unreported opinion, this Court found no error in the juvenile court's change of permanency plan or its conclusion that the Department made reasonable efforts toward reunification. Therefore, we affirmed the juvenile court's order. *See In re K.H.*, No. 1353, September Term 2022 (filed 25 April 2023).

In January 2023, the Citizen's Review Board for Children completed a case review recommendation report, which reiterated K.H.'s refusal to return to Grandmother's home

and his continuing anxiety and extreme fear during visits with her. Since in-person visits were suspended, K.H. was doing well.<sup>5</sup> After exploring the possibility of adoption of K.H. by his foster family, the Board requested that the Department recommend a change in permanency plan to adoption by a non-relative.

In advance of a 28 February 2023 permanency plan review hearing,<sup>6</sup> the Department submitted a report detailing that, having been in foster care for 20 of the previous 22 months, K.H. had been “very vocal” about expressing his desire to be adopted by his foster family. During virtual visits, the Department noted that Grandmother engaged minimally with K.H., often going 20 minutes of the allotted hour without speaking to him.

Although Grandmother signed two service agreements, she had not signed yet and returned a third service plan dated 30 January 2023. As recently as December 2022, she tested negative for all drug/alcohol substances. The Department found that, although having participated actively in the tasks in her service agreements, Grandmother lacked still insight into K.H.’s needs and that, despite K.H.’s continued expression of a desire for adoption by his foster family, Grandmother dismissed his feelings and insisted on telling him he would be returning to live with her. The Department recommended a primary permanency plan of adoption with a secondary plan of custody/guardianship with a non-

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<sup>5</sup> K.H.’s CASA noted also that K.H. made “remarkable improvements” since ending in-person visitation with Grandmother.

<sup>6</sup> The juvenile court continued the permanency plan review hearing because Grandmother’s earlier appeal was still pending. The review hearing occurred on 6 June 2023.

relative.<sup>7</sup>

The Department updated its report in advance of the 6 June 2023 permanency plan review hearing at issue in this appeal. By then, K.H. had been out of Grandmother’s care for 26 months. The only real change since the previous review hearing was that Grandmother signed a new service agreement on 23 March 2023. The Department continued to find it unsafe to return K.H. to Grandmother’s custody, in light of the child’s “significant anxiety and fear” about that prospect.

At the hearing, K.H.’s foster care social worker testified that K.H., then in fifth grade, had no behavioral issues at school that year, as compared to the year before when he exhibited “emotional distress” and “issues surrounding visitation” with Grandmother. Those issues stopped completely when he ceased having in-person visitation with Grandmother. As recently as a week prior to the hearing, K.H. vocalized again to the worker that he wanted to end the weekly supervised phone calls with Grandmother because he got nervous and upset. In addition, K.H. reported that Grandmother did not listen to him and told him he was coming home, instead of being adopted.

The social worker did not believe K.H. could be safe in Grandmother’s home, in part because of K.H.’s strong distress about returning to her care, and in part because of the negative events that occurred while K.H. was in her care, including domestic violence between Grandmother and her ex-husband, nights of sleeping in the car after some such

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<sup>7</sup> The Department filed a petition for termination of parental rights (“TPR”) with respect to Mother in April 2023. At the start of the 6 June 2023 status conference, the juvenile court elected to appoint a guardian *ad litem* for Mother in relation to the TPR.

instances of violence, and occasions when Grandmother pinched and hit K.H. Grandmother's parents, with whom she was then living, passed the necessary background checks to have K.H. live in their home. Grandmother performed all the required tasks in her service agreements, but, according to the social worker, those positive steps do not result automatically in reunification, especially in the case of a child with special needs who expressed a desire not to be reunified.

In contrast, the worker continued, K.H. felt safe with his foster parents, with whom he had lived since April 2021, and he expressed a desire to be adopted by them. He was calm and happy with his foster parents, whom he calls "Mom" and "Dad," his educational and medical needs were being met by the foster parents, and he was integrated into their family.

The Department recommended a permanency plan of adoption by a non-relative as in K.H.'s best interest, based on the amount of time he was in care, his special needs, the progress he made in foster care, his attachment to his foster family, his anxiety and distress surrounding possible reunification with Grandmother, and his strong stated preference. The Department no longer sought a plan of custody/guardianship with a non-relative, in part because the foster parents were adoptive resources who wished to pursue that option.

As far as its reasonable efforts to promote reunification, the Department offered family therapy sessions to K.H. and Grandmother, but the therapist did not believe that family therapy was beneficial to K.H., and the social worker was unsure if family therapy would be helpful in achieving reunification. Moreover, the Department was unable to locate a family therapist who would accept a client on medical assistance. In addition, the

Department offered Grandmother FaceTime visits with K.H., instead of phone calls, but she declined and did not seek increased visitation.

L.E. testified that K.H. remained bonded to her and her husband, as well as to the other children in their household, and considered them all as his family. She explained that during phone visits with Grandmother, Grandmother and K.H. talk for approximately 10 to 20 minutes of the 60 minute call, while remaining quiet the rest of the time, often because K.H. refuses to speak to Grandmother.

Grandmother testified that she had remained sober and was in compliance with all the items on her service agreements. She believed family therapy would help her achieve reunification with K.H. because K.H. had not had an opportunity, since the traumatizing events of the past, to see that she was not living in “a bad environment anymore” and that he no longer had to feel threatened in her home. She acknowledged that a graduated therapeutic procedure would be best so it wouldn’t be disruptive to K.H. She understood that the court’s decision must be based on K.H.’s best interest and agreed that he should have a voice in the decision.

In closing, both the Department’s and K.H.’s attorneys agreed that a change in permanency plan to adoption by a non-relative was warranted, based on the length of time K.H. had been in foster care, K.H.’s undisputed past trauma related to domestic abuse in Grandmother’s home, his attachment to his foster family, his improvement in speech and academics since he came into the E.s’ care, and his stated desire.

In closing, Grandmother reminded the court that she had stepped up to care for K.H. when Mother could not. Grandmother acknowledged problems in her home but she had

been given a service agreement and had completed every task on it, such that the Department should be working with her toward reunification. She claimed also that the Department had not undertaken reasonable efforts toward reunification.

Grandmother asked the court to order in-person visitation and placement of K.H. with her when he was deemed ready, after beginning family therapy. She sought a sole permanency plan of reunification, but if the court were not inclined to order a sole plan, Grandmother agreed that a concurrent plan of reunification and guardianship/custody with a non-relative would be appropriate.

In rebuttal, the Department, reiterating that the overarching standard was the best interest of the child, not the custodian, acknowledged that reunification may have been in K.H.'s best interest in 2021, but underscored that K.H. is autistic, had observed domestic violence in Grandmother's home, and had told numerous witnesses that Grandmother and Grandmother's mother had hit him, causing him to be "extremely fearful of his grandmother." As a result, the Department was "taking things slowly," at a level K.H. could handle. To that end, the Department provided reasonable efforts, including in-home visits with K.H., monitoring of K.H.'s therapy, and consulting with his therapist about whether family therapy would be in K.H.'s best interest. The Department provided also services to Grandmother, which had been beneficial, because she had remained sober and made improvements in her home life, although the Department believed she still lacked insight into K.H.'s concerns.

The juvenile court, in explaining its ruling, noted that because the child's best interest is the paramount concern, "it is entirely possible that every component of a service

agreement can be met, but we still find ourselves in a unique circumstance, where notwithstanding that compliance, there is some variable or some component that still hasn't shifted the best interest of the child." The court, sensitive to Grandmother's frustration about having done everything she had been asked to do and yet still remaining under threat of losing custody of K.H., referred to K.H.'s "traumatic upbringing" related to the domestic violence he witnessed, due, in large part, to excessive alcohol consumption by Grandmother and her ex-husband. The court noted also K.H.'s distress during visitation with Grandmother, along with the cessation of his disruptive behaviors when the visits were stopped.

In contrast, the judge observed that K.H. "blossomed and bloomed" since residing with his foster family, making advancements in speech and academics. The court was moved by the undisputed testimony that K.H. had made his wishes to be adopted by the E. family "abundantly clear."

Following its consideration of the required factors of Md. Code, § 5-525(f) of the Family Law Article ("FL"), the juvenile court continued K.H.'s status as CINA and changed his permanency plan from a concurrent plan of reunification and custody/guardianship to a non-relative, to a primary plan of adoption by a non-relative with a secondary plan of custody/guardianship with a non-relative. Grandmother appealed timely the juvenile court's order.

## DISCUSSION

### Standard of Review

We review CINA cases under three “different but interrelated” standards. *In re Adoption/Guardianship of Cadence B.*, 417 Md. 146, 155 (2010). First, we review the juvenile court’s factual findings under the clearly erroneous standard. *Id.* (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). Second, if it appears that the juvenile court erred in its determinations as a matter of law, further proceedings will be required ordinarily, except in cases of harmless error. *Id.* Finally, “when reviewing a juvenile court’s decision to modify the permanency plan for the children, [we] ‘must determine whether the court abused its discretion.’” *In re A.N., B.N., & V.N.*, 226 Md. App. 283, 306 (2015) (quoting *In re Shirley B.*, 419 Md. 1, 18-19 (2011)).

The Supreme Court of Maryland emphasizes that appellate review of a juvenile court’s determination concerning a permanency plan is “limited.” *In re Ashley S.*, 431 Md. 678, 715 (2013). “Because the overarching consideration in approving a permanency plan is the best interests of the child, we examine the juvenile court’s decision to see whether its determination of the child’s best interests was ‘beyond the fringe’ of what is ‘minimally acceptable.’” *Id.* (quoting *In re Yve S.*, 373 Md. at 583-84). In doing so, we must remain mindful that “‘only [the juvenile court] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [it] is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.’” *Baldwin v. Baynard*, 215 Md. App. 82, 105 (2013) (quoting *In re Yve S.*, 373 Md. at 585-86)).

### Analysis

Grandmother asserts that the juvenile court abused its discretion by changing K.H.’s permanency plan from a concurrent plan of reunification and custody/guardianship with a non-relative to a primary plan of adoption with a secondary plan of custody/guardianship with a non-relative. She contends that the court’s change in the plan is not in K.H.’s best interest, especially in light of her demonstration that she met all the requirements of the service agreements with the Department. She avers further that the Department has not made reasonable efforts to facilitate the permanency plans of reunification or custody/guardianship with a non-relative.

When a CINA is committed to a local department of social services, the juvenile court must determine which permanency plan is in the child’s best interest, being the “paramount concern,” as well as the ultimate governing standard. CJP § 3-823(e)(1); *In re Caya B.*, 153 Md. App. 63, 76 (2003).<sup>8</sup> Following its implementation of a permanency plan, a juvenile court must conduct periodic hearings to review the child’s permanency plan, during which the court must determine, *inter alia*, whether reasonable efforts have been made to finalize the permanency plan and change the permanency plan if it would be

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<sup>8</sup> The permanency plans, “in descending order of priority[,]” are: (1) reunification with a parent or guardian; (2) placement with relatives for adoption or custody and guardianship; (3) adoption by a non-relative; (4) custody and guardianship by a non-relative; or (5) another planned permanent living arrangement. CJP § 3-823(e)(1)(i).

Reunification is presumptively the better option, as it is presumed to be in the child’s best interest to remain in the care and custody of his or her biological parent—in this case, the custodial grandparent. *Cadence B.*, 417 Md. at 157. Nonetheless, “if 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.” *Id.*

in the best interest of the child to do so. CJP § 3-823(h)(2)(ii), (vii). Pursuant to CJP § 3-823(e)(2), in determining and reviewing the child’s permanency plan, the court must consider the factors enumerated in FL § 5-525(f)(1), which include:

- (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.

The court is not required, however, to refer specifically to those factors on the record, so long as its reasoning as to the child’s best interest is articulated. *See In re Adoption/Guardianship of Darjal C.*, 191 Md. App. 505, 531-32 (2010).

Here, the record supports a reasonable conclusion that the juvenile court considered properly the required factors before changing K.H.’s permanency plan.

As far as K.H.’s ability to be safe and healthy in Grandmother’s home, the court found that K.H. would not be safe. Even in the absence of danger to his physical safety, the level of distress and opposition displayed by K.H. to even telephonic visitation led the court to conclude that if K.H. were compelled to return to Grandmother’s home, those exhibitions of distress would be “significantly amplified.” The court was not inclined,

therefore, to return K.H. to a place that could place his mental health, which appeared to be improving, in jeopardy.<sup>9</sup> FL § 5-525(f)(1)(i).

Regarding K.H.’s attachment and emotional ties to his natural parents—in this case, Grandmother (as a stand-in for Mother)—the juvenile court pointed to “the copious evidence” that K.H. had made it very clear that he does not want contact with Grandmother, even as *de minimis* as a weekly phone call. With that level of reticence, the court could not find a strong attachment between K.H. and Grandmother. FL § 5-525(f)(1)(ii).

The court noted that K.H.’s relationship with his foster family, a pre-adoptive resource, involved an “incredibly well-bonded, affectionate, caring dynamic.” K.H. considered the foster family his family and wanted to be part of it; the court found that “that attachment is significant.” FL § 5-525(f)(1)(iii).

The juvenile court found that K.H. had been with his current caregivers since April 2021, 26 months at the time of the relevant hearing. The court concluded further that, “[b]ased on everything that has been presented thus far,” removal of K.H. from his foster home “would work an extraordinary detriment to that little boy.” Since being in the foster parents’ care, K.H. developed, matured and made significant strides in his emotional health and education, such that moving the child from his current placement would work “significant harms.” The court added that “we are already beyond the 24 months within

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<sup>9</sup> We are not persuaded by Grandmother’s assertion, unsupported by law, that FL § 5-525(f)(1)(i) is intended to refer primarily to the child’s *physical* safety. The CINA subtitle is intended to “provide for the care, protection, safety, and *mental and physical* development of [the] child[.]” CJP § 3-802(a)(1) (emphasis added). A custodian’s failure to provide mental and/or physical safety can lead to a finding of neglect, as defined by CJP § 3-801(s).

which permanency is supposed to be achieved by statute[,]” so it was nearing the point in which permanency reflective of the current circumstances should be achieved. FL § 5-525(f)(1)(iv)-(vi).

Despite Grandmother’s claim that the juvenile court failed to give sufficient weight to her successful completion of all the items of her service agreements, the court explained that, although Grandmother’s contention was undisputed in this regard, that was merely one part of its calculus in determining an appropriate permanency plan, with K.H.’s best interest the paramount consideration. Grandmother lacked insight as to K.H.’s concerns. Moreover, K.H. had been in care for over two years and was entitled to more permanency than Grandmother, despite her best efforts, was able to provide. Removing reunification as a permanency plan addressed the potential harm of K.H. continuing in the limbo of foster care. *See Ashley S.*, 431 Md. at 711 (One of the primary purposes of a permanency plan is “to avoid the harmful effects when children languish in temporary living situations.”).

Although Grandmother contends that the juvenile court erred in determining that the Department made reasonable efforts toward reunification, the record reveals that the court considered the totality of the circumstances before finding that the Department had made reasonable efforts. The court detailed the efforts it found reasonable—the Department’s facilitation of visitation between K.H. and Grandmother, provision of individual therapy for K.H., and attempts at family therapy.

Despite the Department’s efforts in providing visitation, however, the in-person visits between Grandmother and K.H. had, by all accounts, gone poorly. K.H. exhibited a great deal of physical and emotional distress before and after visits, which resolved entirely

once in-person visitation ceased. Moreover, during phone visitation, Grandmother made little effort to engage with K.H., instead remaining silent for a large portion of the 60-minute calls. In addition, when the Department offered FaceTime visitation, Grandmother declined. The lack of success of visitation did not require the juvenile court to find that the Department had not made reasonable efforts.

As for the Department’s efforts regarding family therapy, the Department made clear, and the juvenile court found, that K.H.’s individual therapist did not find family therapy to be in K.H.’s best interest. Nonetheless, at the demand of Grandmother’s attorney, the Department had sought to find a family therapist—contacting five to seven practices—but none was inclined to provide services to a Medicaid recipient who was receiving already individual therapy. The court noted that, although it could order family therapy, it could not order a therapist to provide services.<sup>10</sup> And, despite Grandmother’s advocacy for family therapy, there was no guarantee—even if K.H. could be persuaded to participate—that it would resolve the issues impeding reunification. The failure to provide family therapy is not a failure of the Department to provide reasonable efforts at services.

As to reasonable efforts related to the concurrent plan of custody/ guardianship with a non-relative, the Department had reached out to K.H.’s foster family, discussed the possibility of guardianship as an alternative to adoption, and learned that the foster family was not a guardianship resource. Seeking alternative placement, solely for the purpose of

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<sup>10</sup> The one family therapy practice the Department found who would consider accepting Grandmother and K.H. as clients continued to have a waiting list as of February 2023.

achieving custody and guardianship, the court concluded, would not have been in K.H.’s best interest. *See In re Adoption/Guardianship of C.E.*, 464 Md. 26, 59 (2019) (“Custody and guardianship does not afford [a child] with the same permanency as adoption[.]”).

For all these reasons, we conclude that the juvenile court considered adequately the required statutory factors and the reasonableness of the Department’s efforts when reviewing K.H.’s permanency plan. It concluded reasonably, based on all the evidence before it, that it was in K.H.’s best interest to change his permanency plan to adoption with a secondary plan of custody/guardianship by a non-relative. We perceive no abuse of discretion in the court’s ruling.

**ORDER OF THE CIRCUIT COURT FOR  
CECIL COUNTY, SITTING AS A  
JUVENILE COURT, AFFIRMED; COSTS  
TO BE PAID BY APPELLANT.**