Circuit Court for Montgomery County
Case Nos. 06-I-19-000009 - 000014

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 919

September Term, 2020

IN RE: J.S., D.S., N.S., J.S., & A.S.

Leahy,
Shaw Geter,
Moylan, Charles E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 16, 2021

In 2019, the Child Welfare Services ("CWS") division of the Montgomery County Department of Health and Human Services ("the Department"), appellee, filed Child in Need of Assistance ("CINA")[1] petitions on behalf of six children: C.S. (born December 2009); Jo.S., (born November 2010); D.S. (born October 2011); N.S. (born September 2012); Ja.S. (born October 2013); and A.S. (born November 2014) (collectively, "the Children"), appellees.[2] The Circuit Court for Montgomery County, sitting as a juvenile court, adjudicated the Children to be CINA. Ultimately, the court entered five custody orders, from which this appeal was taken, closing the CINA cases for Jo.S., D.S., N.S., Ja.S., and A.S. and granting legal and physical custody and guardianship to their maternal great aunt and great uncle ("Great Aunt and Great Uncle"). The orders contain a provision that suspends visitation between the Children's mother, K. J.-S. ("Mother"), appellant, and the Children until such time as Mother "presents" herself to the court.[3]

[1] A child in need of assistance is "a child who requires court intervention because: (1)[t]he child has been abused, has been neglected, . . . ; and (2)[t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Maryland Code (1973, 2013 Repl. Vol., 2018 Supp.), Courts & Judicial Proceedings Article, § 3-801(f).

[2] As we explain, the oldest child, C.S., is not involved in this appeal.

[3] D.S., N.S., Ja.S., and A.S. also noted an appeal to this Court from the custody orders. They subsequently filed a motion in this Court to stay the appeal pending a juvenile court hearing pertaining to C.S., which could "render the appeal moot." We granted the motion to stay the appeal. On February 19, 2021, D.S., N.S., Ja.S., and A.S. moved to withdraw their appeal and participate as appellees before this Court. We granted that motion by order entered March 24, 2021. The Children's father, C.S., Sr. , did not note an appeal.

Mother presents a single issue for our review:

> "Did the court abuse its discretion when it suspended visitation between [Mother] and her children[] upon granting custody and guardianship to family members?"

We hold that the juvenile court did not abuse its broad discretion by suspending visitation until Mother presents herself to the juvenile court. Accordingly, we affirm the custody orders entered by the juvenile court.

BACKGROUND

Mother and Father, who are married but estranged, have a long history with the Department and with the Prince George's County Department of Social Services ("PGDSS").

A. Prior Investigations[4]

In 2012, PGDSS twice investigated Mother and Father for neglect. The first investigation was initiated after C.S., then age 2, broke his leg in two places. Mother did not appear for scheduled meetings, and the case was closed. The second investigation stemmed from Mother testing positive for marijuana at the time of N.S.'s birth. That case was closed as unsubstantiated[5] after Mother was "non-responsive to PGDSS" and a

[4] The facts recited here are derived, primarily, from the first amended complaint. These allegations were sustained and proven by a preponderance in accordance with Rule 11-114.

[5] A case may be closed as "unsubstantiated" if the investigation did not result in sufficient evidence to make a finding of "indicated" or "ruled out." Maryland Code (1984, 2019 Repl. Vol.), Family Law Article ("FL"), § 5-701(aa).

visiting nurse.

In 2013, the Department opened an investigation when Mother gave birth to Ja.S. at home and "delayed taking the child to the hospital for days[.]" Mother claimed she did not know she was pregnant, had received no prenatal care, and planned to place Ja.S. up for adoption. That case also was closed as unsubstantiated after Mother "stopped responding to efforts to reach her."

In 2014, PGDSS sheltered all six children and placed them in kinship care with the Great Aunt and Great Uncle after Mother called the police to report finding an abandoned newborn baby outside her house. She later admitted that the baby was her youngest child, A.S. Mother and Father also were living with her Great Aunt and Great Uncle at that time. The juvenile court in Prince George's County adjudicated the Children to be CINA and placed them with Mother and Father at the home of the Great Aunt and Great Uncle subject to an order of protective supervision. Mother and Father complied with the terms of the order, and the case was closed in 2016.

In 2017, the Department investigated the family three times. First, in July 2017, the Department completed an "Alternative Response (AR) – Physical Abuse Assessment" after C.S., then age 7, reported that Father hit him with a spoon, causing his hand to swell and a bruised thumb. Mother and Father denied the allegation, and C.S. subsequently denied any injury. Because the matter was an AR assessment, no findings were made. The second investigation was precipitated by a report that the Children were dirty, smelly, and hungry. D.S. also had a small cut on his nose that was allegedly caused by

"Father's aggression." Father and Mother denied the allegations of abuse. The third investigation arose from a report from C.S. that Father cut him with a knife. The last investigation was closed as unsubstantiated.

B. Current Investigation

On December 11, 2018, the Department began a child neglect investigation after C.S., then age 9, reported that Mother struck him on the hand with a belt because he was not doing well in school. Mother denied hitting C.S.[6]

On January 2, 2019, the Department received multiple reports alleging physical abuse of N.S., then age 6. An initial report alleged that N.S. was observed crying and in pain and had trouble taking off her coat. N.S. claimed to have injured herself by falling out of bed, but "later said her sister hurt her arm, and additionally made a comment about her [F]ather being upset." Mother was interviewed and reported that Father had grabbed N.S. to prevent her from falling while she was running.

The next day, N.S. was evaluated at Children's National Medical Center and diagnosed with an oblique fracture of the right shoulder and swelling to her right bicep. The investigation revealed that N.S. sustained the injury when Father "grabbed her in [an] effort to physically discipline her." Father admitted that he grabbed N.S. by the hand and that he '"popped"' each of the Children "with a belt on their bottoms three times each." N.S. told a child abuse pediatrician that Father had grabbed her by the right hand,

[6] The original CINA petition alleged that Mother admitted hitting C.S. An amended petition alleged that she denied hitting him, however.

she twisted away, and then he threw her on a bed and "'whooped' her on the arm with a belt." According to N.S., when she told Mother what happened, Mother told her to "talk to [Father]" and then applied cold packs, which "did not alleviate the pain."

On January 4, 2019, CWS and the Montgomery County Police Department jointly interviewed Mother. Mother said that CWS could "take all six children and she would 'replace' them." While alone in the interview room, Mother threw a chair, breaking a camera in an adjacent interview room. She also stated that she hated her children and wished she did not have them.

All the Children reported that Mother and Father argued frequently and that the arguments sometimes "result[ed] in physical aggression in which [Mother] throws things and [Father] becomes physical with [Mother]."

C. CINA Case

On January 8, 2019, the Department filed six CINA petitions alleging abuse and neglect of the Children by Mother and Father. That same day, the juvenile court held an emergency hearing and sheltered the Children, committing them to the custody of the Department for placement in kinship care with the Great Aunt and Great Uncle. Mother's and Father's presence at the hearing was waived. The shelter care order granted Mother and Father supervised visitation, for a minimum of one hour a week, "in accordance with the Department's recommendation." The cases were scheduled for a pretrial hearing on January 23, 2019 and an adjudicatory hearing on February 5, 2019.

On the day of the pretrial hearing, the parties mediated and reached an agreement. Consequently, the Department filed amended CINA petitions and attached a list of twelve recommendations. Among the recommendations, visitation was recommended between Mother and the Children for a "minimum [of[two hours weekly under the direction of the Department and supervised by the Department or its designee." The recommendations further specified that visitation would be "in accordance with the parents' pretrial services and bond conditions." Mother and Father agreed to waive their right to a trial and not to contest the factual allegations in the amended CINA petitions. Based upon that agreement, the court sustained the facts in the amended petitions.

The court then held an adjudicatory hearing on February 19, 2019. The court found that the Children had been neglected and that N.S. also had been abused. It determined the Children to be CINA, found that it was contrary to their welfare to remain in the home, and committed them to the custody of the Department for placement with the Great Aunt and Great Uncle. Mother was ordered to participate in psychological and substance abuse evaluations, follow any resulting recommendations, and complete parenting education classes. The court ordered weekly supervised visitation with Mother "provided she submits to and follows all recommendations of the Department[.]" Supervised telephone contact also was allowed. The court then scheduled a review hearing for June 5, 2019 and a permanency planning hearing on December 6, 2019.

On June 5, 2019, the juvenile court held the review hearing. Mother and Father did not appear, but their counsel did, and Mother and Father's appearance was excused.

Both Mother and Father were facing criminal charges "related to the reasons the children [were] in care"[7] and were not permitted contact with the Children as conditions of their pre-trial services and bonds. The Department clarified that it was "not here to get in the way of reunification or clients to see their parents" but would need the "go-ahead form the state's attorney" to allow visitation. Mother had not "complied with needed services." The juvenile court determined that the Children remained CINA and continued their commitment to the custody of the Department in kinship care with Great Aunt and Great Uncle. With respect to visitation, the juvenile court granted supervised weekly two-hour visits, as well as supervised telephone contact, both on the condition that Mother and Father, respectively, were "compliant with all Court Orders" and consistent with their bond conditions and pretrial services agreements in their pending criminal cases.

On December 6, 2019, the juvenile court held a permanency planning review hearing. Prior to that hearing, the Department submitted a report. In its report, the Department concluded that it did "not feel either parent [wa]s able to keep the children safe and healthy, due to the parents' instability, lack of housing, lack of resources, and

[7] In January 2019, Mother was charged with malicious destruction of property, neglect of a minor, and contributing to child needing to be placed in supervision. She ultimately plead guilty in the Circuit Court for Montgomery County to the malicious destruction charge, which stemmed from the damage to the interview room, and was sentenced to serve 60 days, all suspended in favor of 3 years' supervised probation.

Father was arrested and charged with child abuse, neglect of a minor, second-degree assault, and reckless endangerment.

the harm they have caused the children." The Children were "safe in their current placement" with the Great Aunt and Great Uncle; and, the Department urged, removal "could have potential serious consequences." The report explained:

> The children have been through extensive trauma residing with their parents and are acting out the trauma in a variety of ways. For example, [D.S.] and [C.S.] are aggressive, lack coping skills, and lack emotional regulation. Additionally, all of the children have a history of eating out of trashcans, drinking out of toilets, and stealing food, which attests to the trauma they endured. Residing in a safe and stable home with [Great Aunt and Great Uncle] are helping the children learn to cope with these experiences.

The report revealed that Father had plead guilty to second-degree child abuse and was "given 5 years incarceration, all suspended, with 5 years supervised [p]robation." Father's remaining charges were nolle prosequi. Mother was found guilty of malicious destruction of property, failed to appear for her sentencing hearing, was issued a warrant, and then spent four days in jail. Afterwards, Mother returned to court where she was sentenced to 60 days, all suspended, and credited for the four days that she spent in jail. The report provided that Mother "actively tried to meet her requirements" by participating in therapy but, as of the date of the report, had not submitted a psychological evaluation or a urinalysis. The report recommended that Mother and Father have supervised visitation and supervised telephone calls "under the direction of the Department . . . provided they submit to and provide proof of completion of all Court Orders services and in accordance with their Probation conditions."

At the hearing, the court met with the Children and heard argument from counsel. The Children reported that they had spoken by telephone with Mother and Father but had not had any in-person visits with them. Children's counsel argued that the Department should transition to supervised visitation given that Mother and Father had been consistent with phone calls. Mother's attorney echoed that argument, asking the court to order that "visits resume" considering Mother's "consistent phone contact[.]" Father's attorney concurred.

With the consent of all parties, the juvenile court determined that it was in the Children's best interests to change the permanency plan from reunification to custody and guardianship with a relative, *i.e.*, the Great Aunt and Great Uncle. In support, the court concluded that the Children could not be safe or healthy in the care of Mother and Father "due to their parents' instability, lack of housing and lack of resources and the harm that they have caused the children in the past." While the Children were bonded to Mother and Father and missed them greatly, they had experienced trauma at the hands of their parents and were "working through the issues related to the abuse and neglect . . . by the parents" that was causing them to act out in different ways. The court determined that the Children were bonded with their Great Aunt and Great Uncle and "could potentially experience serious consequences if [] removed" from their care. The court noted that the Children acted out trauma in a variety of ways, noting that D.S. and C.S. also displayed aggression and lack of emotional regulation. The juvenile court summarized that the permanency plan was "no longer in the best interests of the [C]hildren and the parents

have indicated today that they are in agreement with a change in the plan to custody and guardianship with a relative."

In addition, the juvenile court granted Mother and Father supervised visitation as well as supervised telephone contact with the Children "on the condition that [they] [were] consistently engaged in court ordered services[.]"

On December 10, 2019, the juvenile court entered an order memorializing the court's findings from December 6, 2019. The order specifically provided that Mother and Father were permitted supervised visitation and telephone contact with the Children "on the condition that the parents consistently engage in court ordered services, under the direction of the Department." The order then set a permanency planning review hearing for April 22, 2020.

The permanency plan was continued by consent on June 16, 2020 after the scheduled April 22, 2020 permanency planning review hearing could not be held due to the COVID-19 emergency closure of the courts. The consent order included a finding that Mother "had made little progress toward meeting her court ordered items." The Department's report further explained that "despite efforts to reach out," there had "been limited contact with" Mother. According to the report, while the Department referred parenting classes and "provided [Mother] all the information on how to attend," she had not participated in a parenting class. Mother also had "limited phone calls with her children" and did not attend a supervised visit on Christmas. The court's order granted Mother and Father supervised telephone contact but continued to make supervised

visitation subject to the condition that Mother and Father "consistently engage in court ordered services[.]" The juvenile court set a permanency planning review hearing for September 28, 2020.

On September 18, 2020, the Department filed a permanency planning review hearing report in advance of the September 28 hearing. The Department recommended the court close all of the Children's cases except C.S.,[8] and grant custody and guardianship to the Great Aunt and Great Uncle.

In the "Recommendations" section of the report, the Department proposed that Mother and Father have "supervised visitation" with the Children "minimum monthly, under the discretion of [Great Aunt and Great Uncle]." In the "Progress Under Supervision" section, however, the Department explained that Mother, who did not have a permanent address, had had "limited contact" with the Department during the review period and had not completed parenting education despite attempts to facilitate that for her. Her phone contact with the Children had been sporadic and had "dissipated" recently. She did not show up for a scheduled in-person visit on Christmas Day 2019. For those reasons, the Department did not recommend "in[-]person visitation at [that] time due to [Mother's] inconsistent phone calls, not showing up for the Christmas visit

[8] C.S. was in a residential treatment center for behavioral and mental health issues. The Department recommended that his case remain open until such time as he completed that program and could transition back into the home of the Great Aunt and Great Uncle.

and lack of compliance with the court order, to include lack of consistent phone calls, not participating in parenting classes, and lack of proof of urinalysis results."

The permanency planning review hearing was held ten days later, via teleconference. Mother did not call into the hearing and her attorney asked the court to waive her appearance without offering an explanation for her absence. Mother's attorney stated that Mother had "reviewed [the] court reports" and spoken with her about them. The juvenile court asked her attorney why Mother thought that she did not "have to participate[.]" Her attorney responded that if the court declined to waive Mother's presence, counsel could try to contact her and determine if she could call in. The court remarked that Mother's "[l]ack of participation [wa]s troubling."

Father also was not present. His counsel explained that Father had been called to work unexpectedly. The juvenile court expressed skepticism that Father could not take ten minutes at work to call into the remote hearing.

As explained, the Department recommended closing the cases for all the Children except for C.S., with custody and guardianship to be granted to the Great Aunt and Great Uncle. Mother's attorney stated that Mother had "no objection[.]" Father likewise did not object. The Great Uncle was present and made a statement expressing his disappointment that Mother and Father were not present for the hearing.

The juvenile court adopted the Department's recommendation. During its ruling, the court did not excuse Mother's or Father's absence from the remote hearing and directed them to appear for all future hearings. The juvenile court found that the Children

had made "excellent progress under supervision." Mother and Father, in contrast, had "made minimal to zero progress[.]" The court found that they were "checked out" and were not consistently communicating with the Children, which was continuing to "cause psychological damage to [the] [C]hildren." With respect to visitation, the court observed:

> All contact between the [C]hildren and their biological parents are to be supervised. These folks have checked out and I am not going to allow them unsupervised access to these children until such time, if ever, as they present themselves to the Court, whether it's to me or to another CINA judge and make the case and I can make a finding under 9-101 of the Family Law Article.[9] I can't do that today, particularly in light of the horrific facts of this case. So if and when these parents want to step up, makes themselves available and make the case, I'll listen or some other judge will listen but until they even bother to show up, the answer is no.

The next day, the juvenile court entered a permanency planning review hearing order and five custody orders that: closed the CINA cases for the Children, except C.S.; granted custody and guardianship to Great Aunt and Great Uncle; rescinded the Department's custody and guardianship; and, terminated the juvenile court's jurisdiction. Regarding visitation, the permanency planning review hearing order "ORDERED, that visitation by the biological parents is suspended until such time, if ever, as they present themselves to the court." Likewise, each custody order "ORDERED, that visitation between [the child] and [Mother] [] shall be suspended, until such time, if ever, as she presents herself to the court[.]" The custody orders specified in bold face that

[9] As we explain, FL § 9-101 governs custody and visitation in cases in which a child has been abused or neglected by a party.

enforcement of the orders must be pursued through a separate family law case because the juvenile court's jurisdiction would terminate.

Mother noted a timely appeal from these orders. Father did not note an appeal. We include additional facts as necessary to our resolution of the issues.

MOTION TO DISMISS

Jo.S., who is represented by separate counsel, noted an appeal to this Court on November 2, 2020. The Department moves to dismiss his appeal as untimely. Generally, "a notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." Md. Rule 8-202(a). However, Rule 8-202 further states: "If one party files a timely notice of appeal, any other party may file a notice of appeal within ten days after the date on which the first notice of appeal was filed[.]" Md. Rule 8-202(e).

Here, while Jo.S.'s appeal was noted 30 days after entry of the September 29, 2020 orders, his appeal was noted within 10 days after Mother noted her timely appeal. Accordingly, we deny the Department's motion to dismiss on this basis.

Nevertheless, because Jo.S. did not file a brief in this Court, as required by Maryland Rule 8-502(a)(1), we exercise our discretion pursuant to Maryland Rule 8-602(c)(5) to dismiss his appeal for that reason. The Rules provides that the "court may dismiss an appeal if: . . . the brief or record extract was not filed by the appellant within the time prescribed by Rule 8-502." Md. Rule 8-602(c)(5).

STANDARD OF REVIEW

"There are three distinct but interrelated standards of review applied to a juvenile court's findings in CINA proceedings." *In re J.R.*, 246 Md. App. 707, 730-31 (2020). First,

> [w]hen the appellate court scrutinizes factual findings, the clearly erroneous standard of Rule 8-131(c) applies. Second, if it appears that the 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. Finally, when the appellate court views the ultimate conclusion of the court founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the court's decision should be disturbed only if there has been a clear abuse of discretion.

In re Adoption/Guardianship of C.E., 464 Md. 26, 47 (2019) (brackets omitted) (quoting *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 100 (2010)). In particular, "[d]ecisions concerning visitation generally are within the sound discretion of the [juvenile] court," and we will not disturb those decisions unless that court has clearly abused its discretion. *In re Billy W.*, 387 Md. 405, 447 (2005). "That standard requires reversal only when we find that the circuit court has acted 'without reference to any guiding rules or principles,' or that 'no reasonable person would take the view adopted by the [circuit] court,' or that the decision of that court is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that 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)).

DISCUSSION

Visitation

A. Parties' Contentions

Mother contends the juvenile court abused its discretion by suspending her visitation with the Children pending her appearance before the court on some unspecified future date. She avers that the juvenile court stated at the September 28, 2020 hearing that it would grant Mother supervised visitation but, the next day, entered orders that suspended visitation entirely. She maintains that the juvenile court's decision was unsupported by any evidence and punitive. Because, she contends, "no party addressed the idea of terminating the parents' visits moving forward or mentioned visits whatsoever, the court could not have considered the best interest of the children when it made its notable and punitive decision."

The Department responds that the juvenile court acted within the scope of its broad discretion by suspending visitation until Mother appeared before the court to permit the court to make findings pursuant to FL § 9-101. It argues that its September 18, 2020 report put Mother "on notice that visitation was an issue to be addressed by the juvenile court" and that its position was that there should be no visitation between the Children and Mother given her lack of consistency and compliance with court orders during the review period. According to the Department, Mother's failure to appear at the hearing without explanation prevented the court from making meaningful factual findings relative to visitation with Mother. Alternatively, the Department contends Mother

waived this argument because her attorney did not contest the Department's recommendation that there be no visitation, stating only that she had reviewed the Department's report, discussed it with Mother, and that Mother agreed to the recommendation to close the case and grant the Great Aunt and Great Uncle custody and guardianship.

The Children,[10] by their counsel, likewise contend that the juvenile court did not err or abuse its discretion by suspending visitation with Mother. They maintain that the visitation orders were consistent with the law and the juvenile court's discretion and protected their best interests. Further, they maintain that the juvenile court properly placed the burden on Mother to come to court and adduce evidence in support of visitation, consistent with FL § 9-101.

In reply, Mother avers that "there was no concern for the safety of the children," which prevented the court from restricting "visitation based upon the best interest of the child." In addition, Mother asserts that she did not waive her argument that the court abused its discretion because "no party discussed the possibility of denying Mother visitation completely at the close of the case."

[10] Though, as noted, C.S. is not part of this appeal and Jo.S. did not file a brief in this Court, we continue to refer to the four siblings who did file a brief as "the Children" for ease of discussion/reference.

B. Analysis

Visitation, although an "important, natural and legal right . . . is not an absolute right[.]" *Roberts v. Roberts*, 35 Md. App. 497, 507 (1977) (citation omitted). Rather, "[b]ecause the trial court is required to make such determinations in the best interests of the child, visitation may be restricted or even denied when the child's health or welfare is threatened." *In re Billy W.*, 387 Md. at 447.

Where a child or children have been declared CINA because of abuse or neglect, the juvenile court is constrained further by the requirements of FL § 9-101, which prohibits the court from granting visitation to a party who has abused or neglected a child unless the court specifically finds that there is no likelihood of further abuse or neglect. Section 9-101 states:

> (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 burden is on the parent previously having been found to have abused or neglected his or her child to adduce evidence and persuade the court to make the requisite finding under § 9-101(b)." *In re: Yve S.*, 373 Md. 551, 587 (2003).

Here, the juvenile court's order suspending visitation was consistent with FL § 9-101, which proscribes an award of visitation unless the court finds "that there is no likelihood of further child abuse or neglect by the party" and "a supervised visitation arrangement" cannot protect the psychological and physical safety of the child. The juvenile court found that Mother was "checked out," a finding that was bolstered by Mother's diminishing contact with the Children, including her absence during a scheduled visit on Christmas, and her unexcused absence from the hearing, and that her inconsistent contact with the Children was causing psychological harm. The juvenile court reasonably concluded that a supervised visitation arrangement could not protect the Children from the emotional toll if Mother were awarded visitation but did not exercise it.

Mother relies primarily on this Court's decisions in *In re Caya B.*, 153 Md. App. 63, 72-73 (2003), and *In re M.C.*, 245 Md. App. 215 (2020). Both are inapposite. In *In re Caya B.*, this Court held that a juvenile court erred when it closed a child's CINA case and awarded custody and guardianship to a relative but did not order visitation because it erroneously believed it had no authority to do so. 153 Md. App. at 79-82. The mother, who was present at the hearing, requested visitation. *Id*. at 79. This Court reasoned that the juvenile court abused its discretion by not exercising it: "The court had discretion either to order formal visitation or to deny visitation as no longer appropriate." *Id*. at 81. Because it did not order or deny visitation, but rather left visitation to the discretion of the

legal guardians, we reversed and remanded for the court to determine and enter an appropriate visitation order. *Id*. at 81-82.

In *In re M.C.*, a juvenile court amended a visitation order to change visits between a mother and her child, who had been adjudicated CINA, from unsupervised to supervised without holding a hearing. 245 Md. App. at 219. The mother had disputed the facts alleged by the Department supporting the change and requested a hearing to challenge the proposed restriction upon visitation. *Id*. On appeal, this Court held that the mother was entitled to an opportunity to be heard before the juvenile court restricted her visitation and that the burden was on the Department, not the mother, to show that circumstances had changed to justify a restriction on the visits. *Id.* at 229-232.

Here, unlike *In re Caya B*., the juvenile court understood that it had discretion to award or deny visitation to Mother (and Father) when it issued orders closing the CINA cases for five of the six children. The court considered the Department's report, to which Mother, through counsel, noted no objection. Consistent with the Department's recommendation, the court suspended visitation between Mother and the Children. The juvenile court plainly exercised its discretion in making that determination.[11]

[11] Because the court's orders suspend visitation until Mother presents in court but also close the underlying CINA cases, we note that Mother is free to petition an appropriate court of equity for a change in visitation. *See Caya B.*, 153 Md. App. at 78 (noting that when the court "issue[s] a decree of guardianship to the relative" and closes the CINA case, "[p]arental rights are not terminated" and "the parents are free at any time to petition an appropriate court of equity for a change in . . . visitation"). For example, she may petition a court of equity to grant her visitation pursuant to section 1-201 of the (Continued)

Further, in *In re M.C.*, we reasoned that, when the Department seeks to "change the *status quo*," a juvenile court abuses its discretion by "not receiving testimony as to material, disputed allegations when requested by a party[.]" *Id.* at 231-32. Here, the status quo was that Mother had been granted supervised phone contact and supervised visitation with the Children subject to her consistent engagement with court-ordered services but had not appeared for her only scheduled visit. In its court report, the Department alleged that Mother was not consistently engaged with court ordered services and was becoming increasingly inconsistent with her contact with her Children, justifying a suspension of visitation. Mother did not dispute any of the facts set out in the Department's report or seek to adduce any evidence to the contrary. By not contesting the Department's allegations and not appearing at the hearing to offer the juvenile court the opportunity to hear from her about her living circumstances, her sobriety, and her missed visit with her Children, Mother waived any objection to the juvenile court adopting the facts as alleged. Mother's counsel also did not make a request that visitation, supervised or unsupervised, be awarded by the juvenile court.[12]

Family Law Article. *See* FL § 1-201(b)(6) (stating that "[a]n equity court has jurisdiction over: . . . (6) visitation of a child").

[12] We are not persuaded by Mother's argument that she was deprived of due process because the juvenile court, in announcing its ruling from the bench, suggested that it would permit supervised contact, but upon entering its order, suspended visitation entirely until Mother appeared in court. The Department's September 18, 2020 report describes Mother's limited progress to comply with the court's orders and noted that the Department was not "recommending in person visitation at this time" due to her conduct.
(Continued)

We hold that, under the circumstances, the juvenile court did not abuse its broad discretion by suspending visitation until Mother presents herself to the juvenile court. Accordingly, we affirm the custody orders entered by the juvenile court.

JO.S.'S APPEAL DISMISSED; JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY, SITTING AS THE JUVENILE COURT, AFFIRMED; COSTS TO BE PAID BY APPELLANT.

The time for Mother to present evidence and make argument to the juvenile court concerning the terms of the order closing the Children's case had passed by the time the court announced its proposed ruling. Further, the court made clear during its oral ruling that Mother's failure to appear deprived the court of the ability to make the appropriate findings under FL § 9-101.