Circuit Court for Calvert County
Case Nos. C-04-JV-19-92 & C-04-JV-19-93

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1040 & 1044

September Term, 2021

IN RE: J.D. AND R.W.

Kehoe,
Leahy,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: February 22, 2022

V.H., appellant, was the legal guardian of two children, J.D. and R.W., who were removed from her care in September 2019 and placed in foster care. In August 2021, the Circuit Court for Calvert County, sitting as a juvenile court, changed the children's permanency plans to adoption. V.H. challenges these decisions on appeal as abuses of discretion. We shall hold that the court did not abuse its discretion, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

J.D. was born in November 2010 to her mother, L.W., and her father, G.D. She tested positive for methadone at birth and was hospitalized for one month while she received treatment. The Calvert County Department of Social Services (the "Department") had concerns about both L.W.'s and G.D.'s mental health and possible substance abuse. When J.D. was two months old, the Department removed her from her parents' custody and placed her in foster care. In 2013, J.D. was placed with V.H., her paternal grandmother.

R.W. was born in February 2016. Her mother, J.W., arranged for R.W. to live with V.H., a family friend, shortly after R.W.'s birth. At some point, V.H. obtained custody of R.W. R.W.'s father is believed to be J.J., but his paternity has not been verified. Neither J.D.'s nor R.W.'s parents are parties to this appeal.

Circumstances Leading To Placement In Foster Care

V.H. and the children primarily lived with her son G.D., and experienced multiple periods of homelessness.[1] In separate incidents on August 28, 2019, and September 10, 2019, police were called to V.H. and G.D.'s residence on the suspicion that V.H. was using

[1] G.D. worked on fishing boats and lived in Florida in the winter months.

drugs. During the second incident, V.H. stated that she was hallucinating and having "blackouts." Both times, V.H. was taken to the hospital and the children were left with G.D., who was also suspected of using drugs. On August 28, 2019, V.H. was diagnosed with Chronic Pain Syndrome, hypokalemia, sepsis, elevated liver function, and a urinary tract infection.

On September 12, 2019, two investigators for the Department went to the residence unannounced and met with V.H. The investigators noted that the house was in disarray, but not hazardous to the children. There were dirty dishes throughout the kitchen, and there was little food in the refrigerator. V.H. denied any drug use and told the investigators that her hallucinations were caused by pneumonia and infections, for which she was being treated. V.H. also informed the investigators that her landlord had started the eviction process, and that she had no income. The investigators provided V.H. with information about programs that could assist her.

On September 23, 2019, the Department met with L.W. (J.D.'s mother), who expressed concerns about V.H.'s ability to care for the children and V.H.'s potential drug abuse. L.W. mentioned that V.H.'s housing had been unstable, citing multiple instances of V.H. living with the children in a vehicle. She also expressed concerns about G.D. caring for the children because of his use of opiates, heroin, and Xanax.

The next day, an investigator returned to V.H.'s home on a scheduled visit. At that time, the home was "clean and tidy." V.H. informed the investigator that she suffers from mini-strokes, for which she receives treatment by a neurologist. V.H. claimed that the last time she had a mini-stroke was two or three months prior to the visit. J.D., however, told

the investigator that V.H. frequently experienced mini-strokes, including one the previous day.

G.D.'s urinalysis taken on September 26, 2019, came back positive for cocaine and Buprenorphine. Because none of the children's parents had stable housing at the time, the Department decided to place the children in foster care. On October 7, 2019, the juvenile court entered emergency shelter care orders for J.D. and R.W., which provided V.H. and the children's parents each with one hour of supervised visitation per week.

On October 21, 2019, J.D., then almost nine years old, expressed to a social worker that she did not want to return to V.H.'s care, and would prefer to either stay in foster care or live with her mother, L.W. She stated that, while in V.H.'s care, she had lived in vehicles five times, and once lived in a fisherman's shed. J.D. indicated that V.H. told her during a recent phone call that V.H. was "packing up her house and she [did] not know where she [was] going but [J.D. was] coming with her." J.D. also described G.D.'s anger issues and violence against his girlfriend, including one occasion when J.D. witnessed G.D. pulling a gun on the girlfriend and hitting her in the abdomen. Concerning V.H., J.D. indicated that V.H. "kind of hit [R.W.] in the face before," and that, on more than one occasion, V.H. suffered a mini-stroke and was unconscious for several hours while the children watched movies. During these times, V.H. could not be roused even by R.W. crying and hitting her.

On November 8, 2019, the court found both children to be children in need of assistance (CINA).[2] The children have been in foster care continuously since September 2019.

Reunification Efforts And V.H.'s Progress

The Department assisted V.H. with completing a housing assistance application on September 27, 2019, but V.H. was ineligible for the program because she did not have any income. On October 17, 2019, the Department contacted V.H.'s primary care physician's office to facilitate V.H.'s referrals to specialists. During that call, the office indicated that V.H. had never expressed any concern to her doctor about mini-strokes. V.H. was seen by her primary care physician on October 22, 2019, and received a referral to a neurologist to address her mini-strokes. Later that same day, V.H.'s car was towed and she was given 30 days' notice to vacate her home. After she was evicted, V.H. lived on a boat and in a storage unit. In November 2019 she was hospitalized with a gallbladder infection and pneumonia.

V.H. completed a psychological evaluation with Dr. Tashna Felix on December 9, 2019. Dr. Felix recommended that V.H. have supervised visitation, "participate in

[2] "Child in need of assistance" is defined in Md. Code (1973, 2020 Repl. Vol.), § 3-801(f) of the Courts and Judicial Proceedings Article as

> 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.

counseling services, obtain stable housing, obtain a part-time job to earn income and maintain medical appointments and medications."

From November 2019 through March 2020, V.H. lived in a homeless shelter. While she was in the shelter, the Department provided V.H. with a bus pass to enable her to visit with the children. When it was brought to the Department's attention that, even with the bus pass, V.H. often had to walk several miles in the evenings after visits, the Department provided V.H. with an Uber card.

After leaving the shelter in March 2020, V.H. moved to Pennsylvania to live with her niece. While living there, she worked three days per week as a babysitter, and obtained a vehicle.

That same month, J.D.'s anxiety "increased tremendously," and she began receiving therapy. J.D.'s primary source of anxiety was the prospect that she might have to live with V.H.—J.D. indicated that she did not feel safe in V.H.'s care. On May 6, 2020, J.D. experienced a panic attack after a phone conversation with V.H. In that conversation, V.H. told J.D. that she would be coming to live with V.H. in Pennsylvania.

A permanency planning hearing was originally scheduled for March 24, 2020, but was postponed twice due to the Covid-19 pandemic and did not occur until September 30, 2020. On October 5, 2020, the court ordered that the permanency plan for J.D. be reunification with a parent or guardian, and that the permanency plan for R.W. be reunification concurrent with custody or guardianship with a relative or non-relative. The court found that L.W., J.D.'s mother, had maintained stable housing since April 2020, and had been having unsupervised visitation with J.D. since that time, including overnights

every other weekend beginning in June 2020. Additionally, the court ordered that V.H. have one hour per week of supervised visitation with both children, that she submit to a substance abuse assessment, follow up with her primary care physician, take prescription medications as prescribed, submit to random drug tests and unannounced visits by the Department, follow the recommendations from the psychological assessment, and participate in a bonding assessment with R.W.

V.H. attempted to schedule a substance abuse evaluation in December 2020 or January 2021, but the appointment was cancelled due to the Covid-19 pandemic.

Sometime between October 2020 and January 2021, the Department provided financial support to assist V.H. in obtaining a laptop to allow her to find a job where she could work from home. It is unclear from the record whether V.H. continued working part-time as a babysitter during that period. In March 2021, V.H. was working at Pizza Hut.

In January 2021, V.H. began having unsupervised visits with the children.[3] The Department provided financial assistance for obtaining a hotel room to accommodate this visitation because V.H. was living out of state. At first, these visits reportedly went well, but V.H. began having conversations with the children during these visits about the children returning to her care, which exacerbated J.D.'s anxiety and led to R.W. exhibiting negative behaviors, including spitting on other children and telling her teachers and foster

[3] V.H.'s unsupervised visitation was initially by agreement of the parties. On February 1, 2021, the court ordered that V.H. have unsupervised visitation with J.D., at J.D.'s discretion. On March 16, 2021, the court ordered that V.H. have unsupervised visitation with R.W.

parents that she did not need to listen to them. Additionally, J.D. reported that V.H. did not adequately supervise R.W. during visits. J.D.'s therapist recommended that her visitation with V.H. and G.D. be supervised due to J.D.'s extreme anxiety preceding the unsupervised visits. Consequently, supervised visitation recommenced on April 1, 2021.

V.H. completed a substance abuse assessment on April 21, 2021. The results of the assessment indicated that no treatment was necessary. V.H. did not provide the assessment report to the Department prior to the August 23, 2021 hearing that resulted in modification of the permanency plans.

V.H. purchased a vehicle in March 2021 and sought employment as an Uber driver. At that time, V.H. was still living in Pennsylvania, but she indicated that she had arranged for housing in Calvert County, though she had not yet signed a lease. In May 2021, V.H.'s car needed costly repairs that she could not afford, which resulted in her inability to work for Uber.[4] In early June 2021, V.H. learned that the owner of the house she sought to rent had decided to sell the house instead of renting to her. Sometime prior to June 8, 2021, V.H. moved back in with her son G.D. V.H. did not provide the Department with her new address until July 7, 2021.

J.D.'s mother, L.W., died on April 6, 2021. Prior to L.W.'s death, reunification efforts between L.W. and J.D. had been going well. The Department had been focused primarily on reuniting J.D. with L.W., and viewed reunification with V.H. as a "backup plan." J.D. had indicated on multiple occasions that she wanted to live with L.W., and that

[4] It is unclear from the record if V.H. ever actually worked for Uber.

if she could not live with L.W., she preferred staying with her foster family rather than returning to V.H.'s or G.D.'s care.

The August 23, 2021 Permanency Plan Hearing

At the permanency plan hearing on August 23, 2021, the parties agreed to proceed by proffer. The Department recommended changing the permanency plans for both children to adoption by a relative or non-relative. While V.H. opposed any change in R.W.'s permanency plan, she stated that she was generally in favor of the change in permanency plan for J.D., but requested that family therapy be conducted prior to any change. V.H.'s counsel told the court:

> As a general principle we are -- *my client is predisposed to agree to change the plan for* [*J.D.*]. We are asking for the [c]ourt not to do it quite yet, to allow for family therapy to occur with -- between [V.H.] and [J.D.] But we are predisposed -- *we are predisposed to legally, figuratively and literally embrace her, embrace* [*J.D.*]*, in consideration of the things she has said and she has conveyed to various parties, that she is reluctant to return to the home -- to* [*V.H.'s*] *home.*
>
> We think, you know, there's been a lot of expressing how [J.D.] has anxiety and gets anxious when she goes to the visits, et cetera. We believe that through -- by [V.H.] taking this position, this loving position, Your Honor, this very mature, thoughtful position, that [J.D.] will, in fact, relax a little more, her anxiety might be diminished.
>
> As she knows, that it's okay. [J.D.], it's okay for you to not to -- it's okay for you to be anxious, but you don't have to be anymore, *because we're not going to fight this fight.*
>
> And it's within that context that it's important to discuss the family therapy. I think quite obviously and quite clearly, family therapy is essential. I mean, how do the parties say outloud that she's experiencing all this anxiety, at the same point mention that they're opposed to family therapy. I don't get it.

> So we're hoping that -- and that's why we're asking the [c]ourt to delay changing the plan. *We're announcing loud and clear from the mountaintops that we're predisposed to the plan change, but we would like for family therapy to be allowed to commence finally.*

(Emphasis added). Additionally, V.H. argued that the Department "basically . . . stopped trying" to reunify J.D. with her in January 2021, when visitation changed to unsupervised. In addition to alluding to communication difficulties with the Department, V.H. mentioned that the Department had not yet completed a "home health assessment" since she moved back in with G.D.; that, despite requests, the Department had not set up a meeting with her to discuss what conversation topics are inappropriate around the children; and that the Department had not arranged a recent urinalysis.

The children's attorney stated that family therapy was not yet appropriate for J.D. because "she's not at a point where she would be able to discuss these issues even in a therapy setting with another adult there in a way that she would feel comfortable." The Department indicated that the children's therapist did not believe that the children were ready for family therapy. Specifically, family therapy was not appropriate for R.W. because of her age, and J.D. was still working on learning how to "cope with her own emotions and her own anxiety." The Department did not know when family therapy would be appropriate, but stated:

> I do believe that [V.H.'s counsel's] statement that perhaps this kind of a change in plan or a change -- you know, obviously, this forces the Department to file a TPR petition and maybe that coming to some kind of finality will allow [J.D.] to have that sense of comfort to engage in family therapy.

The Department indicated that, while V.H. was living in Pennsylvania, it encountered difficulty in arranging for drug testing because she was living outside of its jurisdiction. However, in an email to the Department, V.H.'s attorney mentioned that V.H. submitted to a urinalysis in early March 2021. During a break in the proceedings, G.D. and V.H. provided urine samples for drug testing. V.H. tested negative for all substances, but G.D. tested positive for alcohol and Buprenorphine.

The juvenile court rendered its findings and conclusions from the bench, and later issued a written order. The court's primary concern with regard to V.H. was her lack of progress and continued unstable housing. Specifically, the court found:

- "[V]isitation with [V.H.] has changed from unsupervised visits to supervised visits, due to concerns of inappropriate conversations during the visits. The conversations have led to increased anxiety for [J.D.]."

- "[V.H.] reports that she is now residing with [G.D.]. However, certainly the Department finds that this is not a viable plan because [J.D.] has experienced . . . eight periods of homelessness when the plan was for housing. And I recognize that [V.H.] and [G.D.] suggested it's not these eight periods, but certainly the information that has been proffered to the court, the court will make that finding."

- J.D.'s "father and grandmother have not made substantial progress towards reunification. [J.D.] reports that she does not want to return to her father or her grandmother."

- "[T]he Department has made reasonable efforts to finalize the permanency plan for reunification."

- J.D. "has some special needs, in that she's got these issues of anxiety."

The court then modified J.D.'s permanency plan from reunification to adoption by a relative or non-relative:

> [A]t the end of the day, I just don't believe it's appropriate to drag it out any further for [J.D.]. She's 11 and she's going into a difficult time of her life. There's been no real progress by either [V.H.] or [G.D.]. . . .
>
> And I believe that when I take all of the considerations of what's available, what's going on, what progress -- and maybe [V.H.'s counsel] is right, and he's gone out of his way to say look, we've made this progress, things have gotten a little bit better. And I recognize that the Department doesn't believe that.
>
> But the timeline is so slow that it's unfair. It's unfair to the child.
>
> I'm going to change the permanency plan to adoption by either a relative or a nonrelative, because I believe it's in the best interest of the child, because I believe there's a lack of progress that's been made by the interested parties in this, [V.H.] and the father, that it screams out for it.
>
> . . . [A]s hard as it is to hurt each of your feelings relative to this matter, it would be harder to let this young -- this young girl, who's been trying to become a young woman, what I believe is languish in purgatory. And that's exactly what she would be doing, languishing in purgatory, waiting for things -- waiting for stable housing, waiting for a safe place to live and things of that nature.
>
> . . .
>
> I note for the record that [V.H.] is really back in a situation which really got us all here. Her housing is unstable. It's unstable.
>
> . . .
>
> She's really made no -- little to no effort for employment, or to stabilize herself. I credit her and give her kudos for being drug and alcohol free, I really do because I know how difficult that is.

Notably, the court rejected V.H.'s request to order family therapy prior to changing J.D.'s permanency plan.

The court also modified R.W.'s permanency plan from reunification concurrent with relative or non-relative guardianship to adoption. The court found that neither R.W.'s

mother nor V.H. had made any progress toward reunification, and that, as with J.D., R.W. was "in purgatory." The court noted:

> I took into consideration all the factors that I noted on the record for [J.D.] as well, but certainly there's been a lack of effort. And it's sad to see at the very end, people try and get things together and that's great, but I can't let the child linger.
>
> There's a reason these cases move at the pace that they move, because it's in their best interest. And when I take all of the Exhibits, all of the reports, into consideration, I just find that there's really -- this case is spinning tires, for lack of a better way to put it, and that's unfortunate for the child.
>
> But the child is thriving at this point. And I want the child to continue to do so. That's why I've rendered this decision.

Both children continued to have supervised visitation with V.H.

We shall include additional facts as necessary.

DISCUSSION

V.H. argues that the court abused its discretion by modifying J.D.'s permanency plan without first considering the Department's failure to provide family therapy and timely services to V.H. Additionally, V.H. argues that the modification of the permanency plans was not in J.D.'s or R.W.'s best interests.

The Department responds that it provided reasonable assistance to V.H. in an attempt to accomplish reunification, and that the court's conclusion was not an abuse of discretion, but instead was consistent with the principle that a court should consider "the detrimental impact a prolonged custodial limbo [has on a child's] mental and emotional well-being." *In re Ashley S.*, 431 Md. 678, 712 (2013). We agree with the Department and

shall affirm the juvenile court's decision to modify J.D.'s and R.W.'s permanency plans to adoption.

We review the modification of a permanency plan under three levels of review:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard . . . applies. [Secondly,] if 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. Finally, when the appellate court views the ultimate conclusion of the [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [juvenile court's] decision should be disturbed only if there has been a clear abuse of discretion.

In re Shirley B., 419 Md. 1, 18 (2011) (alterations in original) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

CINA cases are governed by statutes found in the Family Law Article and the Courts and Judicial Proceedings Article. A juvenile court is required to change a permanency plan if the change "would be in the child's best interest." Md. Code (1973, 2020 Repl. Vol.), § 3-823(h)(2)(vi) of the Courts and Judicial Proceedings Article ("CJP"). Additionally, section 5-525(f)(1) of the Family Law Article provides:

> In developing a permanency plan for a child in an out-of-home placement, the local department shall give primary consideration to the best interests of the child, including consideration of both in-State and out-of-state placements. The local department shall consider the following factors in determining the permanency plan that is in the best interests of the child:
>
> (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.

Md. Code (1984, 2019 Repl. Vol.), § 5-525(f)(1) of the Family Law Article ("FL"). Although the statute speaks in terms of the "local department's" obligations, the juvenile court is likewise required to consider these factors in developing a permanency plan. *In re D.M.*, 250 Md. App. 541, 563 (2021).

We shall address the court's decisions with regard to J.D. and R.W. separately.

I. THE COURT DID NOT ABUSE ITS DISCRETION BY CHANGING J.D.'S PERMANENCY PLAN

V.H. does not challenge the court's analysis of the statutory factors. Indeed, with regard to J.D., V.H.'s counsel told the juvenile court that V.H. was "predisposed to agree to change the plan," implicitly recognizing that the record before the court was sufficient to support modification of the permanency plan. Nonetheless, we note that the court discussed all of the factors, and although it did so without expressly listing the factors themselves, such "magic words" are not necessary. *See D.M.*, 250 Md. App. at 563. For example, the court addressed the first factor, J.D.'s "ability to be safe and healthy" in V.H.'s home, by stating that V.H. was "back in a situation which really got us all here," that J.D. suffers from "severe anxiety," and that V.H. had conversations with J.D. during unsupervised visits that increased J.D.'s anxiety. As to the second and third factors, which collectively refer to the child's emotional attachment to the child's parents, siblings,

caregiver, and caregiver's family, the court found that J.D. "report[ed] that she does not want to return to her father or her grandmother," and "went out of her way to say how happy she was with [the foster family]." Although the court did not explicitly refer to the fifth factor, the "potential emotional, developmental, and educational harm" to J.D. if she were removed from her current placement, the court contrasted the trauma J.D. had experienced prior to placement to her living situation with the foster parents where J.D. confirmed that it was "nice to know" that she would get three meals a day and have a place to sleep. The fourth and sixth factors, the "length of time the child has resided with the current caregiver" and "the potential harm to the child by remaining in State custody," were addressed by the court's primary concern—the length of time J.D. had been in foster care, and its finding that J.D. was "languishing in purgatory." We are satisfied that the court adequately reviewed and considered the FL § 5-525(f) factors.

Although comparisons between cases in this fact-specific area of law can present analytical difficulties, *Shirley B.*, 419 Md. 1, provides helpful guidance in our quest to determine whether the court abused its discretion by modifying J.D.'s permanency plan. In *Shirley B.*, four children were removed from the care of their parents, Ms. B. and Mr. T. *Id.* at 5–6. Ms. B. was cognitively impaired, and the children also had special needs. *Id.* at 6. The Department offered services to Ms. B. "in the hopes that she would be able to develop the parenting skills necessary for reunification with her Children." *Id.* The Department additionally "attempted to connect Ms. B. with services specifically tailored to meet her special needs," but the "funding for these services was non-existent, leaving Ms. B. ineligible to receive them." *Id.* After the children had been in foster care for 28

months, funding for the specialized services was still unavailable, and there was no indication when funding would become available. *Id.* At that point, the juvenile court decided to modify the children's permanency plan from reunification to adoption. *Id.*

The juvenile court made its decision based upon the lack of progress since the previous hearing. *Id.* at 15. The court "recognized that Ms. B. had cooperated with the Department, but it still did not believe that the Children could be safe in her care." *Id.* Ms. B. required additional services to be able to meet her needs and those of her children, and the Department and other agencies did not have the funding to provide those services. Significant to the juvenile court's decision was the uncertainty concerning the funding and the length of time (28 months) that the children had been in placement. *Id.* at 16.

The Court of Appeals affirmed. *Id.* at 35. In discussing the extent of services the Department is required to provide to a parent before the court may change the permanency plan to something other than reunification, the Court noted:

> The State is not required to allow children to live . . . in temporary shelters . . . or to grow up in permanent chaos and instability, bouncing from one foster home to another until they reach eighteen and are pushed onto the streets as adults, because their parents, even with reasonable assistance from DSS, continue to exhibit an inability or unwillingness to provide minimally acceptable shelter, sustenance, and support for them.

Id. at 26 (alterations in original) (emphasis removed) (quoting *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 501 (2007)). The Court further emphasized that the focus of a juvenile court's decision is the child, not the parent: "[T]he purpose of a CINA case is to protect the child, not to punish the parent." *Id.* at 31. "Ms. B.'s inability to improve her situation, arguably through no fault of her own, left the

Children 'languishing in foster care drift' for 28 months, with no end in sight. While we acknowledge that Ms. B. had been largely cooperative with the Department, we must balance her interests with the Children's health and safety." *Id.* at 33–34 (citation omitted).

Here, two important things remained unresolved at the time of the August 23, 2021 hearing—V.H.'s living conditions, and J.D.'s ability to participate in family therapy—and the timeline for their resolution, if ever, was unknown.

At the time of the August 2021 hearing, V.H.'s circumstances were substantially the same as when J.D. entered foster care—V.H. was unemployed, without a vehicle, and living with G.D. As noted by the juvenile court, these circumstances had led to multiple periods of homelessness.

Regarding family therapy, V.H. made clear at the August 2021 hearing that her primary objection to a change in permanency plan for J.D. was that family therapy had not yet been attempted. As previously noted, she was otherwise "predisposed to agree to change the plan for [J.D.]." Indeed, on appeal she argues that the court should not have altered the permanency plan *at that time*, but instead should have maintained the permanency plan of reunification "for one additional review period" to allow for V.H. and J.D.'s relationship to be repaired.

In our view, the juvenile court did not abuse its discretion in rejecting V.H.'s request to defer the change in the permanency plan "for one additional review period." Although the juvenile court did not mention family therapy in its ruling, the court implicitly determined that family therapy was not a prerequisite for changing the permanency plan under the circumstances, and the evidence supports the court's conclusion. The

Department proffered that J.D.'s therapist did not believe family therapy would be currently beneficial for J.D., and she could not state when therapy might be appropriate. The court was not required to wait until family therapy had been attempted to modify the permanency plan under these circumstances, particularly in light of the fact that J.D. had already been in foster care for nearly twenty-three months. Moreover, J.D. was nearly eleven years old at the time of the August 2021 hearing and she had expressed her desire not to live with V.H., and to have only limited, supervised visitation with V.H. Under these circumstances, it would be inappropriate to require J.D. to continue to live in foster care indefinitely because V.H. "continue[s] to exhibit an inability . . . to provide minimally acceptable shelter, sustenance, and support" for her. *See Rashawn H.*, 402 Md. at 501. It is unfortunate that V.H.'s efforts to improve her life have not been successful, but the court did not abuse its discretion in finding that it was in J.D.'s best interests to change the permanency plan to adoption rather than making J.D. "languish[] in foster care drift" until V.H.'s efforts prove successful. *See Shirley B.*, 419 Md. at 33–34. In short, the court's decision to change J.D.'s permanency plan where V.H. was "predisposed to agree to change the plan" and advised the court that "we're not going to fight this fight" is not "well removed from any center mark imagined by the reviewing court" or "beyond the fringe of what [we] deem[] minimally acceptable." *See D.M.*, 250 Md. App. at 566 (quoting *Shirley B.*, 419 Md. at 18–19).

We therefore hold that the court did not abuse its discretion in modifying J.D.'s permanency plan of reunification to a plan of adoption by a relative or non-relative.[5]

II. THE COURT DID NOT ABUSE ITS DISCRETION BY CHANGING R.W.'S PERMANENCY PLAN[6]

Although many of the same considerations applicable to our analysis of J.D.'s case apply to R.W., we will briefly address R.W. separately because her circumstances are slightly different in that she is not related to V.H. and she is significantly younger than J.D.

[5] V.H. additionally argues that the permanency plan should not have been modified because of delays in services that may have assisted reunification. The only services that V.H. argued were delayed before both the juvenile court and this Court were her substance abuse assessment and random drug tests. V.H. does not explain how reunification would have been advanced if she had received these services earlier. The main impediment to her reunification with J.D. was her unstable living situation and lack of employment. Even had she shown through drug testing and a substance abuse evaluation conducted at the beginning of the case that she was not using any drugs or alcohol, she would nonetheless have remained in the same living situation.

Furthermore, the delay in services was caused by the Covid-19 pandemic and the fact that V.H. chose to move to Pennsylvania. In *Shirley B.*, 419 Md. 32–33, the unavailability of certain services due to lack of funding was not reason to delay modification of a permanency plan from reunification to adoption where the Department otherwise made reasonable efforts to reunify the child with the parent. We see no reason why the same would not apply where the unavailability is caused by a global pandemic or the recipient of the services chooses to move out-of-state. In any event, the juvenile court here properly focused on what served J.D.'s best interest as of the August 2021 hearing.

[6] Because V.H. is not related to R.W., we asked the parties to address the threshold issue of whether this Court has jurisdiction to hear V.H.'s appeal of the change in R.W.'s permanency plan. We are satisfied that we do have jurisdiction under a literal reading of CJP § 12-303(3)(x), which provides that: "A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case: . . . (3) An order: . . . (x) Depriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order[.]" Though V.H. is not a "parent, grandparent, or natural guardian" of R.W., she was "a party" to the case, and the court's order "depriv[ed] a parent [R.W.'s mother] . . . of the care and custody of [her] child," R.W.

Aside from issues related specifically to J.D.'s anxiety and desire not to live with V.H., all of the court's findings with regard to V.H. apply equally to R.W.'s case. R.W. had been in foster care for nearly twenty-three months at the time of the court's order, with no end in sight, and V.H.'s living conditions were nearly identical to what they were when R.W. was removed from V.H.'s care. These were the primary factors upon which the court relied in both cases, and our analysis of the court's reasoning in J.D.'s case applies equally to R.W.'s case.

We note again that V.H. does not assert that the court failed to apply the FL § 5-525(f) factors. Moreover, V.H. does not make any distinct arguments regarding R.W. except to note that R.W. maintained a strong bond with V.H. While it is true that R.W., unlike J.D., expressed a desire to return to V.H.'s care, R.W. was only five years old at the time. While a child's preference may provide evidence related to the second and third factors in FL § 5-525(f)(1) (concerning the child's attachment and emotional ties to the child's parents, siblings, current caregiver, and current caregiver's family), the court may properly discount the stated wishes of a five-year-old. This is especially true when compared to the evidence indicating V.H.'s lack of progress toward reunification and the amount of time R.W. had been in foster care. *Cf.*, *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 255, 258 (2021) (holding that trial court did not abuse its discretion in custody decision where "trial court noted that the children[, ages 5 and 7,] are too young to express a preference and that asking them to do so would not be in their best interest").

We therefore hold that the court did not abuse its discretion in modifying R.W.'s permanency plan of reunification concurrent with relative or non-relative guardianship to a plan of adoption.

JUDGMENTS OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.