

Circuit Court for Baltimore City  
Case No. 813221003

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1296

September Term, 2021

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IN RE: B.B.

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Graeff,  
Beachley,  
Eyler, James R.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Graeff, J.

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Filed: March 23, 2022

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from an order of the Circuit Court for Baltimore City, issued on September 20, 2021, granting custody and guardianship of B.B. to her maternal great-grandmother, Ms. S., and closing B.B.’s Child in Need of Assistance (“CINA”) case.<sup>1</sup> On appeal, J.B., B.B.’s mother (“Mother”), presents the following questions for this Court’s review, which we have consolidated and reordered, as follows:

1. Did the circuit court properly exercise its discretion to grant custody and guardianship to Ms. S.?
2. Did the circuit court err or abuse its discretion when it failed to enter an order of visitation before granting custody and guardianship to Ms. S. and terminating the court’s jurisdiction?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **I.**

#### **CINA Petition & Shelter Care**

On August 9, 2013, the Baltimore City Department of Social Services (the “Department”) filed a CINA petition, with request for shelter care, on behalf of B.B., who was born on September 11, 2010. The petition alleged that Mother, who had a history of mental health issues and substance abuse, had failed to provide B.B. “with a safe, stable, nurturing and protective living environment.” Mother was pregnant at the time, had

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<sup>1</sup> “‘CINA’ means a child in need of assistance.” Md. Code. Ann., Cts. & Jud. Pro. Art. (“CJ”) § 3-801(f) (2020 Repl. Vol.). A CINA is “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.” CJ § 3-801(f).

enrolled in substance abuse treatment at the Johns Hopkins Hospital Center for Addiction and Pregnancy (JHH-CAP) in June 2013, and continued to test positive for opiates and marijuana. Mother left the treatment program but returned in August 2013. The petition noted that Mother had been diagnosed with major depression, bipolar disorder, Attention Deficit Disorder (“ADD”), and anxiety. On August 19, 2013, the court ordered that custody of B.B. be granted to her maternal grandmother, Ms. B., pending an adjudicatory hearing. Visitation between B.B. and Mother was to be by agreement with Ms. B.

On August 21, 2013, the court ordered that “Mother shall have unsupervised visits with [B.B.] so long as she continue[d]” her substance abuse treatment. By October 29, 2013, Mother’s visits with B.B. were changed to supervised. The Department alleged that Mother had discontinued her substance abuse treatment and had not availed herself of the opportunity to spend nights with B.B.

In January 2014, after the parties stipulated to Mother’s substance abuse problem, and mental health issues, as well as shouting incidents between Mother and her fiancé, the court found that the allegations in the CINA petition were proven by a preponderance of the evidence. Mother was permitted unsupervised overnight visits with B.B., in Ms. B.’s home.

In April 2014, the court found B.B. to be a CINA. Mother remained in drug treatment, she had suitable housing, and she was scheduled to begin family therapy. B.B. was placed in Mother’s care under an Order of Protective Supervision (“OPS”).

On May 15, 2014, the Department filed a motion to remove B.B. from Mother's care, alleging that B.B.'s parents failed to provide her "with a safe, stable, nurturing and protective living environment." While at the courthouse on May 14, 2014, a staff member observed Mother's newborn, J.S.,<sup>2</sup> fall on his head from Mother's lap as she nodded off. Mother yelled at B.B. and blamed her for pushing her brother off Mother's lap. The staff member detained Mother and her children after Mother refused medical attention for J.S. Following medical exams and tests, J.S. was found to be unharmed.

On May 23, 2014, the court issued an order, determining that B.B.'s continued residence in Mother's home was contrary to B.B.'s welfare based on neglect by Mother. The court ordered that the Department provide care and custody for B.B. under a temporary commitment to the Department, with Mother having supervised visitation in Ms. B.'s home. On August 8, 2014, the court referred Mother to a Family Recovery Program ("FRP").<sup>3</sup> The court ordered that the April 2014 OPS be rescinded. The court found a likelihood of future abuse or neglect by Mother based on substance abuse and lack of stable housing. The court ordered supervised visitation to Mother.

On November 7, 2014, after the court found Mother to be in poor compliance with the FRP, it ordered her to comply with the FRP. On March 20, 2015, the court held another

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<sup>2</sup> As indicated, at the time of the CINA petition, Mother was pregnant. On January 28, 2014, Mother gave birth to J.S.

<sup>3</sup> Family Recovery Program ("FRP") is a program that supports parents who have substance abuse issues, with reunification efforts. FAMILY RECOVERY PROGRAM, <https://frp-inc.org/>, available at <https://perma.cc/R7U6-Y7GT> (last visited March 22, 2022).

hearing. Mother agreed that B.B. should remain in care, and the court ordered B.B. to remain in care. It nevertheless adopted the parties' joint recommendation to continue B.B.'s permanency plan of reunification with supervised visitation. That same month, the court found Mother to be in poor compliance with the FRP. She had not enrolled in drug treatment and submitted a "bogus" employment verification letter.

On November 19, 2015, the magistrate held a contested review hearing. The Department requested that the permanency plan for B.B. and J.S. be changed from reunification to a concurrent plan of reunification and custody and guardianship to a non-relative. Counsel for the children requested that the plan remain reunification, or in the alternative, a concurrent plan, because Mother had made progress towards achieving reunification. Counsel for Mother asked that the plan remain reunification.

The magistrate noted that Mother had made progress, and she loved her children, but there still were concerns regarding Mother's drug use. The magistrate recommended that the permanency plan remain reunification and that Mother's visitation remain supervised. The court approved that recommendation on December 10, 2015.

After a hearing on July 19, 2016, the court ordered that B.B. be placed in Mother's custody under an OPS, as long as, among other things, she completed substance abuse treatment. The court noted that the children were doing well in foster care,<sup>4</sup> Mother regularly visited the children, completed her parenting class, attended AA classes, provided

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<sup>4</sup> After Ms. B. was diagnosed with cancer, B.B. was moved to foster care.

drug tests with a negative result for illicit drugs, maintained employment, and had a suitable home for the children.

On August 11, 2016, Mother filed a motion requesting immediate review, asking that the CINA cases for B.B. and J.S. be closed. The motion was denied.

In December 2016, Mother moved B.B. to her maternal great-grandmother's home, Ms. S., while J.S. remained with Mother and Mr. S.S.<sup>5</sup>

On February 23, 2017, the Department filed a motion to authorize removal of B.B. and J.S. from Mother's custody. Two days later, the court determined that the continued placement of the children with their Mother was contrary to their welfare, based on Mother and Mr. S.S. having been arrested for car theft. The court ordered that limited guardianship of the children be committed to the Department, with B.B. placed with Ms. S.<sup>6</sup>

In September 2018, the court allowed unsupervised weekend visits. Mother obtained a protective order against Mr. S.S. so that he no longer had contact with the children during Mother's unsupervised visits, and Mother was in substance abuse treatment.

On July 26, 2019, the court ordered that visitation return to supervised based on concerns about the stability and safety of the children during unsupervised visits. The barriers to reunification were housing, documentation of substance abuse treatment and mental health treatment status. The court further ordered that Mother schedule a home

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<sup>5</sup> Mr. S.S. was Mother's male companion and J.S.'s father.

<sup>6</sup> J.S. was placed with his grandmother, Ms. B.

inspection and meet with a social worker to determine whether substance abuse or mental health treatment was needed, and if not, to submit a provider letter to the court that it was not needed.

On August 27, 2019, a Court Appointed Special Advocate (“CASA”) noted in a report that B.B. had developed some behavioral issues, was disrespectful to Ms. S., and took and hid money and jewelry from Ms. S.<sup>7</sup> During one of Mother’s visits in July, Mother screamed vulgar words at Ms. S., and when Ms. S. told Mother that B.B. expressed that she wanted to stay with Ms. S., Mother grew furious and “began fussing” at B.B. B.B. confirmed these events, but she told the CASA not to tell Mother about her desire to stay with Ms. S. because she did not want to upset Mother. The report also noted that, on many occasions during her visits, Mother brought different men with her, who had not been approved by the Department to be around B.B. The CASA recommended that Mother’s visits be supervised and that B.B.’s placement with Ms. S. be continued.

## II.

### **Change in Permanency Plan**

On October 7–9, 2019, a magistrate held a permanency plan review hearing. The Department requested a change in the permanency plan from reunification to custody and guardianship with a relative. Mother requested a concurrent plan.

Fadea Husain, a permanency worker assigned to the case on April 24, 2019, testified that she conducted monthly visits and communicated with Mother in an effort to facilitate

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<sup>7</sup> A CASA is assigned to advocate for the best interests of children in foster care.

reunification. She had communicated with Mother the need for substance abuse and mental health treatment, to get a home inspection, and to get a service agreement signed. In the service agreement, the Department requested that Mother comply with the court order that required documentation of mental health and substance abuse treatment, obtain a home inspection, and inform the Department of her needs. Ms. Husain had contacted Mother to facilitate supervised visits with B.B., but Mother did not attend any of the supervised visits. Mother never came to sign the prepared service agreement, even though Ms. Husain prepared a letter to Mother's employer requesting that Mother get the day off. Mother requested assistance with her home, but Mother failed to provide the requested documentation of her housing issues. Mother also failed to submit documentation regarding substance abuse or mental health treatment. Ms. Husain testified that B.B. was in third grade and was doing well in school. B.B. had been placed on ADHD medication.

Monique King, the CASA, testified that she was assigned to B.B.'s case in June 2018. She visited B.B. and Ms. S. to check on school, therapy and B.B.'s overall care. She talked to the children and their caretakers separately about Mother's visits.

J.S.'s caretaker, Ms. Gee, testified that B.B. and J.S. shared a bond, and she and Ms. S. facilitated visits between the siblings almost every weekend. B.B. sometimes spent the night with J.S. Both caretakers had an "amiable" relationship and communicated with each other.

Mother testified that she did not receive a letter from Ms. Husain requesting her to sign a service agreement. With respect to home inspection, Mother explained to Ms.



Husain the problems with her home, but Ms. Husain told her that there was no reason to inspect the home if it was clear that the home would not pass inspection. Mother worked five days a week, from approximately 4:00 a.m. to 7:00 p.m., and she was not able to take up Ms. Husain's offer to facilitate supervised visits after 7:00 p.m. because she did not want to keep her children up on school nights.

Mother told Ms. Husain that she had been cleared two years ago regarding mental health and substance treatment. She did not visit her children during the holiday the prior year because her mother, Ms. B., passed away on December 17, 2018, which caused a state of depression for three weeks. Even though she had school set up for the children, Mother was unable to resume care for the children because of her housing and day care needs.

On November 18, 2019, the magistrate noted the history of the case and Mother's substance abuse and mental health issues. The magistrate found that since Mother's visits became supervised, Mother had not visited the children, citing her work schedule, even though the Department worker offered to stay behind after the close of work. There were concerns about Mother's home, and Mother conceded that she was not ready to resume custody of her children because of the condition of her home. Mother did not comply with the July 26, 2019 court order that required her to submit documentation of her mental health and substance abuse treatment, and she could not provide the addresses or names of the facilities she received service.

The magistrate found that a return to Mother was not in B.B.'s best interest because of health and safety concerns. Noting the incident where Mother yelled at Ms. S., and

B.B.'s reaction, the magistrate found that B.B.'s emotional ties to her mother were counterproductive to her emotional well-being. B.B. and J.S. visited each other regularly and had developed a strong bond. B.B. showed significant progress in Ms. S.'s care, and she was emotionally attached to Ms. S. The magistrate found

that the potential for emotional, developmental and educational harm exist[ed] if [] [B.B.] [is] removed from [her] current placement and returned to [her] parent[()]. [B.B.] [] [had] been in the foster care system for five (5) plus years. [Mother] ha[d] a CPS history dating back at least ten years. [Mr. S.S.], whom [the] [c]ourt believe[d] [B.B. and J.S.] [were] afraid of, remain[ed] in their lives, outside of [the Department's] oversight, control and supervision.

The issues which have hindered the parents from properly caring for their child or children [were] the same as they were 10 years ago and five years ago despite supportive services...substance abuse, mental health and now domestic violence.

She found that it was time for B.B. "to finally have permanency" in her life and recommended that the permanency plan change from reunification to custody and guardianship to a relative. Mother filed a notice of exception, but she subsequently withdrew her exception. On February 13, 2020, the court signed an order adopting the magistrate's recommendation.

On August 2, 2021, at a contested custody and guardianship hearing, the Department advised that B.B.'s custody and guardianship packet was completed and approved. Mother was not in attendance, but her counsel stated that Mother was not in agreement with custody and guardianship being granted to Ms. S. because of issues with Ms. S. Counsel requested a continuance, which the magistrate denied, stating that Mother's absence was unjustified, and Mother's issues with Ms. S. were insufficient reason to continue the case.

Ms. S. testified that B.B. is her great-granddaughter, but she was like a daughter to her. B.B. was happy and doing great in school. B.B. occasionally visited J.S. at his foster parent's home. The magistrate advised Ms. S. about the implications of assuming custody and guardianship, informed her that parental rights had not been terminated, and "at anytime [B.B.'s] mother can petition the court and request that custody be reinstated to her." The magistrate also advised that, if Ms. S. could not continue to care for B.B., Ms. S. was not able to transfer custody to B.B.'s parents or anyone else without a full hearing. Ms. S. stated that she understood and was willing to assume custody and guardianship of B.B.

The magistrate then recommended that custody and guardianship of B.B. be granted to Ms. S., and the court's jurisdiction be terminated. The magistrate stated that, in making her decision, she considered the factors necessary to determine B.B.'s best interest, as well as the report submitted by the Department "on the suitability of the person to be the guardian of the child."

On August 4, 2021, Mother filed a notice of exceptions to the magistrate's recommendation, excepting to the recommendations and stating that the "[m]agistrate improperly concluded that a permanency plan of custody and guardianship be implemented and the case be closed." She requested, in addition to a *de novo* hearing, that her exception be sustained, that custody and guardianship not be granted at the time, and "[s]uch other relief as justice may require."

On September 20, 2021, the parties appeared before a judge for the *de novo* hearing. Deborah Richard, the assigned social worker for B.B., testified that she had been assigned to the case in November 2019. The Department had issues getting Mother to comply with the court order that required Mother to submit documents showing completion of her substance abuse classes, the existence of adequate housing, and compliance with visitation. Mother rarely visited B.B. in the first quarter of 2019, and for the remainder of the year, Mother visited only at her convenience, without notice, including during inappropriate times of the day, such as school nights. Visitation had been unsupervised at first, then it became supervised when “mom would just pop up whenever and she became very argumentative when Ms. S. would . . . talk to her about it.” In-person visits were converted to virtual in 2020 during the COVID-19 pandemic, and Mother still did not comply with the visitation times.

Ms. Richard had not received any documentation evidencing Mother’s substance abuse treatment, despite several requests. Mother had delivered another child earlier in the year, and the Department had been involved with the child because of Mother’s substance abuse issues. B.B.’s placement with Ms. S. since 2017 was safe, and Ms. S. kept B.B.’s medication and therapy up to date. B.B. had consistently been in school. Ms. S. was wonderful with B.B. She enrolled B.B. in extracurricular advanced classes and often took B.B. to the library.

When B.B. received her ADHD diagnosis, Ms. S. did some research and learned to manage B.B.’s condition. Ms. S. did not feed B.B. certain foods that triggered B.B.’s

ADHD. Ms. Richard described the relationship between Ms. S. and Mother as “in limbo.” With respect to Mother’s ability to contact B.B. if Ms. S. was granted custody and guardianship, Ms. S. had advised that she was open to Mother calling B.B., and she had never stopped B.B. from talking to Mother. With respect to in-person visits, however, Ms. S. had stated that she was terrified of Mother because Mother was very disrespectful and aggressive towards her. Accordingly, Ms. S. indicated that she would require someone else to supervise during any in-person visits. Ms. Richard testified that Mother also acted aggressive towards her on the phone, with Mother “yelling and screaming and threatening . . . to get her attorney.”

Ms. S. testified that B.B. had been in her custody for four and a half years. B.B. was enrolled in school and was in fifth grade. She was good at math and reading, had been on her school’s honor roll for consecutive years, and was enrolled in an advanced class. Ms. S. enrolled B.B. in several extracurricular activities, including gymnastics, karate, and swimming. B.B. spent a lot of time with J.S., and she also spent time with her half-sister, Mother’s first-born, who was adopted by Ms. S.’s daughter because of Mother’s drug troubles.<sup>8</sup>

Ms. S. testified regarding Mother’s visits in the two years leading up to the hearing. Ms. S. and Mother did not get along, so the visits were virtual and over the phone, but Mother was not consistent with the visits. She explained that Mother had bipolar disorder

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<sup>8</sup> Mother’s older daughter, D.O., was approximately 14 years old. She had been adjudicated CINA and Mother’s parental rights had been terminated.

and “she can fly off the handle very quickly and say not so nice things to you if things don’t go her way.” With respect to B.B.’s ADHD diagnosis, Ms. S. recognized a change in B.B.’s behavior, and Ms. S. was able to identify the pattern because there is a history of ADHD in the family. She adjusted B.B.’s diet and took her to a doctor who prescribed medications. Ms. S. kept B.B. in therapy and maintained a relationship with the doctor who prescribed her medications. Ms. S. wanted B.B. to remain with her because B.B. had been with her for years and was part of her family. B.B. had a structured life with her, and she did not want B.B. exposed to drugs and theft like she was when she was with Mother.

On cross-examination, Ms. S. testified that B.B. and Mother had last been in the same room “months ago.” Mother had stopped by Ms. S.’s house and they had an argument, which B.B. witnessed, with Mother calling Ms. S. a “bitch.” Ms. S. does not let Mother in her house anymore because of the incident.

Mother testified that she wanted to regain custody of B.B. She admitted that she had problems over the years, but she kept fighting. She had submitted several documents to the court in the past years, but now that she was employed full-time and caring for a newborn, it was hard for her to complete the court requirements. With respect to the vehicle theft that Ms. S. referenced, Mother stated that she had taken B.B. to Ms. S. at the time because she wanted B.B. to finish school at the same school she started, and therefore, B.B. was not exposed to the incident. Moreover, she was not a party to the theft, and she had been cleared of the charges. Mother stated that she only became aware that Ms. Richard was her new social worker in 2020 when Ms. Richard called to have Mother’s home

inspected. Mother told Ms. Richard that she did not have a home to inspect at the moment, and the Department never asked her again. Mother further testified that she had problems contacting Ms. Richard, and she often had to contact Ms. Richard's supervisor instead.

Mother stated that she was then in a position to regain custody of B.B. because she moved into a new house in February 2020, retained her job, bought a new car, and had a room for B.B. in her house. She also had schooling set up for B.B. She had attempted on several occasions to get the Department to inspect her home, to no avail. Mother admitted that the Department had been involved with her newborn because the baby tested positive for marijuana, but she stated that the case was closed because Mother had a medical marijuana card. Mother had seen B.B. in-person one time in 2020, on B.B.'s birthday, and twice in 2021. She could not get into a drug treatment program because she had a medical marijuana card, and her drug testing returned positive only for marijuana.

Mother had mental health problems, and she had been diagnosed with bipolar disorder as a child. She was able to manage her illness after consulting a therapist and receiving medical marijuana treatment in a different state. She was not currently in a mental health program because the last psychiatrist she saw said that he could not help her because she was fully functioning. Mother stated that she would have agreed to let B.B. remain with Ms. S. so as to not disrupt B.B.'s routine, but Ms. S. would not allow her in-person visits with B.B. She explained that she had a good relationship with Ms. S. before, but things changed when custody and guardianship were raised. Her issues with Ms. S. were

in the past, that her attitude problem was a result of her drug struggles, and she was now a changed person.

On cross-examination, Mother testified that the last documentation she had provided concerning her drug treatment was in 2017 or 2018, and she never had a drug problem after that. Of Mother's four children, only the newborn was in her care. Counsel for B.B. asked Mother what she knew about B.B.'s ADHD diagnosis. Mother did not agree that B.B. needed to be on medication, and in any event, she was unaware of any medication or therapists B.B. was seeing because Ms. S. did not disclose that information. Mother acknowledged that, if she was granted custody, B.B. "would be leaving friends, her school, and everything that she has known for the past five years."

In closing argument, the Department requested that the magistrate's recommendation to grant custody and guardianship to Ms. S. and terminate the court's jurisdiction be upheld. B.B. had been before the court since 2013, and Mother "had a number of chances to ameliorate the necessity of [the] court's jurisdiction," including orders of protective supervision, which subsequently resulted in the Department having to file motions to authorize removal of B.B. from Mother's care. There was evidence that it was in the best interest of B.B. to remain with Ms. S. because B.B. was doing well and Ms. S. was a suitable caregiver for B.B. Mother on the other hand, testified that she had a very busy schedule and was unaware of B.B.'s medication regime.

Counsel for B.B. argued that five years is a "substantial amount of time in a young person's life," and that is how long B.B. had been with Ms. S. B.B. was in a stable



environment, which included schooling, extracurricular activities, and a relationship with her half-siblings. Ms. S. was updated about B.B.'s needs and helped B.B. manage her ADHD diagnosis. The evidence showed that it was in B.B.'s best interest to remain in Ms. S.'s care.

Counsel for Mother asked that the court not grant custody and guardianship. He argued that Mother had not been given any in-person visits in a long time, and the Department failed to facilitate visitation between Mother and B.B., instead deferring to Ms. S. Counsel asserted that Ms. S. excluded Mother from B.B.'s life because she did not allow visits between Mother and B.B., and she did not inform Mother of school events or medical appointments. With respect to Mother's newborn, even though the court got involved, Mother had maintained custody of the child. Finally, counsel argued that "it [was] premature for the court to give custody to someone else."

The court then made its ruling. It noted that the Department was pursuing custody and guardianship, in part, because Mother had not submitted proof that she had completed drug treatment. Although she testified that she had completed drug treatment in 2017 or 2018, the court order issued in February 2021 with regard to Mother's newborn stated that Mother tested positive for marijuana at the time of birth. Mother testified that she had a medical marijuana card, but she said that she was not prescribed medical marijuana, and she said that, despite being diagnosed with anxiety, bipolar disorder, and major depressive disorder, she was not receiving mental health treatment. The court found this information to be inconsistent, and it did not make sense.

The court next noted that Ms. S. testified that she had cared for B.B. for more than four years, and B.B. was thriving in Ms. S.'s care. Ms. S. was dedicated to B.B.'s continuing development. The court noted that it was not saying that Mother was not dedicated to B.B., but the question was whether Mother had demonstrated that she was capable of following the court's order. Another concern was that there was a pending protective order involving the newborn's father, which indicated that there were "other things going on in Mother's home environment which could be critical to providing a stable and safe environment for [B.B.]." Finally, the court noted that Ms. S. had tried different things to address B.B.'s ADHD. It questioned Mother's testimony that she would take B.B. off her ADHD medication when it seemed to be helping and B.B. was thriving academically and socially.

Ultimately, the court denied Mother's exception and ruled that the magistrate's order would remain in place. The court stated that the magistrate's decision granting custody and guardianship to Ms. S. was not clearly erroneous, and it was based on the best interest of B.B. given the number of years B.B. had been in Ms. S.'s care, B.B.'s social and academic progress, and that Ms. S. had "been able to provide care and address [B.B.'s] ADHD and tend to her overall needs."

### **STANDARD OF REVIEW**

We outlined our standard of review for CINA proceedings as follows:

There are "three distinct but interrelated standards of review" applied to a circuit court's findings in CINA proceedings. *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214, 189 A.3d 284 (2018). The circuit court's factual findings are reviewed for clear error. *In re Adoption/Guardianship of Amber*

*R.*, 417 Md. 701, 708, 12 A.3d 130 (2011). Whether the circuit court erred as a matter of law is determined “without deference;” if an error is found, we then assess whether the error was harmless or if further proceedings are required to correct the mistake in applying the relevant statute or regulation. *In re Yve S.*, 373 Md. 551, 586, 819 A.2d 1030 (2003). Finally, we give deference to the circuit court’s ultimate decision in finding a child in need of assistance, and “a decision will be reversed for abuse of discretion only if ‘well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.’” *In re J.J.*, 231 Md. App. 304, 345, 150 A.3d 898 (2016), *aff’d*, 456 Md. 428, 174 A.3d 372 (2017), *cert. denied*, — U.S. —, 139 S. Ct. 310, 202 L. Ed.2d 32 (2018) (quoting *In re Yve S.*, 373 Md. at 583–584, 819 A.2d 1030 (internal citations omitted)).

*In re J.R.*, 246 Md. App. 707, 730–31, *cert. denied*, 471 Md. 272 (2020).

## DISCUSSION

### I.

#### **Custody and Guardianship**

Mother contends that the court erred and abused its discretion in granting custody and guardianship to Ms. S. She asserts that the court “failed to make adequate factual findings concerning B.B.’s best interests . . . and [it] improperly deferred to the magistrate’s assessment of the case.” Mother argues that she proved that she could safely care for B.B., and the court should have awarded her custody of B.B. or continued the matter for B.B.’s imminent reunification with Mother.

The Department contends that the court properly exercised its discretion when it granted custody and guardianship to Ms. S. because “after nearly eight years, Mother continued to fail to address satisfactorily her substance abuse use and her mental health challenges.” It asserts that the court considered the statutory factors in making its decision,

and based on the record, the court had “ample grounds . . . to conclude, in its discretion, that it was in B.B.’s best interest for the court to grant [] custody and guardianship to Ms. S., with whom she had been living for more than four and a half years and in whose care she has thrived.” B.B. similarly contends that the circuit court properly exercised its discretion in finding that it was in B.B.’s best interest to grant custody and guardianship to Ms. S., her “longtime relative caregiver.”

“The purpose of CINA proceedings is ‘to protect children and promote their best interests.’” *In re M.*, 251 Md. App. 86, 115 (2021) (quoting *In re Priscilla B.*, 214 Md. App. 600, 622 (2013)). When a child is declared CINA based on allegations that the child has been abused or neglected by their parents or guardian, the court must establish a permanency plan that is in the child’s best interest. *In re Adoption of Jayden G.*, 433 Md. 50, 55 (2013). The permanency plans, from which the court may choose are, as follows: “in descending order of priority, (1) reunification with a parent or guardian; (2) placement with relatives for adoption, custody, or guardianship; (3) adoption by a non-relative; (4) custody or guardianship by a non-relative; or (5) another planned permanent living arrangement.” *Id.*

After the initial permanency plan determination, the circuit court must review the permanency plan at least every six months to determine “the continuing necessity for and appropriateness of the commitment,’ ‘whether reasonable efforts have been made to finalize the permanency plan that is in effect,’ and ‘the extent of progress that has been made toward alleviating or mitigating the causes necessitating commitment.’” *Id.* (quoting

Md. Code Ann., Cts. & Jud. Proc. Art. (“CJ”) § 3-823(h)(2) (2020 Repl. Vol.)). “The court must ‘[c]hange the permanency plan if a change . . . would be in the child’s best interest,’ and must be cognizant of the statutory requirement that “[e]very reasonable effort . . . be made to effectuate a permanent placement for the child within 24 months after the date of initial placement.”” *Id.* at 55–56 (quoting CJ § 3-823(h)(2)(vi) & (h)(3)).

“‘[W]hen it is determined that a parent cannot adequately care for a child, and efforts to reunify the parent and child have failed, the State may intercede and petition for guardianship of the child pursuant to its *parens patriae* authority.’” *In re M.*, 251 Md. at 114–15 (quoting *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 48 (2019)). The court must consider the following factors before granting custody and guardianship to a relative:

- (i) Any assurance by the local Department that it will provide funds for necessary support and maintenance for the child;
- (ii) All factors necessary to determine the best interests of the child; and
- (iii) A report by a local Department or a licensed child placement agency, completed in compliance with regulations adopted by the Department of Human Services, on the suitability of the individual to be the guardian of the child.

CJ § 3-819.2(f)(1)(i)–(iii).

To determine what is in the child’s best interest for the purposes of custody and guardianship, the circuit court must consider the factors set forth in Md. Code Ann., Fam. Law Art. (“FL”) § 5-525(f)(1) (2019 Repl. Vol.). *See In re M.*, 251 Md. at 115. The factors are:

- (i) the child’s ability to be safe and healthy in the home of the child’s parent;
- (ii) the child’s attachment and emotional ties to the child’s natural parents and siblings;
- (iii) the child’s emotional attachment to the child’s current caregiver and the caregiver’s family;
- (iv) the length of time the child has resided with the current caregiver;
- (v) the potential emotional, developmental, and educational harm to the child if moved from the child’s current placement; and
- (vi) the potential harm to the child by remaining in State custody for an excessive period of time.

FL § 5-525(f)(1)(i)–(vi).

“While the [circuit] court is required to consider the ‘relevant statutory factors’ and ‘make specific findings based on the evidence with respect to each of them,’ the court is ‘not required to recite the magic words of a legal test.’” *In re D.M.*, 250 Md. App. 541, 563 (quoting *In re Adoption/Guardianship of Darjal C.*, 191 Md. App. 505, 531–32 (2010)). The key is whether “‘actual consideration of the necessary legal considerations are apparent in the record.’” *Id.* (quoting *In re Adoption/Guardianship of Darjal C.*, 191 Md. App. at 531–32). Here, the court did not specifically enumerate the factors, but the record reflects that the court considered the requisite factors in making its decision.

With respect to the first factor, “the child’s ability to be safe and healthy in the home of the child’s parent,” FL § 5-525(f)(1)(i), the court noted the lack of proof that Mother had completed drug treatment and the inconsistency in her testimony that she had a medical marijuana card, but she did not have a prescription. The court also expressed concern about

Mother's mental health diagnoses, without any mental health treatment. The court also considered the safety of Mother's current living arrangement, including the existence of a protective order against her newborn's father, which suggested that there were "other things going on in Mother's home environment which could be critical to providing a stable and safe environment for [B.B.]."

Regarding the second factor, "the child's attachment and emotional ties to the child's natural parents and siblings," FL § 5-525(f)(1)(ii), the court heard testimony from Ms. S. that B.B. spends a lot of time with her half siblings and their foster parents. Granting custody to Ms. S. would allow B.B. to maintain that relationship. Additionally, Ms. S. had been supportive of B.B.'s telephone contact with Mother.

With respect to the next two factors, the child's emotional attachment with, and "the length of time the child has resided with, the current caregiver," FL §§ 5-525(f)(1)(iii)-(iv), the court noted that Ms. S. testified that B.B. had been in her care for more than four years, and she had done well in Ms. S.'s custody. B.B. previously had expressed her desire to continue living with Ms. S., but she did not want Mother to know because Mother would be upset with her.

Regarding the fifth factor, "the potential emotional, developmental, and educational harm to the child if moved from the child's current placement," FL § 5-525(f)(1)(v), the court considered the fact that Ms. S. was dedicated to B.B.'s development. Ms. S. had enrolled B.B. in extracurricular activities and had taken steps to address B.B.'s ADHD diagnosis and overall well-being.

The court concluded that the decision to grant custody and guardianship to Ms. S. was in B.B.'s best interest "given the number of years she ha[d] been in [Ms. S.'s care]," B.B.'s academic and social progress, and "the fact that Ms. S.[] ha[d] been able to provide care and address [B.B.'s] ADHD and tend to [B.B.'s] overall needs." Based on the record here, we conclude that the circuit court properly considered the requisite factors in deciding that it was in B.B.'s best interest to grant guardianship to Ms. S.

Mother next contends that the court improperly deferred to the magistrate's finding, rather than making its own findings. To be sure, where there is a request for a *de novo* exceptions hearing, the circuit court must review the matter anew. *In re Marcus J.*, 405 Md. 221, 234 (2008). And as Mother notes, the court did say in its ruling that it did "not find that [the] [m]agistrate's [] decision was clearly erroneous." Despite the language the court used, however, the record indicates that the circuit court made its own findings independent of the magistrate. The court heard testimony from different witnesses, including Mother and Ms. S., and in making its ruling, the court addressed the facts testified to by the witnesses.

## II.

### Visitation

Mother contends that the circuit court erred as a matter of law when it failed to make an order regarding visitation after Mother made clear that she wanted continued contact with B.B. She argues that, without a court order, Ms. S. will not agree to visitation between Mother and B.B.



The Department contends that Mother did not preserve the issue of visitation. In any event, it argues that the court did not abuse its discretion when it granted custody and guardianship to Ms. S. without addressing visitation. The Department asserts that Mother showed a lack of interest in supervised visitation, and when visitation was virtual during the COVID-19 pandemic, Mother failed to call at the appointed times. B.B. similarly argues that the issue was waived, and in any event, it is without merit.

As this Court explained in *In re Caya B.*, 153 Md. App. 63, 78 (2003):

If the permanency plan calls for custody and guardianship by a relative but does not contemplate adoption, the court may issue a decree of guardianship to the relative and may then close the case. *See id.*, § 3-823(h)(iii)(1). Parental rights are not terminated in such a situation: the parents are free at any time to petition an appropriate court of equity for a change in custody, guardianship, or visitation.

In this case, the magistrate recommended that custody and guardianship be granted to Ms. S., and the court’s jurisdiction be terminated. Mother filed a notice of exceptions, stating that she “except[ed] to the recommendations of the [m]agistrate,” specifically stating that “the [m]agistrate improperly concluded that a permanency plan of custody and guardianship be implemented and the case be closed.” She asked that the “matter be set for a hearing *de novo*,” that the court sustain her exception and not grant custody and guardianship at that time, and for “[s]uch other relief as justice may require.”

A party that files an exception to a magistrate’s findings, conclusions, and recommendations “shall specify those items to which the party objects,” and the hearing “shall be limited to those matters to which exceptions have been taken.” CJ § 3-807(c)(1). *Accord* Md. Rule 11-103(e)(1)(B) (“[A]ny party may file exceptions to the magistrate’s

proposed findings, conclusions, or recommended order,” and shall state “with particularity, those items to which the party excepts.”). As appellees note, Mother’s notice of exceptions did not specify any exception to the magistrate’s failure to address visitation. It merely excepted to the recommendation “that a permanency plan of custody and guardianship be implemented and the case closed.”

Mother contends that her notice of exceptions was sufficient to preserve the issue of visitation. She relies on *In re Marcus J.*, 405 Md. 221 (2008), in that regard. In that case, Marcus J. excepted to a magistrate’s finding that he was in possession of a handgun, and therefore, a delinquent child. *Id.* at 222. In his notice of exceptions, he excepted to one evidentiary ruling and then stated that the magistrate “erred in her facts and findings in the adjudicatory and disposition hearing.” *Id.* at 225. The Court of Appeals held that, given the language of the exceptions, and the statutory provision that a party may note an exception to “any or all” of the magistrate’s findings, conclusions, and recommendations, Marcus J. was entitled to a *de novo* hearing on all issues. *Id.* at 233–34.

Mother argues that a similar conclusion should be reached here because she excepted to the “recommendations of the magistrate,” and in addition to sustaining her exceptions and not granting custody and guardianship at this time, she asked for “such other relief as justice may require.” The magistrate’s recommendations, however, did not address visitation. Mother cannot except to a recommendation that was not made. Since an exceptions hearing is limited to those matters to which exceptions have been taken, the *de novo* hearing here was limited to the magistrate’s recommendations, including the

recommendation that a permanency plan of custody and guardianship be implemented and the case be closed. The issue of visitation was not preserved for review.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**