

Circuit Court for Montgomery County
Case Nos. C-15-JV-22-000087 & C-15-JV-22-000088

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1562

September Term, 2023

IN RE: A.Z.E. AND A.D.E.

Arthur,
Leahy,
Friedman,

JJ.

Opinion by Arthur, J.

Filed: May 3, 2024

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

The Circuit Court for Montgomery County, sitting as a juvenile court, changed the permanency plan of two children in need of assistance from a concurrent plan of reunification with their mother and custody and guardianship with their paternal aunt to a sole plan of guardianship with the aunt. The court proceeded to grant custody and guardianship of the children to the aunt, ordered visitation with the mother under limited conditions, and closed the case.

The mother noted a timely appeal. We affirm.¹

FACTS AND LEGAL PROCEEDINGS

Initial Investigation and Removal of the Children from Mother’s Care

This case involves two boys: A.Z.E. (born in October 2011) and A.D.E. (born in January 2015).

The boys’ mother (“Mother”) emigrated to the United States from Honduras in 2014, before A.D.E., the younger child, was born. When Mother left Honduras, A.Z.E., who was then two years of age, remained in the care of his father and Mother’s adult daughter, B.E. Mother learned that she was pregnant with A.D.E. upon her arrival in the United States; A.D.E. was born in this country.

A.Z.E. travelled to the United States from Honduras in October 2021. He was accompanied by Mother’s adult daughter, B.E., for part of the journey, but crossed the border alone and was detained by immigration officials. He was reunited with Mother in

¹ The children’s father (“Father”) lives in Honduras and has remained there during the pendency of this matter. Father, through counsel, agreed with the juvenile court’s rulings and orders and is not a party to this appeal.

November 2021. B.E. arrived in the United States in January 2022 and moved in with Mother.

On January 21, 2022, the Montgomery County Department of Health and Human Services (“the Department”) received a second-hand report of suspected abuse and neglect of A.Z.E. and A.D.E. The report included concerns about inadequate food and supervision; verbal abuse; and sexual abuse of the older child, A.Z.E., by B.E.

On January 31, 2022, the Department received a second report, which stated that Mother, her romantic partner, A.Z.E., A.D.E., and B.E. were living in one room of a multi-tenant property. The report stated that Mother did not provide the children with adequate food and that she threatened to beat them. A.Z.E. was reportedly exhibiting signs of trauma, including encopresis (periods of involuntary defecation) at home and school. In addition, A.Z.E. had reportedly disclosed that B.E. sexually abused him in Honduras and that she recorded the acts.

On about February 7, 2022, the Department received a third report, which stated that Mother had retaliated against the children physically and emotionally for the first two reports of abuse; told them they would be taken away from her until they were adults; and pressured them to recant their accusations, upon threat of returning them to the care of A.B., Mother’s stepmother, who beat the children when she babysat for them. After the third report, the Department initiated an investigation.

In an interview with Department employees at his school on February 8, 2022, A.D.E. said that Mother had struck him with a belt two days earlier, leaving bruises. A.D.E. described himself as “scared.”

In an interview with Department employees on February 8, 2022, Mother denied that she or her stepmother, A.B., had physically abused the children. She also denied that B.E. had sexually abused the children. The workers asked Mother and B.E. to vacate the premises and live elsewhere. They moved out that evening.

On February 9, 2022, the Department held a Family Team Decision Meeting with the children’s paternal aunt (“Aunt”), who had travelled from her home in New York to assist in the children’s care. As part of a safety plan developed during the meeting, Mother agreed to have no unsupervised contact with the children; B.E. and A.B. were to have no contact with the children at all.

On February 23, 2022, a Department social worker conducted a home visit. The children were doing much better and appeared less fearful under Aunt’s care. Nonetheless, Aunt expressed concern for A.Z.E., who was crying at night and suffering from panic attacks and the return of encopresis after a single supervised phone call with Mother.

On March 9, 2022, a forensic social worker interviewed the children. A.Z.E. reaffirmed his previous statements of physical abuse by Mother and sexual abuse by B.E., including forced oral sex. He said that he had told Mother about the sexual abuse when he arrived in the United States, but that she failed to protect him and had, instead, welcomed B.E. into her household. A.D.E. told the worker that Mother had hit him with a sandal, touched his penis in the shower, and taken nude photos of him while he bathed.

Shelter Care Hearing

On March 11, 2022, the Department requested an emergency shelter care hearing.

It asserted that A.D.E. had been sexually abused by Mother, that Mother had failed to protect the children from sexual abuse at the hands of others, and that Mother had physically abused the children to keep them from reporting the abuse. On that same day, the Department filed a petition asking the court to find that A.Z.E. and A.D.E. were children in need of assistance.²

At an emergency shelter care hearing on March 11, 2022, Mother and Father, through counsel, denied the allegations in the CINA petition, but agreed that shelter care would be appropriate. The juvenile court granted the Department’s request for shelter care and placed the children in its temporary care and custody. The court appointed the Department and Aunt as the children’s limited guardians. In addition, the court ordered Mother and her adult daughter, B.E., to have no contact with the children, but permitted liberal unsupervised phone and video contact with Father.

CINA Adjudication and Disposition Hearing

Just before a CINA adjudication and disposition hearing on April 1, 2022, the Department amended its CINA petition, adding factual details. At the hearing itself, Mother and Father did not admit the allegations in the amended CINA petition, but they elected not to present evidence and agreed that the allegations would have been sustained

² Pursuant to Md. Code, § 3-801(f) of the Courts & Judicial Proceedings Article (“CJP”), a “child in need of assistance” means “a child who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.”

by a preponderance of the evidence had they presented evidence.

The juvenile court sustained the allegations in the amended CINA petition, determined that the children had been neglected by Mother and Father, and adjudicated the children to be CINA. The court reaffirmed that the Department and Aunt would have limited guardianship, and it placed the children in kinship care with Aunt. In addition, the court ordered supervised visitation with Mother once weekly, after one supervised phone call and one supervised video call. The court also ordered Mother to undergo a psychological evaluation and to complete parenting classes.

August 23, 2022, Review Hearing

The Department filed a report in anticipation of a review hearing on August 23, 2022. Among other things, the report stated that Aunt had rented an apartment in Maryland so that she could be a placement resource for the children. Mother, however, had reportedly refused to give Aunt custody of the children. Instead, Mother reportedly stated that her goal was to work toward reunification.

The Department described Mother’s behavior during visitation as “appropriate.” The children, however, said that they did not enjoy the visits. They reportedly appeared visibly uncomfortable, particularly when Mother hugged and kissed them. After some visits, A.Z.E. again experienced encopresis.

The children, aware that Aunt would, at some point, have to return to New York, expressed the desire to go with her, as they felt safest with her. They did not want to be reunified with Mother, whom they characterized as a “liar.” Aunt expressed a desire to take the children with her when she returned to New York.

Although Mother said that she missed the children and that she remained open to court-ordered services, she continued to deny the allegations of sexual and physical abuse. She did, however, acknowledge smacking the children on the ankles when they misbehaved. She said that she did not know whether she believed A.Z.E.’s reports of sexual abuse by B.E.

At the review hearing on August 23, 2022, the Department requested that the juvenile court not change its standing orders, with the exception of the visitation order. In light of concerns about A.Z.E.’s encopresis after the visits and the children’s anxious behavior on the way to visits, the Department asked that the children be given the discretion to decide whether to visit with Mother. Forcing them into visitation, the Department said, was becoming “therapeutically inappropriate.” Mother argued that visitation at the discretion of young children, when the permanency plan was reunification, was not appropriate.

The juvenile court found that the children did not feel safe with Mother, had expressed a strong desire not to visit with her, and were adamant that they wanted to move with Aunt to New York. The court also found that the children were participating in individual therapy and that Mother had begun therapeutic services in August 2022. Based on its factual findings, the juvenile court continued the children’s status as CINA and ordered that supervised visitation with Mother would occur once per week for one hour, but that the children would have the right to refuse visitation.

February 8, 2023, Permanency Plan Hearing

In advance of a permanency plan hearing on February 8, 2023, the Department

submitted two reports.

The first report, prepared in anticipation of an earlier status hearing that does not appear to have taken place, stated that visits between the children and Mother had remained consistent during the reporting period, but that the children continued to become more tense and anxious the closer they got to the visitation site. During the visits, the children sat across from Mother and tried to avoid her hugs.

In the first report, a social worker recounted that on one visit Mother brought different gifts for each child. As a result of the different gifts, A.Z.E. came to believe that Mother loved A.D.E. more than she loved him. To alleviate this concern, the social worker advised Mother to bring the children the same gifts. On the next visit, however, Mother again brought different toys for each child, causing more distress for A.Z.E. In October, A.Z.E. again became upset when, he said, Mother misspelled his name on a birthday card. A.Z.E. ended the visit early.

According to the first report, the children’s therapist had told the social worker that the children did not look forward to or enjoy their visits with Mother and did not like her attempts to touch them, which they did not view as physical affection. Because the visits were still “stressful events” for the children, the Department continued to recommend that the visits remain supervised and that the children maintain the right to refuse visits or end them early.

In a second report that was prepared ahead of the permanency plan hearing on February 8, 2023, the Department reported that Aunt had been licensed as a restricted foster care parent for the children, who were thriving under her care. According to the

report, the boys had refused all but one visit with Mother since December 14, 2022.

They had stabilized emotionally and behaviorally since the cessation of visits, but their treatment team indicated that their symptoms would likely return if the visits resumed.

A.Z.E. reportedly said that he would throw himself off his apartment’s balcony if he were returned to Mother’s care. During her therapy sessions, Mother continued to deny the allegations of sexual and physical abuse and claimed not to understand why the children weren’t with her.

In the second report, the Department asserted that reunification was “not appropriate at this time,” because many barriers had to be addressed before reunification could be achieved. The Department recommended that visitation be reduced to once every two weeks and that Mother be prohibited from hugging or kissing the children unless they gave her permission. The Department further recommended a change in the permanency plan to a concurrent plan of reunification and custody and guardianship with a relative.

According to the second report, the Department had presented the boys and Mother with a visitation contract in January 2023. The purpose of the contract was to improve the visits with Mother and to decrease the children’s anxiety about the visits. Among other things, the contract stipulated that Mother would not do certain things that triggered negative emotions in the boys, such as talking about Honduras or hugging and kissing them. The boys agreed to the contract, but Mother, through her attorney, refused

to sign it.³

Gabriela Lira Alvarez, the children’s trauma therapist, testified at the permanency plan hearing on February 8, 2023. According to Ms. Lira Alvarez, A.Z.E. had exhibited “common symptoms of post-traumatic stress disorder” and elevated levels of anxiety upon the initial evaluation, while A.D.E. showed symptoms of post-traumatic stress avoidance and hyper-vigilance. A.Z.E., Ms. Lira Alvarez said, suffered from a “constant negative emotional state,” which manifested itself in nightmares, night terrors, and encopresis. A.D.E. also experienced nightmares and constant feelings of anger and fear.

Since beginning treatment, Ms. Lira Alvarez said, both boys’ symptoms had improved dramatically, except right before and right after visits with Mother. When the period between visits increased, A.D.E. was less anxious and more open to displaying positive emotions. Ms. Lira Alvarez opined that the children should not visit with Mother or engage in family therapy until they had successfully completed their trauma therapy. Ms. Lira Alvarez considered an acknowledgment of harm to the children, which Mother had not done, to be the first step toward reunification.

Shelly Tamayo, the children’s family social worker, testified that, upon her first visit with the children in May 2022, they were distressed and indicated that they did not want to see Mother. By the fall of 2022, she testified, the boys had begun to advocate for themselves. For example, A.Z.E. used a safe word to end visits with Mother when she began to speak of his childhood in Honduras in ways that he said were false and

³ It appears, however, that Mother eventually agreed to a contract. *See* n.7 below, as well as the text at page 16.

triggering to him. In December 2022, the boys asked that no visits occur, saying that their weeks progress better when they don't have to see Mother and that they wanted to avoid the negative emotions surrounding visitation. Ms. Tamayo acknowledged, however, that the boys were happy during visits at times, particularly when interacting with each other or talking about school.

Ms. Tamayo said that Mother was attending parenting education classes twice monthly and was willing to learn. Mother was also attending therapy sessions weekly, working on controlling her emotions. Mother still had not discussed the allegations of abuse or neglect against her, and her therapist did not believe that Mother was ready for family therapy. In Ms. Tamayo's assessment, Mother's refusal to acknowledge the harm that she had caused the children remained a large impediment to their healing process.

According to Ms. Tamayo, the Department recommended the change to a concurrent plan because the children had been in Aunt's care for one year; they were happy and well taken care of there; and even the possibility of seeing Mother was "[t]he biggest stressor" in the children's lives." Ms. Tamayo asserted that, if the permanency plan were to change to a concurrent plan, the Department would continue providing Mother services to work toward reunification. She testified that the Department had not considered terminating the parents' rights.

In a written order in which the court considered all of the relevant statutory factors,⁴ the court found that reunification was not, at that time, in the children's best

⁴ See Md. Code (1984, 2019 Repl. Vol.), § 5-525(f)(1) of the Family Law Article.

interest. The court continued the children’s status as CINA and changed their permanency plan from a sole plan of reunification to a concurrent plan of reunification and custody and guardianship with a relative. The court ordered that Mother would have supervised visitation once every two weeks. The court gave the children the right to refuse visits once in every four-week period, but the Department had to document the reason for the refusal.

September 7, 2023, Permanency Plan Review Hearing

In advance of the next permanency plan review hearing, the Department recommended that the children—who had continued to express the desire to move with Aunt to New York and not be reunified with Mother—be placed in the custody and guardianship of Aunt so they could attain stability and move on with their lives. The Department wrote that the children were still angry with Mother for failing to accept her guilt in their abuse. The Department added that Mother had not made progress in therapy “in areas that are relevant to the case.” Because the children continued to suffer stress and nightmares in connection with visits with Mother, the Department recommended that visitation be further reduced to a once-monthly virtual session and in-person visitation in Maryland once every three months.⁵

The September 7, 2023, permanency plan review hearing focused on a request by

⁵ The hearing had been scheduled for July 27, 2023, but was reset to September 7, 2023, to permit the parties to supplement the departmental report, which the court determined was missing some information. The court did, however, meet with the children on July 27, 2023, speaking with them about school and their favorite sports, cars, and food. When asked if they had anything they wished to tell the court, the children stated that they wanted to live with Aunt.

the Department, the children, and Father to change the permanency plan to a sole plan of custody or guardianship by a relative. Mother objected to the change and to the Department’s request to close the case.

Ms. Lira Alvarez testified about the boys’ progress in individual therapy. She reported that progress was steady but slow: the boys still exhibited some trauma symptoms, including avoidance, disassociation, hyper-arousal, and hyper-vigilance. According to Ms. Lira Alvarez, the boys continued to express their desire not to visit with Mother, saying that she lies, scares them, and is “not nice.” In contrast, Ms. Lira Alvarez said, in the weeks when they did not see Mother, the boys’ emotions were “happy and positive.” In Ms. Lira Alvarez’s opinion, a change of the permanency plan to custody and guardianship with Aunt would be beneficial and would enhance the boys’ feelings of safety.

Ms. Tamayo testified that during visits A.Z.E. continued to try to avoid greeting Mother and that visits were “very tough” for him. A.D.E., she said, was “a little bit more relaxed” and engaged with Mother, but was still sometimes distracted during visits. According to Ms. Tamayo, the boys were always happy at the end of the visits and were excited to go home to Aunt. Ms. Tamayo recommended that the court grant custody and guardianship to Aunt.

Permanency Plan Review Hearing Order and Change of Permanency Plan

In a thoughtful, sensitive, and compassionate opinion that was docketed on September 8, 2023, the court began by stating that it had reviewed the amended CINA petition, whose allegations the court had sustained. The court stated that it was

“particularly disturbed” by the averments about sexual abuse of A.Z.E. by B.E., Mother’s adult daughter, and physical abuse by A.B., the babysitter. The court noted that Mother denied all allegations of abuse and denied knowing about abuse by others.

The court went on to observe that at trial the boys’ therapist, Ms. Lira Alvarez, and the social worker, Ms. Tamayo, testified as experts. The court credited the testimony of both experts.

“Based on the boys’ fear of their mother, the anguish they suffer in connection with any visitation with their mother, their physical discomfort associated with visitation with their mother, and the nightmares they suffer in connection with visitation with their mother,” the court was “convinced that these boys were abused.” The court added that it was “convinced that the allegations the boys make about their mother beating them and pressuring them are credible.” The court found that “[t]hese boys have been traumatized, and seeing their mother creates more trauma.”

The court observed that Mother had done “many” of the things that the court had ordered her to do, including submitting to a psychological evaluation, refraining from normal expressions of affection toward her sons, and engaging in psychotherapy. The court recognized that Mother was “likely bewildered by these proceedings” because of her lack of education and other challenges, such as “acculturation difficulties.” The court stressed, however, that Mother “**still does not accept the fact that her children have been abused.**” (Emphasis in original.) “Under these circumstances,” the court found, “it is dangerous for her to have any supervision over these boys.” The court also found that “keeping this case open and with the possibility that they may one day be brought back to

her is causing serious harm to these children.”

The court proceeded to examine the factors that a court is required to consider at a permanency plan review hearing.⁶

On the issue of the continuing necessity for and appropriateness of the commitment, the court found that “[h]aving this case open is causing serious damage to these children.” The court explained that “[t]he mere possibility that they may someday face living with their mother is causing nightmares, anxiety and physical distress.” The court concluded that the case “should not be kept open” and that “the commitment shall be rescinded.”

On the issue of the appropriateness of and the extent of compliance with the case plan, the court made the following findings:

It is clear to the court that [Mother] loves her sons, and that she wants them back. It is just as clear to the court that her sons are terrified of her, that they cancel visitation with her every chance they get, that they suffer great distress at the mere thought that they might be reunited with her someday, and that keeping this case open is causing them great harm.

On the issue of whether Mother had made progress toward alleviating or mitigating the causes that necessitated the children’s commitment to the Department, the court agreed with the Department’s assessment that Mother had made no significant progress. In support of that conclusion, the court explained that Mother “continues to deny [the] allegations against her and does not acknowledge the allegations against her older daughter, [B.E.], . . . and the [children’s] former babysitter, [A.B.]” The court

⁶ See CJP § 3-823(h)(2).

added, as it had said before, that Mother seemed to be “bewildered by this entire proceeding.”⁷

The court found that the boys “ha[d] made progress in school” and had “become more attached as brothers.” They both considered Aunt to be their mother, and they felt “happy in her care.” The court recognized that, “[i]f the children continue to be in foster care and have the possibility of reunion with their mother in their lives, they will continue to live with great distress.” “The[] children,” the court wrote, “deserve some permanency and security in their lives.” The court concluded that “[c]hanging the permanency [plan] to a plan of custody and guardianship to a relative [Aunt] and closing the CINA case is clearly in each child’s best interest.”

Crediting the testimony of Ms. Tamayo and Ms. Lira Alvarez, the court found that “the boys have to process their own trauma before dealing with their mother.” “Family therapy,” the court found, “is not appropriate at this time.”

The court turned to the question of visitation. The court recognized that Mother had the right to a hearing on that issue. Consequently, the court wrote that it would not close the case until it had resolved that issue.

In an accompanying written order, the court directed that A.Z.E. and A.D.E. should be placed in the care, custody, and guardianship of Aunt. The court directed that

⁷ The court took note of an allegation that Mother had violated a term of her visitation contract by telling A.D.E. that she loved him, missed him, and could not wait to be together with him again. The court acknowledged that Mother had violated the contract, but wrote that her conduct was “a totally understandable cry of agony from the depth of a mother’s soul.”

the case remain open pending a decision on Mother’s visitation rights. Until the visitation hearing was concluded, the court ordered virtual visitation, once monthly, but stated that the children must agree to the visits.

*September 28, 2023, Visitation Hearing, Entry of Custody
and Guardianship Order, and Closure of the Case*

After a hearing on September 28, 2023, the juvenile court entered a supplemental permanency plan review and visitation hearing order. The order incorporated the court’s order of September 8, 2023, and included a case closure order.

In the order, the court reiterated that contact with Mother continued to cause the children “great anguish and distress.” Consequently, the court found that their “sense of safety requires that all such contact be extremely limited.”

The court placed the children in the physical and legal custody and guardianship of Aunt. It ordered that visitation with Mother would consist of one virtual, supervised visit per month, for a minimum of one hour; and one in-person, supervised visit every three months, for a minimum of two hours. One in-person visit per year would occur in Maryland. Each child would have the right to refuse in-person visits as he saw fit. The order incorporated the terms of an earlier visitation contract, which prohibited Mother from hugging or kissing the children without their permission and discussing their earlier childhood, among other things.

The court provided Father with liberal and unsupervised virtual or phone visitation (or in-person visitation if Father were in the United States). Finally, the juvenile court determined that the children were no longer CINA and closed the case.

The court entered a custody and guardianship order on the same day.

Mother filed a timely notice of appeal of the court’s orders.

QUESTIONS PRESENTED

Mother poses two questions, which we quote:

1. Did the juvenile court err when it changed the children’s permanency plans to sole plans of custody and guardianship with aunt, granted aunt legal guardianship of the children, and terminated jurisdiction over the family?
2. Did the juvenile court err when it granted the children full discretion to refuse their court-ordered in-person visitation with mother as part of the final custody and guardianship orders?

DISCUSSION

Standard of Review

We review CINA cases under three “different but interrelated” standards. *In re Adoption/Guardianship of Cadence B.*, 417 Md. 146, 155 (2010). First, we review any factual findings for clear error. *In re Yve S.*, 373 Md. 551, 586 (2003). Second, we review any legal conclusions without deference. *Id.* Finally, we do not disturb the ultimate conclusion unless the court abused its discretion. *In re Adoption of Ta’Niya C.*, 417 Md. 90, 100 (2010). A court abuses its discretion if its decision “does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.” *In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 87 (2013) (citation omitted).

“[A] judgment in a civil case,” including a CINA case, “will not be reversed in the absence of a showing of error *and* prejudice to the appealing party.” *In re Ashley E.*, 158

Md. App. 144, 164 (2004), *aff'd*, 387 Md. 260 (2005) (emphasis in original). “In that context, prejudice means that it is likely that the outcome of the case was negatively affected by the court’s error.” *Id.* “[T]he complaining party has the burden of showing prejudice as well as error.” *In re Yve S.*, 373 Md. at 616 (citations and quotation marks omitted).

I. Change in Permanency Plan, Grant of Custody and Guardianship to Aunt, and Closure of the Case

Mother asserts that the juvenile court abused its discretion in changing the permanency plan from a concurrent plan of reunification and custody and guardianship with a relative to a sole plan of custody and guardianship, in granting Aunt custody of the children, and in closing the case. She argues that the totality of the circumstances warranted keeping reunification as a goal.

Mother premises her argument on two grounds. First, she argues that the court erroneously found that she had abused the children. Second, she argues that it was premature for the court to abandon the goal of reunification. We shall discuss each of these points in turn.

In arguing that the court erroneously found that she had abused the children, Mother focuses on one sentence in the seven-page permanency plan review hearing order of September 8, 2023. In that sentence, the court wrote: “The Court is further convinced that the allegations the boys make about their mother beating them and pressuring them are credible.” Mother characterizes that sentence as a factually unsupported finding of physical abuse.

Mother argues that the court could not have based any such finding on the allegations in the amended CINA petition. Even though the court had sustained those allegations, Mother observes that the petition contained only “competing proffers” on the question of whether she had physically abused the children—a proffer that A.D.E. claimed that she struck him with a belt and a proffer that she denied the allegation. Because the parties did not agree that any physical abuse had actually occurred, Mother argues that the competing proffers could not have formed the basis for a finding of abuse.

Mother goes on to argue that the court could not have relied on the expert testimony of Ms. Lira Alvarez and Ms. Tamayo to conclude that the children’s allegations of abuse were “credible.” Citing *Hall v. State*, 107 Md. App. 684, 691 (1996), she argues that a court may not credit a child’s therapeutic disclosure merely because an expert witness believes the child.

Mother contends that the court could not make a finding of physical abuse without testimony from the child or an admission from Mother herself. Because the court had neither of these pieces of evidence, Mother concludes that the finding was erroneous.

In our judgment, Mother has misinterpreted the basis for the court’s statement that “the allegations the boys make about their mother beating them and pressuring them are credible.” The court made that statement in a paragraph in which it recounted the expert witnesses’ testimony about the boys’ extreme emotional distress in connection with visitation with their mother. The court cited the testimony about “the boys’ fear of their mother, the anguish they suffer in connection with any visitation with their mother, their physical discomfort associated with visitation with their mother, and the nightmares they

suffer in connection with visitation with their mother,” as a basis for its conclusion—unchallenged by Mother—that “these boys were abused.”

At that point, the court added its comment that it “was convinced that the allegations the boys make about their mother beating them and pressuring them are credible.” As the basis for that comment, the court said: “These boys have been traumatized, and seeing their mother creates more trauma.” In view of the structure of the court’s analysis, we conclude that the court viewed the allegations of beatings and pressure as “credible” because the undisputed evidence about the children’s intensely negative, visceral reactions to their mother led the court to infer that the allegations were probably true. Contrary to Mother’s assertion, the court did not view the allegations of beatings and pressure as “credible” because it relied on part of the competing proffers or because it allowed the experts to vouch for the children.

But even if the court erred—which it did not—we would conclude that the error was harmless. No reader of the court’s thoughtful, seven-page opinion and order could reasonably conclude that the court changed the permanency plan to a plan of custody and visitation with Aunt because it thought that “the allegations the boys make about their mother beating them and pressuring them are credible.” The court wrote very clearly about why it changed the plan: the children were “terrified” of Mother; they “suffer[ed] great distress at the mere thought that they might be reunited with her”; “keeping th[e] case open [was] causing them great harm”; they needed to “know that they will never have to live with their mother again”; Mother had made “no significant progress” toward reunification, because she “continu[ed] to deny [the] allegations against her and [did] not

acknowledge the allegations against her older daughter, [B.E.], and the [] babysitter, [A.B.]”; it was “dangerous for [mother] to have any supervision over these boys”; the children “deserve[d] some permanency”; “the boys have to process their own trauma before dealing with their mother”; and “[f]amily therapy [was] not appropriate at this time,” because Mother did not accept “that any abuse occurred.”

On the basis of those findings, the court would have had the grounds to abandon the permanency plan of reunification and to change the plan to custody and guardianship with Aunt ((*see In re Shirley B.*, 419 Md. 1, 33-34 (2011)) even if the court had never said anything whether the allegations of beatings and pressure were “credible.” Its comment about those allegations was harmless error, at worst.

We turn to Mother’s assertion that the court prematurely changed the permanency plan and closed the case. We review this aspect of the court’s decision for abuse of discretion. *See In re Ashley S.*, 431 Md. at 704; *In re M.*, 251 Md. App. 86, 111 (2021).

Mother contends that, had the court not closed the case, she might have made additional progress. She argues that, had the cases remained open, the children’s therapist might have communicated with hers “to aid the therapeutic process.” She observes that A.D.E. was about to begin working with a new therapist, and she speculates that the new therapist might have recommended family therapy as a means of facilitating reunification. She acknowledges that Aunt was taking excellent care of the children, but argues that the bond with a caregiver cannot be dispositive. Finally, she argues that the case had been open for only about 18 months, six months before the projected date for permanent placement under CJP § 3-823(h)(5).

We are unconvinced that the court abused its considerable discretion in changing the permanency plan and closing the case when it did. In view of the children’s intense and unabated fear and anxiety about being returned to Mother, their need for permanency, and Mother’s lack of progress, the court made a reasonable judgment that further progress toward reunification was unlikely. The court did not treat the children’s relationship with Aunt as dispositive. And nothing in CJP § 3-823(h)(5) prohibits a court from effectuating a permanent placement in less than 24 months.

II. Visitation Order

Mother claims that the juvenile court erred as a matter of law in permitting the children full discretion to refuse court-ordered visitation with her. She argues that the court cannot delegate judicial authority relating to visitation. In Mother’s view, the children’s feelings should not be the sole determinant of whether visitation occurs. She acknowledges, however, that the children cannot be forced to visit with her and that the court was correct in considering their wishes.

“Generally, decisions concerning visitation are ‘within the sound discretion of the [juvenile] court[.]’” *In re G.T.*, 250 Md. App. 679, 698 (2021) (quoting *In re Billy W.*, 387 Md. 405, 447 (2005)). “[W]e accordingly will not disturb such decisions ‘unless there has been a clear abuse of discretion.’” *Id.* (quoting *In re Billy W.*, 387 Md. at 447). “[I]n reviewing a visitation order, we must give ‘due regard . . . to the opportunity of the [juvenile] court to judge the credibility of the witnesses[.]’” *Michael Gerald D. v. Roseann B.*, 220 Md. App. 669, 687 (2014) (quoting *In re Yve S.*, 373 Md. at 584).

Visitation, although an “important, natural and legal right . . . is not an absolute right,” but one that “must yield to the good of the child.” *Roberts v. Roberts*, 35 Md. App. 497, 507 (1977) (quoting *Radford v. Matczuk*, 233 Md. 483, 488 (1960)) (further citation omitted). In a CINA case, visitation is part of the permanency plan, and it is within the discretion of the juvenile court to decide the appropriate amount of visitation, with input from the Department about conditions that the agency believes should be imposed. *In re Justin D.*, 357 Md. 431, 449-50 (2000). Because the juvenile court must make such a determination in the child’s best interests, the court may restrict or even deny visitation when the child’s health or welfare is threatened. *In re J.J.*, 231 Md. App. 304, 347 (2016), *aff’d*, 456 Md. 428 (2017). The court must assure, “at a minimum, that such visitation will not jeopardize the safety and well-being of the child.” *In re Billy W.*, 387 Md. at 448.

“[I]t cannot be left up to the unfettered discretion of . . . five-year old children whether to visit with their mother, especially when the visits are carefully supervised.” *In re Barry E.*, 107 Md. App. 206, 220 (1995). On the other hand, a court “may look at the wishes of the child as a factor in making the determination of whether visitation should be granted.” *In re G.T.*, 250 Md. App. at 700. Children should not be “physically forced, kicking and screaming, into their mother’s presence[.]” *In re Barry E.*, 107 Md. App. at 221.

When A.Z.E. and A.D.E. were removed from Mother’s custody in March 2022, the children were ten and seven years of age, respectively. By the time of the September 2023 visitation hearing, A.Z.E. was almost twelve years old, and A.D.E. was more than

eight and a half years old. At that age, they were certainly old enough to express their opinions on visitation.

From the time of their removal from Mother's care after the allegations of physical and sexual abuse and neglect, the children repeatedly displayed severe physical and emotional distress just before and just after visitations with Mother and were steadfast in their stated desire not to visit with her. During visits, they reacted negatively to her physical touch and were indifferent to conversation with her on most occasions.

In their individual therapy sessions, the children were having a hard time addressing their trauma, and their progress in therapy was slow. The children's therapist and social worker, both accepted as experts by the juvenile court, testified as to their continuing distress in regard to visitation. As a result, the Department recommended, and the juvenile court ordered, that the children be given some agency over the visits.

In our view, the court could reasonably conclude that the children's desire not to visit with Mother was based on the severe trauma they had suffered while in her care. Despite Mother's claim that giving the children the right to refuse visits was effectively the same as denying her visitation, the court could reasonably conclude, under the circumstances of this case, that forcing the children to attend visits would not have been in their best interest.

Moreover, the court's order did not foreclose in-person visitation. The tensions between the children and Mother may ease as they get older and more secure in their place in Aunt's family, and they may agree to visitation.

In summary, the court did not abuse its discretion in permitting the children to decline to attend in-person visits with Mother at their discretion. The court appropriately considered the distress to the children surrounding visits, the expert testimony, and Mother's continued failure to acknowledge any harm caused to the children while in her care.

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