

Circuit Court for Montgomery County
Case No.: 06-I-18-000150

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1619

September Term, 2023

IN RE: C.S.O.

Arthur,
Leahy,
Friedman,

JJ.

Opinion by Leahy, J.

Filed: May 22, 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 its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Ms. O., mother of C.S.O., brings this appeal from an order of the Circuit Court for Montgomery County, sitting as a juvenile court, denying her motion to reconsider the court’s earlier order terminating jurisdiction over C.S.O. and closing his Child in Need of Assistance (“CINA”)¹ case after awarding custody and guardianship to his foster mother, L.S. On appeal, Ms. O. (“Mother”) presents the following question for our review:²

Whether the Court err[ed] in closing this matter on September 14, 2023, and terminating the Court’s jurisdiction in [light] of the fact that C.S.O.’s caretaker had a stroke and there was no information regarding the severity of her condition and/or her ability to continue caring for C.S.O.?

For the reasons that follow, we affirm the judgment.

BACKGROUND

C.S.O. was born in October of 2016. On September 19, 2018, just before his second birthday, the Montgomery County Department of Health and Human Services, appellee (“the Department”), filed a CINA petition following multiple reports that C.S.O. and his

¹ A “CINA” is “a child who requires court intervention because (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” Maryland Code, (1974, 2020 Repl. Vol.), Courts & Judicial Proceedings Article (“CJP”) § 3-801(f).

² In its appellee brief, the Montgomery County Department of Health and Human Services frames the issue as:

Did the juvenile court permissibly exercise its discretion to deny Ms. O.’s motion seeking reconsideration of the order closing C.S.O.’s CINA case where the information provided to the court indicated that the foster mother’s stroke was mild and that she had a care plan that would provide C.S.O. with stability and visitation with his parents during her recovery?

siblings were being neglected and/or abused in their home.³ Following a hearing, the juvenile court granted shelter care placement. Soon after, on October 12, 2018, by agreement of the parties, the court sustained the allegations in the petition, found C.S.O. to be a CINA, and committed him to the care and custody of the Department.

As part of the consent order, the court directed Mother to complete psychiatric and substance abuse evaluations, follow all treatment recommendations, and participate in the Abused Persons Program.⁴ The order further provided that Mother’s visitation with C.S.O. would be supervised initially but could progress to unsupervised if Mother had two successful supervised visits.

The court held its first review hearing on May 5, 2019. By this time, Mother had completed a substance abuse evaluation, which recommended that she participate in intensive outpatient treatment. Although Mother regularly attended that program, she tested positive for alcohol every time she was tested, which led to her being referred for inpatient treatment. This, in turn, caused her visitation with C.S.O., which had progressed to unsupervised, to revert to supervised. Mother was also participating in the Abused Persons Program, but she continued to maintain contact with Mr. S., C.S.O.’s father

³ The Department points out in its briefing that it has been involved in investigations of Mother for physical abuse of C.S.O.’s siblings since 2014, and that Mother was ultimately convicted for assault of the children’s classmates in 2016.

⁴ The Abused Persons Program is a Montgomery County government program that provides domestic violence counseling and advocacy services. *See* <https://www.montgomerycountymd.gov/HHS-Program/Program.aspx?id=BHCS/BHCSAbusedPerson-p207.html> (last visited March 28, 2024).

(“Father”), despite his history of domestic violence and past indicated⁵ child sexual abuse of C.S.O.’s siblings. Mother had obtained a protective order against Father, but she still invited him to her apartment, which led to an argument that escalated to a physical altercation and culminated in Father’s arrest. After the review hearing, the juvenile court maintained a permanency plan of reunification.

This pattern of progress and regress continued for the next three years as Mother struggled with maintaining sobriety and continued maintaining contact with Father despite reports of continued domestic violence. The juvenile court held five permanency plan review hearings during this time and, after each, continued the plan of reunification.⁶ But, when only minimal, lasting progress had been made by the seventh permanency planning review hearing on January 21, 2022,⁷ the court changed C.S.O.’s permanency plan from reunification to a concurrent plan of reunification or custody and guardianship by a non-relative. The court maintained this plan through the next two review hearings.⁸

On May 2, 2023, at the tenth permanency planning review hearing, the parties agreed that continued work toward reunification was no longer in C.S.O.’s best interest.

⁵ “‘Indicated’ means a finding that there is credible evidence, which has not been satisfactorily refuted, that abuse, neglect, or sexual abuse did occur.” Md. Code Ann., Family Law § 5-701(m).

⁶ These hearings were held on August 5, 2019; January 23, 2020; September 8, 2020; February 19, 2021; and July 6, 2021.

⁷ In the months prior to this review hearing, there had been four domestic violence incidents between Mother and Father, culminating in Father’s arrest and detention after he tried to strangle Mother.

⁸ These hearings were held on June 17, 2022, and November 21, 2022.

Mother expressly agreed that C.S.O.’s permanency plan be of custody and guardianship by a non-relative, Ms. S., who is C.S.O.’s foster mother (“Foster Mother”), with whom he had been residing since October 2019—for over 42 months. The attorney for the child also agreed that the plan to award custody and guardianship to the Foster Mother, allowing for visitation to grow with family members, was in the best interests of C.S.O. Although Mother requested that the weekly visitation with C.S.O. continue, the child’s attorney and the Department noted that C.S.O. was “missing close to 25 percent a week of school to be able to do these visits.” Hearing the concerns expressed about how weekly visitation would be disruptive to C.S.O.’s schooling and afterschool activities, the Court turned to Mother and stated, in relevant part, “[b]ut that’s something you all would have to work out, but it’s not going to be able to be every week, I want to say that bluntly, you understand that?” Mother responded, “Yes, Your Honor.”

Based on the parties’ agreement, the court adopted a sole permanency plan of custody and guardianship by a non-relative. At the time of this hearing, the Department had not yet completed the required custody and guardianship home study, so the Court held the matter open with weekly visitation continuing until the study was complete.

On June 20, 2023, after completion of the home study, the Department moved to close C.S.O.’s CINA case and terminate jurisdiction with a grant of custody and guardianship of C.S.O. to Foster Mother. The Department requested that, upon case closure, the court grant separate visitation to Mother and Father at a minimum of one hour monthly to be supervised by Foster Mother. Mother responded to the Department’s motion expressing concerns about the sufficiency and mechanics of visitation following the closing

of the case. More specifically, Mother alleged that at the May 2022 hearing, the court found that visitation with Mother should occur weekly, under supervision. She argued that “reducing [C.S.O.’s] visitation with his mother to one hour supervised once a month, and having those diminished one hour visits combined with sibling visits, is not in his best interests[.]” She requested a hearing for the court to determine a transition plan for visitation and make a finding under Family Law § 9-101 that would permit her to have unsupervised visits.⁹

The court held a hearing on July 28, 2023. There, the parties agreed that the case should remain open for three more weeks to allow Mother and Father to arrange their visits with Foster Mother and do a “trial run of what w[ould] occur when the case close[d].” Foster Mother would supervise separate visits for Mother and Father during the trial period and, “assuming everything [went] well,” the parties would thereafter file a consent motion to close the case. The only point on which the parties disagreed was whether the court should make a finding under § 9-101 that there is no further likelihood of abuse or neglect, enabling Mother to have unsupervised contact with C.S.O. The court declined to make that finding, and issued an order on August 28, 2023, stating that, “UPON CONSIDERATION of the [Department’s] Motion to Close and Terminate Court

⁹ Section 9-101 of the Family Law Article forbids a court from awarding custody or unsupervised visitation to a parent who has subjected a child to abuse or neglect unless the court makes a specific finding “that there is no likelihood of further child abuse or neglect[.]” Md. Code Ann., Family Law § 9-101(b).

Jurisdiction and of [Mother’s] Opposition thereto, . . . the Court will take no action at this time.”

In the weeks following the hearing, Foster Mother coordinated four separate visits between C.S.O. and his natural parents, all of which went well. Accordingly, on September 13, 2023, the Department again moved to close C.S.O.’s CINA case. The motion requested, among other things, that the “visitation between [C.S.O.] and his [Mother] be supervised, minimum once a month for a minimum of one hour, not to include overnights, under the direction of [Foster Mother].” The court granted the motion in an order signed the next day, September 14, and that order was entered by the clerk on September 18, 2023.

On September 18, 2023, Mother filed a motion for reconsideration. The Department had contacted Mother earlier that day to inform her that Foster Mother had been hospitalized after suffering a stroke and that C.S.O. was in respite care. The motion stated that the severity of the stroke was unknown. The motion also reminded the court that it had found earlier in May that visitation with Mother should occur “minimum weekly, under supervision,” but also reiterated Mother’s request for the court to make a § 9-101 finding. Accordingly, Mother requested the court rescind its order to close case and schedule another hearing.

The Department responded on September 22, 2023. It included an affidavit from one of the Department’s Social Workers informing the court that he had visited Foster Mother in the hospital and learned that her stroke was mild. According to the affidavit, Foster Mother stated that C.S.O. did not require respite care in a stranger’s home while she was recovering because he was staying with Foster Mother’s son, daughter-in-law, and

nephew—all of whom C.S.O. knew and were identified as Foster Mother’s emergency backup plan during the custody and guardianship home study process. Foster Mother was also arranging for a family member or friend to temporarily live with her and C.S.O. to assist with their daily routine while Foster Mother recovered and assured that she would arrange for a family member to transport C.S.O. for visits with his parents.

The court denied Mother’s motion on October 2, 2023, and this appeal timely followed.

STANDARD OF REVIEW¹⁰

Appellate review of a juvenile court’s decision involves three interrelated standards: (1) a clearly erroneous standard for factual findings; (2) a *de novo* standard for matters of law; and (3) an abuse of discretion standard for the court’s ultimate decision. *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 47 (2019). Factual “findings are ‘not clearly erroneous if there is competent or material evidence in the record to support the court’s conclusion.’” *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019) (quoting *Lemley v.*

¹⁰ We note that the State’s briefing suggests that we are constrained to review the juvenile court’s rulings for an abuse of discretion because Mother’s appeal was taken from the denial of her motion for reconsideration on October 2, 2023. However, by filing her motion for reconsideration on the same day as, and certainly within ten days of, the entry of the court’s order granting the Department’s Motion to Close Case and Terminate Jurisdiction on September 18, 2023, Mother stayed the deadline for filing an appeal of that order. Md. Rule 8-202(c); *see also Pickett v. Noba, Inc.*, 122 Md. App. 566, 570 (1998). As such, her notice of appeal encompasses the court’s Order entered on September 18, 2023, even though, as we explain, her contentions challenging that Order are not preserved.

Lemley, 109 Md. App. 620, 628 (1996)). As we next explain, the only issue preserved on appeal is reviewed under the abuse of discretion standard. “[A]n abuse of discretion exists ‘where no reasonable person would take the view adopted by the [juvenile] court, or when the court acts without reference to any guiding rules or principles.’” *In re Andre J.*, 223 Md. App. 305, 323 (2015) (quoting *In re Yve S.*, 373 Md. 551, 583 (2003)).

DISCUSSION

A. Parties’ Contentions

On appeal, Mother contends that the juvenile court erred in closing C.S.O.’s CINA case for three reasons: (1) because she was “making progress” and should have been given additional time to secure employment and housing; (2) because the Department failed to fulfill its statutory obligations to make a “reasonable effort” to help her secure that employment and housing; and (3) because Foster Mother’s stroke raised “the issue of whether [she] was capable and able to care for C.S.O. [because] the severity of her condition was unknown.”

In response, the Department first points out that “at the May 2, 2023[,] CINA review hearing, all of the parties, including [Mother], agreed that it was in C.S.O.’s best interests to change his permanency plan to a sole custody and guardianship to [Foster Mother].” According to the Department, by “agree[ing] that the parties should no longer work towards reunification, [Mother] cannot now challenge the level of employment and housing services provided by the Department” or the length of time she had to secure that employment and housing. The Department further argues that the juvenile court did not

abuse its discretion in denying Mother’s motion for reconsideration “[i]n light of [the] additional information [it provided] assuring the stability of C.S.O.’s placement[.]”

B. Analysis

We agree with the Department that Mother waived her first two contentions for two reasons. *First*, she did not raise either contention in the juvenile court. And “an appellate court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]” Md. Rule 8-131(a). *Second*, Mother is, in essence, claiming that she should have been allowed more time to work towards reunification and that the Department failed to adequately assist her in doing so. But as the Department points out, in the juvenile court, Mother agreed that it was in C.S.O.’s best interests to change his permanency plan to a sole plan of custody and guardianship to Foster Mother. “It is well settled in Maryland that the right to appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from the which the appeal is taken or by otherwise taking a position which is inconsistent with the right of appeal.” *In re Nicole B.*, 410 Md. 33, 64 (2009) (quoting *Osztreicher v. Juanteguy*, 338 Md. 528, 534 (1995) (quotation marks omitted in *Nicole B.*)). Having agreed in the juvenile court that the parties should no longer work towards reunification, Mother cannot now challenge the length of time the court allowed her to work towards reunification or the level of assistance provided by the Department during that time. Therefore, Mother has waived her first two contentions.

Mother’s third contention challenging the court’s denial of her motion for reconsideration is preserved; however, we review the juvenile court’s determination for an

abuse of discretion. *See C.E.*, 464 Md. at 47. Mother asserts that the juvenile court should have reopened C.S.O.’s case upon learning that Foster Mother had suffered a stroke of unknown severity. Mother’s argument ignores the Department’s response to her motion in the juvenile court. As noted above, the Department filed an affidavit from a Social Worker who had met with Foster Mother and C.S.O. shortly after Foster Mother’s stroke. The affidavit stated that the stroke was minor and detailed the steps Foster Mother had already taken to ensure C.S.O.’s daily routine and his natural parents’ visitation continued unimpeded. Evidently the juvenile court credited these factual assertions, and it was not clearly erroneous to do so. In light of the additional information assuring the stability of C.S.O.’s care, the court acted well within its discretion in denying Mother’s motion and refusing to reopen C.S.O.’s case.

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