Circuit Court for Montgomery County
Case Nos. 06-Z-21-000014; 06-Z-21-000015;
06-I-19-000167; 06-I-19-000168

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED CASES

Nos. 356, 1465, & 1763

September Term, 2021

IN RE: R.L.-H. & A.L.

Arthur,
Friedman,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: August 12, 2022

In these consolidated appeals, we are asked to determine whether the Circuit Court for Montgomery County sitting as a juvenile court erred in changing the permanency plan for minor children R.L-H. and A.L. from reunification to adoption by a non-relative, and then later terminating the parental rights of Mother and Father. For the reasons that follow, we affirm the rulings of the juvenile court.

BACKGROUND

R.L.-H. first came to the attention of the Montgomery County Department of Health and Human Services upon her birth on September 10, 2016, when both she and Mother tested positive for cocaine. The hospital alerted the Department that R.L.-H. was a substance-exposed newborn, and Mother agreed to enter into a safety plan. Over the next six months, the Department held periodic Family Involvement Meetings with both Mother and Father to monitor their substance use and mental health. By March 2017, both Mother and Father had relapsed into drug use and the Department filed petitions asking the court to find that R.L.-H. was a child in need of assistance (CINA)[1] and to temporarily shelter her.[2] After a hearing, the juvenile court found R.L.-H. to be a CINA due to both Mother's and Father's neglect and ongoing substance abuse and mental health issues. R.L.-H. was

[1] A CINA is a "child in need of assistance." MD. CODE, COURTS & JUDICIAL PROCEEDINGS (CJ) § 3-801(g). Maryland defines a CINA as "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." CJ § 3-801(f).

[2] "Shelter" or "shelter care" refers to "a temporary placement of a child outside of the home at any time before [CINA] disposition." CJ § 3-801(bb).

placed in kinship care with her maternal grandmother, and Mother and Father were both ordered to participate in substance abuse evaluation, monitoring, and treatment, and attend Infant & Toddlers parent education. In June 2017, the juvenile court established a permanency plan of reunification. That permanency plan was reaffirmed at review hearings in September 2017, February 2018, and again in May 2018. By August 2018, Father had again relapsed into substance abuse and the Department lost contact with him, but Mother continued to engage in services and monitoring provided by the Department. Additional review hearings were held in September 2018 and January 2019.

On April 30, 2019, R.L.-H.'s younger brother, A.L., was born to Mother and Father. At the next review hearing in June 2019, the juvenile court concluded that R.L.-H. was no longer a CINA and she was reunited with Mother. By that time, R.L.-H. was approaching her third birthday and had been in shelter care for approximately 27 of her nearly 35 months.

Only a few months after R.L.-H and A.L. had been reunited with Mother, the Department received reports that Mother had relapsed into substance abuse and was failing to supervise R.L.-H. and A.L. Mother again voluntarily entered into a safety plan with the Department, but not long thereafter, the Department filed a petition asking the court to find that both R.L-H. and A.L were CINA. After a hearing in November 2019, R.L.-H. and A.L. were found to be CINA due to Mother's substance abuse, mental health issues, and problems appropriately supervising both children. R.L.-H. and A.L. were placed in kinship care with their maternal grandmother.

At the first review hearing on the second CINA petition in March 2020, the Department asked the juvenile court to amend its order regarding R.L.-H. and A.L.'s placement to remove them from kinship care and place them in a foster home. The juvenile court found that despite the Grandmother's desire to care for R.L.-H. and A.L. and the Department's efforts to assist her in finding caregiving help, she was unable to provide adequate care and supervision of such young children and her home was no longer an appropriate placement. The children were removed and placed in foster care. Although the permanency plan remained reunification, the juvenile court's order included notice that the permanency plan could be changed to one that included termination of parental rights if neither Mother nor Father made significant progress towards reunification.

At the review hearing in January 2021, the Department informed the juvenile court that the children's foster family could not continue caring for them beyond May 2021. The Department further informed the court that it had found an alternate placement option for the children through one of Mother's relatives and asked the court to place the children with a "fictive kin"[3] foster family in Virginia. The juvenile court approved the Department's request, and the children moved to the fictive kin placement in March 2021.

Following a permanency plan review hearing in March 2021, the juvenile court changed the children's permanency plan from reunification to adoption by a non-relative. Shortly thereafter, in May 2021, the Department filed petitions to terminate the parental rights of both Mother and Father.

[3] We discuss the concept of "fictive kin" in Section II, *infra*.

Mother filed an interlocutory appeal challenging the juvenile court's decision to change the permanency plan. Mother and the Department voluntarily stayed that appeal pending the outcome of the Department's petition to terminate parental rights.

After a 5-day trial in October 2021, the juvenile court granted the Department's petition and terminated the parental rights of Mother and Father. The juvenile court issued written findings and an order in November 2021, and both Mother and Father filed notices of appeal. After the notices of appeal had been filed, the Department filed a motion for the juvenile court to amend its findings and order to include more specific statutory language. The juvenile court granted the Department's motion and issued amended findings in December 2021. Mother and Father filed notices of appeal to the juvenile court's amended order. This Court then lifted the stay that had been placed on Mother's appeal of the earlier order amending the permanency plan. All three appeals have now been consolidated into the current proceeding.

DISCUSSION

In these consolidated appeals Mother raises five issues and argues that the juvenile court erred in: (1) finding that the foster family in Virginia was fictive kin; (2) changing the permanency plan from reunification to adoption by a non-relative; (3) improperly delegating authority over visitation to the Department and foster family; (4) admitting hearsay evidence that was contained within departmental reports; and (5) analyzing the best interest of the children as a question of custody rather than of parental rights. Father raises two issues and argues that the juvenile court erred in (1) placing too much emphasis on the children's relationship with the fictive kin foster family, and (2) amending its order

after the first notices of appeal had been filed. In addition, the Department has filed a motion to dismiss Mother's appeal of the order amending the permanency plan.

I. MOTION TO DISMISS

As a preliminary matter, we address the Department's Motion to Dismiss Mother's appeal of the juvenile court's order amending the permanency plan from reunification to adoption by a non-relative. The Department argues that because Mother's parental rights have subsequently been terminated, her appeal of the order changing the permanency plan is moot. We disagree.

A parent has the right to immediately appeal an interlocutory order changing a permanency plan from reunification to adoption. MD. CODE, COURTS & JUDICIAL PROCEEDINGS (CJ) § 12-303(3)(x); *In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 69-70 (2013); *In re Damon M*. 362 Md. 429, 438 (2001). This right to an immediate appeal, however, does not include a corresponding right to an automatic stay of any further proceedings that could result in the termination of parental rights. *In re Jayden G.*, 433 Md. at 78. Thus, it is possible that while an appeal of a permanency plan is pending, parental rights could be terminated in a separate proceeding. *See id.* at 64-65. Moreover, if these proceedings have progressed parallel to and independently of each other, it is also possible that, even if the parents prevailed in their appeal of the CINA order, the court making the ruling could not offer any effective relief because it did not also have jurisdiction over the subsequent order terminating the parental rights. Under those circumstances, an appeal of the order amending the permanency plan would be moot. *In re Karl H*., 394 Md. 402, 410-11 (2006). That is, however, not the case here.

After Mother filed her notice of appeal to the order changing the permanency plan, she voluntarily stayed that appeal to await the outcome of the petition to terminate her parental rights. Those appeals have now been consolidated and this Court has jurisdiction over both the order amending the permanency plan and the order terminating Mother's parental rights. Should Mother prevail in her challenge to the juvenile court's order changing the permanency plan, which we address in Section III of this opinion, this Court has the ability to provide the appropriate relief. The matter is, therefore, not moot and the Department's Motion to Dismiss appeal number 356 is denied.

II. FICTIVE KIN DESIGNATION

We begin by addressing Mother's argument that the juvenile court erred in finding that the foster family in Virginia was "fictive kin." Mother argues that the juvenile court used this designation to give the foster family priority over placement with actual relatives, such as the children's maternal grandmother. We disagree.

The term "fictive kin" refers to a non-relative who has developed a familial or emotionally significant relationship with the child. *In re Ryan W.*, 207 Md. App. 698, 723 n.16 (2012), *aff'd in part, vacated in part, rev'd in part*, 434 Md. 577 (2013). Although placing a child with "fictive kin is treated like a relative placement," *id*., the term is not a legally defined category for the placement of a child in shelter care.[4]

[4] When selecting a placement option for a child in shelter care, the statutory order of priority provides first for reunification with the parent or guardian, followed in descending order by placement with a relative, adoption by a non-relative, or custody and guardianship by a non-relative. CJ § 3-823(e)(1)(i)(1)-(4).

The foster family in Virginia came to the attention of the Department at the suggestion of Mother's aunt, who knew them as extended family members of her long-term partner. Mother is correct that there is no evidence in the record that she or Father or the children had a preexisting relationship with the family in Virginia. Rather, it appears that the family's designation as "fictive kin" was simply the result of the Department having become aware of the family as a possible placement option through the aunt's referral rather than through the established foster care system.

By the time the children were moved to the foster family in Virginia, the Department had tried and failed to find any family members who were willing or able to provide a home for R.L.-H and A.L. and the children had already been residing in a third-party foster home for more than a year. Although the foster family is referred to as "fictive kin" in the juvenile court's orders, there is no evidence in the record to support Mother's assertion that because of this designation, the family received priority over other placement options. We conclude that there was no legal significance to the juvenile court's use of the descriptive term "fictive kin" and no error committed by the juvenile court.

III. MODIFICATION OF THE PERMANENCY PLAN

Mother next challenges that the juvenile court erred in modifying the permanency plan from reunification to adoption by a non-relative. Specifically, Mother asserts that because the juvenile court found that "three factors weigh in favor [of] a plan change and three do not," the presumption in favor of reunification required the court to maintain the permanency plan of reunification. We disagree.

A juvenile court has broad statutory authority to act in the best interest of a child who has been found to be a CINA. *In re D.M.*, 250 Md. App. 541, 566 (2021). When we review a juvenile court's actions, "we utilize three different but interrelated standards." *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 100 (2010). We review the juvenile court's factual findings for clear error. *In re Shirley B.*, 419 Md. 1, 18 (2011) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). We review legal conclusions without deference but will only reverse for further proceedings if we conclude that the error was not harmless. *Id*. If the juvenile court's factual findings are not clearly erroneous and its legal conclusions are correct, we review the court's ultimate conclusions for an abuse of discretion. *In re Jayden G.*, 433 Md. at 96.

The primary consideration in establishing a permanency plan is the best interest of the child, weighed along with six additional factors:

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

MD. CODE, FAMILY LAW (FL) § 5-525(f)(1). In its order, the juvenile court made specific findings with respect to each of these statutory factors. In those findings, the court

described that the children were still bonded to their parents, had only been in their current placement for a short time, and had not yet developed any emotional attachment to their foster family. These three factors supported maintaining the permanency plan of reunification. The juvenile court also described that neither Mother nor Father could provide a safe and healthy home for the children, that R.L.-H would suffer harm by being removed from the stable environment provided by the foster family, and that both children had spent the majority of their lives under State custody and were at risk of harm from the long-term lack of permanency or stability. These three factors supported changing the permanency plan to adoption by a non-relative. Mother does not challenge the substance of these findings but asserts only that because the juvenile court's tally of the factors was evenly divided, the presumption in favor of reunification should have acted as a "tie-breaker" that controlled the outcome. The juvenile court's discretion, however, is not restrained by that kind of arithmetic calculation.

When considering whether to make a change to a permanency plan, the juvenile court's primary concern is the best interest of the child. *In re Adoption of Cadence B.*, 417 Md. 146, 157 (2010). In making its decision, the juvenile court aptly noted that while it must consider all of the factors, it was "not required to give equal weight" to each of them. The juvenile court ultimately found that:

> Overall[,] what stands out is the depth and complexity of both parents' substance abuse and mental health issues. For the future, the Court cannot see a reasonable time when this will change and when the Children can have a safe and healthy home with either parent.

This weighing of factors, rather than their mere counting, is precisely what the law requires. The juvenile court appropriately focused its analysis on the best interest of the children rather than the rights of the parent. We, therefore, conclude that the juvenile court did not abuse its discretion by modifying the permanency plan.

IV. DELEGATION OF VISITATION

Mother next argues that the juvenile court improperly delegated the authority to make decisions regarding visitation to the Department because the visitation orders provided that in-person and virtual visitation was to be "under the direction of the Department." We disagree.

Decisions regarding visitation are generally within the discretion of the juvenile court and will not be disturbed absent an abuse of discretion. *In re Mark M.*, 365 Md. 687, 704 (2001). The juvenile court's discretion does not, however, include the authority to delegate decisions about visitation to a non-judicial person or entity. *In re Justin D.*, 357 Md. 431, 449 (2000); *Van Schaik v. Van Schaik*, 200 Md. App. 126, 134 (2011). Whether a juvenile court has made an improper delegation of authority is a question of law that we review without deference. *In re Mark M.*, 365 Md. at 704-05.

When providing for visitation, the juvenile court must "determine, and set forth in its order, at least the minimal amount of visitation that is appropriate … as well as any basic conditions that it believes, as a minimum, should be imposed." *In re Justin D.*, 357 Md. at 450. Beyond that, "there is a great deal of flexibility permitted in visitation orders." *Id.* at 447. Indeed, with the agreement of the parent, it is not inappropriate for the court to permit an agency such as the Department "to determine whether *additional* visitation or

less restrictive conditions on visitation are in order." *Id.* at 450 (emphasis added). The written order must be "clear, complete, and precise" enough that it cannot be read as "comprehensive authority for [a third party] to determine whether there was to be visitation and, if so, when, where, and how it was to occur." *Id*. at 445.

Here, Mother complains specifically about the visitation orders issued by the juvenile court on March 12, 2021 and April 26, 2021. The March 12 order provided for visitation:

> **ORDERED**, that supervised visitation between the Children and [Mother] *shall be virtual, minimum weekly, minimum 30 minutes* and [Mother] shall confirm those visits with the Department the morning of said visit; and it is further
>
> **ORDERED**, that the Children and [Mother] *shall have two monthly in-person supervised visits* at a mutually agreed upon location and time, under the direction of the Department, and in compliance with the Department's COVID-19 guidelines; and it is further
>
> **ORDERED**, that supervised visitation between the Children and [Father] *shall be virtual, minimum weekly, minimum 30 minutes* and [Father] shall confirm those visits with the Department the morning of said visit; and it is further
>
> **ORDERED**, that the Children and [Father] *shall have one monthly in person supervised* visit at a mutually agreed upon location and time, under the direction of the Department, and in compliance with the Department's COVID-19 guidelines[.]

(emphasis added). The April 26 order provided for visitation:

> **ORDERED**, that supervised visitation between [the Children] and [Mother] *shall be virtual, minimum weekly, minimum 30 minutes*, with [Mother] confirming or cause it to be confirmed the morning of the visit, under the direction of the Department; and it is further
>
> **ORDERED**, that the parties shall explore how [Mother] could have an in person visit with the Children, and during this time,

> [Mother] may have an *extra virtual visit* with the Children *every month*, under the direction of the Department; and it is further
>
> **ORDERED**, that supervised visitation between [the Children] and [Father] *shall be virtual, minimum weekly, minimum 30 minutes*, with [Father] confirming or cause it to be confirmed the morning of the visit, under the direction of the Department; and it is further
>
> **ORDERED**, that [the Children] *shall have an in-person supervised visit, monthly* with [Father], at a mutually agreed upon location and time, under the direction of the Department[.]

(emphasis added).

In both the March and April visitation orders, Mother and Father were each to have supervised virtual visitation that lasted a minimum of 30 minutes and occurred at least once a week. The March order provided for supervised in-person visitation at a mutually agreed upon location at least once per month for Father and twice per month for Mother. The April order again provided for Father to have supervised in-person visitation at least once per month. The order directed the parties to explore how Mother could have in-person visitation, and until that was possible, Mother would have an additional virtual visit with the children every month.

The juvenile court's orders specifically set out the minimum amount, method, and frequency of visitation. We perceive no improper delegation of authority. As a result, the juvenile court's visitation orders did not constitute an abuse of discretion.

V. ADMISSION OF HEARSAY EVIDENCE

Mother argues next that the juvenile court erred in admitting into evidence Department Exhibits 3 through 8 because they contained hearsay. We conclude, however, that these objections have not been preserved for our review.

On the third day of testimony, the Department offered into evidence Exhibits 3 through 8, consisting of departmental reports related to the CINA case. When the Department offered Exhibits 3, 4, and 5, it informed the juvenile court that the author of those reports would not be available to testify and offered to redact the opinions of the author contained within the reports. Mother's attorney specifically stated that there were no objections to those exhibits, subject to the documents being redacted. The juvenile court deferred ruling on the admissibility of Exhibits 3, 4, and 5 until the parties had a chance to confer and inform the court if there were any disputes about the redactions. Redacted copies of Exhibits 3, 4, and 5 are contained in the appellate record, and there is no evidence that any objections were made after the redactions were concluded. With respect to Exhibits 6 and 7, Mother's counsel specifically stated that there were no objections. With respect to Exhibit 8, Mother's counsel objected to the exhibit on the grounds that the hearing for which the departmental report was prepared did not take place. The juvenile court overruled that objection. No additional objections were raised.

Mother is, of course, correct that hearsay is inadmissible. *See* MD. R. 5-802; MD. R. 5-803(b)(8)(A); *In re: H.R., E.R. & J.R.*, 238 Md. App. 374, 406 (2018) (holding that hearsay statements by expert witnesses in Departmental reports must be sponsored by in-person testimony). Despite this, a trial court's ruling on the admission or exclusion of

evidence may not be raised on appeal unless a timely objection or motion to strike is preserved in the record. MD. R. 5-103(a)(1); *Boyd v. State*, 399 Md. 457, 475-76 (2007). Because neither Mother nor Father raised any hearsay objections to the juvenile court, we conclude that issue is not preserved for our review.[5]

VI. SUFFICIENCY OF THE ORDER TERMINATING PARENTAL RIGHTS

Next, both Mother and Father assert that in its order terminating their parental rights, the juvenile court failed to properly rebut the presumption that continuing the parental relationship was in the best interest of the children. Specifically, Mother asserts that the court applied the wrong legal standard and applied a custody analysis rather than termination of parental rights analysis, while Father asserts that the court erred in finding that the children had adjusted to their placement with the foster family. We will address these arguments in turn.

When reviewing an order terminating parental rights, we use the same three-part standard of review that applies to other actions of the juvenile court: We review factual findings for clear error, legal conclusions without deference, and ultimate conclusions for

[5] In a sub-issue, Mother also argues that the juvenile court erroneously applied a "double standard" to the evidence because it did not give her character letters or the testimony of her long-term therapist as much weight as it gave the evidence offered by the Department. The juvenile court had the opportunity to observe the witnesses and the parties and hear the testimony, and it is precisely the role of the factfinder to evaluate the evidence presented and determine how much weight each item of evidence should be afforded. *In re Yve S.*, 373 Md. at 586 (quoting *Davis v. Davis*, 280 Md. 119, 122-26 (1977)). Credibility and relevance determinations are within the discretion of the factfinder, and we see nothing in the record to indicate that the juvenile court's evaluation of the evidence was clearly erroneous.

an abuse of discretion. *In re Shirley B.*, 419 Md. at 18. We will only reverse the juvenile court's order if we conclude that any errors were not harmless. *Id*.

Any analysis of a juvenile court order terminating parental rights starts with the legal and factual presumption "that it is in the best interest of children to remain in the care and custody of their parents." *In re Jayden G.*, 433 Md. at 67. But although the right of a parent "to make decisions concerning the care, custody, and control of their children" is well-established, it is not absolute. *Id.* at 66-67. When there is a conflict between the parents' right to raise their children and a child's best interest, Maryland law is clear that "the best interest of the child remains the ultimate governing standard" and the needs of the child must prevail. *Id*. at 67-68 (quoting *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 496 (2007)).

For a juvenile court to terminate parental rights, it must find by clear and convincing evidence that, based on the statutory factors listed in FL § 5-323(d), the "parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the rights of the parent is in a child's best interests." FL § 5-323(b).

Here, the juvenile court issued its findings in a detailed 52-page opinion. After reviewing the background and legal proceedings, the juvenile court addressed and made findings with respect to each of the statutory factors.

The juvenile court first reviewed the services offered to Mother and Father before the children were found to be CINA, the services offered to try to reunite R.L.-H. and A.L.

with their parents, and to what extent Mother and Father and the Department fulfilled their obligations. *See* FL 5-323(d)(1). The juvenile court detailed how Mother and Father both struggled with a wide array of mental health and substance abuse issues that began long before the births of their children, and that both Mother and Father have spent significant portions of their lives in and out of treatment facilities and rehabilitation programs. The juvenile court also described at length the referrals and monitoring efforts that the Department has undertaken, including psychological evaluations, individual therapy, medication management assistance, and more than a dozen inpatient and outpatient programs. Mother had entered into several social services agreements with the Department but was only partially compliant with her obligations under those agreements. Although Mother made efforts to maintain regular contact with the children, she frequently failed to show up for visits, cancelled visits, or arrived late. With regard to the visits that she did attend, she sometimes had difficulty regulating her emotions and paying attention to both children. There was no evidence that Father had ever entered into a social services agreement with the Department. His contact with both the Department and with the children was inconsistent throughout the CINA case. Father generally behaved appropriately during his visits with the children but saw them less frequently than Mother due to his failure to stay in contact with the Department.

The juvenile court next considered the results of Mother and Father's efforts to make the changes necessary to be reunited with R.L.-H. and A.L., and if "additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the parent within an ascertainable time not to exceed 18 months from the date

of placement." FL § 5-323(d)(2)(iv). Here, the juvenile court found that despite the extensive services offered by the Department, Mother and Father demonstrated a consistent pattern of recovery from and relapse into substance abuse. The juvenile court described the numerous and repeated attempts by Mother and Father to utilize the resources provided by the Department to assist with their substance abuse and mental health recovery. Despite the repeated attempts, however, neither Mother nor Father made any lasting progress. The juvenile court concluded that:

> There is no evidence that additional services would be likely to bring about the "lasting parental adjustment" necessary [to] return [R.L-H. and A.L.] within the next 18 months or some specified period thereafter. While [Mother and Father] tend to do well as patients in structured, inpatient drug rehabilitation facilities, they have repeatedly faltered when transitioning to outpatient programs.

The juvenile court next considered whether Mother or Father had abused or neglected the children. *See* FL § 5-323(d)(3). The juvenile court noted that allegations of neglect were sustained in two CINA petitions, the first in 2017 for R.L.-H. and the second in 2019 for both R.L-H. and A.L. In addition, both R.L.-H. and mother tested positive for cocaine in the hospital when R.L-H. was born. When A.L. was born, although Mother was at the time compliant with her substance abuse treatment, his meconium tested positive for cocaine. The juvenile court further found that, although Mother never explicitly refused the level of drug treatment that was recommended to her, she was often non-compliant with the treatment recommendations.

Finally, the juvenile court considered R.L.-H. and A.L.'s emotional ties and feelings towards Mother and Father and their foster family; how well they had adjusted to their new

community, home, and school; how the children felt about severing their relationship with Mother and Father; and the likely impact on R.L.-H. and A.L.'s well-being if that relationship was terminated. FL § 5-323(d)(4). The juvenile court found that R.L.-H was still attached and bonded to Mother and Father. A.L. was still attached and bonded to Mother but was not attached to Father. Both children were attached and bonded to their foster parents and siblings and had adjusted to their new community and school. R.L.-H. was still having behavioral issues in her placement with the foster family but was making progress towards improvement. The court also found that both R.L.-H and A.L. were too young to understand the idea of severing their relationship with Mother and Father, but that removing them from their current foster placement would be traumatic and detrimental to their long-term development.

After explaining these findings under the statutory factors, the juvenile court concluded that neither Mother nor Father would, "within a reasonable period of time, be able to care for [R.L.-H. and A.L.] in a way that does not endanger them" and that it was "in the best interest of [R.L.-H. and A.L.] that the parental rights of [Mother and Father] be terminated."

Mother and Father each challenge an aspect of the juvenile court's decision to terminate parental rights.

A. Termination of Parental Rights Factors vs. Custody Analysis

Mother argues that the juvenile court's findings discussed the best interest of the children in relation to a custody determination rather than to a termination of parental rights, and in doing so the juvenile court failed to properly rebut the presumption favoring

reunification as being the best interest of the child. Specifically, Mother argues that the juvenile court did not address whether continuation of the parental relationship would be harmful to R.L.-H. and A.L., but rather made its decision based on the how well the children were doing in their current placement. The juvenile court's written findings, however, do not support Mother's argument.

Both termination of parental rights and custody cases begin with a presumption "that it is in the best interest of children to remain in the care and custody of their parents." *In re Rashawn H.*, 402 Md. at 495. Despite this similarity, decisions regarding custody differ significantly from decisions about termination of parental rights. *Id*. at 495-96.[6] Custody decisions allocate access to a child that may be changed upon a showing of changed circumstances, whereas a termination of parental rights is a "total rescission of the legal relationship between parent and child" that is generally final. *Id*. While some factors overlap and are relevant to both determinations, using factors that are exclusively applied to custody decisions risks "ignoring the essential assessment of the parental relationship that is necessary to decide whether to terminate that relationship." *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 223, 232 (2018).

As previously described, the juvenile court's findings are memorialized in a 52-page written decision in which the juvenile court methodically addresses each of the statutory factors required for termination of parental rights. While the juvenile court does

[6] The factors for determining child custody are set out in cases like *Santo v. Santo*, 448 Md. 620 (2016); *Taylor v. Taylor*, 306 Md. 290 (1986); *Ross v. Hoffman*, 280 Md. 172 (1977); and *Montgomery Cty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1977).

discuss how much progress R.L.-H. and A.L. are making in their current placement—as is required by FL § 5-323(d)(4)—that discussion does not serve as the primary basis for the juvenile court's ultimate decision. Rather, most of the court's discussion focuses not on the foster family, but on Mother and Father. The court reviews at length the efforts that the Department has made to help Mother and Father reunite with R.L.-H. and A.L., and the failure of Mother or Father to make any significant progress towards that goal.

The juvenile court's written findings addressed the appropriate statutory factors for termination of parental rights, and its analysis properly focused on "the central question of whether the continued parental relationship would be detrimental to [R.L-H. and A.L.'s] best interest." *In re H.W.*, 460 Md. at 223. We conclude, therefore, that the juvenile court applied the proper legal standard.

B. Adjustment to Community, Placement, Home, and School

We next address Father's assertion that based on the testimony of the foster father, the juvenile court erred in finding, under FL 5-323(d)(4)(ii), that R.L.-H. and A.L. had adjusted to their placement with the foster family. We review challenges to the factual findings of the juvenile court to determine if they were clearly erroneous. *Shirley B.*, 419 Md. at 18.

Father argues that the terminology used by the foster father to describe R.L.-H.'s behavior indicated that she was not considered an equal member of the family. In the particular testimony about which Father complains, the foster father was describing to the court how he tried to explain R.L.-H.'s behavior problems to his two older children. The foster father testified that he told his other children that they had "to treat [R.L.-H.] like

she just walked out of the jungle and her attitude and behaviors that she has, the screaming, the raging are not normal; and we don't treat her the same way because of the difficulties that she has; and … the reasons that she came to us … or how [R.L.-H.] got to this position …where she is with us, we … don't know a hundred percent; but we know something happened in her past." Father argues that, based on this testimony, the juvenile court could not have found that R.L.-H. had adjusted to her placement with the foster family. We disagree.

In other testimony, the foster father described how difficult the adjustment had been for R.L.-H. after moving in with his family, and the challenges that it posed for his two older children.[7] He also testified, however, about the progress that R.L.-H. had been making with the help of her therapist, and how much the family cared about her and was working to help her adjust. He described many of the routines that the family had established and the activities that R.L.-H. had started to engage in.

The foster father candidly described a difficult adjustment. Although the foster father's testimony could have been interpreted in several ways, it was the responsibility of the juvenile court as the factfinder to observe his testimony, evaluate his credibility, and determine how to weigh that evidence. *In re Yve S.*, 373 Md. at 586. The juvenile court chose—as was its right and responsibility—to focus on the positive and hopeful aspects, rather than the negative or to cherry-pick his unfortunate explanations. The juvenile court's

[7] The foster father testified that due to A.L.'s young age, he had a much easier time adjusting after the move, and the biggest challenge they faced was when A.L. would start to mimic R.L.-H.'s behavior.

findings are supported by the foster father's testimony. As a result, we conclude that the juvenile court's factual findings under FL § 5-323(d)(4)(ii) were not clearly erroneous.

VII. AMENDMENT OF THE ORDER AFTER NOTICES OF APPEAL HAD BEEN FILED

Finally, we address Father's argument that the juvenile court erred in amending the order terminating his parental rights after Mother and Father had filed their notices of appeal. Father asserts that the juvenile court's first order lacked the statutorily required findings of either unfitness or exceptional circumstances, and had the juvenile court not issued the amended order to add the specific statutory language, he and Mother would have been able to successfully argue for reversal of the juvenile court's order. Although there is merit to Father's argument that the juvenile court erred in issuing the amended order after the notices of appeal had been filed, *see In re Emileigh F.*, 355 Md. 198, 202-03 (1999) (holding that "[a]fter an appeal is filed, a trial court may not act to frustrate the actions of an appellate court. Post-appeal orders [that] affect the subject matter of the appeal are prohibited"), we conclude that because the juvenile court's original order contained all of the findings necessary to support termination of parental rights, any error was harmless.

Before terminating parental rights, the juvenile court must "determine expressly whether [the factual] findings suffice either to show an unfitness on the part of the parent to remain in a parental relationship with the child or to constitute an exceptional circumstance that would make a continuation of the parental relationship detrimental to the best interest of the child." *In re Adoption/Guardianship of Darjal C.*, 191 Md. App. 505, 531 (2010).

In its original order, the juvenile court explained its conclusions:

> There is a presumption that the child's best interest lies with a continuation of the parental relationship, and this presumption may only be rebutted by clear and convincing evidence that the parents are unfit or that exceptional circumstances exist that would make continued custody with the parent detrimental to the best interest of the child. This directive is now embodied in statutory form at Md. Family Law Code Ann § 5-323(b).
>
> The court is obliged to consider carefully the statutory factors set forth in [FL § 5-323(d)]. The statute requires that the court give primary consideration to the health and safety of the child and all other factors enumerated therein. The court applies the clear and convincing evidentiary standard to the totality of the evidence in determining whether to grant petitioner's prayer for termination of parental rights.
>
> The court in the instant case has made findings of fact pursuant to the statutory factors found in Family Law § 5-323(d), *supra*. What the statute contemplates is "whether the parent is, or within a reasonable time will be, able to care for the child in a way that does not endanger the child's welfare." The court has weighed the evidence in its entirety, and cannot conclude that [Mother and Father] will, within a reasonable period of time, be able to care for [R.L.-H.] and [A.L.] in a way that does not endanger them.
>
> Accordingly, and after weighing the statutory factors in light of the requisite legal presumption, this court finds by clear and convincing evidence that it is in the best interest of [R.L.-H. and A.L. that the parental rights of [Mother and Father] be terminated."

(citations omitted). The juvenile court's detailed decision demonstrates that it was well aware of the necessary legal considerations. The juvenile court specifically explained that the presumption that it is in the child's best interest to continue the parental relationship can only be "rebutted by clear and convincing evidence that the parents are *unfit* or that *exceptional circumstances* exist that would make continued custody with the parent

detrimental to the best interest of the child." (Emphasis added).[8] The juvenile court then concluded that "after weighing the statutory factors in light of the requisite legal presumption" it found by clear and convincing evidence that it is in the best interest of R.L.-H. and A.L. to terminate the parental rights of Mother and Father. By clearly identifying the legal considerations necessary to reach a conclusion and then announcing that as the conclusion of the court, the necessary findings are clearly and necessarily implied. It is not necessary for the juvenile court to recite specific magic words to make those findings. "The mere incantation of the 'magic words' of a legal test, as an adherence to form over substance, is neither required nor desired if actual consideration of the necessary legal considerations are apparent in the record." *In re D.M.*, 250 Md. App. at 563 (cleaned up) (quoting *In re Darjal C.*, 191 Md. App. at 531-32 (citing *S. Easton Neighborhood Ass'n, Inc. v. Town of Easton*, 387 Md. 468, 495 (2005))). We will not reverse the actions of a juvenile court for legal error if that error was harmless. Because the first order issued by the juvenile court was legally sufficient, we conclude that any error in the juvenile court's issuance of the amended order was harmless and reversal is not required.

MOTION TO DISMISS DENIED. ORDER OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY SITTING AS A JUVENILE COURT AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

[8] Of course, the italicized words are the very words from the statute that Father argues are lacking from the juvenile court's order.