Circuit Court for Cecil County
Case No. C-07-JV-18-39, 40, 41

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1886

September Term, 2019

IN RE: D.J., H.J., AND P.J.

Kehoe,
Beachley,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: May 14, 2020

At the conclusion of a permanency plan review hearing on October 22, 2019, the Circuit Court for Cecil County, sitting as a juvenile court, modified the permanency plan for minor children D.J., H.J., and P.J. from reunification to adoption by a non-relative. The parents, Mr. and Mrs. J., timely appealed and present two questions for our review:

1. Whether the trial court erred in failing to make necessary findings of fact in support of changing the permanency plan from reunification to adoption by a non-family member.

2. Whether the trial court abused its discretion in changing the permanency plan from reunification to adoption by a non-family member.

We hold that the court failed to properly consider mandatory statutory factors in rendering its decision to modify the permanency plan. Without these requisite findings and considerations, we cannot say whether the court erred in modifying the plan. Accordingly, we shall vacate and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

On February 26, 2018, the Cecil County Department of Social Services ("CCDSS") filed three separate Juvenile Petitions, stating that it had removed D.J., H.J., and P.J. from the home of their parents, Mr. and Mrs. J. According to its Emergency Shelter Care Report, at approximately 12:30 A.M. on February 22, 2018, police officers observed D.J., then a twelve-year-old boy, walking in the street. D.J. told the police he had been kidnapped from South Dakota and had been walking for six hours. The officers observed that although D.J. was wearing a long-sleeved shirt and sweatpants, he was not wearing shoes over his "wet and muddy" socks. D.J. provided the officers with minimal identifying information.

The report explained that, at 10:00 A.M., CCDSS determined D.J.'s identity, but

that Cecil County Police had received no reports that he was missing. A Child Protective Services Assessor and a detective with the Maryland State Police then went to Mr. and Mrs. J.'s home and spoke with Mrs. J., who stated that D.J. was not missing, but instead was home sleeping in his bed. Mrs. J. did not appear concerned for D.J.'s welfare.

While at D.J.'s home, the investigators observed conditions which caused them concern. The first concern came when Mrs. J. showed the investigators D.J.'s "bed." The report described the bed as "a box approximately 6 ½ ft by 4-5 ft, completely enclosed with plywood on three sides with a peg board top with holes approximately 1 cm each, the front of the box was enclosed with a green board with duct tape and Velcro." Mrs. J. explained that D.J. would enter the bed each night and she and her husband would close him inside.

The investigators also observed the living arrangements for D.J.'s ten-year-old sister H.J. They observed that "she was sleeping in a master closet with a bed." The investigators interviewed H.J. and her younger sister P.J., who was nearly six years old at the time. While speaking with the J.s and the children at their home, the investigators developed concerns regarding "inappropriate discipline, inappropriate sleeping arrangements and withholding of food and schooling." For example, Mr. and Mrs. J. reported that D.J. only drank "shakes" made up of formula and water, and that he had to be force fed. H.J. and P.J. also disclosed that the children in the household would be confined to the bathroom as a form of punishment, and that they had scratched and defaced the walls of the bathroom during their punishment. The report also indicated that "[a]ll school-age children in the [J.] residence are home schooled adding to their vulnerability." As stated above, due to

these concerns, on February 26, 2018, CCDSS filed separate CINA[1] petitions for D.J., H.J., and P.J. At the shelter care hearing the next day, the juvenile court placed the three children in the custody of CCDSS. Following the shelter care hearing, the Harford County Department of Social Services ("HCDSS") took over management of the CINA case.

On June 26, 2018, the juvenile court held an adjudication hearing. At this hearing, the parties agreed to submit on the facts contained in the CINA petitions and a HCDSS report dated June 15, 2018, although the J.s denied all allegations contained therein. The June 15, 2018 report explained that Mr. and Mrs. J. had adopted all three children, and further recounted troubling incidents regarding the J.s that the children revealed to Cecil County Child Protective Services and the Cecil County Child Advocacy Center. D.J. reported that he would be locked in the bathroom as punishment, and that there were times when he was forced to sleep in the tub in the bathroom. D.J. explained that he was also forced to sleep in a box that the J.s built, which was enclosed with plywood on three sides, a peg board top, and enclosed with a green board sealed with duct tape and Velcro. Additionally, H.J.'s bedroom was "the closet in her parents' bedroom." There were no windows in H.J.'s room, and Mrs. J. controlled the light to the room with an application on her phone. Apparently, because H.J. frequently misbehaved, the J.s punished her by

[1] Md. Code (1973, 2013 Repl. Vol., 2019 Supp.), § 3-801(f) of the Courts and Judicial Proceedings Article 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."

forcing her to spend most of the day in her room. The J.s would also lock H.J. in the bathroom as a form of punishment.

The report indicated that since the shelter care hearing on February 26, 2018, D.J. had been placed at St. Vincent's Villa in the Diagnostic Unit. Psychological evaluations indicated that D.J. met the criteria for autism,[2] and also suffered from intellectual disability, mild ADHD, anxiety disorder, and post-traumatic stress disorder. When D.J. first arrived at St. Vincent's Villa, the J.s reported that D.J. "had numerous food allergies and issues eating." St. Vincent's Villa, however, indicated that D.J. tested negative for all food allergies and was eating a regular diet without displaying any vomiting or intestinal issues.

Regarding H.J. and P.J., the June 15, 2018 report indicated that they had remained in placement with foster parents since their removal on February 23, 2018. Although the J.s claimed that both H.J. and P.J. suffered from numerous food allergies, both girls were "eating a normal diet with no major issues." Although H.J. "was very loud" at first, her foster parents indicated that her behaviors appeared normal for her age. Dr. Peggy Hullinger diagnosed H.J. with post-traumatic stress disorder with delayed expression, anxiety disorder, and intermittent explosive disorder. Dr. Hullinger diagnosed P.J. with post-traumatic stress disorder with delayed expression, and separation anxiety disorder. P.J. indicated that she wanted to return home to the J.s, and was initially reluctant to try

[2] Though not material to our analysis, Dr. Joan Kaufman, an expert in clinical psychology, indicated that D.J. "does not meet diagnostic criteria for autism spectrum disorder."

new foods, believing herself to be allergic. After trying new foods, P.J. had no allergic reactions.

The June 15, 2018 report also indicated that all three children were now enrolled in school. Troublingly, the report reflected that a member of St. Vincent's Diagnostic Unit expressed doubt that D.J. had actually received homeschooling prior to his arrival. Additionally, the report revealed that, prior to their removal, none of the children had been registered "with Cecil County Public Schools or an umbrella program[.]"

As stated above, at the June 26, 2018 hearing, the J.s submitted on the CINA petitions and the June 15, 2018 report, but generally denied the allegations. The court noted that both parents waived a contested hearing, and found that the report supported a finding of CINA for all three children. The court therefore found all three children to be CINA and continued custody with HCDSS, allowing the J.s supervised visitation. At the time of the hearing, HCDSS recommended a permanency plan of reunification.

On August 28, 2018, the State's Attorney filed criminal charges against Mr. and Mrs. J. related to D.J. and H.J. The State ultimately charged Mr. J. with second-degree child abuse, second-degree assault, two counts of neglect, and two counts of contributing to rendering a CINA. Mrs. J. was charged with two counts of neglect, and two counts of contributing to rendering a CINA.

The next review hearing was scheduled for September 25, 2018, but was rescheduled twice, ultimately taking place on December 18, 2018. Nevertheless, on September 25, the juvenile court interviewed the children. At the December 18 hearing, the children's attorney read into the record her notes from the September 25 interview. P.J.

indicated that she was eating various kinds of foods, but offered little information regarding the CINA and reunification proceedings. H.J. stated that she was enjoying school, making friends, and participating in cheerleading. She stated that she was attending supervised visits with the J.s and preferred them to remain that way for the time being. She admitted that while part of her wanted to stay with her new foster family, part of her also wanted to return home to the J.s. D.J. indicated that he was still at St. Vincent's Villa in the Diagnostic Unit. D.J. was eating various foods without issue, and was participating in visits with his sisters and the J.s, which were "going good." A HCDSS report indicated that on November 15, 2018, St. Vincent's Villa discharged D.J. into foster care with his current foster mother. Before the juvenile court received testimony, HCDSS indicated that it recommended that the permanency plan remain reunification, but suggested that another hearing take place once the J.s' criminal cases were resolved.

At the conclusion of the December 18, 2018 hearing, the juvenile court noted that "[t]he parents have done their training in Nurturing Parenting, but [the court] still [did not] think they have an understanding, nor empathy of the trauma that [H.J] and [D.J.] ha[d] been subjected to." The court ultimately continued custody with HCDSS, and maintained the permanency plan as reunification.

The next review hearing occurred on June 18, 2019, where the court focused on visitation. The court again spoke with the children. H.J., then eleven years old, indicated that she was generally happy in her new foster home, and that she did not want to return home. She explained that she liked being allowed to go camping, that she could now eat whatever she wanted without getting sick, and that she enjoyed playing outside in the yard

at her foster home—things she could not do at the J. residence. H.J. concluded her interview by indicating that she wanted the juvenile court to decide whether to continue with supervised visits.

The court next interviewed P.J., who was then seven years old. P.J. indicated that things were "good" at her foster home, and that her supervised visits with the J.s were also going "good."

Lastly, the court interviewed D.J., who was thirteen years old at the time. D.J. stated that he was attending school, which he enjoyed. Regarding the J.s, he indicated that he was not attending supervised visits because his school doctor understood that D.J. was scared of them. D.J. stated that he "[didn't] want to see their faces no more." D.J. told the juvenile court that he wanted to continue living with his "new mom[,]" because he felt safe there. He appreciated there being no box on his bed, and that he was allowed to walk around, play with toys, play video games, and go outside and go on vacation. D.J. told the court, "I just want my parents [the J.s] to get out of my life[.]" Finally, D.J. told the court "make sure [H.J. and P.J.] don't go to the visits no more. They can't go to those visits. Yeah, that's everything."

The June 18, 2019 visitation hearing continued on July 2, 2019. At the conclusion of the July 2 hearing, the court terminated supervised visitation pending the results of the J.s' criminal trials.[3]

[3] Though not pertinent to this appeal, on July 12, 2019, the J.s filed a notice for en banc review of the juvenile court's decision to terminate visitation. Although the en banc court has not yet rendered a decision, we nevertheless have jurisdiction to consider the

On October 11, 2019, Mr. and Mrs. J. were each convicted of: 1) two counts of neglect of a minor (D.J. and H.J.); and 2) two counts of rendering a CINA (D.J. and H.J.). Prior to sentencing, the J.s appeared for another permanency plan review hearing on October 22, 2019.[4] At this hearing, HCDSS moved to change the permanency plan to adoption by a non-relative, and submitted a report dated October 8, 2019. This report recounted the history of the case, and explained the efforts the J.s had made to have their children returned. These efforts included removing the box from the top of D.J.'s bed, and creating a new bedroom for H.J. in the basement. The report also indicated that HCDSS had provided the J.s with the opportunity to participate in a Nurturing Parenting program, which the J.s accepted. The initial screenings for this program demonstrated that while the J.s possessed "knowledge of empathy based parenting[. . .] their need for control, especially in chaotic situations prevented them from demonstrating the skills." The report further noted that the children had been out of the J.s' home for nineteen months, and that HCDSS did "not believe that [D.J., H.J., and P.J. could] safely return to the care of" the J.s.

At the hearing, the J.s called Shelly Wilson, a court-appointed special advocate. Ms. Wilson testified that prior to the termination of supervised visits, the J.s "[n]ever missed a visit except maybe a snow storm and I think the flu at one point." She further testified that

juvenile court's change of the permanency plan. *See In re Ashley S.*, 431 Md. 678, 702 n.15 (2013) (stating that "[a] change in a permanency plan to eliminate reunification with a parent is appealable as an interlocutory order").

[4] Both Mr. and Mrs. J. ultimately received executed sentences of six months in jail. We note that they have both appealed their convictions.

the parents had complied with all service agreements required of them, and that despite recommendations for family therapy sessions, HCDSS had not allowed any to take place. Ms. Wilson indicated that D.J.'s foster mother wished to adopt him, but that H.J. and P.J.'s foster parents were not willing to adopt them.

Mrs. J. testified next. She stated that she and Mr. J. had "done everything [they had] been asked to do" by HCDSS. She further denied minimizing the seriousness of the allegations against her and her husband, but admitted overreacting to D.J.'s eating issues. On cross-examination, Mrs. J. struggled to concede that D.J.'s bed was not beneficial to him, but admitted she had overreacted by requiring him to eat in the bathtub. Regarding the fact she would strap D.J. into a chair to eat, Mrs. J. admitted that it "was not the best parenting decision." She further testified that she learned to lock H.J. in the closet from a parenting class, but denied locking her in the closet for twenty-four hours at a time despite H.J. reporting this to multiple people. Mrs. J. also denied locking D.J. in the bathroom, and when confronted with D.J.'s report to numerous people that she locked him in the bathroom to the point that he was scratching holes in the door, Mrs. J. dismissed the statements as "false memory problems."

Mr. J. also testified at the hearing. He admitted that he and his wife "made a lot of mistakes." He explained that they should have asked for more help, that they "were in over [their] head[s]," and admitted that they "traumatized these kids." Although he conceded to making "bad mistakes" and "wrong choices," Mr. J. insisted that they never tried to intentionally hurt the children.

At the conclusion of the hearing, the juvenile court modified the permanency plan from reunification to adoption by a non-relative. On November 1, 2019, the juvenile court issued three substantively identical Permanency Planning/Review Findings and Orders consistent with its bench decision, and the J.s timely noted this appeal. We shall provide additional facts as necessary.

STANDARD OF REVIEW

> In CINA cases, factual findings by the juvenile court are reviewed for clear error. An erroneous legal determination by the juvenile court will require further proceedings in the trial court unless the error is deemed to be harmless. The final conclusion of the juvenile court, when based on proper factual findings and correct legal principles, will stand unless the decision is a clear abuse of discretion.

In re Ashley S., 431 Md. 678, 704 (2013) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)).

DISCUSSION

We agree with the J.s that the court's modification of the permanency plan from reunification to adoption by a non-relative must be vacated. As we shall explain, the juvenile court erred by failing to demonstrate that it actually considered mandatory statutory factors in reaching its decision.

In *In re Ashley S.*, the Court of Appeals explained the statutory framework for permanency plan reviews. *Id*. at 686. First, in developing a permanency plan, the juvenile court is required to give primary consideration to the child's best interest. *Id*. To guide that analysis, Md. Code (1973, 2013 Repl. Vol., 2019 Supp.), § 3-823(e)(2) of the Courts and Judicial Proceedings Article ("CJP") instructs juvenile courts that, "In determining the child's permanency plan, the court shall consider the factors specified in [Md. Code (1984,

2019 Repl. Vol.), § 5-525(f)(1) of the Family Law Article ("FL)]." The FL § 5-525(f)(1) factors are:

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

Permanency plan review hearings must be held "at least every six months for updates and amendments to the original plan." *In re Ashley S.*, 431 Md. at 687 (citing CJP § 3-823(h)). At each hearing, the juvenile court must:

> (i) Determine the continuing necessity for and appropriateness of the commitment;
>
> (ii) Determine and document in its order whether reasonable efforts have been made to finalize the permanency plan that is in effect;
>
> (iii) Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating commitment;
>
> (iv) Project a reasonable date by which a child in placement may be returned home, placed in a preadoptive home, or placed under a legal guardianship;
>
> (v) Evaluate the safety of the child and take necessary measures to protect the child;

(vi) Change the permanency plan if a change in the permanency plan would be in the child's best interest; and

(vii) For a child with a developmental disability, direct the provision of services to obtain ongoing care, if any, needed after the court's jurisdiction ends.

CJP § 3-823(h)(2); *see also In re Ashley S.*, 431 Md. at 687.

Although the *Ashley S.* Court granted *certiorari* on whether the juvenile court could "consider the events occurring during the months that the children spent in foster care under the initial court orders that had been reversed by the Court of Special Appeals[,]" we find the Court's analysis instructive because it underscores the mandatory nature of the FL § 5-525(f)(1) factors. *Id.* at 703. Throughout its opinion, the Court of Appeals reiterated the importance of considering the statutory factors in permanency planning hearings. For example, the Court stated: "In adopting a permanency plan, the juvenile court *was to consider* the girls' attachment and emotional ties to their natural mother." *Id.* at 709 (emphasis added) (citing CJP § 3-823(e)(2) and FL § 5-525(f)(1)(ii)). The Court further noted, "The juvenile court *was obliged to weigh* the length of time that the girls had spent with [their foster parent] and the emotional attachment they had to her—two of six statutory factors *to be considered* in selecting a permanency plan that is in the child's best interest." *Id.* at 710 (emphasis added) (citing CJP § 3-823(e)(2) and FL § 5-525(f)(1)(iii) & (iv)). Regarding FL § 5-525(f)(1)(vi), the Court stated, "One of the *primary considerations* in setting a permanency plan for children who have been adjudicated CINA is to avoid the harmful effects when children languish in temporary living situations." *Id.* at 711 (emphasis added) (citing *In re Adoption/Guardianship No. 10941*, 335 Md. 99, 104

(1994)). And the Court noted that "FL § 5-525(f)(1)(v) *required* the juvenile court to consider any potential harm to the children's emotional, developmental, and educational needs that could result from their removal from foster care." *Id*. at 717 (emphasis added). We presume that the Court's language, including that which we have emphasized, was intentional. Indeed, the Court's affirmative statements support CJP § 3-823(e)(2)'s express statutory mandate—that consideration of the FL § 5-525(f)(1) factors is required.

In their brief, the J.s acknowledge that counsel for HCDSS specifically addressed the FL § 5-525(f)(1) factors in his opening statements at the October 22, 2019 hearing. Nevertheless, they argue that the juvenile court "failed to make the necessary findings" required by CJP § 3-823(h)(2), FL § 5-525, and FL § 9-101.[5]

At the close of the October 22, 2019 hearing, the juvenile court set forth its reasons for modifying the permanency plan. Because of its centrality to our analysis, we reprint in full the court's bench ruling:

> All right. These children, and I've met with them, they're delightful, friendly, happy children, at least they were when I saw them. I didn't see them prior to removal obviously. But these are children who are in trauma based therapy. I'll say that again, trauma based therapy, and trauma that Dr. Kaufman indicated happened while they were with the (Parents). They've been in therapy for some time. Two experts, Dr. Kaufman and, uh, your worker, [HCDSS], the one I named earlier who was in my notes and, if she's here I'm sorry but I don't have her name. . . .

[5] FL § 9-101 states that "In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party." This statute would only apply here if the juvenile court were to grant custody or visitation to the J.s.

> Anyway, she did, she was credentialed and she had - - she was heard as a witness but those two experts described the harm to the children as it has occurred. Harm that I hope is reversible. It has placed the children into therapy, into trauma based therapy now. The standard, contrary to [Mr. and Mrs. J.'s attorney's] position is not what is in the best interest of the parents, it's not what is - - whether or not the parents are going to benefit from having the children returned to them. No, that's wrong, it's the best interest of the children.
>
> I read into the record a few minutes - - well, actually probably an hour or so ago, the expert's findings and their position regarding visitation.[6] The harm that has been done to the children, the harm that would continue based on contact between children and parents, and that the parents, also I take it into account, the parents have been convicted of the criminal charges. The parents haven't done anything to the children since they were removed, and with visitation ending, they haven't seen the children since then, except for as parent's [sic] testified, in court two weeks ago. But these children suffer, the three children suffer from P.T.S.D. and trauma related issues. The parent's [sic] issues are not the standard. The best interest of the children is the standard and that is what I must follow. These children have suffered harm at the hands of the parents. The court understands that the parents meant well and father's testimony reflected that, "yes they were under a lot of stress and made some bad decisions." The court finds that the parents have in fact caused severe harm to the children, have been convicted of the criminal case, and the children can't even – it's not even in their best interest to visit with the (Parents) and they cannot be in the care of the (Parents). The children's best interest is that they stay in care and do the best to heal.
>
> The court finds that all three children shall stay in the custody of D.S.S. and the permanency plan should change to adoption by a non-relative. Thank you.

In response to the J.s' counsel's request for the court to make "some findings the court is supposed to make," the trial judge stated, "I'll do it in writing." But the court's written order focused on HCDSS's reasonable efforts to finalize the permanency plan,

[6] These findings related exclusively to the trauma experienced by the children under FL § 5-525(f)(1)(i).

finding that "[t]he Department has provided trauma based therapy for the children, therapy for the parents, [and] parenting classes for the parents." The court's five-page Order makes no explicit findings related to FL § 5-525(f)(1).

In our view, the juvenile court's bench opinion and subsequent written Order do not demonstrate that the court sufficiently considered the FL § 5-525(f)(1) factors prior to changing the permanency plan. We begin by noting that neither the court's bench opinion nor the written Order even mentions FL § 5-525(f), a fact that might not be problematic standing alone, but which becomes more troublesome as we examine this record. Although the court thoroughly considered FL § 5-525(f)(i)—the child's ability to be safe and healthy in the home of the child's parent—the court failed to even mention most of the other statutory factors. For instance, FL § 5-525(f)(iii) requires the court to consider "the child's emotional attachment to the child's current caregiver and the caregiver's family," but the court never addressed the children's attachment to their respective caregivers. Likewise, the court failed to identify "the length of time the child has resided with the current caregiver" as required by FL § 5-525(f)(iv). Here, D.J. had initially been placed at St. Vincent's Villa and then transferred to his current foster placement, yet the court made no finding in that regard (nor did the court expressly consider the length of time H.J. and P.J. had been with their caregivers). In weighing the statutory factors, FL § 5-525(f)(v) mandates consideration of "the potential emotional, developmental, and educational harm to the child if moved from the child's current placement[,]" but we see no acknowledgement of this factor by the court. To be sure, the court adequately addressed the inability of the children to return to their parents' home, *see* FL § 5-525(f)(i), but FL §

5-525 (f)(v) requires the court to examine the potential harm to the children if moved from their current placements. And the court made no mention of "the potential harm to the child by remaining in State custody for an excessive period of time" as required by FL § 5-525(f)(vi). As to this factor, the record reflects that D.J.'s caregiver expressed a desire to adopt him, but H.J. and P.J.'s caregivers did not want to adopt them. Thus, because it is reasonable to conclude that H.J. and P.J. would likely be in State custody for a longer period of time, the court should have articulated the potential harm, if any, which may result from an extended State placement. Finally, as to FL § 5-525(f)(ii), "the child's attachment and emotional ties to the child's natural parents and siblings[,]" we recognize that the court was aware that the older children, D.J. and H.J., did not want to return to their parents' home. Thus, we can infer that the children's "attachment and emotional ties" to their parents was not significant. Nevertheless, the court never addressed the children's emotional ties to one another, a factor that has some relevance in this case because all three children are not in the same foster home.

HCDSS and the children each assert that the juvenile court did not fail to consider the FL § 5-525(f)(1) factors because a court need not recite "magic words" to demonstrate consideration. The children's brief notes that "a trial judge's failure to state each and every consideration or factor in a particular applicable standard does not, absent more, constitute an abuse of discretion, so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion." *Cobrand v. Adventist Healthcare*, 149 Md. App. 431, 445 (2003). The children's brief further states that a court "'is not required to recite the magic words of a legal test' . . . as an adherence

to form over substance[.]" *In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 738 (2014) (citing *In re Adoption/Guardianship of Darjal C.*, 191 Md. App. 505, 532 (2010)).

We have no quarrel with these legal principles. But the *Jasmine D.* Court's statement that the "mere incantation of the 'magic words' . . . is neither required nor desired if actual consideration of the necessary legal considerations are apparent in the record" is significant because it supports our conclusion that the record here does not demonstrate that the court actually considered the mandatory factors. *Id.* (quoting *In re Adoption/Guardianship of Darjal C.*, 191 Md. App. at 532). We fail to see any acknowledgement of FL § 5-525(f)(1)(iii) – (vi) in the court's bench opinion. Indeed, at the conclusion of the hearing, the J.s' counsel told the court, "Your Honor, there's some findings the court is supposed to make, and I ask that the court make them." Perhaps recognizing the inadequacy of its oral decision, the court replied, "I'm not going to make them now [counsel]. I'll do it in writing." As we have explained, however, the Permanency Planning/Review Findings and Orders issued on November 1, 2019, fail to demonstrate a comprehensive consideration of the FL § 5-525(f) factors.

In *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 503-04 (2007), the Court of Appeals reversed a juvenile court's termination of parental rights due to an insufficient consideration of the relevant statutory factors. The Court explained that

> As noted, FL § 5-313(c) required that the court give primary consideration to the safety and health of the children. The court seemed to resolve that factor by noting that the children had "special needs"—health and safety needs—which "are better served by granting the Department the guardianship." The court did not identify those needs but simply adopted

> counsel's argument that the children's safety "required that they be given a chance for an opportunity to have all those services that they need that the Department can . . . provide if I grant the guardianship." The court did not indicate what services DSS could provide if guardianship was granted that it could not provide otherwise. Whatever the court had in mind, that is not a clear or sufficient explanation of why the safety and health of the children required termination of Ms. F.'s parental rights.

Id. Although *Rashawn H*. construed a different section of Title 5 of the Family Law Article, we find the Court's analysis instructive in our interpretation of FL § 5-525(f)(1). Here, neither the court's bench opinion nor its subsequent permanency plan orders demonstrate the requisite consideration of the FL § 5-525(f)(1) factors. As in *Rashawn H*., "[w]hatever the court had in mind, that is not a clear or sufficient explanation" for its decision to modify the permanency plan. *Id*. at 504.

Because the juvenile court here failed to demonstrate its consideration of all the factors in FL § 5-525(f)(1) in its permanency planning decision, we must vacate the court's permanency plan order and remand this case, without affirmance or reversal, for further proceedings consistent with this opinion.[7] Md. Rule 8-604.

[7] In their appellate brief, the J.s also argue that the court failed to demonstrate consideration of the mandatory factors in CJP § 3-823(h)(2) in modifying the permanency plan. Neither HCDSS's nor the children's appellate briefs acknowledge this argument. Although it appears that the court inferentially addressed these factors in its bench opinion and written orders, we note that it is best practice for the court to expressly demonstrate consideration of mandatory statutory factors. On remand, the court may make its consideration of these factors more explicit.

We also note that the permanency plan orders for all three children are substantively identical. On remand, the court should ensure that it evaluates the relevant statutory factors as to each child to the extent that a child's circumstances may be unique to his or her siblings.

PERMANENCY PLANNING ORDERS OF THE CIRCUIT COURT FOR CECIL COUNTY DATED NOVEMBER 7, 2019, VACATED AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY CECIL COUNTY.