Circuit Court for St. Mary's County
Case No. C-18-JV-19-000108

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1921

September Term, 2022

IN THE MATTER OF
G.M. AND S.M.

Kehoe,
Leahy,
Zic,

JJ.

Opinion by Zic, J.

Filed: July 6, 2023

* 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).

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

In October 2019, the two children (the "Children") of Mr. M. ("Father"), appellant, and Ms. R. ("Mother") were taken into the care and custody of the St. Mary's County Department of Social Services (the "St. Mary's Department"). The Children, G.M. and S.M., are now approximately eight and six years old, respectively. On October 25, 2019, Mother voluntarily dropped the Children off with Father, who was living with his mother in a residence that the St. Mary's Department did not deem suitable for minor children at the time. The St. Mary's Department, therefore, placed the Children in the care of nonrelatives, Mr. K.N. and Mrs. D.N. (the "N.s"). In December 2019, Mother unfortunately passed away. The Circuit Court for St. Mary's County continued to work on a permanency plan for the Children. On December 16, 2022, the court entered orders granting guardianship of the Children to the N.s. Father now appeals those decisions.

QUESTIONS PRESENTED

On appeal, Father presents two questions, which we have rephrased as follows:[1]

[1] Father phrases the questions as follows:

> 1. Did the Circuit Court abuse its discretion when it ordered that G.M. and S.M. be placed in the care and custody, or guardianship of third parties, Mr. and Mrs. N, and awarding the biological father, R.M., visits with the children despite R.M. mitigating the reason the children were taken into the care and custody of the Department of Social Services?
>
> 2. Did the Circuit Court violate R.M.'s constitutional right to parent G.M. and S.M. when it allowed the goalpost to be moved for what R.M. needed to do to be reunified with his children which led to custody of G.M. and S.M. to be given to non-relative third parties over the objection of the only biological parent the children have and without a finding of parental unfitness or exceptional circumstances?

1. Whether the circuit court abused its discretion when it ordered guardianship of G.M. and S.M. be granted to the N.s.

2. Whether the circuit court violated Father's constitutional right to parent G.M. and S.M. when it ordered guardianship of G.M. and S.M. be granted to the N.s.

For the reasons below, we affirm the judgment of the circuit court with respect to the first issue and hold that the second issue is unpreserved.

BACKGROUND

Mother and Father began dating in August 2013, and G.M. was born in February 2015. Prior to the involvement of the St. Mary's Department, the Charles County Department of Social Services ("CCDSS") entered into a safety plan with Mother and Father in 2015, when G.M. was an infant and prior to S.M.'s birth, because CCDSS had received reports of domestic violence and concerns about Mother's mental health and substance abuse. CCDSS placed G.M. in foster care in August 2015 after a physical altercation between Mother and Father; G.M. was reunified with Mother and Father in June 2017. S.M. was born in 2016.

The St. Mary's Department began an investigation in October 2019, when it received a report of Mother leaving the Children, then four and three years old, outside a motel room while she went in and out of the room with various men. The Children were wearing only shirts and diapers. At the time, Father was living with his parents ("Grandfather" and "Grandmother") and Mother was moving from hotel to hotel; Father told the St. Mary's Department that he was aware of the Children's living conditions but did not intervene at that time.

On October 25, 2019, Mother voluntarily dropped the Children off at Grandmother's house, where Father was living. Father's parents contacted CCDSS requesting that the Children be removed from the home because they could not be cared for in that home. On October 29, 2019, social workers from CCDSS visited the home and found that nine people and two large dogs, one of which was aggressive and had bitten people in the past, lived there: Grandfather, Grandmother, Father, the Children, Father's sister and her boyfriend, and the children of Father's sister. CCDSS reported that Father and the Children were sleeping together in the living room of the home. CCDSS also reported that the Children "were dirty, and [S.M.] was wearing a dirty diaper that appeared not to have been changed all day," and that "[t]he home was dirty."

Following the investigation by the St. Mary's Department, the Children were taken into the care of the St. Mary's Department on October 31, 2019, at which time the Circuit Court for St. Mary's County authorized shelter care. In December 2019, the court found both G.M. and S.M. to be a Child In Need of Assistance ("CINA"); Father did not dispute these findings. In the order placing the Children in the care of the St. Mary's Department because of their CINA status, the court found that the Children had "been neglected" and that the "circumstances which led to the removal of [the Children]" were (1) "Mother's lack of involvement," (2) the parents' "need for safe and stable housing," and (3) the parents' "need for parenting skills training." At that time, the Children were placed with a foster family, the N.s, in St. Mary's County. The court granted Father unsupervised visitation with the Children and ordered that he "obtain and maintain safe and stable housing." Unfortunately, in December 2019, soon after this order was issued,

Mother passed away.

Starting in January 2020, the court held multiple review hearings for the Children's permanency plan. From January 2020 to March 2021, the sole permanency plan for the Children was reunification with Father. Father lost his job at a bakery when the pandemic began in March 2020, and he struggled to find alternative employment. While unemployed and living with his parents, though, Father purchased a vehicle, obtained his personal trainer and weight loss certifications, and was receiving unemployment benefits. During this time, Father also had supervised visits with the Children; Ms. Kubina, a family therapist, was present for those visits and expressed concern about Father's ability to "focus on the [C]hildren and what is age appropriate for them, being able to show equal attention toward [each of the Children],[2] awareness of [G.M.'s] anxiety, and engaging in appropriate play." Father also attended individual therapy twice per month and began a six-week parenting program.

At the review hearing on January 27, 2021, the court acknowledged that Father was making efforts to obtain safe and stable housing, but it noted a "lack of urgency in [Father] obtaining housing and finding stable employment."[3] The permanency plan

[2] During a review hearing in August 2020, the circuit court found that, based on Ms. Kubina's reports, Father may not recognize "how he's parenting these two children differently based upon their gender or who they are and the level of aggression that he permits in one and not the other or the level of aggression he encourages in both children."

[3] We recognize that Father had difficulty obtaining other housing—including housing that the St. Mary's Department would have been able to assist him to obtain—because of his credit score, his previous assault conviction arising from domestic violence against Mother, and his unstable employment status.

remained reunification with Father, and the court ordered weekly unsupervised visits.

The next review hearing took place on March 31, 2021, at which point the Children had been in the care of the St. Mary's Department for 18 months. At this hearing, the St. Mary's Department and the attorney for the Children, Lauren Sharrock, expressed that two obstacles to reunification with Father still existed: (1) Father's continued residence in Grandmother's home, and (2) Father's parenting issues. After the hearing, the court added a concurrent permanency plan of custody and guardianship by a nonrelative—specifically, the N.s, with whom the Children had been living since October 2019. The court instructed Father to obtain a job "that provides for you and your children and to obtain housing for you and your children." The court also ordered that Father be allowed a two-hour weekly unsupervised visit with the Children but instructed the parties to return to court immediately if the Children began experiencing behavioral issues.

Because the Children soon began to exhibit aggressive behavior after their unsupervised visits with Father, the St. Mary's Department and Ms. Sharrock requested that the visits go back to being supervised, even though the parties did not believe that Father was intentionally harming the Children. Accordingly, the court ordered Father's visits to be supervised by Father's parenting program. The permanency plan remained reunification with the concurrent plan of custody and guardianship by the N.s.

In June 2021, Father began renting an apartment, but by February 2022, Father

could no longer afford the apartment and moved back in with Grandmother.[4]

On July 21, 2021, the court held another permanency plan review hearing, after which the magistrate recommended that the court award custody and guardianship to the N.s, with visitation to Father; the circuit court adopted these recommendations. Father filed exceptions, however, and the court vacated the order and held a de novo exceptions hearing on March 16 and April 29, 2022. The court returned the Children's sole permanency plan to reunification, while providing "services to [Father] to give him the opportunity to reengage with his children in an appropriate manner," because of the court's concerns about the effects of the pandemic on Father's efforts to achieve reunification.

In February 2022, when Father had moved back in with Grandmother, Grandmother decided that she was now willing to allow the Children to live in her home because her daughter, son-in-law, and their children had moved out. The St. Mary's Department assessed the home, however, and determined that it was unsuitable for the Children to visit.[5] The St. Mary's Department identified the changes Father needed to make to bring the home up to appropriate standards for the Children to visit and/or live

[4] Father lived only with Grandmother at this time; Grandfather had recently died, and the other family members had moved out.

[5] The social worker testified, in part, that there was only one bed for the Children, "the house was unsafe"—it had a hole in the ceiling and had exposed wiring, for example—there were "animal feces on the floor," there was mold in the kitchen, and there was animal hair "caked on to the side of the walls and on the floor." She also testified that the single bed was only one of many problems, so the St. Mary's Department did not provide an extra bed as they routinely do if that provision would bring the home up to satisfactory standards.

there. The St. Mary's Department conducted another inspection in March 2022 but found that the home was similarly unsuitable for the Children to visit. The St. Mary's Department assessed the home again in June 2022, and on August 9, 2022, it was cleared for the Children to visit. It did not, however, satisfy the "safe-and-stable" housing requirement because Grandmother had evicted Father and G.M. in the past and had refused, since October 2019, to allow the Children to live there; the St. Mary's Department also expressed concerns that the home would return to its unsuitable conditions if the St. Mary's Department was no longer conducting inspections of the home.

On September 14, 2022, the circuit court held a review hearing before a magistrate, who did not change the permanency plan but set the case for a contested hearing before a judge. This contested hearing was held on November 14 and 15, 2022, during which the circuit court heard the testimony of various witnesses and accepted other evidence. At this hearing, Father requested that the permanency plan remain reunification with him. The St. Mary's Department and Ms. Sharrock requested that the court award custody and guardianship to the N.s., close the Children's CINA cases, and order "some appropriate form of visitation" for Father. The circuit court issued a written decision and order for each child, awarding custody and guardianship of the Children to the N.s and ordering that Father's visits transition from supervised to unsupervised by June 1, 2023. Father filed this timely appeal.

STANDARD OF REVIEW

Appellate review of a juvenile court's decision involves three interrelated standards: (1) a clearly erroneous standard for assessing the court's factual findings; (2) a de novo standard for matters of law; and (3) an abuse of discretion standard when reviewing the court's ultimate decision. *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 47 (2019). "[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)). Because Father's appeal relates only to the court's ultimate custody and guardianship decision, the deferential abuse of discretion standard applies. *See In re M.*, 251 Md. App. 86, 111-12 (2021).

DISCUSSION

A CINA is defined in § 3-801(f) of the Courts and Judicial Proceedings Article in the Maryland Code as

> a child who requires court intervention because
>
> (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and
>
> (2) The child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs.

In this case, the circuit court intervened and found G.M. and S.M. to be CINA on December 2, 2019. The court found that the Children had been neglected, and the circumstances that led to the removal of the Children were (1) "Mother's lack of

involvement," (2) "Parents[']s need for safe and stable housing," and (3) "Parents[']s need for parenting skills training . . . ." Father did not challenge these CINA findings.

Once a court makes a CINA finding, it must either maintain the child's current custody status or commit the child to the custody of a parent, a relative, or other appropriate individual, a local department, or the Maryland Department of Health. Cts. & Jud. Proc. § 3-819(b)(1)(iii). The Family Law Article contains "provisions concerning out-of-home placement and foster care." *In re Ashley S.*, 431 Md. 678, 685 (2013); *see* Md. Code Ann., Fam. Law §§ 5-524–5-534. The purpose of CINA proceedings is "[t]o provide for the care, protection, safety, and mental and physical development of [the] child." Cts. & Jud. Proc. § 3-802(a)(1). CINA proceedings were created "[t]o conserve and strengthen the child's family ties and to separate a child from the child's parents only when necessary for the child's welfare." Cts. & Jud. Proc. § 3-802(a)(3).

Once a child is found CINA and is committed to a local department for out-of-home placement, the court must "hold a permanency planning hearing" within 11 months "to determine the permanency plan for a child." Cts. & Jud. Proc. § 3-823(b)(1). "Every reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement." Cts. & Jud. Proc. § 3-823(h)(4). At the time of the contested hearing, the Children had been in State care for over three years.

The circuit court's authority and obligations concerning development of a permanency plan in CINA cases are set forth in § 3-823(e) of the Courts and Judicial Proceedings Article:

> (1) At a permanency planning hearing, the court shall:
>
> (i) Determine the child's permanency plan, which, to the extent consistent with the best interests of the child, may be, in descending order of priority:
>
> 1. Reunification with the parent or guardian;
>
> 2. Placement with a relative for:
>
> A. Adoption; or
>
> B. Custody and guardianship under § 3-819.2 of this subtitle;
>
> 3. Adoption by a nonrelative;
>
> 4. Custody and guardianship by a nonrelative under § 3-819.2 of this subtitle;

Also, Family Law § 5-525(f)(1) requires the St. Mary's Department and the court to consider the following six factors when developing a permanency plan for a child in an out-of-home placement:

> (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.

As with all custody determinations in Maryland, the primary goal of permanency planning in CINA cases is to serve the best interests of the child. *See Conover v. Conover*, 450 Md. 51, 54 (2016) ("The primary goal of [child] access determinations in Maryland is to serve the best interests of the child.") (citation omitted); *Taylor v. Taylor*, 306 Md. 290, 303 (1986) ("In any child custody case, the paramount concern is the best interest of the child."); *Ross v. Hoffman*, 280 Md. 172, 174-75 (1977) ("This best interest standard is firmly entrenched in Maryland and is deemed to be of transcendent importance."). When courts make these determinations, "[t]he best interest of the child is not considered as one of many factors, but as the objective to which virtually all other factors speak." *Taylor*, 306 Md. at 303. A court, therefore, should change a child's permanency plan when it is in the child's best interest to do so. *In re Ashley S.*, 431 Md. at 686-87.

Before granting custody and guardianship, circuit courts must also consider the following:

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

Cts. & Jud. Proc. § 3-819.2(f)(1)

In this appeal, Father challenges the circuit court's decision to grant custody and guardianship of the Children to the N.s.

I. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION WHEN IT GRANTED CUSTODY AND GUARDIANSHIP OF THE CHILDREN TO THE N.S.

Father argues that the circuit court erred in granting guardianship of the Children to the N.s. He maintains that the Children were declared CINA based on Mother's conduct and argues that there was "no credible testimony that [Father] was unable or unwilling to give the [C]hildren proper care and attention." Father asserts that the obstacle blocking reunification was initially that he did not have "a suitable home for the [C]hildren" but has changed to Father's "self-involvement that gets in the way of him not only being an effective parent but even in the way of him ensuring the [C]hildren's safety in fairly basic ways." Father concludes by stating that he secured an apartment and that there is "no suggestion or evidence that [Father] ever physically abused the [C]hildren."

Ms. Sharrock, on behalf of the Children, argues that the circuit court's decision to grant custody and guardianship to the N.s, while maintaining Father's participation in the Children's lives, was in the Children's best interests. Ms. Sharrock reasons that the circuit court evaluated the proper statutory factors, and she identifies ongoing concerns about Father's ability to provide suitable housing and to address the Children's emotional needs. Ms. Sharrock acknowledges that the Children love Father but notes that the circuit court found the Children "appeared to have a stronger bond with their foster family." She argues that it is in the Children's emotional, developmental, and educational best interests

to remain with the N.s, which is supported by the evidence the circuit court reviewed. Ms. Sharrock emphasizes the court's role in executing timely permanency planning in CINA cases, stating that the Children had been in the State's care for over three years at the time of the contested hearing.

Similarly, the St. Mary's Department argues that the circuit court acted within its broad discretion and in the Children's best interests by awarding custody and guardianship to the N.s. First, the St. Mary's Department argues that the circuit court properly evaluated the statutory factors, and the factors weighed in favor of custody and guardianship to the N.s. Second, the St. Mary's Department argues that, even after three years, Father had not successfully completed the two main tasks required of him: to obtain and maintain safe and stable housing and to implement appropriate parenting skills. The St. Mary's Department maintains that the circuit court's action in this case was authorized pursuant to the CINA finding, "the award of custody and guardianship in a CINA case does not involve either termination of parental rights or adoption," and Father still has visitation rights with the Children.

In reaching its decision to award custody to the N.s, the court made findings with respect to all six of the factors set forth in Family Law § 5-525(f)(1) for each child. Because Father did not challenge the circuit court's factual findings, this Court takes the facts as the circuit court found them and only evaluates whether the circuit court's decision was an abuse of discretion in light of those facts.

The circuit court first reviewed "the child's ability to be safe and healthy in the home of the child's parent." Fam. Law § 5-525(f)(1)(i). When natural parents do not

show the ability to improve their situation, this Court finds that this factor weighs against reunification with the parents and in favor of an alternate permanent placement. *In re Shirley B.*, 419 Md. 1, 33-34 (2011) (upholding the circuit court's change to the children's permanency plan from reunification to adoption, stating that mother had been cooperative with the DSS but her "inability to improve her situation, arguably through no fault of her own, left the [c]hildren 'languishing in foster care drift' for 28 months, with no end in sight"); *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 490 (2007) ("The State is not required to allow children to . . . grow up in permanent chaos and instability . . . because their parents, even with reasonable assistance from DSS, continue to exhibit an inability or unwillingness to provide minimally acceptable shelter, sustenance, and support for them.").

In this case, from the time that the Children entered the care of the St. Mary's Department to the time of the contested hearing, Father lived primarily with his parents in a home that the St. Mary's Department repeatedly deemed unsuitable for the Children to visit or live in. Starting in June 2021, Father briefly lived in an apartment where the Children could visit, but he could not afford to live in the apartment beyond February 2022. In August 2022, the St. Mary's Department deemed Grandmother's house, where Father lived, suitable for the Children to visit but not suitable for overnight visits. Also, although Grandmother expressed, in November 2022, a willingness to allow the Children to live in her house, she had previously repeatedly told the St. Mary's Department that the Children could not live with her and that she was unable to care for them. In 2015, when G.M. was an infant, Grandmother even evicted Father, Mother, and G.M.

Beyond Father's living situation, the St. Mary's Department also noted that when the Children first came into care from Grandmother's house, they were behind on vaccinations and their speech was extremely delayed. The St. Mary's Department has expressed ongoing concerns about Father's financial stability and ability to provide a safe and healthy home and lifestyle for the Children.

The circuit court made the following findings with respect to the first factor:

> Father has made plans for [G.M.] and [S.M.] to reside with him in the home where the lack of adequate and safe accommodations prompted the filing of the Petition in this matter and the [C]hildren's entry into care. The only persons who would reside in the home are [G.M.], [S.M.], Father and [] Grandmother.

The court also found that "Father's housing has become stabilized," and Father "corrected deficiencies" related to his housing situation.[6]

The circuit court then considered the second and third factors, which we will discuss in tandem. The second factor requires consideration of children's attachment and emotional ties to their natural parents and siblings. Fam. Law § 5-525(f)(1)(ii). The third factor requires consideration of children's attachment and emotional ties to their current caregiver and the caregiver's family. Fam. Law § 5-525(f)(1)(iii). In *In re Adoption/Guardianship of Cadence B.*, the Supreme Court of Maryland[7] found that a

[6] As stated above, despite Grandmother's home meeting the standards of the St. Mary's Department at the time of the contested hearing, the St. Mary's Department expressed concerns that the home would return to its unsuitable conditions if inspections ceased.

[7] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the

child had a stronger attachment to the caregiver than to the father and that the father was "more in the position of a beloved uncle . . . than a father." 417 Md. 146, 162 (2010). The Court found that the caregiver had provided the child a safe, stable, and loving home that Father was unable to provide, and the child had "clearly bonded to the family." *Id.* Even when children have an attachment to a natural parent, their best interests may be served by continuing to live with a nonrelative. *See In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 100 (2013).

Here, the circuit court found the following with respect to G.M.'s attachment to Father:

> [G.M.]'s attachment and emotional ties to Father are best determined examined together with his attachment and emotional ties to the [N.s]. [G.M.] is attached to Father and does not want to disappoint Father; while efforts were made to persuade the [c]ourt that Father is someone to whom [G.M.] and [S.M.] look for fun, the explanation most logically follows from the fact that Father's opportunity has been to make the best of the relatively limited time that he has with the two children. Nevertheless, [for] [G.M.], the attachment and bond with Father are not as strong as they are with the [N.s].

The court made identical findings on this factor for S.M.

As for G.M.'s attachment to the N.s, the court found the following:

> [G.M.] has a strong emotional tie with the [N.s] and their family. He refers to them as "Mom" and "Dad", representing [G.M.]'s acceptance of them as parents. Father has not been

Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .").

> in a position to parent [G.M.] and be available to meet [G.M.]'s daily needs. The [N.s] have had that opportunity as a result of [G.M.]'s placement with them. As a consequence, [G.M.] has an attachment with the [N.s] characterized by turning to them to meet and attend to his emotional and physical needs. The [N.s] have also had an opportunity to incorporate him into their family. [G.M.] relates to the [N.s'] children as siblings. The strength of the attachment is captured by [G.M.]'s desire to be a "full [N.]"

The court made identical findings on this factor for S.M. The court also stated, "[G.M.] shared with Father that desire [to be a 'full [N.]'] but retracted it during the [therapy] session at which he and [S.M.] were to share their wishes." Similarly, the court stated, "S.M. shared with Father her desire to be adopted by the [N.s] and held fast to that preference."

The court also found that Father dutifully attended scheduled visitation times with the Children but did not attend most of the Children's school activities and therapy appointments. Between late May and November 5, 2022, the Children had over 60 activities and appointments; the N.s notified Father of each within 48 hours of learning of the event, which they had arranged around Father's schedule to the extent possible. Father acknowledged receiving notice for 55 events, but he only attended five. The N.s, however, scheduled and attended all activities.

The court further found that "[o]bservations of disparate treatment or parenting perceived to be a favoring of [S.M.] has caused concern to the [C]hildren's therapist, particularly how the treatment has affected [G.M.]." The court also noted, though, that "there has been no suggestion that Father has ever been physically abusive" to the Children.

Additionally, with respect to Father's interactions with and parenting of the Children during visitation hours, the court found that the "initial completion of a parenting class . . . caused a recommendation . . . for Booster Sessions to help coach Father and strengthen his bond with [G.M.] and [S.M.]." After Father participated in those sessions, "it was recommended that [he] continue family therapy sessions with [G.M.] and [S.M.] to assist in bonding and attachment." The court stated that, at that time, it was recommended that "Father's visits continue to be supervised to ensure that the [C]hildren's needs are being met" and that this recommendation was "related to Father's capacity to avoid distractions that diverted his attention from the [C]hildren."

The St. Mary's Department presented evidence that Father often became distracted while with the Children and often turned conversations to his own interests rather than those of the Children. For example, on one occasion, when G.M. tried to talk about what he had done in gym class, Father cut him off and started talking about Father's workout regimen. On another occasion, during a family therapy session, G.M. tried to show Father a medal he received, and Father replied, "Oh yeah? Well I have 20 medals." Ms. Evick, the social worker who supervised visitation between Father and the Children, testified that she had spoken to Father about listening to the Children and allowing them to talk but that Father still interrupts Children "[a]lmost the entire visit of every visit." The St. Mary's Department also presented testimony that Father had once walked off without G.M. in a crowded parking lot and would regularly not pay attention to the Children when they were at a playground.

For the fourth factor, the court considered the length of time the Children had resided with the N.s. Fam. Law § 5-525(f)(1)(iv). This Court considers the length of time children have resided with their current caregivers in relation to their age. *See In re Adoption/Guardianship of Jayden G.*, 433 Md. at 63-64 (finding that the fact that the five-year-old child had spent two thirds of his life with foster parents was an important factor in concluding that it was in his best interest for the foster parents to adopt him); *In re Adoption/Guardianship of Cadence B.*, 417 Md. at 161 (finding that the length of time the child had resided with the current caregiver was a critical factor because the child had spent more than half of her life in the home of the current caregiver). Here, the circuit court found that, at the time of the contested hearing, G.M. and S.M. had continuously resided with the N.s for over 3 years, and G.M. was 7 years and 10 months old and S.M. was 5 years and 5 months old. G.M., therefore, had resided with the N.s for nearly half of his life, and S.M. had resided with the N.s for more than half of her life.

The court then considered the fifth factor, "the potential emotional, developmental, and educational harm to the child if moved from the child's current placement." Fam. Law § 5-525(f)(1)(v). Separating children from their current placement may pose harm to the children when the current family is "the stability that [they] know[]." *In re Adoption/Guardianship of Cadence B.*, 417 Md. at 162-63 (finding that "separating [the child] from [her current caregivers] would be traumatic and detrimental to her well-being because that family is the stability that she knows" (internal quotation marks omitted)).

Here, in the matter of G.M., the circuit court found that:

> [G.M.] requires continued access to therapy; Father's willingness to ensure that [G.M.] attends therapy and other appointments is questionable based on his minimal attendance at appointments of which he was given notice by the [N.s]. Father's willingness is also questionable since he does not trust [G.M.]'s therapist and has, effectively, cut off meaningful information and guidance to help ensure [G.M.]'s emotional well-being. [G.M.] will be without support to access therapy to continue to work on his anxieties, trauma related to losing his mother and losing the most extended supportive environment he has known.
>
> Father credibly testified that he does not want [G.M.] or [S.M.] to have contact with the [N.s] if they are reunited with him. An abrupt cut-off of contact would be emotionally harmful to [G.M.] and [S.M.] as a sacrifice for Father's personal offense at language directed at him by Ms. [N.].

The court made identical findings on this factor for S.M.

Finally, the court made findings with respect to the sixth factor, "the potential harm to the child by remaining in State custody for an excessive period of time." Fam. Law § 5-525(f)(1)(vi). In Maryland, "[e]very reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement." Cts. & Jud. Proc. § 3-823(h)(4). "It is an integral part of 'the statutory scheme designed to expedite the movement of Maryland's children from foster care to [a] permanent living, and hopefully, family arrangement.'" *In re Ashley S.*, 431 Md. at 686 (quoting *In re Damon M.*, 362 Md. 429, 436 (2001)).

In the matter of G.M., the circuit court found that:

> [G.M.] is 7 years and 10 months old. In this matter, [G.M.] has been continuously in care since October l9, 2019, when he was 4 years and 8 months old – three years. He was

> previously in care for 21 months. Most of his young life has been in State care.

In the matter of S.M., the circuit court found that:

> [S.M.] is 6 years and 5 months old. [S.M.] has been continuously in care since October 19, 2019, when she was 2 years and 3 months old – three years. She has spent more than one-half of her life in State care.

The court further found the following with respect to G.M. and made identical findings as to S.M.:

> [G.M.] has already been in State care for an excessive period of time. His time in care has extended long beyond the period during which reunification or other permanency should reasonably have been achieved. [G.M.] is aware of his status, especially the uncertainty of whether he will continue to be a member of the [N.] household or have to leave to be with Father. Further prolonging his time in care is not warranted.

The court also noted that custody and guardianship to the N.s was "immediately achievable."

In its consideration of the statutory factors, the circuit court was required to seek a result that would serve the Children's best interests. Cts. & Jud. Proc. § 3-823(e)(1)(i). After making findings as to all six factors, and making "Additional Findings," the court found that the Children have a strong attachment to Father but that the totality of the circumstances, in light of all the factors it considered, weighed in favor of awarding guardianship of the Children to the N.s. We conclude that this decision was supported by the evidence and was not an abuse of the circuit court's discretion. Accordingly, we affirm the judgment of the circuit court awarding guardianship of G.M. and S.M. to the N.s.

II. WE DECLINE TO ADDRESS THE ISSUE OF FATHER'S CONSTITUTIONAL RIGHT TO PARENT BECAUSE IT IS NOT PRESERVED FOR APPELLATE REVIEW AND FATHER'S APPELLATE BRIEFING IS INSUFFICIENT ON THIS ISSUE.

We initially address the issue of preservation. "Ordinarily[,] appellate courts will not address claims of error which have not been raised and decided in the trial court." *State v. Hutchinson*, 287 Md. 198, 202 (1980). According to Maryland Rule 2-517, which governs the method of making objections in a civil matter, a contemporaneous objection is required to preserve an issue for appeal. *Halloran v. Montgomery Cnty. Dep't of Pub. Works*, 185 Md. App. 171, 202 (2009) (noting that "unless a [party] makes timely objections in the lower court or makes his feelings known to that court, he will be considered to have waived them and he can not now raise such objections on appeal") (quoting *Caviness v. State*, 244 Md. 575, 578 (1966)). This principle applies to constitutional issues just as it applies to other issues. *See Hess v. Indiana*, 414 U.S. 105, 106 n.2 (1973) (finding constitutional argument preserved because party "moved to quash the affidavit for disorderly conduct in the City Court on the constitutional grounds that he is asserting in this Court").

Father phrases his second question presented, in part, as follows: "Did the Circuit Court violate [Father]'s constitutional right to parent G.M. and S.M. when it *allowed the goalpost to be moved* for what [Father] needed to do to be reunified with his children . . . ?"[8] In his appellate brief's Statement of the Case, Father cites to the portion of a

[8] We briefly note that the award of guardianship to a third party in a CINA case does not automatically terminate parental rights; courts must apply a different statute and standard than they apply in custody or guardianship determinations before entering an

hearing transcript where the trial judge uses the term "goalpost":

> [Court]: I don't want you to feel like you've done all these things and it's never enough and that they keep moving, you know, the goalpost and that's not my intention to keep moving the goalpost. But if I have to identify where the goalpost is, I need as much as information for me to determine what that goalpost is, okay.

The following exchange then occurred:

> [Father]: Honest sir, you know, if I may speak about the assessment --
>
> [Court]: Sure.
>
> [Father]: -- personally, like in my profession in my studies and everything like that, assessments is a part of what I do and I fully understand why assessments are warranted. I fully welcome assessments.
>
> [Court]: All right.
>
> [Father]: I love assessments.
>
> [Court]: All right, thank you.
> Okay. All right, anything else from anyone?

Because no one responded to this question, the judge moved forward with the proceedings. Father's counsel did not raise an objection or argument based on Father's constitutional rights at this time. Father's counsel later had another opportunity to address the court with respect to the change of plan at issue in that hearing, but she also

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order that terminates parental rights. *See In re Adoption/Guardianship of H.W.*, 460 Md. 201, 205, 211-13, 217-19 (2018) (discussing children in need of assistance and the proper statute and standard a court must apply when determining whether to terminate parental rights, which is different than the standard applied when awarding guardianship); *In re Adoption of Victor A.*, 157 Md. App. 412, 424-29 (2004) (same). In this case, the court did not terminate Father's parental rights.

did not raise a constitutional argument at that time. Because Father did not raise a constitutional argument during the proceedings in circuit court, the issue of his constitutional right to parent is not preserved for appellate review.

Additionally, Maryland Rule 8-504(a)(6) requires that an appellate brief contain "[a]rgument in support of the party's position on each issue." In support of his argument that the circuit court violated his constitutional right to parent, Father's brief contains the following:

> [T]he 14th Amendment of the United States Constitution by way of the Due Process Clause protects [Father's] right to life, liberty, and the pursuit of happiness, which includes the raising of his children. The U.S. Supreme Court held in *Meyer v. Nebraska*, 262 U.S. 390 (1923) and *Troxel v. Granville*, 530 U.S. 57 (2000) that a parent has a fundamental liberty interest to provide for the care and custody of their children, to the exclusion of others. This right is not absolute when the State is called to protect the health, safety, and welfare of minor children. In assessing what to do when the State by way of the court must act for the child, it must consider the best interest of the child.

Father's brief goes on to argue that the circuit court abused its discretion, not that it violated his constitutional right to parent. It is our understanding, therefore, that Father includes no further argument on the constitutional issue beyond the above-quoted paragraph.

In this paragraph addressing the right to parent, Father broadly cites two cases from the United States Supreme Court that generally support his proposition that the United States Constitution provides for this right. He does not further expound on this proposition or apply it to the present case. We note that *Meyer* explains that the Due

Process Clause in the Fourteenth Amendment "denotes not merely freedom from bodily restraint but also the right of the individual to . . . establish a home and bring up children . . . according to the dictates of his own conscience." 262 U.S. at 399. *Meyer* addressed the issue of a parent's right to choose with regard to a child's education. *Id.* at 400-01. The other cited case, *Troxel*, addressed a parent's right to rear children with respect to third-party visitation—in that case, grandparent visitation pursuant to a state statute. 530 U.S. at 60, 66-67.

Father does not explain how either of these cases or any facts in the record before us support a finding by this Court that the circuit court violated his constitutional right to parent. We conclude, therefore, that Father's argument on this issue is insufficient under the Maryland Rules. Also, with respect to CINA, custody, and guardianship proceedings, circuit courts are required to seek the best interest of the child; the relevant 'goalpost,' therefore, in such proceedings is the best interest of the child. Because the constitutional issue is not preserved for appellate review and Father's appellate briefing on the issue is insufficient, we decline to further address the matter.

As explained above, we affirm the circuit court's judgment on the basis that the circuit court did not abuse its discretion by awarding guardianship of the Children to the N.s.

JUDGMENT OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.