Circuit Court for Kent County
Petition Nos. C-14-JV-17-000011 and C-14-JV-17-000012

CHILD ACCESS

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1927

September Term, 2019

IN RE: A.W. AND A.W.

Leahy,
Shaw Geter,
Wells,

JJ.

Opinion by Leahy, J.

Filed: July 6, 2020

The child at the center of this case, A'r., was declared a Child in Need of Assistance ("CINA")[1] in 2017 along with his brother, A. Appellant, Ms. G. (or "Mother") is the mother of both children.[2] She appeals from the order of the Circuit Court for Kent County, sitting as a juvenile court, that changed A'r.'s primary permanency plan from legal guardianship with a nonrelative to adoption by a nonrelative, and ordered that Ms. G.'s visitation with A'r. occur at the sole discretion of the appellee, Kent County Department of Social Services ("Department"). Ms. G. presents three questions for our review,[3] which we recast and consolidate into the following two questions:

I. Did the juvenile court abuse its discretion when it changed A'r.'s primary permanency plan to adoption by a nonrelative and declined to reinstate

[1] A CINA is a child who "requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has mental disorder; and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Maryland Code, (1973, 2013 Repl. Vol., 2019 Supp.), Courts and Judicial Proceedings Article, § 3-801(f).

[2] Mr. W., father to A'r. and A., chose not to be a resource for the children, did not participate in the CINA proceedings, and is not a party to this appeal.

[3] Ms. G. phrased her questions presented as follows:

"1. Did the juvenile court abuse its discretion when it changed A'r.'s primary permanency plan to adoption by a nonrelative from legal guardianship with a nonrelative?

2. Did the juvenile court abuse its discretion with it refused to reinstate reunification with mother as either a primary or concurrent permanency plan for A'r.?

3. Did the juvenile court err when it ordered that mother's visits with A'r. were at the sole discretion of the Kent County Department of Social Services?"

reunification with Ms. G. as either a primary or concurrent permanency plan for A'r.?

II. Did the juvenile court err when it allowed the Department to set visitation between A'r. and Ms. G. at its discretion?

We hold that the juvenile court applied the proper standard and did not abuse its discretion when it changed A'r.'s permanency plan to adoption by a nonrelative. Conversely, we hold that the juvenile court erred by allowing the Department to set visitation solely at its discretion without providing any terms for visitation. Accordingly, we affirm, in part, and vacate, in part, the judgment of the juvenile court and remand for further proceedings.

BACKGROUND[4]

Ms. G. and Mr. W. are the parents of two minor children, A'r., born in November 2012, and A., born in August 2008. Ms. G. was born in 1972 and graduated from high school in 1991. Ms. G has "denied having any behavioral problems in school but [] admitted to having many behavioral problems outside of school." On or about 1991, Ms. G. was incarcerated for ten years for attempted murder, attempted maiming, assault and battery, and reckless endangerment. Ms. G was released from prison in April of 2001 and began using cocaine. Since March 19, 2017 (according to the record in the CINA case), Ms. G. periodically stopped and then resumed cocaine use.

[4] We dismiss Mother's appeal as to A., as both the Department and Ms. G. acknowledge that the issue of A.'s custody has become moot. Accordingly, our background facts focus on A'r.

The Department's Initial Involvement

On March 19, 2017, the Department received a call that Ms. G. was "lying in the street wanting to hurt herself." The police and an on-call child protective services worker arrived and learned that Mother had a concern that A'r. had suffered certain abuse, the facts about which are sealed. The Department provided support and services through its investigative response. These services included neurofeedback therapy services for Ms. G., although she did not follow through in participating. A'r. obtained a court-appointed special advocate ("CASA").[5]

During its investigation of the March 19 incident, the Department received a report that Ms. G. was not administering A. his prescribed medication for attention deficit hyperactivity disorder ("ADHD"). As a result, A. exhibited some troublesome behavior at school. "This mismanagement of medications by Ms. G[.] [] caused A[.] to be removed from [the] main classroom to an isolated classroom with a one-on-one teacher." The Department's investigator, Dawn Young, went to Ms. G.'s home on April 6, 2017, to interview her about A.'s behavior and an allegation that she had beaten A. with a belt and an electrical cord.

Ms. Young found that two of A.'s ADHD medicine bottles were full, and the pharmacy records indicated those medications had not been refilled since January 27, 2017.

[5] A court may appoint a CASA volunteer to "(i) [p]rovide the court with background information to aid it in making decisions in the child's best interest; and (ii) to [e]nsure that the child is provided appropriate case planning and services." Maryland Code, (1973, 2013 Repl. Vol., 2019 Supp.), Courts and Judicial Proceedings Article, § 3-830(a).

The third bottle—a central nervous system ("CNS") stimulant with a "high potential for abuse"—had thirteen pills missing when Ms. Young examined the bottle on April 6. Ten pills were unaccounted for weeks later on May 4 when Ms. Young returned to check on the medication. Ms. G. later claimed that she gave A. up to three CNS stimulant pills a day—despite that A. was only prescribed to take one pill in the morning—because she did "not know how else to control [A.'s] behaviors." Ms. G. refused to submit to substance abuse testing to determine if she was abusing the drug or other illicit substances.

Ms. G. denied using the belt to hit the children—only to threaten them when they were not listening. A'r. indicated that Ms. G. hit A., but not A'r., with the belt.

On the night of June 7, 2017 until the early morning of June 8, 2017, Ms. G. left then four-year-old A'r. and eight-year-old A. unattended and alone in their apartment. Ms. G did not return until after the police were called and had arrived at the apartment complex. Prior efforts by the Department to address concerns that Ms. G. was leaving the children unattended were unsuccessful. A'r. and A. were taken into emergency custody by the Department.

On June 26, Ms. G. fled on foot while an arrest warrant was being served for the neglect of her children in relation to the June 7 incident. She was arrested and released on an unsecured bond that same day.

Shelter Care Adjudication

The Department filed a petition for continued shelter care on June 9, 2017. The petition averred that "an investigation is now being made to determine whether a Juvenile Petition should be filed;" that A'r. should remain in shelter care "to protect the child or the

person and property of others;" and that "there appeared to be no parent, guardian, custodian or other person able to provide supervision and care for the child and return the child to Court when required." In an order dated, June 14, 2017, the circuit court, sitting as a juvenile court, ordered that the Department retain A'r. pending a June 19 hearing.[6]

At the hearing, the juvenile court continued shelter care for A'r. and ordered a CINA adjudicatory hearing.[7] In a written order entered June 26, 2017, the juvenile court memorialized the following findings in support of its ruling:

> The [c]ourt has admitted the Report prepared by the Department into evidence, has considered the Report, and finds that the facts of the Report as supplemented by the testimony of the Department's witnesses are the facts of the case. The [c]ourt finds that the testimony of the Department's caseworkers is credible. Prior to removal, [A. and A'r.] were in the custody of [Mother]. On March 27, 2017, a final protective order was entered by the Circuit Court for Kent County granting custody of [A. and A'r.] to the Mother] and order [Mr. W.] to stay away from [A'r.'s] home and school. The Department has provided multiple services to [A'r.'s] family. The Mother has been unable to account for [A.'s] medication. On multiple occasions, pills were missing or otherwise unaccounted. The Department recommended that medication be dispensed by the school, but this did not occur because of the Mother's actions. The Mother appears to have both mental health and substance abuse issues. The Department paid for ten sessions of neurofeedback that the Mother agreed to attend. Despite the fact that the Department paid for these sessions and offered transportation, the Mother refused to go. The Mother, on five different occasions, refused substance abuse screening. The Department held two Family Involvement Meetings in an effort to avoid the need for removal. On the late night of June 7, 2017 and the early morning of June 8, 2017, the Mother left [A. and A'r.] unattended in their apartment. The Mother departed from the apartment complex and did not return until after the police were called and arrived on the scene. The four and eight year old siblings were placed at a substantial risk of harm by being left alone at their apartment for multiple hours. The Department had

[6] The transcript from the June 19, 2017 hearing was not included in the record.

[7] The juvenile court initially scheduled the hearing for July 6, 2017, and postponed the hearing to August 3, 2017.

> previously attempted to address concerns with the Mother that she had left the children unattended on prior occasions; however, the Mother denied that she had done so. . . . [A'r.'s] attorney is in support of continued shelter care. It is in the best interest of [A'r.] to be in continued shelter care.

CINA Proceedings

On July 3, 2017, the Department filed a petition alleging that A'r. is a "child in need of assistance." At the adjudication hearing on August 3, 2017, the parties "stipulate[d] and submit[ted] the facts contained in the Shelter Care Order from June 19, [2017]." The parties also submitted that the factual findings from the order "were sufficient to sustain the allegations contained in the CINA Petition." The parties requested that the juvenile court continue the disposition phase of the CINA proceeding and have a hearing on a separate date.

On August 7, 2017, the juvenile court issued a written order, finding that the "allegations in the CINA petition have been proven by a preponderance of the evidence" and sustaining the facts set forth in the June 26, 2017 shelter care order. The court found good cause to delay the disposition hearing to a subsequent date to allow a licensed psychologist to conduct a psychological evaluation of Ms. G. and her parenting capacity.

The psychologist later reported, that, in addition to his concerns about Ms. G's anxiety disorder, other personality disorders, and the effects of drug abuse on her mental health, Ms. G's performance in certain parenting tests "suggests less than adequate knowledge of parenting presently and the need for intensive parenting education." The psychologist recommended that: Ms. G. complete a parenting course; undergo a substance abuse evaluation and complete random urinalysis throughout the remainder of her

involvement with the Department; engage in individual supportive psychotherapy; consult with a psychiatrist to evaluate medication to treat her symptoms; and apply for Supplemental Security Income, if she had not done so already.

October 11, 2017 Disposition Hearing

At the disposition hearing, lawyers representing the Department and Ms. G. requested that the juvenile court adopt the doctor's recommendations outlined in his psychological evaluation. The Department's counsel also reported that Ms. G. recently underwent two substance abuse screenings. Ms. G.'s screening on September 21, 2017 was positive for cocaine and marijuana, whereas her more recent screening on October 10 was negative. In addition, the Department referenced an Addendum, submitted before the hearing.

The Addendum recounted the Department's efforts to assist Ms. G., including transporting her to medical, mental health, and substance abuse appointments, as well as transporting her to job interviews and assisting with her housing search. The Addendum also related that the Department scheduled a Family Involvement Meeting because Ms. G.'s visits with A. and A'r. "were becoming a safety risk." Specifically, A. struggled with visits and would become "extremely anxious and decompensate[] throughout the day." The Department's counsel relayed at the hearing that, on one occasion, Ms. G. failed to demonstrate "proper parental conduct" and, ultimately, the "police had to be called." The Addendum noted that Ms. G. "continues to demonstrate that she loves her children and wants to do the right thing in providing care to them. However, since the last hearing, the [D]epartment still has great concern with Ms. G[.'s] mental health stability."

While the juvenile court admonished that "real effort [must be] made on the part of Ms. G[.] before this [c]ourt is convinced that she's an appropriate parent," the court continued the plan of reunification. The court also found that A. and A'r. were CINA, established the Addendum "to be the facts of the case," and adopted the psychologist's recommendations. The court then set the matter for a three-month review hearing.

January 10, 2018 Final Disposition and Review Hearing[8]

On December 22, 2017, the Department filed a report ahead of the January hearing. A'r. was five years old and had started pre-kindergarten. The Department reported that visitation with Ms. G., previously three times a week, was altered to once a week "until Ms. G[.] is able to show stability and consistency in her substance abuse treatment." The report noted that A'r. was having behavioral issues in pre-kindergarten, and the school assigned an aid to provide one-to-one assistance. A'r.'s negative behaviors decreased with the assistance of the one-to-one attention.

The Department also reported that Ms. G. was "incarcerated at Kent County Detention Center following her criminal charges due to leaving the children at home alone on June 7, 2017." The Department explained:

> Ms. G[.] was ordered to serve 30 days by doing 15 weekends. However, when Ms. G[.] reported to the Detention Center on 12/8/17 she did not have a clean urinalysis and was ordered to serve her 30 days straight. Ms. G[.] was offered to serve her time and complete treatment at Mountain Manor treatment center in Emmitsburg, MD however, denied [sic]. Visitation with her children was offered and declined.

[8] Because there was confusion over whether the October 11 disposition hearing was a complete disposition hearing and whether a written order was generated from that hearing, the juvenile court and the parties treated the January 2018 hearing as the final disposition hearing.

The report indicated, however, that Ms. G. planned to resume services for mental health and substance abuse with Community Behavioral Health upon her release from incarceration. On January 5, 2018, Community Behavioral Health filed a letter before the January hearing. In the letter, a licensed clinical professional counselor related that Ms. G. had "requested to participate in intensive substance abuse and mental health services" and had an "urgent urge to do something" about her drug/alcohol use. Specifically**,** the counselor explained, Ms. G. "has a desire to change her lifestyle to build a family for her children. Ms. G[.] doesn't want her children being raised in a home without support. **This is a major concern for Ms. G[.].**" (Emphasis in original.) Ms. G tested negative for illicit drugs twice in the last week of December 2017 and on January 2, 2018. Accordingly, the counselor recommended that Ms. G (1) attend services at Community Behavioral Health three times a week; (2) complete at least three screenings for illicit substances each week; (3) meet with a psychiatrist once a month; (4) meet with a psychiatric rehabilitation specialist six times a month; (5) meet with her social worker once a week; (6) have supervised visits with her children as prescribed by the Department; and (7) would benefit from overnight visitation with her children.

Ms. G. appeared and testified at the hearing. First, she explained that the children had shelter at her current residence and that she was interviewing with the U.S. Department of Housing and Urban Development for its Section 8 housing choice voucher program. Then, Ms. G. testified to her participation in mental health and outpatient substance abuse treatments. She acknowledged that she had used drugs since the children were initially

removed from her care but described her efforts to recover from her addiction. Ms. G. expressed her desire and willingness "to cooperate with [the Department] more than anything" to recover her children.

The juvenile court judge then spoke with A. and A'r. The judge summarized that, while both children were "relatively quiet, probably a little nervous," they "both expressed their desire to go back to their mother immediately or as soon as possible or to see her or have as much contact with her as they could."

In closing, the Department urged that, while Ms. G.'s "heart is in the right place," "she's sincere in her recovery," "she loves these children," "has a bond with [them]," and "wants to do the right thing," "[o]ne month of sobriety is just not enough here given the fact that there have been multiple relapses." The Department recommended returning in three months and reviewing Ms. G.'s progress. Counsel for A. and A'r. agreed with the Department's position as stated and recommended returning to the juvenile court in three months.

The court declared that A. and A'r. were CINA and continued out-of-home care with the Department. The court memorialized its findings and ruling in a written disposition hearing order dated February 28, 2018. Among other things, the juvenile court noted that it "congratulates the Mother on achieving thirty (30) days of sobriety and does not doubt the Mother's sincerity, but more time is needed to establish consistent sobriety. Ninety (90) days is more of a time proven measuring stick." Accordingly, the court ordered that A'r. be placed in the custody of the Department "for appropriate placement pending further disposition" and ordered liberal visitation with a goal of both increasing the

frequency and transitioning the visitation to unsupervised. The court scheduled a review hearing for March 1, 2018.

March 1, 2018 Permanency Plan Review Hearing

Ahead of the March review hearing, the Department filed a report on February 20, 2018. The Department reported that A'r. and A. were placed into the same foster home. Ms. G. was visiting her children three times a week unsupervised as long as she tested negative for illicit substances. The report then summarized Ms. G.'s difficulties concerning visitation:

> Ms. G[.] cancelled her neurofeedback appointment on Wednesday, January 31, 2018, on the way to the appointment. Ms. G[.] did a no-show to her Outpatient group and a visitation on February 1, 2018, and did not call the Department nor answer any phone calls. Ms. G[.] stated she had a mental breakdown and couldn't respond to anyone. The Department called Mobile Crisis for a well check on Ms. G[.] as this was not typical behavior. The Department suspended her Saturday unsupervised visit and supervised visit's until a clean urine screen came back for the following week. Ms. G[.] was able to resume unsupervised visitation on February 8, 2018. The Department has asked for weekly team meetings to include Ms. G[.], Foster parent, caseworkers and substance treatment provider to move toward the goal of reunification. This has been met with resistance from Ms. G[.].

The Department concluded with the following concern: "Although Ms. G[.] continues to work towards the goal of reunification, the Department still has concerns for reunification at this time."

The CASA report, filed February 23, 2018, related that A'r. had made academic progress and was getting better at following directions. One of A'r.'s teachers reported that A'r. "thrives where there is consistency and a positive reward system in place." However, A'r.'s teachers were "concerned with recent negative behavior after changes in

[the] visitation schedule." One of the Department's social workers shared that "after a visit with their mother . . . both A'r[.] and A[.] reverted to angry outbursts and tantrums." The CASA report stated that the children's "improved behavior and happiness at school and at home are directly attributable to the consistent rules, structured and caring environment that [the foster parents] provide." The report concluded:

> It is evident to these CASAs that the [children] love their mother very much and want to return to her care. These CASAs are hopeful that Ms. G[.] will continue to attend therapy . . . to address her own trauma. It is also critical that her urinalysis tests remain negative. Although Ms. G[.] has made significant progress, these CASAs would like to see her maintain stability for a longer period of time so that eventual reunification is successful.

At the March 1 hearing, the Department noted that, while Ms. G. "has, to the best of [the Department's] knowledge maintained sobriety," it had concerns regarding Ms. G.'s mental health and ability to manage a household and her children, in light of her recent mental breakdown. The Department also expressed its concerns regarding Ms. G.'s decision to refuse the Department's services. The Department's concerns were echoed by its witness and by a CASA worker. Ms. G[.] testified to her strong desire to raise her children and that she was receiving help for her depression.

The court accepted the facts contained in the Department's report and the CASA report as "being the facts of the case" and continued the children as CINA. The juvenile court then addressed Ms. G[.]:

> I think that everyone who has reviewed the matter acknowledges that you've made progress. The question is have you made sufficient progress that would . . . it would be in the best interest of these children that the [c]ourt and the Department could feel that they were safe if they were returned to your full time care. And I don't think we've reached that point yet.

The court then entered a written order on April 9, 2018.

September 6, 2018 Permanency Plan Review Hearing

As the Department had done previously, it filed a report before the permanency plan hearing. A'r. was five years old and going into kindergarten. The Department reported that "A'r[.] [had] bonded with the B[.s] [A'r.'s foster parents]." The report also indicated the A'r. was "having an increased amount of negative behaviors" at school.

The Department reported that Ms. G. was caught shoplifting from the Dollar General, although no charges were filed. "After this incident, the Department pulled back visits and had a Family Involvement Meeting on April 9, 2018 to discuss visitations moving forward." The Department reported further incidents and changes to Ms. G.'s visitation:

> On June 6, 2018, during transportation to her son's sensory appointment, Ms. G[.] was escalated and erratic towards the staff member. Therefore, the appointment had to be cancelled. Ms. G[.] was asked to complete a urinalysis as she smelled of alcohol and refused. A Family Involvement Meeting was scheduled for that afternoon and visitations were changed to one time per week supervised with LaToya Murray for parenting and nurturing.

The Department further reported that, on July 24, 2018:

> Ms. G[.] was unable to visit . . . as she had to be taken to the Emergency room on the way to the visit after she was seen on the side of the road holding her chest walking back and forth. . . . Records from this site visit state the Ms. G[.] was under the influence of cocaine.

Ms. G. was "discharged from Community Behavioral Health on July 23, 2018 . . . due to Ms. G[.]'s non compliance with treatment." Ms. G. had an opportunity to go inpatient at another facility but was denied due to "her poor interview on July 20, 2018 and her denial that she ha[d] a drug addi[c]tion[.]" Ms. G.'s urinalysis screenings were positive

for alcohol five times in March, once in April, and again in May. The Department's screenings on May 17, 2018 and July 24, 2018 were positive for cocaine.

Further, the Department reported that, while Ms. G. "was awarded the Section 8 FUP voucher," her voucher expired due to Ms. G.'s inaction. While the "Department assisted Ms. G[.] with locating multiple places," Ms. G. failed to follow-through and complete the process.

The Department concluded that:

> Ms. G[.] has been offered numerous services to reduce the risk of future maltreatment. These services include: substance abuse treatment []both inpatient and outpatient, mental health, housing assistance, parenting, transportation, budgeting and financial assistance. Ms. G[.] continues to have the same level of risk as a caregiver on August 16, 2018, as she did during her first assessment using the Maryland Family Risk Assessment tool in May 2017. . . . The result of the follow up evaluation and all services offered confirmed that Ms. G[.] is unable to provide a safe environment for her children. The children continue to need a permanent placement and at this time, the Department is requesting a change in permanency plan.

The CASA report, filed September 1, 2018, echoed the Department's assessment. The report indicated that "there may be a correlation with Ms. G[.]'s visitation schedule" and A'r.'s most challenging behavior. The report concluded:

> The constant upheaval and uncertainty A'r. has experienced is unfortunate. Since, Ms. G[.] does not seem sufficiently able to deal with her . . . issues, CASA Mauro does not believe that reunification is an appropriate option for A'r[.]. . . . These CASAs consider that it is in the best interests of A. and A'r. that their permanency plan is changed to adoption by a non-relative and that [the Department] work to identify a suitable adoptive home for the [children] as soon as possible.

At the hearing, Ms. Herr, the Department's foster social care worker, testified first. She related the Department's attempts to assist Ms. G., but according to her, "Ms. G[.] has

been non-compliant with obtaining housing . . . non-compliant with a psychiatrist . . . [, and] non-compliant with her substance abuse treatment." For example, Ms. Herr testified that the Department applied for a housing voucher, located a landlord who would accept the voucher, asked for an extension to allow Ms. G. to procure the home, but Ms. G. failed to undertake the steps necessary to secure the apartment. In response to a question on cross-examination, Ms. Herr noted that there was "no doubt" that Ms. G's children loved her and affirmed that Ms. G. loved her children. However, the Department had concerns that Ms. G. was under the influence of drugs and alcohol during visits with her children, that Ms. G's behavior was out of control, and that this problematic behavior was "fairly consistent over the 14 to 15 months that the children have been out of care[.]"

Next, Ms. G. testified. She claimed that the housing voucher would not cover a home suitable to the Department. She testified that she had been clean for approximately three weeks. Ms. G. acknowledged that she had mental health issues and that she tested positive on multiple occasions for alcohol and that it would be a barrier to reunification. But, she claimed that, when she drank, she was unaware that her urine would be tested and did not believe that she would test positive. Ms. G. attested that she did not receive any mental health services from the Department.

Ms. Campos, the CASA for A., testified. Ms. Campos saw A. about once a week, depending on her schedule. Ms. Campos reported that A. was performing well at school, according to the child's teachers, and is a "very smart" and "intuitive" child.

Counsel for the Department then proffered that he had a witness available to testify. The witness would testify that the "Department ha[d] provided services with regard to

mental health and substance abuse[]" and that Ms. G exhibited disruptive behavior while being transported to these appointments.

The juvenile court found that it was in the best interest of the children to change the permanency plan to guardianship with a nonrelative with a concurrent plan of adoption. The juvenile court memorialized its ruling and findings in a written order, entered October 11, 2018. The court found:

> [A'r.'s] mother continues to struggle with mental health, alcohol, and substance abuse issues. Since the last hearing, there have been multiple troubling incidents involving the mother, which are set forth in greater detail in the Department's [R]eport. Of particular concern was a shoplifting incident which caused disruption to a planned visit. . . .
>
> The Mother has displayed erratic, disruptive, and disrespectful behavior. She has continued to use alcohol and illicit drugs including cocaine and marijuana. . . . There are multiple positive urinalysis tests for alcohol and cocaine. She appeared to be under the influence of cocaine during a scheduled visit with her children. Visitations have also had a negative effect on [A'r.] and [A.] as they both have experienced behavioral problems after the visits.
>
> Many efforts have been made by the Department and other professionals to assist the Mother. Those efforts include services for mental health, substance abuse, parenting, transportation, and financial assistance. Those efforts were unsuccessful because of the Mother and through no fault of the Department.
>
> * * * * *
>
> [A'r.] and [A.] have been in foster care for approximately 14 months and the situation is essentially the same as it was at the time that children were removed from the home.

The juvenile court changed the primary plan to guardianship to a nonrelative and the concurrent plan to adoption to a nonrelative. The court set the next review hearing, which was later postponed until March 21, 2019 to allow for a two-hour evidentiary hearing.

Motion to Modify Visitation

The day after the September 6, 2018 Permanency Plan Review Hearing, the Department moved to modify Ms. G.'s visitation from weekly to monthly and to require Ms. G. to demonstrate thirty days of sobriety before visitations resumed. The Department averred that Ms. G. "displayed signs and symptoms of being under the influence of alcohol or drugs at the hearing, and was given a toxicology screen shortly thereafter." Although Ms. G. testified at the hearing that she had been clean for three weeks, the Substance Abuse Screening Report detected benzodiazepines, cocaine, oxycodone, and THC, the chemical found in marijuana. Counsel for A'r. filed a response agreeing with the Department's motion in its entirety. Counsel for Ms. G. responded, in pertinent part: the "clean urine prerequisite to having visitation is contrary to the meaning and spirit of the statute and is unconstitutional"; the proper remedy to alter visitation would be an appeal; and "[n]othing substantive has changed between the time of [c]ourt and this motion being filed." On September 19, 2018, the court entered an order granting the Department's motion and ordered supervised visitation for one hour at monthly intervals. The court conditioned the visitation on Ms. G. demonstrating that she had not used alcohol or illicit drugs for a continuous period of at least thirty days and provided for the Department to cancel a scheduled visitation if the "Mother appears to be under the influence of alcohol or drugs, that alcohol or drugs, other than prescribed drugs in their prescribed dosage, are detected in the Mother, or in the event that the Mother fails to submit to the toxicology screen."

Motion for Hearing on the Issue of Placement

On November 20, 2018, Ms. G. filed a motion to request a hearing on the placement of the children. In Ms. G.'s motion, she averred that, on November 19, 2018, the B.s, the

children's foster parents, sent a letter notifying the Department for the children to "be removed from the home." Ms. G. requested a hearing to ensure the children receive an appropriate placement. Counsel for A'r. responded that the B.s rescinded their notice in a meeting with the Department and that the "judiciary does not get involved in choosing the new placement." The Department incorporated A'r.'s response and averred that the "inappropriate behaviors of the Mother largely contributed to the decision of the Foster Parents to send notice" and that the "Motion [was] Moot." The juvenile court denied Ms. G.'s motion on December 10, 2018.

March 21, 2019 Permanency Plan Review Hearing

Before the March Permanency Plan Review Hearing, the Department and the CASA filed reports. At the time, A'r. was in kindergarten.

The Department reported that A'r. "[wa]s having a good year [at school] and not having [as] many behavior[al] [issues] as the previous year." The Department reported that Ms. G. had completed treatment at the Whitsitt Center in October 2018 and went to the Marian House, "where she is doing substance abuse treatment and mental health." Ms. G. had completed an intensive outpatient program, was working towards obtaining a job, and "[was] participating in parenting courses as of February 6, 2019."

The CASA report, filed March 1, indicated that Ms. B. expressed interest in having further discussions regarding adoption. The CASA learned that A'r.'s "behavior has greatly improved this school year." According to his teacher, he was "interacting well with other children and [wa]s demonstrating leadership skills." However, "[f]rom discussion with [A'r.'s] school teacher and counselors, the Wednesday trips to visit with [Ms. G.] in

Baltimore seemed to disrupt not only A'[r.]'s progress in school, but also resulted in recurrence of tantrums and defiant behavior." In addition, A'r. was prescribed medications for ADHD, anxiety, and sleep. While the CASAs did not have specific information concerning Ms. G.'s treatment progress, they understood that she was "progressing well" and that "the treatment program could take a couple of years to successfully complete." The CASA report concluded:

> [A.] and [A'r.] have been in foster care for the past 21 months. The conditions which brought them into care have not significantly improved during these children's time in out-of-home care. It is in both [children's] best interest to work toward achieving the plan of guardianship or adoption by a non-relative as soon as possible.

In addition, on February 27, 2019, A'r.'s therapist sent a letter to the Department. In the letter, the therapist noted that "A'r[.] has a pattern of behavior dysregulation when he has frequent visitation or interactions with his biological mother." The therapist explained:

> [B]ecause of his age and development, he starts to believe he will be going back to live with [Ms. G.]. I have been told that his biological mother also tells A'r[.] that she is continuing to fight for custody of him and his brother. In a situation where a child is managing multiple relationships it can be challenging to understand the separation-reunification process as well as the comments made by his mother.

The therapist recommended:

> [V]isitation with his biological mom should, for now, be limited to once per month[] and be supervised by the Department of Social Services. This arrangement will show [A'r.] this relationship is supported, but he will not be returning to living with his biological mother and will ensure that she does not mislead [A'r.] to believe he may be returning home in the near future.

At the hearing, the Department first called Ms. Herr, and the juvenile court admitted and took judicial notice of the Department's report. Ms. Herr testified that reunification with Ms. G. could not be achieved in the immediate, foreseeable future, but the "Department feels that Ms. G[.] can . . . through extensive sobriety, she could get to a point where she would be able to have her children back. So we did guardianship versus terminating her rights." Ms. Herr testified that Ms. G. had participated in detoxication or rehabilitation programs but those programs were unsuccessful. Ms. G.'s prior representations that she was "clean and sober" had turned out to be false. Ms. Herr testified that, while the mother loves the children, for the foreseeable future, she was unable to care for them. Mr. and Ms. B., A'r.'s foster parents, were receptive to Ms. G. having access to the children after a guardianship was put into place. However, Ms. Herr also testified that the weekly visitations with Ms. G. were problematic because the children were reluctant to go, due, in part, to the distance to Baltimore, and acted out both during the trip and on the following day. The Department had not moved to close the case because the Department had not "had enough time to do all the work we need to do to close the guardianship case."

Next, Ms. Mauro testified that CASA recommended a permanency plan of guardianship, primarily, and adoption, secondarily, because, "from getting to know both the [children] and the B[.]s, that seems like the . . . the place where they will thrive and be safe." Ms. Mauro testified that the behavioral issues that occur after visitation "got to be pretty extreme and made it very hard for [the children]. . . to learn and to be part of the school community." Ms. Mauro did not see reunification with Ms. G. a possibility.

Mr. B. testified that he and his wife were willing to adopt A. and A'r. Mr. B. also testified that they were "not trying to keep the kids from [Ms. G.]."

Then, Ms. G. testified. She described her most recent treatments at the Whitsitt Center and the Marian House, after testing positive for illicit drugs immediately following the September 2018 hearing. Ms. G. averred that:

> I just came a long way, and I'm really striving to be a better mother, and I'm just . . . I'm just blessed that I got this opportunity and chance to . . . come full circle with myself and to know myself. And I miss my [children] terribly. . . . I may have had a little struggle, a little ups and downs, turns, but God turned it all around and myself, 'cause I play a big part in my change, and it feels good to be sober, and it feels good to not to be lying and covering up, and I'm just blessed and grateful that I made it this far in regards of the situation. I made it. I did it.

The juvenile court concluded that the permanency plan should remain guardianship with a nonrelative with a concurrent plan of adoption by a nonrelative. The court praised Ms. G. for her efforts but noted that it's "been almost 2 years, and that she is not the focus of these proceedings." The juvenile court entered a written order on April 29, 2019, in which it summarized:

> It is a tough call in balancing the two plans of Guardianship and Adoption to determine which one should be the primary plan. The Mother loves the Children and the Children love the Mother. This issue is what led to removal and the Mother's struggles with substance abuse and mental health. . . . The [c]ourt finds that it is in the best interest of the Child for the Permanency Plans to remain the same, with Guardianship to a non-relative as the primary plan and Adoption to a non-relative as the concurrent plan.

September 5, 2019 Permanency Plan Review Hearing

A'r. was then six years old and entering the first grade. The Department, in its report filed August 23, related that it had to suspend Ms. G.'s visitation on June 13, 2019 after

learning that Ms. G. went unannounced to the B.'s home, "crying and sobbing that the Department took her kids[.]" The Department also learned that Ms. G. "was no longer in her treatment program and that she had not successfully completed the recommended treatment." Prior to continuing visitation, the Department requested that Ms. G. provide the contact information for her treatment provider and a clean urinalysis, but, as of the date of the Department's report, Ms. G. had not complied with either request.

The Department also reported that Ms. G. had a warrant out for her arrest on June 3, 2019, because she failed to report to her probation officer, and voluntarily turned herself in. She had a second warrant out for her arrest on August 2019.

Furthermore, the Department reported that A'r. had to be taken to the hospital twice. First, on May 8, 2019, A'r. had to be taken to the emergency room due to "crying, screaming and kicking" and was admitted to a hospital for further treatment. A'r. was discharged to the B.s on May 21, 2019. Second, on June 8, A'r. had another incident and was taken to the hospital for similar behavior but was discharged the same day. Since A'r.'s medication was altered, the Department reported that his outbursts and uncontrollable behavior ceased.

The CASA also submitted a report and also described A'r.'s recent tantrums. The CASAs for the children summarized:

> After 27 months in foster care and no realistic likelihood of reunification with Ms. G[.], these CASAs respectfully ask the court to consider adoption by a non-relative as the primary permanency plan for A[.] and A['r.] and that in the best interests of the children this be done as soon as possible.

Ms. B. testified first. She stated that A'r. regressed after seeing Mother, and A. threw a "pretty good" tantrum. She explained that in June and July, A.'s behavior deteriorated, and she had to the call the police twice when A. could not calm down. On one occasion, A. refused to go to respite to calm down and was transported to the emergency room before the "Department stepped in and transported [A.] to respite." Ms. B. recognized that there were a few instances where she discussed not keeping the children in her care. She explained that she preferred adoption to guardianship because "if I'm going to commit to the [children], they are going to be mine."

Next, Ms. Young, the social worker, testified that Ms. G. completed all parts of the program at the Marian House except a provision requiring employment. Ms. Young later learned that Ms. G. was employed in Delaware and was receiving substance abuse and mental health treatment in Delaware. However, Ms. Young recommend adoption because it eliminated the uncertainty inherent in a guardianship.

Counsel for the Department proffered that "the Department has been focused on the plan of guardianship with a secondary plan of adoption and has not made reunification efforts with respect to Ms. G[.]." Correspondingly, Ms. Campos testified briefly to request that CASA's report "stand" and to specify that CASA felt that adoption was in A'r.'s best interest.

Ms. G. then testified and explained that she left the Marian House on June 3 after completing the first phase of the program and began work as a housekeeper approximately a week later at an inn in Delaware. She was receiving services for her mental health and had been sober since some time in September. Ms. G. recognized that she was not "stable"

in her current living situation. The juvenile court also received into evidence Ms. G.'s earning statements, a letter reflecting her employment, pictures of her residence, certificates of completion of the Marian House's programs, and a brochure about the programs.

The Department's counsel argued that the primary plan should be changed to adoption because the Department could not depend on Ms. G. to "act appropriately and that the children would respond appropriately."

Counsel for the children requested a sole plan of guardianship with a nonrelative. In response, the court questioned: "what about having a plan of adoption with a concurrent plan of guardianship?" The judge explained:

> . . . .This has been going on for 2 years now, and it's become a bit, at least in my mind – and I may be partially responsible for the creation of this thinking that more time might allow Ms. B[.] to be into a place that it would be in [the] best interest of the children to have their mother involved in their life. But it may have come past that that – And I'm not saying that I know that this is the answer. . . . Is more time going to make it worse or is the fact that it's gone on so long the reason that the behavior persists and is [] escalating?
>
> * * * * *
>
> And, in that sense, might it be best to have a concurrent plan so both can be pursued if and when it appears clear what the answer to that question is?

Counsel for Ms. G. requested the court analyze three things. First, counsel for Ms. G. noted that "I think everyone at this table would agree . . . the children are in the best possible place [with the B.s]." Second, counsel requested that the court consider visitation. Third, counsel requested that the court set the children's primary permanency plan as reunification. If the court was unwilling to set reunification as a primary plan, counsel

requested a primary plan of guardianship with a concurrent plan of reunification "so that the Department has some obligation to actually check up and see how Ms. G[.] is doing[.]"

Juvenile Court's Decision

The court concluded that the children's best interests warranted a change in their permanency plan to adoption by a nonrelative with a concurrent plan of guardianship to a nonrelative. The court explained:

> [T]his case has been going on for 2 years now, and I think . . . that there was hope on the part of the Department at one point in time that Ms. G[.] would make progress to the extent that she would be a viable resource. I think that there was hope on the part of the [c]ourt after that that Ms. G[.] . . . would continue to make progress and would be a viable resource and that it was in the children's best interest that she make that . . . continue to make that progress and get to a point where she would be a viable resource in that regard. However, we are 2 years down the road and, although some progress has been made, she herself – and . . . I don't know whether it was intention[al] or unintentional, but I think it was very revealing – she indicated that she is not stable. And we're 2 years down the road. She's still not stable. Will she be? May she be? Could she be? Possibly. When? There's no way to tell. And, at some point in time, I think it becomes self defeating, particularly for these children, to continue to hold out that hope. And that, I think, is, if not readily clear or abundantly clear, at least that there is a pattern emerging that, the longer that this goes on and the more contact, whether it's scheduled contact or unscheduled contact, that these children have with their mother, when there is all this uncertainty that surrounds their situation, that it is not in their best interest to continue in . . . along that path. And, therefore, that a change in the permanency plan is warranted. Whether or not it will result in a termination is . . . is a whole separate issue. But, at this stage in the proceeding, I think there's no conclusion that the [c]ourt can reach other than the existing plan is no longer in the children's best interest and that a change is therefore warranted. So the [c]ourt's gonna find that the facts of the report . . . the Department's report as supplemented by the testimony here today are the facts of the case, that [A. and A'r.] continue to be children in need of assistance but that a change in the permanency plan to adoption to a non-relative, specifically [Mr. and Ms. B.], with the concurrent plan of guardianship by a non-relative, again with [Mr. and Ms. B.], is in the children's best interest, and the [c]ourt will change the plan in that regard.

> Court will find that the Department has made reasonable efforts in furtherance of the plan of guardianship, which was the plan.

The court clarified that its ruling was not intended to "punish" Ms. G., but rather the court "commend[ed] [Ms. G.] for her efforts." However, the court found that "the children's best interests need to be served, and they are best served at this point in time by this change." Initially, the juvenile court denied visitation but, when questioned, clarified that visitation is "at the discretion of the Department." The juvenile court then memorialized its ruling in a written order, entered on November 1, 2019. In the order, the court explained:

> This case was opened in June 2017. There has been hope on the part of the Department that Ms. G[.] would make progress and could be a viable resource. We are now two years down the road, and although some progress has been made, Ms. G[.] herself has indicated that she is not stable. The children have experienced behavioral problems and difficulties following visitation and contact with the mother. The longer this goes on, and the more contact that the children have with their mother, the more the problematic behavior escalates. It is not in the best interest of the children to continue along this path. A change in permanency plan is warranted, and it is in the best interest of [A'r. and A.] that the primary permanency plan be changed to Adoption by a non-relative and the concurrent plan be changed to Guardianship to a non-relative.
>
> The [c]ourt further finds that Reunification is not a viable option. The [c]ourt has considered all of the testimony as well as the documents and reports submitted. The [c]ourt accepts the facts of the reports as the facts of the case, in conjunction with the testimony presented. The Child and his brother remain Children in Need of Assistance. Reasonable efforts have been made in furtherance of the plans of Guardianship and Adoption.

Ms. G. noted a timely appeal.

STANDARD OF REVIEW

Maryland courts utilize "three different but interrelated standards of review" in child custody disputes:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of Rule 8-131(c) applies. Second, if it appears that the court erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the court founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the court's decision should be disturbed only if there has been a clear abuse of discretion.

In re Adoption/Guardianship of C.E. ("C.E."), 464 Md. 26, 47 (2019) (brackets omitted) (quoting *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 100 (2010)). The Court of Appeals further recognized:

> [I]t is within the sound discretion of the [juvenile court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion. Such broad discretion is vested in the [juvenile court] because only [the juvenile judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; he is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.

In re Yve S., 373 Md. 551, 585-86 (2003). A juvenile court's decision concerning a permanency plan is reviewed for an abuse of discretion. *In re Ashley S.*, 431 Md. 678, 704 (2013). Our review of the juvenile court's determination of a plan is, corresponding, "limited." *Id.* at 715. "Because the overarching consideration in approving a permanency plan is the best interests of the child, we examine the juvenile court's decisions to see whether its determination of the child's best interests was 'beyond the fringe' of what is 'minimally acceptable.'" *Id.* (quoting *In re Yve S.*, 373 Md. at 584).

Finally, "[w]hile determinations concerning visitation are generally within the sound discretion of the trial court, . . . where a trial court's order constitutes an improper

delegation of judicial authority to a non-judicial agency or person, the trial court has committed an error of law to be reviewed by appellate courts *de novo*." *In re Mark M.*, 365 Md. 687, 704-05 (2001) (internal citations omitted).

DISCUSSION

I.

Motion to Dismiss

After the notice of appeal from the November 1, 2019 order was filed, the Department reunified A. with Ms. G. after the B[.]s concluded that "they could no longer be a resource for A[.]" On March 5, 2020, the juvenile court ordered A.'s primary permanency plan to be reunification with Ms. G., with a concurrent plan of legal guardianship to a nonrelative.

Both the Department and Ms. G. contend that this Court should dismiss the appeal regarding the older child, A., as moot because the Department reunified A. with Ms. G. on February 17, 2020 and changed A.'s permanency plan to reunification with Mother. Counsel for the children does not address whether Ms. G.'s appeal in A.'s case should be dismissed but solely addresses questions pertaining to A'r. in her brief.

"A case is moot when there is no longer any existing controversy between the parties at the time that the case is before the court, or when the court can no longer fashion an effective remedy." *In re Kaela C.*, 394 Md. 432, 452 (2006). Here, Ms. G. does not seek any remedy from this Court with respect to A. and does not allege that she suffered any adverse consequences resulting from the juvenile court's November 1, 2019 written order. Quite simply, there is no longer a controversy between the parties concerning A.

Accordingly, the case is moot as to A., and we, therefore, grant the Department's motion to dismiss.

II.

Permanency Plan

A. Parties' Contentions

Ms. G. asserts that the juvenile court abused its discretion by changing A'r.'s primary permanency plan to adoption by a nonrelative from legal guardianship with a nonrelative. According to Ms. G., the "totality of the circumstances as of the September 5, 2019 hearing demonstrated that it was in A'r.'s best interest for the juvenile court to reinstate reunification with mother as either a primary or concurrent/secondary permanency plan[] for the child." Ms. G. contends that she had made "extensive progress in her sobriety" and was "well on her way to providing a safe and healthy home environment for A'r." Further, Ms. G. asserts that the bond between herself and A'r. supports reinstating a plan of reunification.

Alternatively, Ms. G. asserts that the juvenile court erred when "it moved away from a primary plan of legal guardianship in favor of adoption" because adoption would "permanently sever the relationship between [M]other and A'r." Moreover, "moving toward the termination of parental rights when A'r.'s placement with the B[.]s was colored by such uncertainty risked the possibility that the child might end up a legal orphan[.]"

The Department responds that the "juvenile court appropriately acted within its broad discretion when it determined that adoption should be A'r.[]'s primary permanency plan." According to the Department, Ms. G. "did not continue to demonstrate stability or

a commitment to her children, her mental health, or her drug treatment" once she left Marian House in June of 2019. In response to Ms. G.'s claim that A'r.'s attachment to Ms. G. supports a plan of reunification, the Department argues, relying on *In re Adoption of Cadence B.*, 417 Md. 146 (2010), that "[a]ttachment does not dictate that the child should remain in limbo and be denied a permanent placement with a suitable caretaker." Further, the Department contends that there was "ample reason to justify" the court's decision to change the plan to adoption," including the permanency of adoption and Ms. G.'s limited progress in becoming a "viable resource."

Counsel for A'r. echoes the Department's response and argues that the "juvenile court had sufficient evidence in the record to change the permanency plan because it was in A'r.'s best interest." A'r.'s counsel contends that Ms. G.'s "struggle[s] with her sobriety, stability, and mental health throughout the course of this case" and failure to provide "an appropriate home for the children" renders the question of whether Ms. G. is able to manage A'r. while "addressing her ongoing mental health and substance abuse issues."

In her reply, Ms. G. contends that the suggestion that Ms. G.'s sobriety was questionable at the September 2019 hearing "is not supported by the record." Ms. G. argues that the "Department's reliance on *In re Adoption of Cadence B.*, . . . to minimize the significance of Ms. G.'s bond with A'r. is misplaced[,]" because the father's bond in *In re Adoption of Cadence B.*, was not as strong as the bond between Ms. G. and A'r.

B. A Parent's Fundamental Right, CINA, and the Family Law Scheme

Parents have a fundamental right, guaranteed by the Fourteenth Amendment to the United Stated Constitution, "to raise [] children free from undue and unwarranted

interference on the part of the State[.]" *In re Adoption/Guardianship of Rashawn H. ("Rashawn H.")*, 402 Md. 477, 495 (2007). Consistent with this principle, a parent's liberty interest in raising a child "cannot be taken away unless clearly justified." *In re Yve S.*, 373 Md. at 567. The Court of Appeals has explained, however, that this right is not absolute:

> That fundamental interest, however, is not absolute and does not exclude other important considerations. Pursuant to the doctrine of *parens patriae*, the State of Maryland has an interest in caring for those, such as minors, who cannot care for themselves. We have held that "the best interests of the child may take precedence over the parent's liberty interest in the course of a custody, visitation, or adoption dispute." That which will best promote the child's welfare becomes particularly consequential where the interests of a child are in jeopardy[.]

In re Mark M., 365 Md. 687, 705-06 (2001).

Maryland courts harmonize the parent's fundamental right to raise his or her own children with the children's best-interest standard through application of the "substantive presumption [ ] of law and fact [ ] that it is in the best interest of the children to remain in the care and custody of their parents." *Rashawn H.*, 402 Md. at 495. "When it is determined that a parent cannot adequately care for a child, and efforts to reunify the parent and child have failed, the State may intercede and petition for guardianship of the child pursuant to its *parens patriae* authority." *C.E.*, 464 Md. at 48. The State can rebut this presumption when "weighty circumstances" dictate otherwise. *In re Ashley S.*, 431 Md. at 687. Such weighty circumstances are established "upon a showing either that the parent is 'unfit' or that 'exceptional circumstances' exist which would" render custody to the parents contrary to the child's best interests. *Rashawn H.*, 402 Md. at 495. As the Court of Appeals

recently explained in *C.E.*, the inquiry in a proceeding to terminate parental rights "is different from the custody analysis in which the court is looking at whether the *custodial arrangement* is in the best interest of the child." 464 Md. at 50 (emphasis in original). Further, "[i]n custody cases, unfitness 'means an unfitness to have *custody* of the child, not an unfitness to remain the child's parent; exceptional circumstances are those that would make parental *custody* detrimental to the best interests of the child.'" *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 217 (2018) (emphasis in original) (quoting *Rashawn H.*, 402 Md. at 498).

In *In re Ashley S.*, the Court of Appeals explained the statutory framework for review of a permanency plan. 431 Md. at 686. First, "[i]n developing a plan, the juvenile court is to give primary consideration to the 'best interests of the child.'" *Id.* To "guide the analysis[,]" the statute specifies certain factors:

> (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 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.

Maryland Code (1984, 2019 Repl. Vol.), Family Law Article ("FL"), § 5-525(f)(1).

The juvenile court is tasked with determining whether progress has been made toward the implementation of the permanency plan. A juvenile court must hold a permanency plan hearing "at least every six months until commitment is rescinded or a voluntary placement is terminated." Maryland Code, (1973, 2013 Repl. Vol., 2019 Supp.), Courts and Judicial Proceedings Article ("CJP"), § 3-823(h). At each review hearing, the juvenile court is required to:

> (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).

Further, "[e]very reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement." CJP § 3-823(h)(4). If the juvenile court determines that the plan should be altered to adoption by a

nonrelative, the court "shall: (1) [o]rder the local department to file a petition for guardianship . . . within 30 days or, if the local department does not support the plan, within 60 days; and (2) [s]chedule a TPR [termination of parental rights] hearing instead of the next 6-month review hearing." CJP § 3-823(g).

C. Analysis

Returning to the case before us and with this framework in mind, we discern no abuse of discretion in the juvenile court's decision to modify A'r.'s primary permanency plan to adoption by a nonrelative with a concurrent plan of guardianship by a nonrelative.

Consistent with its statutory obligation, the juvenile court focused its determination on A'r.'s best interests. The dominant consideration that properly informed the juvenile court's decision was A'r.'s "ability to be safe and healthy in the home of" Ms. G. FL § 5-525(f)(1)(i). Despite the Department's efforts and Ms. G.'s progress, Ms. G. failed to resolve her addiction and mental health issues and to otherwise become a viable resource for A'r. While acknowledging that Ms. G. had made progress and extended serious effort, based on the record before it, the juvenile court did not err in determining that Ms. G. would not be able to care for A'r., within a reasonable time, without endangering A'r.'s welfare. *Rashawn H.*, 402 Md. at 499-500. Specifically, while the Department initially hoped that Ms. G. could serve as a resource for A'r., Ms. G. continued to struggle with her stability, sobriety, and mental health throughout the entire period of the Department's involvement.

In *In re Adoption/Guardianship of Amber R.*, the Court of Appeals explained: "Unquestionably, parental drug use can negatively impact a child. . . . Moreover, given the well-known difficulty of overcoming drug addiction, and the likelihood that addiction will

persist if untreated, a court can infer that a parent will continue to abuse drugs unless he or she seeks treatment." 417 Md. 701, 721-22 (2011). "This inference can shift to the parent the burden to produce evidence of sobriety," and Ms. G. was "uniquely situated to produce this evidence." *Id.* at 722. Indeed, while Ms. G. testified at the September 2019 hearing that she was a "year sober," she offered little evidence to substantiate this claim. Without any concrete assurance that Ms. G. was changing course to become a resource for her children, the juvenile court instead had to balance over two years of evidence of Ms. G.'s struggle to resolve her addictions and address her mental health.

Further, Ms. G. conceded that her residence at the inn was not an appropriate home for the children to reside. Because, as the juvenile court found, there "is no way to tell" after multiple years of assistance when Ms. G. might become stable, "it becomes self defeating, particularly for these children, to continue to hold out that hope."

With regard to the applicable statutory factors, beginning with FL § 5-525(f)(1)(ii), the court accepted reports from the Department and CASA and testimony that highlighted a loving bond between Ms. G. and A'r. Likewise, regarding FL § 5-525(f)(1)(iii) and (iv), the record demonstrated that the B.s were "creating emotional and physical safety within their home and that they [we]re committed to building their bond with [A'r.]." There is evidence that A'r., who had lived with the B.s since January 22, 2018, was emotionally connected to Ms. B. and turned to her for comfort and safety. According to A'r.'s counsel, A'r. "likes it there," and the B.s indicated their willingness to adopt A'r. Despite challenges, the CASA report, adopted by the juvenile court, found that A'r. was "doing very well" in the B.s' care.

Concerning the potential harm to A'r. if moved from his current placement with the B.s, specified in FL § 5-525(f)(1)(v), even Ms. G.'s counsel concluded at the hearing that the children were in the "best possible place" with the B.s. In contrast, the record supported that Ms. G. may never have sufficient stability to serve as a resource for A'r.

As the Department extensively documented throughout the case, in regard to FL § 5-525(f)(l)(vi), there was a "definite correlation" between A'r.'s problematic behavior, an excessive period in State custody, and contact with Ms. G. Accordingly, the juvenile court found "the longer this goes on, and the more contact that the children have with their mother, the more the problematic behavior escalates." As the Court of Appeals recognized, "[c]ustody and guardianship does not afford [a child] with the same permanency as adoption[.]" *C.E.*, 464 Md. at 59. While the prior primary plan of guardianship was employed in the hope that Ms. G. would progress, the record showed over two years of continued difficulties. Moreover, evidence also supported the court's determination that adoption would eliminate the uncertainty inherent in guardianship and provide permanency to A'r.

In short, we discern no abuse of discretion in the juvenile court's decision to change A'r.'s permanency plan from guardianship to adoption.

While Ms. G. argues extensively that the love shared between A'r. and Ms. G. supports reinstating a plan of reunification, one of the primary purposes of a permanency plan is "to avoid the harmful effects when children languish in temporary living situations." *In re Ashley S.*, 431 Md. at 711. In *In re Adoption of Cadence B.*, the Court of Appeals did not find that a child's attachment to her father, as a "beloved uncle, prevented the juvenile

court from allowing a permanency plan of adoption, which would provide permanence and allow the child to have "the safe stability of her home with [her current caregivers.]" 417 Md. 146, 162 (2010). While the bond between Ms. G. and A'r. appears to be closer than the bond evident in *Cadence B.*, the B.s, who are distantly related to Ms. G., stated that they would allow Ms. G. to continue to see A'r. Regardless, because Ms. G. did not appear able to care for A'r.—and the evidence supports that she may never reach this point—A'r. was not required to languish when an alternative choice—adoption with his foster mother, whom A'r. had bonded and looked to for comfort and safety—was available and in A'r.'s best interest. It was not an abuse of discretion for the court to determine that it was not in A'r.'s best interest to remain in limbo indefinitely in hopes that Ms. G. would conquer her challenges.

Finally, we discern no abuse of discretion in the juvenile court's decision to find that reunification was not a viable option. As the extensive record of this case demonstrates and without repeating our exhaustive summary of the record before the juvenile court, Ms. G. consistently struggled with her sobriety, stability, and mental health, despite the Department's extensive services and support. Among other things, before the September 2019 hearing, Ms. G. failed to meet with her probation officer as required, resulting in two arrest warrants. Further, despite the Department's requests, Ms. G. did not provide the requested verification to confirm her sobriety and care for her mental health at the hearing. Ms. G.'s failure to demonstrate her sobriety or detail her mental health treatment was particularly problematic given Ms. G.'s history of relapse and struggle with addiction. In addition, as the record supports, Ms. G. had a history of representing to the court and others

of her sobriety when, in fact, contemporaneous drug tests revealed the use of multiple illicit drugs.

Of course, we may only review whether the juvenile court abused its discretion based on the facts before it at the time of the hearing. Consistent with the juvenile court's statutory obligation under CJP § 3-823(h)(2)(vi), at the next review hearing, currently scheduled for September, the juvenile court "shall . . . [c]hange the permanency plan if a change in the permanency plan would be in the child's best interest" in light of A.'s reunification with Ms. G. and evaluate whether the B.s remain viable resources to A'r. The juvenile court may, as it did before in this case, set a hearing to review the permanency plan before the statutory minimum six-month review hearing if an earlier hearing is deemed in A'r.'s best interest.

III.

Visitation Order

Ms. G. contends that by "delegating to the Department the sole discretion to decide whether and on what terms Ms. G. could have visits with A'r., the juvenile court erred as a matter of law." The Department also requests that we remand this issue to allow the juvenile court to "specify the minimum, if any, amount of visitation between Ms. G. and A'r.[]."

In response, A'r.'s counsel contends that the juvenile court did not "delegate its responsibility in setting the visitation plan" but "relied on the Department [] to act in [its] parental role." A'r.'s counsel asserts that it was reasonable "for the court to deny visitation

and to allow visitation to resume 'at the discretion of the Department' when appropriate documentation was produced."

In her reply, Ms. G. contends that "A'r. rewrites the juvenile court's order" to include additional terms not issued by the court.

A juvenile court is required to specify "the minimal amount of visitation that is appropriate and that [the department of social services] must provide, as well as any basic conditions that it believes, as a minimum, should be imposed." *In re Justin D.*, 357 Md. 431, 450 (2000). Once the juvenile court makes this determination, the court may "permit [the department], with the concurrence of the parent, to determine whether additional visitation or less restrictive conditions are in order." *Id.* (emphasis in original). "Vesting [an expert] with complete discretion to deny or permit visitation by the petitioner constitutes an improper delegation." *In re Mark M.*, 365 Md. 687, 710 (2001).

Here, after initially determining that "no visitation" was appropriate, the court clarified that it was allowing the Department to allow (or not allow) visitation at its discretion. In making this determination, the juvenile court did not set forth the basic conditions that, at a minimum, should be imposed. Accordingly, we vacate to the juvenile court to allow it to clarify its order and determine the proper amount of visitation and the terms for visitation to occur.

MOTION TO DISMISS A.'S APPEAL GRANTED; JUDGMENT OF THE CIRCUIT COURT FOR KENT COUNTY AS TO A'R. AFFIRMED, IN PART, AND VACATED, IN PART; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION;

COSTS TO BE PAID 50% BY APPELLANT AND 50% BY APPELLEES.