UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0464

September Term, 2016

IN RE: C.E.

Eyler, Deborah S.,
Graeff,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.
Dissenting Opinion by Graeff, J.

Filed: December 14, 2016

Appellant, Crystal D., is the biological mother of respondent child C.E. Appellant appeals an order from a Child In Need of Assistance ("CINA") proceeding,[1] where the Circuit Court for Baltimore City, sitting as the Juvenile Court, entered an Order granting the motion of the Baltimore City Department of Social Services to waive reasonable efforts to reunify C.E. with appellant. Appellant raises the following question for our review:

> "After conducting a hearing under Md. Code Ann., Cts. & Jud. Proc. § 3-812, did the juvenile court properly waive the Department's obligation to make reasonable efforts to reunify Ms. D with C.E., when Ms. D's parental rights to four of her other children had been terminated involuntarily and the Department had already provided extensive, but unsuccessful, reunification services to Ms. D for many years?"

We shall not consider appellant's issue because we address, on our own initiative, whether the Order before us, indisputably an interlocutory one, is immediately appealable. We shall hold that it is not immediately appealable and dismiss this appeal.

I.

The circuit court and the Department have a history of investigating and working with appellant since 1996 regarding allegations of abuse and neglect involving all six of her children: Joshua, India, Linda, Joy, Malachi, and C.E. This Court has set forth this

[1] Md. Code Ann., Cts. & Jud. Proc. § 3-801(f) defines CINA as follows:
"(f) 'Child in Need of Assistance' means 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"

extensive history in five recent decisions. *See in re Joy D.*, 216 Md. App. 58, 61-74 (2014); *in re Malachi D. and Joy D*, No. 3006, Sept. Term 2010 (Sept. 20, 2011), *cert denied*, 424 Md. 56 (2011); *in re Joy D. and Malachi D.*, No. 1894, Sept. Term 2013 (May 2, 2014); *in re Adoption and Guardianship of Joy D. and Malachi D.*, No. 2037, Sept. Term 2014 (Aug. 13, 2015), *cert. denied*, 225 Md. 20 (2015); and *in re C.E.*, No. 925, Sept. Term 2015 (Dec. 15, 2015), *cert. denied* 446 Md. 705 (2016).

C.E.'s CINA case began with an emergency shelter care hearing on July 11, 2014. The circuit court granted the Department's request for shelter care,[2] giving the Department temporary care and custody of C.E. On July 23, 2014, the circuit court conducted an immediate review of the shelter care hearing and continued its prior order granting the Department temporary care and custody of C.E. On September 4, 2014, the circuit court scheduled the case for a contested trial after the parties were unable to reach an agreement during the settlement hearing held on the same day. The circuit court scheduled the adjudicatory contested hearing for October 10, 2014, but postponed the adjudication and disposition multiples times to allow appellant to obtain and keep counsel.

The circuit court held a 6 month adjudicatory review hearing on June 16, 2015, where it sustained the facts found in the Department's CINA petition. Some of the facts sustained by the circuit court include: appellant has mental health issues, a condition that

[2] Md. Code Ann., Cts. & Jud. Proc. § 3-801 defines shelter care as a "temporary placement of a child outside of the home at anytime before disposition," and a shelter care hearing as "a hearing held before deposition to determine whether the temporary placement of the child outside the home is warranted."

interferes with her ability to care for C.E.; appellant has not been amenable to treatment, expressing her belief that there is "no such thing as a mental illness;" appellant is not receiving mental health care or taking medication at this time; and the father resides in a senior building with visitation limits, and thus, cannot take custody of C.E.

After sustaining the facts in the CINA petition as amended, the circuit court proceeded to disposition. The court found C.E. to be a CINA, and awarded custody of C.E. to the Department for relative placement.[3] The court reasoned that continued residence in the home was contrary to the welfare of C.E, and it was not possible to return the child to the home based on the sustained facts in the CINA petition. On June 17, 2015, following the CINA disposition, the circuit court held a review hearing to determine the future status of C.E., review the permanency plan, and provide an opportunity for the parents to be present and participate. The court found that the Department had made reasonable efforts up to this point in support of the permanency plan of reunification with appellant,[4] but ordered that the permanency plan be continued with implementation to be

[3] The Department placed C.E. with maternal relatives, who are licensed as restricted foster parents. The relatives did not want to provide the parents with their address.

[4] The circuit court found that the Department made the following reasonable efforts:

> "entered into a service agreement, made home visits, referred for mental health evaluation/treatment, referred [appellant] for counseling or therapy, referred [appellant] for parenting classes, referred [appellant] for housing assistance and conducted Family Involvement Meetings; maintained contact with the parents via letters, phone calls, emails; provided transportation assistance for the parents; made home assessment of the appellant's home; referred the appellant for domestic violence counseling; investigated father's housing circumstances; facilitated supervised visitation between the

achieved by June 16, 2016. Appellant appealed the CINA finding to this Court, but did not challenge the circuit court's finding that the Department had made reasonable efforts to reunite appellant with C.E. On December 15, 2015 this Court affirmed in an unreported opinion. *In re C.E.*, No. 925, Sept. Term 2016 (Dec. 15, 2015).

On July 9, 2015, the Department filed in the Circuit Court for Baltimore City a motion to waive its obligation to continue to make reasonable efforts to reunify appellant with C.E. Md. Code Ann., Cts. & Jud. Proc Article § 3-801(v)[5] defines reasonable efforts as "efforts that are reasonably likely to achieve the objectives set forth in C.J. § 3-816.1(b)(1) and (2)," which consist of "prevent[ing] placement of the child into the local department's custody," C.J. § 3-816.1(b)(1), and, for children who are placed in State custody, "[f]inaliz[ing] the permanency plan in effect for the child," § 3-816.1(b)(2)(i), and "[m]eet[ing] the needs of the child, including the child's health, education, safety, and preparation for independence." C.J. § 3-816.1(b)(2)(ii). Under C.J. § 3-812, however, efforts to reunify the child with his or her parent are not required if the parent has "involuntary lost parental rights of the sibling of the child." The Department argued in its

> parents and [the child]; and facilitated telephone visitation between the parents and the [child]. . . ."

[5] Unless otherwise indicated, all subsequent statutory references herein shall be to Md. Code Ann., Cts. & Jud. Proc Article (C.J).

motion that reasonable efforts were not required because, as set forth in the statute, appellant had involuntarily lost her parental rights to four of C.E.'s siblings.[6]

On April 20, 2016, following the Court of Appeals denial of appellant's petition for writ of certiorari to review this Court's decision affirming C.E.'s CINA finding, the circuit court held a hearing on the Department's motion to waive its obligation to continue to make reasonable efforts to reunify appellant with C.E. Appellant did not challenge the factual basis for granting the waiver, but argued instead that she was being denied her fundamental right to parent C.E. because she exercised her due process rights to contest prior terminations of her parental rights. The circuit court granted the Department's motion to waive reunification efforts, concluding that it lacked discretion under C.J. § 3-812 as to whether to grant the motion in light of the prior involuntary terminations of appellant's parental rights over four of C.E.'s siblings. The court did not make any other rulings at that time and scheduled a permanency plan review hearing for June 8, 2016. Appellant noted an appeal to this Court on April 26, 2016.

II.

Even though neither party raised the issue of whether the Order in this case is immediately appealable, that question is always one which a court can raise on its own initiative. *See Carroll County Dep't of Social Services v. Edelmann*, 320 Md. 150, 164-

[6] On November 6, 2003, the juvenile court involuntarily terminated appellant's rights to her daughters Linda and India. On December 16, 2014, the juvenile court involuntarily terminated appellant's rights to her children Joy and Malachi.

65 (1990); *Tharp v. Disabled American Veterans Dept. of Md.*, 121 Md. App. 548, 557 (1998). There is no suggestion in this case that the Order of the circuit court is a final judgment. This appeal is before this Court only as an appealable interlocutory order under C.J. § 12-301. The threshold question in this interlocutory appeal, therefore, is whether this Order is immediately appealable. The answer is "*no*."

The right to appeal an adverse judgment in Maryland is not a constitutional right, but rather, as Judge Charles E. Moylan, Jr., explained in *Kurstin v. Bromberg Rosenthal,* LLP, 191 Md. App. 124, 131 (2010), "a grant of legislative grace," dependent upon a statutory grant of power, or under the common law, pursuant to the collateral order doctrine. *Jolley v. State*, 282 Md. 353, 355 (1978).

C.J. § 12-301 permits a party to appeal from a final judgment entered in a civil case by a circuit court. Section 12-101(f) defines "final judgment" as "judgment, decree, sentence, order, determination, decision or other action by a court, including an orphans' court, from which an appeal, application for leave to appeal, or petition for certiorari may be taken." The statute leaves to case law the determination or definition of what is an appealable final judgment or order. *Peat v. Los Angeles Rams*, 284 Md. 86, 91 (1978). The Court of Appeals has held that for the trial court's ruling to be a final judgment it must either "determine *and conclude* the rights of the parties involved or deny the appellant the means [to] prosecut[e] or defend[] his or her rights and interests in the subject matter of the proceeding" *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989) (emphasis added). Further, the Court stated that in determining whether a particular order constitutes a final appealable judgment, "we assess whether any further order is to be issued or whether any further action

is to be taken in the case." *In re Billy W*, 386 Md. 675, 689 (2005). The purpose underlying this general rule is to preclude piecemeal disposition of litigation, enabling in one appeal a review of all stages of the proceedings if and when there is a final judgment. *Warren v. State*, 281 Md. 179, 182–83 (1977).

It is clear that the circuit court's Order granting the Department's motion to waive reunification services in this case was not a final judgment within the contemplation of C.J. § 12-301. *Rohrbeck*, 318 Md. at 41 (finding that "[i]f a ruling of the court is to constitute a final judgment, it must have at least three attributes: (1) it must be intended by the court as an unqualified, final disposition of the matter in controversy, (2) unless the court properly acts pursuant to Md. Rule 2-602(b), it must adjudicate or complete the adjudication of all claims against all parties, and (3) the clerk must make a proper record of it in accordance with Md. Rule 2-601."). In *In re. Billy W.*, 386 Md. 675, 689 (2005), the Court of Appeals made clear that "court orders arising from a periodic review hearing that maintain the permanency plans for the children do not constitute final judgments." Indeed, C.E. does not claim otherwise.

We have recognized three exceptions to the C.J. § 12-301 finality requirement. Judge Alan Wilner, writing for the Court of Appeals, summarized these exceptions in *Salvagno v. Frew*, 388 Md. 605, 615 (2005), as follows:

> "[W]e have made clear that the right to seek appellate review of a trial court's ruling ordinarily must await the entry of a final judgment that disposes of all claims against all parties, and that there are *only three exceptions to that final judgment requirement*: *appeals from interlocutory orders specifically allowed by statute; immediate appeals permitted under*

> *Maryland Rule 2-602; and appeals from interlocutory rulings allowed under the common law collateral order doctrine."*

(Emphasis added). *See also Nnoli v. Nnoli*, 389 Md. 315, 324 (2005). The first two of those exceptions are statutory; the third is created by the common law.

The exception relevant to the case at bar is the statutory exception found in C.J. § 12-303, which provides that "[a] party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case." That section lists 13 specific and particularized orders which qualify as a statutory exemption from the final judgment requirement. *See Nnoli* , 389 Md. at 324 (noting that "an order that is not a final judgment is an interlocutory order and ordinarily is not appealable unless it falls within one of the statutory exceptions set forth in § 12-303.").

C.J. § 12-303, Appeals from certain interlocutory orders, provides, in pertinent part, that a party may appeal from any interlocutory order entered by a circuit court in a civil case:

> "(1) An order entered with regard to the possession of property with which the action is concerned or with reference to the receipt or charging of the income, interest, or dividends therefrom, or the refusal to modify, dissolve, or discharge such an order;
> (2) An order granting or denying a motion to quash a writ of attachment;
> (3) An order:
> (i) Granting or dissolving an injunction, but if the appeal is from an order granting an injunction, only if the appellant has first filed his answer in the cause;
> (ii) Refusing to dissolve an injunction, but only if the appellant has first filed his answer in the cause;

> (iii) Refusing to grant an injunction; and the right of appeal is not prejudiced by the filing of an answer to the bill of complaint or petition for an injunction on behalf of any opposing party, nor by the taking of depositions in reference to the allegations of the bill of complaint to be read on the hearing of the application for an injunction;
> (iv) Appointing a receiver but only if the appellant has first filed his answer in the cause;
> (v) For the sale, conveyance, or delivery of real or personal property or the payment of money, or the refusal to rescind or discharge such an order, unless the delivery or payment is directed to be made to a receiver appointed by the court;
> (vi) Determining a question of right between the parties and directing an account to be stated on the principle of such determination;
> (vii) Requiring bond from a person to whom the distribution or delivery of property is directed, or withholding distribution or delivery and ordering the retention or accumulation of property by the fiduciary or its transfer to a trustee or receiver, or deferring the passage of the court's decree in an action under Title 10, Chapter 600 of the Maryland Rules;
> (viii) Deciding any question in an insolvency proceeding brought under Title 15, Subtitle 1 of the Commercial Law Article;
> (ix) Granting a petition to stay arbitration pursuant to § 3-208 of this article;
> *(x) Depriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order; and*
> (xi) Denying immunity asserted under § 5-525 or § 5-526 of this article."

The question then becomes: Does the Order granting the Department's motion to waive reunification services fall within § 12-303(x): deprive a parent of the care and custody of her child or change the terms of such an order?

To answer this question, it is necessary to provide some brief background on permanency plans and the reasonable efforts requirement on social service departments to implement these plans. In Maryland, if the circuit court places a child outside of his or her home during a CINA proceeding, then the court is required to establish a permanency plan for the child. C.J. § 3-823(b). Pursuant to C.J. § 3-823(e)(2), the court at a permanency plan hearing 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; or
> 5. For a child at least 16 years old, another planned permanent living arrangement that:
> A. Addresses the individualized needs of the child, including the child's educational plan, emotional stability, physical placement, and socialization needs; and
> B. Includes goals that promote the continuity of relations with individuals who will fill a lasting and significant role in the child's life; and
> (ii) For a child at least 14 years old, determine the services needed to assist the child to make the transition from placement to successful adulthood."

The permanency plan is designed "to expedite the movement of Maryland's children from foster care to a permanent living, and hopefully family arrangement." *In re Damon M.*, 362 Md. 429, 436 (2001). The circuit court must review the permanency plan every six months, until the commitment is rescinded or a voluntary placement is terminated. C.J. §

8-823(h)(1)(i). If the child is continued in out-of home placement with a specific care giver, who agrees to care for the child on a permanent basis, then the circuit court need only conduct a review hearing every 12 months. C.J. § § 8-823(h)(1)(i). The circuit court can change the permanency plan at a review hearing if it would be in the child's best interest. C.J. § 8-823(h)(2)(iv).

Md. Code Ann., Family Law Article (F.L.) § 5-525(e)(1) requires the Department, unless a court orders otherwise, to make reasonable efforts in support of a permanency plan of reunification.[7] The circuit court determines at permanency plan review hearings whether the Department has met its obligation to make reasonable efforts to finalize the permanency plan in effect. The reasonable efforts requirement mirrors federal law, as seen first through the enactment of the Adoption Assistance and Child Welfare Act of 1980 ("AACWA"). Pub. L. No. 96-272, § 101(a)(1), 94 Stat. 500. The AACWA sought to "end the stagnation [of] keeping children in foster homes by requiring states to make reasonable efforts to reunite families." *See* Kathleen S. Bean, *Reasonable Efforts: What*

[7] F.L § 5-525 states as follows:

> "(e) Reasonable efforts.—(1) Unless a court orders that reasonable efforts are not required ... reasonable efforts shall be made to preserve and reunify families:
> (i) prior to the placement of a child in an out-of-home placement, to prevent or eliminate the need for removing the child from the child's home; and
> (ii) to make it possible for a child to safely return to the child's home.
> (2) In determining the reasonable efforts to be made and in making the reasonable efforts described under paragraph (1) of this subsection, the child's safety and health shall be the primary concern."

State Courts Think, 36 U. Tol. L. Rev. 321, 325 (2004-2005). In order to be eligible for federal funding, the AACWA required each state to provide reasonable efforts, as follows:

> "in each case efforts will be made (A) prior to placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home."

Pub.L. No. 96-272. *See also* 42 U.S.C. § 671(a)(15)(B) (current amended codification of quoted language); Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State's Burden under Federal Child Protection Legislation*, 12 B.U. Pub. Int. L.J. 259, 269 (2002–2003).

In 1997, Congress revised the AACWA in the Adoption and Safe Families Act of 1997 ("ASFA"). Public L. No. 105-89, 111 Stat. 2115 (codified in 42 U.S.C. Chapter 7, subchapters IV–B and IV–E). The revisions were a response, in part, to criticisms that the reasonable efforts requirement led to foster-care drift because states engaged in efforts to "repair hopelessly dysfunctional families." Bean, 36 U. Tol. L.Rev. at 326. *See also* H.R. 105-77, at 7-8 (1997). Under the AFSA, states are required to make reasonable efforts to preserve and reunify families, but such efforts were now refocused so "the child's health and safety shall be the paramount concern." ASFA 101(a), 42 U.S.C. § 671(a)(15)(A). More importantly, reasonable efforts are not required if a court of competent jurisdiction determines that:

> "(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

***

> *(iii) the parental rights of the parent to a sibling have been terminated involuntarily;*"

ASFA 101(a), 42 U.S.C. § 671(a)(15)(D)(iii) (Emphasis added). *See also* H.R. 105-77, at 10-11 (1997).[8] The AFSA required states to define "aggravated circumstances" where reasonable efforts are not required, but allowed states to tailor the definitions to their own community standards. H.R. 105-77, at 8, 10 (1997). In order to continue receiving federal foster care and adoption funds, the Maryland General Assembly adapted Maryland's laws to include language identical to the changes in the AFSA, including the waiver of reasonable efforts if parental rights of the parent to a sibling have been terminated involuntarily. *See* C.J. § 3-812(b)(1)-(3): H.R. 105-77, at 11 (1997). Maryland Courts have recognized the policy rationale behind the ACCWA and ASFA, stating that the "controlling factor in adoption and custody cases is not the parent's interest in raising the child, but rather what best serves the interest of the child." *In re Adoption/Guardianship No. 10941 in Circuit Court for Montgomery Cty*., 335 Md. 99, 113-14 (1994). From this discussion, it is clear that both federal and state law do not require a local department to make reasonable efforts indefinitely. *In re James G*, 178 Md. App. 543, 589-90 (2008).

[8] While the reasonable efforts language is adapted from federal law, the federal statutory scheme does not define this term. Instead, the meaning and implementation of reasonable efforts is left to the states. *See Suter v. Artist M.*, 503 U.S. 347, 360 (1992) (finding "no further statutory guidance is found as to how 'reasonable efforts' are to be measured. . . .[I]t is a directive whose meaning will obviously vary with the circumstances of each individual case.").

Even before the statutory amendments following the adoption of the ASFA, Maryland Courts recognized that social services departments need not offer services where "attempts at reunification would obviously be futile." *In re Adoption/Guardianship No. 10941 in Circuit Court for Montgomery Cty.*, 335 Md. at 117.

With the background that reunification services need not be offered forever in mind, we return to our initial question whether the Order *deprives a parent of the care and custody of her child or change the terms of such an order*. In making this determination, this Court's focus "should be on whether the order and the extent to which that order changes the antecedent custody order." *In re Karl H.*, 394 Md. 402, 430 (2006). An order that amends an antecedent permanency plan of reunification is a change in the terms of the custody order, and thus, immediately appealable. *See in re Damon*, 362 Md. at 438 ("hold[ing] that an order amending permanency plan calling for reunification to foster care or adoption is immediately appealable."). *See also In re Ashley S.*, 431 Md. 678, 702 n.15 (2013) (finding "[a] change in a permanency plan to eliminate reunification with a parent is appealable as an interlocutory order"); *In re James G*, 178 Md. App. at 564-65 n.14 (finding an order changing the permanency plan from reunification with the parent to placement with a relative to be appealable). In contrast, a subsequent court order arising from a periodic review hearing that maintains the permanency plan of reunification for the children is not immediately appealable. *See In re. Billy W.*, 386 Md. at 691-92 (finding that an order continuing a previously established concurrent permanency plan of reunification and adoption does not "detrimentally affect the [parent's] custody rights. . . ." and is not appealable).

The dissent asserts that this interlocutory Order is immediately appealable, relying primarily on *in re Joy D*, 216 Md. App. at 73 n.10, which cited to *in re Joseph N.*, 407 Md. 278 (2009), in support of its holding.[9] Essentially, the dissent is transforming the test for appealability from the statutory requirement of deprivation of the care and custody of the child, or change in the term of such an order to "whether the court's . . . order **effectuated a detrimental change** to [the mother's] custody rights . . . ." The dissent concludes that if there is a detrimental change to custody rights, the order falls within Section 12-303(3)(x). The test is not simply whether an order may ultimately have a detrimental effect on a parent's custody right but rather, in the plain language of the statute, whether an order "**[d]epriv[es]** a parent, grandparent, or natural guardian of the care and custody of his child, or **change[es] the terms of such an order.**"[10]

Does the Order deprive a parent of the care and custody of her child, or change the terms of such an order? The answer is "no." The circuit court's Order does not change any order in this case. The circuit court did not make any change to the permanency plan or any other order which deprived a parent of the care and custody of a child or change the

[9] The dissent relies on *in re Joy D*, 216 Md. App. at 73 n.10, as support for the proposition that this Order is appealable immediately. We are cognizant that *in re Joy D.* is a reported opinion of this Court, and ordinarily, should be accorded precedential value and so-called horizontal stare decisis. Nonetheless, because whether this Order is appealable is a matter of jurisdiction to entertain the appeal, we have the power, and indeed, the responsibility, to examine the question de novo.

[10] In *in re Joseph N.*, the circuit court changed a custody order from foster case to the child's father. 407 Md. at 292. That change was a change in the child's permanency plan, unlike the case at bar.

terms of such an order. The permanency plan, as it called for an additional contested hearing to be scheduled on the issue of the permanency plan, was left unchanged. A change in the permanency plan is something that may occur in the future but the circuit court did nothing to change it now. Most importantly, the circuit court's Order waiving reunification services does not deprive appellant of the care or custody of her child at this time, as the circuit court had declared C.E. a CINA previously, and as a result of this determination, placed C.E. with the Department for relative placement. We hold that the Order from which appellate appeals is an interlocutory order which is not immediately appealable.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

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No. 0464

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IN RE: C.E.

Eyler, Deborah S.,
Graeff,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Dissenting Opinion by Graeff, J.

Filed: December 14, 2016

I respectfully dissent. I do not agree with the conclusion by the Majority that the circuit court's order, waiving the obligation of the Baltimore City Department of Social Services to provide reunification services to the appellant, Ms. D., is not an appealable interlocutory order. This Court recently held, in *In re: Joy D.*, 216 Md. App. 58, 73 n.10 (2014), that "[a]n order waiving the requirement to make reasonable efforts to reunify a parent with his or her child is appealable."

As this Court explained in *Joy D.*, 216 Md. App. at 74, "[w]hen a child is removed from his or her parent's care and custody and placed in foster care, a department of social services has a statutory obligation to make reasonable efforts to reunify the child with the parent." *See* Md. Code (2012 Repl. Vol.) § 5-525(e)(1) of the Family Law Article ("Unless a court orders that reasonable efforts are not required under § 3-812 of the Courts Article or § 5-323 of this title, reasonable efforts shall be made to preserve and reunify families."). The goal of the reasonable services provision, requiring services to the family, is for the parent to regain custody. *In re: Damon M.*, 362 Md. 429, 436-37 (2001).

Where, as here, a parent previously has involuntarily lost parental rights of a sibling of a child, and the Department moves, pursuant to Maryland Code (2013 Repl. Vol.) § 3-812 of the Courts and Judicial Proceedings Article ("CJP"), that the court find that reasonable efforts to reunify the child and the child's parents are not required, the court is required to grant the motion. *Joy D.*, 216 Md. App. at 80-81. The question here is whether such an order is appealable, pursuant to CJP § 12-303(3)(x), which provides that a party may immediately appeal from an interlocutory order entered by the circuit court that "[d]epriv[es] a parent, grandparent, or natural guardian of the care and custody of his

child, or chang[es] the terms of such an order." We held in *Joy D.*, 216 Md. App. at 73 n.10, that it was appealable as an order that changes the terms of an order regarding the parent's care and custody of his or her child.

In support of our holding in *Joy D.*, we cited *In re Joseph N.*, 407 Md. 278 (2009), in which the Court of Appeals conducted an in-depth analysis of the scope of 12-303(3)(x). In *Joseph N.*, the mother appealed from an interlocutory order that reaffirmed a permanency plan of reunification, but changed physical custody from foster care to the child's father. *Id.* at 282, 285-86. The Court stated that the critical question was "whether the court's . . . order **effectuated a detrimental change** to [the mother's] custody rights falling within Section 12-303(3)(x)." *Id.* at 291 (emphasis added). The Court quoted from its previous decision in *In re Karl H.*, 394 Md. 402, 430 (2006), as follows:

> In determining whether an interlocutory order is appealable, in the context of custody cases, the focus should be on whether the order and the extent to which that order changes the antecedent custody order. It is immaterial that the order appealed from emanated from the permanency planning hearing or from the periodic review hearing. If the change could deprive a parent of the fundamental right to care and custody of his or her child, whether immediately or in the future, the order is an appealable interlocutory order.

Id. at 290.

In finding that the order in *Joseph N.* was appealable, the Court noted that, as a result of the order, the Department's focus to provide reasonable efforts to reunify the child with the mother changed; its focus "broadened to facilitate Joseph's reunification with either his mother or his father," and therefore, it "represented a meaningful shift in direction vis a vis Ms. N., and possible restoration of her rights to parent." *Id.* at 292. The Court stated that the order had "**the potential to facilitate and accelerate**" the conclusion of the CINA

proceedings and a grant of full custody to the father, and it "increased the difficulty [the mother] faced in her effort to be reunified" with her son. *Id.* at 292-94 (emphasis added).

Applying this analysis to the present case leads me to the conclusion that the circuit court's order granting the Department's request to waive its obligation to provide reunification services was immediately appealable. The order "effectuated a detrimental change" to Ms. D.'s custody rights because it denied her reunification services, without which she was unlikely to remedy the conditions that precipitated the CINA action. Moreover, pursuant to CJP § 13-812(e), the court's order accelerated the timing for the next permanency plan hearing to 30 days and required the Department to take steps to finalize the permanent placement of the child. Indeed, although *Joseph N.*, 407 Md. at 292, resulted in an order that had "the potential to facilitate and accelerate" the CINA proceedings, the order here, waiving the Department's obligation to provide reunification services, essentially guaranteed an end to the proceedings, increasing the difficulty Ms. D. faced in regaining custody of her child. *See In re: James G.*, 178 Md. App. 543, 580 (2008) (presumption of statute "'is that if reunification efforts fail the preferred result is adoption'") (quoting *In re: Karl H.*, 394 Md. at 421).

Accordingly, I believe that the order at issue here, waiving the Department's obligation to provide reunification services, is immediately appealable, and the issue raised should be considered on its merits. I respectfully dissent.