UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1189

September Term, 2015

IN RE: N.D.

Eyler, Deborah S.,
Arthur,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: February 16, 2016

This appeal challenges a June 29, 2015, order by the Circuit Court for Montgomery County, sitting as a juvenile court, changing the permanency plan for a child in need of assistance ("CINA"),[1] from reunification to "another planned permanent living arrangement" or "APPLA." The order involves N.D., who has since turned 18 and expects to graduate from secondary school in the spring of 2016, but who remains subject to the continuing jurisdiction of the juvenile court. *See generally* Md. Code (1974, 2013 Repl. Vol., 2015 Supp.), § 3-804(b) of the Courts and Judicial Proceedings Article ("CJP") ("If the court obtains jurisdiction over a child, that jurisdiction continues in that case until the child reaches the age of 21 years, unless the court terminates the case"); CJP § 3-819(k) ("An order vesting legal custody of a child in . . . [an] agency is effective for an indeterminate period of time, but is not effective after the child reaches the age of 21"); *In re Andre J.*, 223 Md. App. 305, 318 (2015).

In a prior appeal, this Court affirmed the CINA disposition and an order restricting visitation between N.D. and his father, appellant Mr. D. ("Father"), to one supervised hour per month. *In re: N.D.*, No. 1844, Sept. Term 2014 (Md. App.) (filed July 8, 2015) (unreported opinion by Berger, J.). Those orders were based on the juvenile court's finding that N.D. was neglected by Father,[2] whose "difficulty functioning in society due

[1] A child may be declared a CINA if he or she has been neglected and his or her parent is "unable or unwilling to give proper care and attention to the child and the child's needs." *See* Md. Code (1974, 2013 Repl. Vol., 2015 Supp.), § 3-801(f) of the Courts and Judicial Proceedings Article ("CJP").

[2] "'Neglect' means the leaving of a child unattended or other failure to give proper care and attention to a child . . . under circumstances that indicate: (1) [t]hat the child's health or welfare is harmed or placed at substantial risk of harm; (continued…)

to mental health issues" has resulted in persistent homelessness, strained interactions with N.D., and distress for the child. *See id.*, slip op. at 12-13.

As required by CJP § 3-823, the juvenile court conducted a permanency planning hearing. Citing Father's failure to address his mental health and housing issues, as well as N.D.'s impending eighteenth birthday, the Montgomery County Department of Health and Human Services ("the Department") recommended an APPLA permanency plan. Over Father's opposition, the juvenile court adopted that recommendation.

In this Court, Father contends the court abused its discretion in changing N.D.'s permanency plan because the APPLA plan "facilitate[s] N.D.'s alienating his father from his life rather than addressing the rift between them, and, therefore, does not advance the goal of preserving families" and "was not in N.D.'s best interests." The Department moves to dismiss Father's appeal on the ground that it is moot. For the reasons explained below, we shall deny the motion to dismiss and affirm the order changing N.D.'s permanency plan.

FACTUAL AND LEGAL BACKGROUND[3]

N.D.'s Family Background

N.D. was born in October 1997 and is the son of Father and O.P. ("Mother"). N.D. lived with his parents in Moscow for his first five years. From ages five to eleven,

or (2) [t]hat the child has suffered mental injury or been placed at substantial risk of mental injury." CJP § 3-801(s).

[3] Our prior opinion reviewed the CINA proceedings in detail. We shall summarize that background information as context for our discussion of the appellate issue before us.

N.D. lived in Washington, D.C., with Father. Over the next three years, N.D. accompanied Father to Beijing for a short time and then lived in Siberia. Between January 2012 and May 2013, N.D. traveled with Father through Eastern Europe.

In the summer of 2013, N.D. and Father returned to the United States so that N.D. could attend an American high school. Over that summer, Father and son lived with a series of friends and, at one point, in a backyard shed.

In September 2013, N.D. enrolled in High School[4] as a boarding student, living in the dormitory on campus. A sponsoring family, the "S." family, has paid N.D.'s tuition, room, and board and has provided emotional support. He has "an agency-approved foster parent who attends school meetings," "ensures that his medical, emotional, and physical needs are met," and takes him to tennis practice and tournaments.

N.D. has excelled at High School, earning straight As in a challenging college preparatory curriculum, playing tennis, and receiving a perfect 36 on the ACT college entrance exam. N.D. expects to graduate from High School in the spring of 2016 and to attend college in the fall of 2016.

CINA Disposition and Visitation Order

During N.D.'s first year at High School, Father initiated altercations with N.D., school officials, and N.D.'s educational benefactor, prompting the Department to file a CINA petition. After working with N.D. and Father, the Department dismissed the petition.

[4] To preserve anonymity, we shall refer to N.D.'s secondary school as "High School."

This CINA proceeding began when N.D. was in the care and custody of Father after his sophomore year, during the summer of 2014. On July 3, 2014, a Department social worker met with N.D. and Father for four-and-a-half hours, in a grocery store parking lot. She learned that they had been staying in their van for the past two nights. In that vehicle were boxes, jars, cans, garbage, and personal items piled approximately a foot high, but no bedding. Father had a strong body odor and bad breath. When the social worker discussed housing alternatives, Father dismissed her concerns about N.D.'s needs; instead, he expressed concern that N.D., Mother, and he would be killed if N.D. were to be removed from his care. He also engaged in monologues about an "East-West war" and other geopolitical concerns.

Father eventually agreed that N.D. could stay with his tennis coach. He then cancelled a follow-up meeting, stating that N.D. "could figure out his living arrangement on his own." At a meeting in the same parking lot on July 10, 2014, Father spoke only about his geopolitical theories and did not present any plan for his son's housing or welfare.

On July 14, 2014, N.D. reached out to the Department in distress, reporting that his tennis coach could no longer provide housing. The Department social worker held a Family Involvement Meeting to discuss where N.D. would reside and whether he could return to High School in the fall. Father presented no solutions to those questions.

Based on these events, the Department sought shelter care and filed a CINA petition. On August 5, 2014, the juvenile court granted shelter care, committed N.D. to

the Department's custody, and ordered Father and N.D. to undergo psychological evaluations.

Dr. Alicia Meyer, a clinical psychologist, evaluated both N.D. and Father. She reported to the court that N.D. was distressed by what he perceived as his Father's increasingly difficult behavior, which is characterized by long and disorganized geopolitical rants and a persistent failure to obtain stable housing. N.D.'s "coping resources were depleted." N.D. reported suicidal and homicidal ideation and was at risk of clinical depression or anxiety disorder. Dr. Meyer concluded that, although Father was "rather high functioning," his thinking was disorganized, tangential, and characterized by delusions of grandeur consistent with schizophrenia. She recommended individual therapy for both N.D. and Father. She also recommended that Father be evaluated for the possibility of treatment with medication. In her view, family therapy would not be beneficial, and would perhaps even be "deleterious" to N.D., until after both Father and son had completed a course of individual therapy.

After contested proceedings, the trial court found that N.D. had been neglected, explaining:

> In looking at the evidence as a whole it is apparent to me that [Father], because of his tangential thinking, because of his disorganized thinking, and because of his failure, even until now from what I know to make living arrangements for [N.], which I think is a part of his mental health issues, I do think he has allowed himself to slip into a place where he is unable, because of his own mental health to properly address his son's needs. Because of his mental health, because of his tangential thinking, whether it's because of schizophrenia or something else, because of his disorganized and tangential thinking, he has been unable to provide the basic things his son needs, and that is a CINA case.

In addition to prohibiting Father from communicating with N.D., the juvenile court ordered both Father and son to attend individual therapy and ordered Father to consult with a psychiatrist regarding medication to manage his symptoms.

On November 6, 2014, the juvenile court declared N.D. to be a CINA as a result of Father's neglect. N.D. remained committed to the Department's care and custody, with a placement at High School and a permanency plan of reunification. The court suspended visitation and all other forms of contact between Father and son. Following a hearing on November 19, 2014, the court granted Father one hour of supervised visitation per month, with no additional contact via phone, email, or other forms of correspondence. Father appealed, and this Court affirmed. *See In re: N.D.*, No. 1844, Sept. Term 2014 (filed July 8, 2015).

Review Hearings and Orders

Following the CINA disposition, the juvenile court held two review hearings to monitor progress toward resolving the mental health and housing issues underlying Father's neglect of N.D. On December 2, 2014, while Father's appeal of the CINA declaration and visitation order was pending, the juvenile court held a review hearing pursuant to CJP § 3-816.2 (requiring periodic review and findings regarding the safety of the child and the progress of the case). Concluding that little or no progress had been made toward ameliorating Father's mental health and housing problems, the court renewed its orders for Father to participate in individual therapy and for monthly supervised visitation with no other contact. The permanency plan remained one of reunification.

The Department referred Father for individual therapy on December 2, 2014. When the social worker followed up with Father to secure documentation that he was a resident of Montgomery County, Father indicated that he did not believe that therapy was necessary.

By February 5, 2015, N.D. was participating in individual therapy, but Father still had not participated in any mental health treatment. The Department reported that Father continued to refuse both individual therapy and evaluation for medication. He still had no housing. Monthly visitations with N.D. were characterized by strained interactions, as Father's long monologues and failure to demonstrate interest in N.D.'s life and views caused N.D. to become annoyed, angry, and withdrawn.

At the next review hearing, on March 12, 2015, Father confirmed through counsel that he did not plan to participate in therapy. When Father asked to address the court, he began by expressing concern "about values," and more specifically the "far West" values to which his son was being exposed at High School. As he continued, his thoughts became incoherent:

> So, I had no choice to put him in the private high school, which is far West values compared to [] Public High School. So, the most simple explanation here is private versus public high school, the environment, the nature, the environment for the child development issues. No, he, in the shorter term, it is a half graph. Longer term and that's supposed to lead to a Bachelor's in Physics. Longer term is United Nations, Your Honor, and that is international. United States is the main party in the Western past. It's a minority in the United Nations. Location of the headquarters and the batch is up to 30 percent, but this is just taking counties whereas the main thing, voting, democracy, voting rights, and the influencing all the decision-making international, 200 countries, national interest, United States, United States is a, is a minority. Thirty years I worked west and I sound sisterizing [sic]. I'm sorry about that, Your Honor. These are professional things.

He continued with a stream-of-consciousness narrative for eight more pages of transcript, referring repeatedly to "east-west" themes, the United Nations, and his "profession." Although Father is not a native English speaker, the incoherence of his remarks could not be explained by a language barrier by the time that he (at the court's insistence) finally concluded. He closed as follows:

> The west is short term, and I'm very worried of short term. More or less, he'll be okay. Very worried about his long term, and that's basically keeping him twice as long, Your Honor, and this is a very simple thing. I can, try Russian. Twenty years, I do this full time as a profession, mental, mental. Mental means of German. And that's him being a prime minister there, those upside down years in ten years being German like that against 20 million died on the father's side. That's because of (unintelligible) years, so Your Honor, it's very easy to, to, to see where my kid is going. If I'm alive 10, 15 years from now, I'll be able to manage keeping him alive twice as long if he continues going up, which his more competitive. He's trying to rush on national interests. Your Honor, we are from the Western half and, and here there's no idea because this is far west, not even Silver Spring here, mindset culture within the Montgomery County. So, I'm sorry, but.

The juvenile court stated that Father's remarks indicated, "at least from my layman's perspective, little to no progress toward addressing the mental health issues that brought this case to the forefront, and that he would benefit a great deal from individual therapy." The court renewed its written order for Father to participate in individual therapy, continued monthly supervised visitation, and reaffirmed the reunification permanency plan.

Change in Permanency Plan

As noted, the CINA disposition order had established a permanency plan of reunification. The court reaffirmed that plan after the review hearings in December 2014 and March 2015. In accordance with CJP § 3-823(b), the court set the next hearing for June 24, 2015.

In anticipation of that hearing, the Department submitted a written report, advising the court that Father still had not participated in therapy or obtained a stable residence and that visitations had been "counterproductive." In light of failed efforts at improving N.D.'s relationship with Father, Father's continuing lack of housing, and N.D.'s upcoming eighteenth birthday in October 2015, the Department recommended changing N.D.'s permanency plan to "another planned permanent living arrangement." N.D., through his court-appointed counsel, agreed with that recommendation. Over Father's opposition, the juvenile court made the recommended change, under which N.D. would not return to Father's custody, and Father would continue to have supervised monthly visitation with no other contact. Father appealed.

DEPARTMENT'S MOTION TO DISMISS

The Department moves to dismiss Father's appeal as moot. "The test for mootness is 'whether, when it is before the court, a case presents a controversy between the parties for which, by way of resolution, the court can fashion an effective remedy.'" *Hamot v. Telos Corp.*, 185 Md. App. 352, 360 (2009) (quoting *Adkins v. State*, 324 Md. 641, 646 (1991)). In the CINA context, a controversy may not be moot when a ruling made in an earlier review hearing order may influence subsequent orders. *See In re*

Joseph N., 407 Md. 278, 305 (2009) (appeal from CINA review-hearing order was not moot even though challenged order was superseded by later orders, because the challenged order "had consequences for [the parent] that may well have affected the juvenile court in its" subsequent orders).

The Department argues that Father seeks to maintain a reunification permanency plan in order to restore his position as N.D.'s legal guardian, but because N.D. is now 18, Father cannot be declared N.D.'s legal guardian. Because this Court cannot grant the remedy Father purportedly seeks, the Department argues, this appeal is moot.

It is true that N.D. is now 18 years old, but he is still a high school senior, expecting to graduate this spring and to attend college this fall. Under CJP § 3-804(b), he remains a CINA subject to the juvenile court's jurisdiction and committed to the Department's custody and care. The juvenile court found that N.D.'s continued "commitment is necessary and appropriate in that it addresses his ongoing medical, education[al], emotional and physical needs, and keeps him safe and protected while allowing him to grow further towards independence."

As a CINA, N.D. remains subject to the permanency planning requirements established in CJP § 3-823. Because a permanency plan "provides the goal toward which the parties and the court are committed to work," the "[s]ervices to be provided by the local social service department . . . are determined by the permanency plan." *In re Yve S.*, 373 Md. 551, 581 (2003) (quoting *In re Damon M.*, 362 Md. 429, 436 (2001)) (quotation marks omitted); *see also Andre J.*, 223 Md. App. at 316. Permanency planning may include efforts to reunify parent and child, if not for housing purposes, then "[t]o

conserve and strengthen the child's family ties" through services such as family therapy and visitation. *See generally* CJP § 3-802(a)(3), (a)(5).

The record does not support the Department's contention that Father "seeks reversal only to reinstate a plan of reunification with the purpose of restoring [him] as legal guardian over N." In his brief, Father challenges the court's determination that an APPLA plan is in N.D.'s best interests, arguing that the APPLA plan will "exacerbat[e] the problems" between parent and child by "facilitat[ing] N.D.'s cutting his father out of his life." Admittedly, Father did assert that "there was no evidence that pursuing a plan of *legal reunification* (as opposed to physical reunification where N.D. would be sent home with Father) would pose a likelihood of further abuse or neglect[.]" (Emphasis added.) Nonetheless, Father has clarified what he means by "legal reunification" by arguing that even if he is not reunified with N.D. under the same roof, he should have a Department-facilitated chance to "heal the rift" with his son. In Father's view:

> [P]romoting a permanency plan which cuts the father off from N.D.'s life will have the long-term adverse effect on N.D. of creating a potentially permanent rift between him and his father. Under a plan of reunification, the Department could look into family therapy or other services to set the father and son on the road to healing and mending the rift between them.

In short, Father does not challenge the APPLA plan because he wants legal guardianship "restored," as the Department asserts, but because under an APPLA plan, he believes the Department will not provide services to improve his relationship with N.D. Because Father seeks to vacate the APPLA permanency plan, and because this Court has authority to grant that remedy, Father's appeal is not moot. The Department's motion to dismiss is denied.

DISCUSSION

A. Standards Governing Change in Permanency Plan

This Court recently summarized the law governing our review of a decision to change the permanency plan of a CINA, as follows:

> In cases where a child in need of assistance has been placed outside of the family home, the juvenile court must determine a permanency plan consistent with the child's best interests. *See* CJP § 3-823(b). The court must consider the following factors in selecting the plan:
>
> (i) the child's ability to be safe and healthy in the home of the child's parent;
>
> (ii) the child's attachment and emotional ties to the child's natural parents and siblings;
>
> (iii) the child's emotional attachment to the child's current caregiver and the caregiver's family;
>
> (iv) the length of time the child has resided with the current caregiver;
>
> (v) the potential emotional, developmental, and educational harm to the child if moved from the child's current placement; and
>
> (vi) the potential harm to the child by remaining in State custody for an excessive period of time.
>
> [Md. Code (1984, 2012 Repl. Vol.),] § 5-525(f)(1) [of the Family Law Article]; *see also* CJP § 3-823(e)(2).
>
> "In developing a permanency plan, the juvenile court is to give primary consideration to the 'best interests of the child.'" Another major purpose of the CINA statute, however, is to "conserve and strengthen the child's family ties and to separate a child from the child's parents only when necessary for the child's welfare [.]" CJP § 3-802(a)(3). To this end, "[t]he statutory scheme presumes that, 'unless there are compelling circumstances to the contrary, the plan should be to work toward reunification, as it is

> presumed that it is in the best interest of a child to be returned to his or her natural parent.'"
>
> The court must consider the following hierarchy of placement options, in descending order of priority: (1) reunification with the child's parent or guardian, (2) placement with a relative for adoption or custody and guardianship, (3) adoption by a nonrelative, (4) custody and guardianship by a nonrelative, or (5) "[a]nother planned permanent living arrangement that . . . [a]ddresses the individualized needs of the child, including the child's educational plan, emotional stability, physical placement, and socialization needs; and . . . [i]ncludes goals that promote the continuity of relations with individuals who will fill a lasting and significant role in the child's life." CJP § 3-823(e)(1)(i). The court may not continue a child's out-of-home placement under a plan of APPLA "unless the court finds that the person or agency to which the child is committed has documented a compelling reason for determining that it would not be in the best interest of the child" to pursue other permanent placement options. CJP § 3-823(f).
>
> "Once set initially, the goal of the permanency plan is re-visited periodically at hearings to determine progress and whether, [because of] historical and contemporary circumstances, that goal should be changed." At review hearings, the court must "[c]hange the permanency plan if a change in the permanency plan would be in the child's best interest." CJP § 3-823(h)(2)(vi) . . . .

Andre J., 223 Md. App. at 320-22 (footnote and case citations omitted); *see also In re Shirley B.*, 419 Md. 1, 18-22 (2011).

B. The Record

The Department submitted a written report for consideration at the permanency planning hearing scheduled for June 24, 2015. Sharon Jordan, the Department's social worker, informed the court that Father had refused individual therapy and remained without a known residence. She explained that:

> [she] made a referral for individual therapy for Mr. D. to the Access Team on December 2, 2014. [She] was informed by the Access Team that Mr. D. needed to provide documentation that he is a resident of Montgomery County. [She] asked Mr. D. if he had any documentation

> and he was unable to provide any. [She] explained that it was needed in order for him to participate in therapy. Mr. D. informed [her] that he did not feel that it was necessary for him to participate in therapy.
>
> [She] has asked Mr. D. if he has housing and he has not stated that he has. The address given [by Father] is the address where he receives his mail.

Ms. Jordan characterized the six supervised visits between N.D. and Father as "counterproductive and ineffective," in that Father "is more negative . . . than he is positive" and "spends all of the time during the visits talking at N. about his agenda for N. which includes N. not being on the proper 'graph/path'" and "need[ing] to spend time with the Chinese and people from the Far East[.]" According to Ms. Jordan, Father rebuffs N.D. whenever he "tries to interject his feelings and opinions." N.D. displayed strong body language signaling "that he is irritated during the visits." In the most recent visit, N.D. "yelled at his father to ask him questions about how he (N.) is doing; ask[ed] him to stop talking about his theories; and . . . asked that the visit end." Despite Ms. Jordan's suggestions to Father "on questions he could be asking N.," Father became "annoyed" and "stated that it is his visit with his son and he ha[d] to finish his agenda."

Citing Father's refusal to address the housing and mental health concerns, and N.D.'s impending eighteenth birthday in October 2015, the Department recommended that N.D.'s permanency plan be changed to "another planned permanent living arrangement." Through his court-appointed counsel, N.D. agreed with this recommendation.

Over Father's opposition, the court adopted an APPLA permanency plan, by order entered June 29, 2015. We set forth the relevant portions of the court's written findings:

4. **THAT** at this time, N. is asking to be allowed to spend additional time with the S [family] this summer prior to returning to the dormitories at [High School]. The Department is asking that the S's be allowed to be limited guardians for N. so that they may attend to whatever medical needs he might have over the balance of this summer.

5. **THAT** with respect to N.'s mental health, he was participating in therapy with Mr. Miller. Through a letter to the Court, which the Court credits, Mr. Miller reports that N. was committed to therapy and they met weekly. They discussed a number of different topics at therapy, one of which included N.'s plans for having ongoing contact with his father and questions about his father's illness. They also talked about N.'s life goals beyond high school. At this time, Mr. Miller is recommending that N. be discharged from therapy as all of his treatment goals have been met.

6. **THAT** . . . Mr. D. has failed to abide by the Court's orders regarding individual therapy. Specifically, he was ordered to participate in individual therapy on . . . October 6, 2014, November 19, 2014, and March 12, 2015. . . . The Department referred him to individual therapy. He has not started that in part because he has failed to provide proof that he is a Montgomery County resident. Beyond that, Mr. D. continues to say that he does not need therapy for himself.

7. **THAT** there is no evidence that Mr. D. has any form of stable housing. He has provided an address to the Department and the Department has asked him where he is living and where that address is, but Mr. D. reports the address is for receipt of mail.

8. **THAT** with respect to visitation between N. and Mr. D. there have been 6 monthly visits this review period. They have taken place at the Department and at tennis courts. The Department reports, which the Court credits, [state] that these visits continue to be counterproductive and ineffective. The details of those visits are outlined on page 4 and 5 of the Department's report, which the Court credits.

With respect to the statutory factors to be considered in determining a permanency plan, the juvenile court concluded:

a. **THAT** with respect to the Child's ***ability to be safe and healthy in his Parent's home***, at this time and for the reasons stated in Open Court, that Father has no such ability. He has no place to live and has made no progress in addressing his mental health issues. With respect to Mother,

she lives abroad and there is no evidence about her ability to provide a safe and healthy home for N either. She has not been a resource for him in this case at any time.

b. **THAT** with respect to the Child's ***emotional ties to natural parents and siblings***, it is clear that N. is concerned about his Father and in therapy has discussed ways he might have a relationship with his Father going forward. There is an emotional tie between N. and his Father. . . .

c. **THAT** with respect to the Child's ***emotional attachment to current caregiver and caregiver's family***, there is no emotional attachment, because N. lives in a dormitory environment at [High School]. He has done well in school and had done well when he is with the S [family]. The Court finds that it is not an emotional attachment but a beneficial attachment.

d. **THAT** with respect to the ***length of time the Child has been with his current caregiver***, he has been in the dorms for a year since this case started and another year before that.

e. **THAT** with respect to ***potential emotional, developmental and educational harm to the Child if moved from the Child's current placement***, there would be significant harm if N. were moved from his current placement. By his hard work, he has done very well at [High School]. He has received top grades. He has pursued his tennis ability. He has received top ACT scores and is well on his way to attending a top university or college.

f. **THAT** with respect to ***the potential harm to the Child by remaining in State custody for an excessive period of time***, there is no such evidence in this case.

The juvenile court then found that "based on all of the factors under § 5-525(f) of the Family Law Article, the permanency plan that is in the Child's best interest is APPLA." In accordance with CJP § 3-823(f), which "requires a showing of a compelling reason that it would not be in the child's best interest to: (1) return home; (2) be referred for termination of parental rights; or (3) be placed for adoption or guardianship with an appropriate relative or guardian," *Andre J.*, 223 Md. App. at 322 n.5, the court identified "compelling reasons for a plan of APPLA" as follows:

It is not in the Child's best interest to be returned home because Mr. D. has not complied with the Court's order to participate in individual therapy and he has not secured stable and safe housing for himself and N. Mr. D. has not demonstrated that he has changed any of the conditions that brought N. into care. It is not in the Child's best interest to be referred for TPR or be placed with a relative willing to care for him under and order of Custody and Guardianship because N. is 17 years old and will be 18 in October, 2015. At that time he will be his own guardian.

Next, the juvenile court itemized how the Department's Plan of APPLA is addressing the Child's individualized needs:

a. **Educational plan:** N attends [High School] and is in the 11th grade. He has maintained an "A" average throughout this school year. He boards on campus. His tuition and all fees are paid for by his benefactors, Mr. and Mrs. S. N. has achieved a 36 on his ACT, which is the highest score possible.

b. **Emotional stability:** N. was participating in therapy with Mr. Stephen Miller from Behavioral Health and Crisis Services Child and Adolescent Mental Health and Crisis Services Child and Adolescent Mental Health from October 2014 until May 2015. N. also receives emotional support from the S's and their family and the staff at [High School].

c. **Physical placement:** N. boards at [High School] on campus. He has a foster parent who is available to take him to tennis practice, doctor and dentist appointments and is available for any emergencies he might have.

d. **Socialization needs:** N. is a talented and gifted tennis player. He plays for the tennis team at [High School] and has participated in several tennis tournaments. He has friends at school that he spends time with and visits with the S's.

e. **Continuity of relations with individuals who will fill a lasting and significant role in the child's life:** The S's are very committed to N. and are willing to play a lasting and significant role in his life.

f. **Preparation for independence:** A referral will be made for N. to participate in the Transitioning Youth Life Skill Classes when they become available. N. is also exploring colleges in a very specific way. He will be attending a conference in which admissions officers will be present from the top universities so that he can discuss his interests in those universities.

Finally, the court found that "although N. has been placed out of the home 15 of the last 22 months," he had only been "in care for 10 months" since the CINA disposition and "will be his own guardian in October 2015 when he turns 18 years old."

Based on these findings, the court changed the permanency plan to APPLA, but continued the prior orders for placement at High School and supervised monthly visitation with no other contact. The court allowed N.D. overnight visitation with the S. family over the summer and holidays.

C. Father's Challenge to Change in Permanency Plan

Father contends that the juvenile court abused its discretion in changing N.D.'s permanency plan from reunification to "another planned permanent living arrangement." He does not argue, however, that the Department failed to make reasonable efforts toward reunification. Nor does he complain that the court failed to consider the relevant factors enumerated in FL § 5-525 and CJP § 3-823. Instead, Father insists that "the juvenile court erred in focusing on the notion of having the father and N.D. residing together and, finding that plan unfeasible, abandoning a plan of reunification." In his view, "[t]he important issue in this case was not whether N.D. had a place to live," but "whether N. and his father could salvage their relationship so that N.D. can have ties to his parent, who also happened to be the only relative N.D. has in this country." Father posits that "promoting a permanency plan which cuts [him] off from N.D.'s life will have the long-term adverse effect on N.D. of creating a potentially permanent rift between him and his father."

N.D. turned 18 pending this appeal and has no disability that impairs his capacity to become independent. Still, as a CINA who is completing his secondary education, he remains subject to the juvenile court's jurisdiction. *See Andre J.*, 223 Md. App. at 318 & n.3; CJP § 3-804(b). We are not persuaded that the juvenile court abused its discretion in changing N.D.'s permanency plan from reunification to APPLA.

In the CINA context, "an abuse of discretion exists where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles[,]" or when "the court's decision is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Andre J.*, 223 Md. App. at 323 (citations and quotation marks omitted). In determining a permanency plan, the trial court "is in the unique position to marshal the applicable facts, assess the situation, and determine the correct means of fulfilling a child's best interests." *In re Karl H.*, 394 Md. 402, 415 (2006) (citations and quotation marks omitted). As the excerpted record demonstrates, the court identified compelling reasons for implementing an APPLA permanency plan, expressly relied on the pertinent statutory factors, made factual findings that are supported by the record, and properly exercised its discretion in determining that it is in N.D.'s best interest not to pursue reunification.

N.D. was adjudicated a CINA as a result of Father's neglect, which stemmed both from Father's impaired mental health and his failure to provide stable housing. Father's housing history supports the court's determination that it is in N.D.'s best interests to have another planned permanent living arrangement. In its best interest evaluation, the

court properly considered the undisputed evidence that Father has neither the intent nor the ability to secure housing for N.D. *See, e.g.*, *In re Adoption of Jayden G.*, 433 Md. 50, 102-03 (2013).

Indeed, Father has not provided N.D. a residence since they arrived in the United States in 2013. Over the course of the Department's involvement, Father did nothing more than agree to plans made by N.D. or the Department for his son to live in the High School dormitory or to stay with persons with whom N.D. (not Father) had developed a relationship, *i.e.*, the S. family, the staff at High School, his foster parent, his tennis coach, and other friends. The lack of stable housing caused N.D. clinically significant distress, which in turn warranted Department intervention. Accordingly, the juvenile court properly considered Father's failure to provide housing for N.D. as a factor weighing against reunification and in favor of another planned permanent living arrangement.

Even more important, the court factored Father's untreated mental health problems into the best interest evaluation. Based on their observations of Father, both Dr. Meyer and the juvenile court were convinced that he was suffering from an untreated mental illness. During the months in which the permanency plan had been one of reunification, Father repeatedly refused to comply with court orders to participate in individual therapy. Despite clear messages from both the Department and the juvenile court that such therapy was an essential step toward reunification, Father continued to insist that he did not need any mental health treatment. The court was entitled to consider Father's intransigence as proof that Father would not voluntarily obtain the mental health treatment necessary to

"heal the rift" with N.D. More broadly, the court was entitled to consider that Father is either unwilling or unable to comply with court orders designed to achieve reunification. *See Shirley B.*, 419 Md. at 33-34 (holding that juvenile court did not abuse its discretion in changing child's permanency plan from reunification where limitations of previously-neglectful parent made it unlikely that parent would be able to provide safe home for child in foreseeable future).

The history of difficult visitations also supports the court's determination that the change in permanency plan was in N.D.'s best interests. As a threshold matter, we reject Father's suggestion that this change amounts to an abandonment of efforts to improve the relationship between Father and son. The juvenile court continued the existing schedule of monthly supervised visits even though the six visits had been "ineffective" and at times "counterproductive" in "mending the rift." The social worker's account of those visits, which the court credited, indicates that Father remains either unaware or unconcerned about the detrimental impact of his lecture-style communications. Father has not demonstrated a likelihood that his interactions with N.D. will improve to the point that the Department could recommend the type of longer and more frequent visits that are necessary precursors to reunification. *See In re Adoption of Cadence B.*, 417 Md. 146, 163 (2010) (reasoning that a change in permanency plan away from reunification is permissible where "any path to reunification would require a gradual increase in the hours of permissible visitation so that the Department could monitor the interactions until it was satisfied that [the child] would be safe in [the] father's custody," but where that progress is unlikely to occur).

CONCLUSION

The juvenile court was not required to continue to pursue reunification when there was no likelihood that Father would be ready for N.D. to return to his care and custody within the limited time that N.D. is likely to remain a CINA under the court's jurisdiction. As the court recognized, even before he turned 18, while living in a dormitory apart from Father, N.D. has demonstrated sufficient intelligence, initiative, and independence to succeed in his education, athletics, and interpersonal relationships. With the assistance of the Department, his foster parent, the S. family, and the staff at High School, N.D. is on track to graduate from secondary school and enroll in college in pursuit of a path toward independence beyond the jurisdiction of the juvenile court.

By contrast, Father's mental health problems have contributed to his failure to obtain stable housing and have prevented N.D. from benefitting from their supervised visits. When the Department offered court-ordered mental health services, Father repeatedly refused those services. Nevertheless, neither the Department nor the juvenile court has abandoned efforts to improve the relationship between N.D. and Father. To the contrary, the court has ordered the supervised monthly visits to continue, thereby offering Father regular opportunities to repair the rift with N.D. It is up to Father to avail himself of those opportunities, just as it has been up to him to avail himself of the mental health assistance offered through the Department.

Because the court did not abuse its discretion in determining that it is in N.D.'s best interest to change his permanency plan to APPLA, we shall affirm that order. *See Andre J.*, 223 Md. App. at 328.

APPELLEE'S MOTION TO DISMISS DENIED. JUNE 29, 2015, ORDER OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY, SITTING AS A JUVENILE COURT, AFFIRMED. COSTS TO BE PAID BY APPELLANT.