UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1193

September Term, 2015

IN RE: A. M.

Kehoe,
Leahy,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: March 18, 2016

On December 31, 2014, six-month old infant A.M. arrived at the emergency room of Peninsula Regional Medical Center ("PRMC") weighing only 4.6 kg (10 lbs., 2.26 oz.) and was admitted and diagnosed with failure to thrive. On January 13, 2015, A.M. was removed from mother, Mary M. ("Appellant")—who was already involved with the Department of Social Services regarding the care and custody of her three young children—and was placed in shelter care. Following a permanency plan review hearing in July 2015, in which it became clear that Appellant was not adequately participating in the mental health treatment required as part of her service plan with the Wicomico County Department of Social Services (the "Department"), the juvenile court changed the permanency plan for A.M. from reunification with Appellant to a plan of adoption with a concurrent plan of care, custody, and guardianship to a non-relative. Appellant filed a timely notice of appeal.

Appellant presents following question for review:

> Did the court err by failing to continue reunification efforts with [Appellant] and by ordering a plan that did not include reunification as an option?

It is clear that the juvenile court properly considered the factors required by Maryland Code (1973, 2013 Repl. Vol.) Courts and Judicial Proceedings Article, ("CJP") § 3-823(e)(2)[1], and the five year record of Appellant's involvement with the Department

[1] CJP § 3-823(e)(2) provides that "[i]n determining the child's permanency plan, the court shall consider the factors specified in § 5-525(f)(1) of the Family Law Article."

supports the court's finding that Appellant had not addressed her "most critical need" for mental health treatment. For these reasons, as further explicated in this opinion, we affirm the juvenile court's ultimate determination that it was in the best interests of A.M. to change the permanency plan, and we hold that the court did not abuse its discretion.[2]

BACKGROUND

Appellant gave birth to a daughter, A.M., on June 11, 2014. Pursuant to the "Birth Match" law,[3] two days later the Department attempted to contact Appellant at the hospital

[2] A.M.'s purported father did not participate in this matter and is not a party to this appeal.

[3] Maryland Code (1984, 2012 Repl. Vol., 2015 Supp.), Family Law Article ("FL"), § 5-715 provides:

> (a) *In general.* — The Executive Director of the Administration shall provide the Secretary of Health and Mental Hygiene with identifying information regarding individuals who, as to any child, have had their parental rights terminated under § 5-322 or § 5-323 of this title and have been identified as responsible for abuse or neglect in a central registry as described in § 5-714(d) of this subtitle.
> (b) *Requirements on birth of subsequent children.* — If in accordance with § 4-222 of the Health - General Article, the Secretary provides to the Executive Director birth record information for a child born to an individual whose identifying information has been provided under subsection (a) of this section, the Executive Director shall:
>
> (1) verify that the parent of the child is the same individual described in subsection (a) of this section; and
> (2) immediately notify the local department in the jurisdiction in which the child resides so that the local department may review its records and, when appropriate, provide an assessment of the family and offer services if needed.

On April 29, 2013, Appellant consented to the termination of her parental rights to her oldest daughter in a Child in Need of Assistance ("CINA") proceeding in Worcester County. Two weeks later, on May 14, 2013, she gave birth to a son, M. M., (continued…)

where she had given birth, but she and A.M. had already been discharged. At that time, the Department discovered that the home address Appellant had provided to the hospital did not exist. Subsequently, the Department contacted Appellant by phone to set up a meeting with foster care worker Eva Hall.

Ms. Hall visited Appellant's new residence in Somerset County and conducted a safety assessment. Appellant, however, refused to sign the safety plan proposed by Ms. Hall and the Department. On June 30, 2014, Ms. Hall attempted another home visit; however, she was informed that Appellant had left the residence the previous day and had not yet returned. After a phone conversation, Appellant and Ms. Hall agreed to meet at the Department on July 3. On the day of the visit, Appellant called to cancel but, after some argument, Appellant agreed to take Ms. Hall to where the child was being cared for.[4] Thereafter, Ms. Hall observed that the child was safe, and was told that Appellant had plans to stay in a new residence with a friend.

Over the next several months, Appellant relocated to another residence and lost her Food Stamp card for failure to comply with the face-to-face interview requirement. In

who was placed in foster care by the Wicomico County Department of Social Services and was the subject of this Court's unreported opinion in *In re Malachi M.*, No. 0616 Sept. Term 2015, slip op. at 1 (filed Dec. 30, 2015)(Affirming the order entered in the circuit court changing Malachi M.'s permanency plan from reunification to adoption by a non-relative.)

[4] According to the detailed thirteen-page report prepared by Child Protective Services, Appellant was having her hair and nails done on that day, and it was noted that "[Appellant] had received her Temporary Cash Assistance payment from the LDSS on this same day allowing her the finances to get her hair and nails done and forgo [A.M.'s] two week well child visit."

September 2014, Department workers made an unannounced visit to Appellant's residence and found that there was very little food in the home and that A.M. did not have a crib. The Department then provided Appellant with a pack-and-play crib, new bottles, blankets, a rubber bath mat, and a pot to sterilize the bottles. In the months that followed, the Department provided extensive services and case management to Appellant. During that time, Appellant and A.M. lived in a number of different homes until Appellant was, with the assistance of the Department, able to obtain housing through the Family Unification Program ("FUP"). The Department continued attempting to meet with Appellant and A.M. with varying degrees of success.

Failure to Thrive Diagnosis

According to medical records, A.M. was within a normal weight range at birth, weighing 3.45 kg. (7 lbs., 9.69 oz.) at five days old, placing her in the 57th percentile for weight.[5] By October 15, 2014, A.M.'s weight gain had slowed, and, at age four months,

[5] The measurements reproduced herein are contained in the medical reports from A.M.'s "Well Child" examinations conducted at Three Lower Counties Community Services, Inc. (a Health Center Program grantee under 42 I.S.C. 254b, and a deemed Public Health Services employee under 42 U.S.C. 233 (g)-(n) covered by FTCA). According to the Center for Disease Control,

> "[p]ercentiles are the most commonly used clinical indicator to assess the size and growth patterns of individual children in the United States. Percentiles rank the position of an individual by indicating what percent of the reference population the individual would equal or exceed. For example, on the weight-for-age growth charts, a 5-year-old girl whose weight is at the 25th percentile, weighs the same or more than 25 percent of the reference population of 5-year-old girls, and weighs less than 75 percent of the 5-year-old girls in the reference population."

(continued…)

she weighed 5.4 kg. (11 lbs., 14.48 oz.), placing her in the 7th percentile for weight. By her well child visit on December 31, 2014, A.M.'s weight had dropped to 4.6 kg (10 lbs., 2.26 oz.), placing her in the 1st percentile for weight. The examining pediatrician sent A.M. to the emergency room "for further work-up and possible admission," noting that she was "very concerned with the significant weight loss over 2 months; decrease in length and head circumference also noted." Subsequently, A.M. was admitted to PRMC and diagnosed with failure to thrive after "all labs were found to be within normal range." According to her medical records, A.M. fed well throughout her hospital stay, gained weight, and was discharged on January 3, 2015 weighing 5.2 kg. (11 lbs., 7.42 oz.). Notably, the discharging physician observed that there had been "several social concerns within the home" because there had been "multiple incidences where it was found that mom was stretching the truth or lying." Upon discharge, Appellant refused to go back to A.M.'s former pediatrician and requested a new one.

On January 5, 2015, the Department received a referral concerning the possible neglect of A.M. The referral cited A.M.'s admission to PRMC for failure to thrive on December 31, 2014, and weight loss—two pounds in two months. The referral indicated that A.M. was discharged from PRMC on January 3, 2014, after being adequately fed and gaining weight.

2000 CDC Growth Charts for the United States: Methods and Development (May 2002), *available at* http://www.cdc.gov/nchs/data/series/sr_11/sr11_246.pdf.

On January 6, 2015, the Department filed a Non-Emergent Petition for Child in Need of Services alleging that A.M. was a child in need of assistance ("CINA").[6] The department's petition cited, *inter alia*, Appellant's failure "to maintain regular medical appointments for [A.M.]," "[f]ailure to properly clean and sterilize bottles and nipples for [A.M.] resulting in [A.M.] being treated for an infection of the mouth,"[7] and "[A.M.'s] admission to the hospital for failure to thrive."

On January 8, 2015, five days after discharge from PRMC, A.M. had a follow-up appointment with a new pediatrician. A.M. weighed 5.1 kg (11 lb. 4oz.) placing her in the .04 percentile for weight, and, at her January 13, 2015 appointment, A.M.'s weight had dropped again to 10 lbs., 13 oz. A.M. was assessed with "developmental delay – failure to thrive," and the pediatrician noted her "severe concern" over A.M.'s weight loss. The pediatrician also documented that, during the office visit, Appellant "refused to let me hold infant in the office or feed infant any formula." The pediatrician notified the Department

[6] "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.

CJP § 3-801(f).

[7] In August 2014 A.M. was diagnosed with "candidiasis of the mouth" and was prescribed medication by a pediatrician. According to the Department, it took a month for Appellant to fill the prescription, and as a result, A.M. suffered with the infection for a prolonged period.

of her "immediate concerns" for A.M.'s "well[-]being," and refused to "discharge" A.M. to Appellant.

That same day, January 13, 2015, A.M. was removed from the Appellant's care and was placed in shelter care. The following day, the magistrate recommended continued shelter care. The shelter care order, entered March 5, 2015, found that "the evidence presented sustained the finding that continuation of [A.M.] in [Appellant's] home is contrary to [A.M.'s] safety and welfare." The magistrate granted the Department's request for continued shelter care and placed A.M. in the temporary care and custody of the Department.

Adjudication and Disposition Hearings

On January 23, 2015, the Department filed an amended CINA petition. At the February 18, 2015 adjudicatory hearing, the court received A.M.'s pediatric and hospitalization records. Thereafter, Appellant verified that she was willing to agree to the adjudication of A.M. as a child in need of assistance. Appellant also indicated her understanding that "the basis for the Department bringing the child into care was the hospital's determination that the child failed to thrive[.]" After hearing Appellant's testimony, the magistrate stated:

> The Court will find that the Department has proven by a preponderance of the evidence that the minor child, [A.M.], born June 11, 2014, was hospitalized for failure to thrive in addition to related medical procedures and/or examinations. That there has been an agreement between the parties, in addition to child's counsel, Miss Feehan, that there would be a finding that the Department has produced the testimony and evidence necessary to make a finding.
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> * * *

> Th[e] evidence previously submitted as well as the evidence submitted today would show that it's contrary to [A.M.'s] safety and welfare to return at this point [in] time to [Appellant's] home and it is necessary to protect [A.M.].

The disposition hearing was then set to continue in thirty days.

At the subsequent disposition hearing held on March 18, 2015, the court noted on the record that A.M.'s putative father was served on February 26; however, he did not appear in court. The out-of-home supervisor for the Department, Claire Spillane, testified as follows regarding A.M.'s condition and progress during the period of shelter care:

> At seven months [A.M.] looked more along the lines of a six to eight week old baby. And she could not significantly hold her head up without flopping it over, she could hold it up at times but not sustain the head being held up. She had no ability to push herself up as far as if she was in the stomach position she couldn't push herself up. She couldn't roll over, which babies at that age should be rolling over. She had very few social interactions. Babies at that age should be able to react to songs, Itsy Bitsy Spider, Peek A Boo, things like that. The baby was not able to engage in any of that activity. Her legs were very thin.
>
> When we had seen her before the hospitalization we were concerned about her lack of motor movement, she just seemed very weak.
>
> * * *
>
> [In shelter care, A.M.] has gained a substantial amount of weight. She is a different looking baby. She doesn't look emaciated anymore. She has strength in her legs and in her arms. Her head has grown significantly, just it's noticeable she's filled out. She's stronger. She can lay on her stomach and push herself up. She can hold her legs straight so that you can actually put weight on her legs. She socially interacts. She is still probably, as far as her motor skills, her social skills seem to be catching up. Her motor skills are probably about two months behind. But the assessments that we've done indicate that she will be able to catch up.

Indeed, the record reflects that within three days, A.M. had gained 10 oz. According to medical records from a pediatrician visit on January 23, 2015, A.M. had gained another 1

lb. 2 oz., and weighed a total of 12 lb. 9 oz. On that date, ten days after entering shelter care, the pediatrician noted that A.M. had a "much fuller face," was "less thin," and "more responsive." The pediatrician was "very pleased with [A.M.'s] progress and development over the last 7 days," and noted that she had made "significant improvement from the last 2 visits where p[atient] was lethargic/non emotional."

In the disposition hearing, the Department next outlined the service agreement they had with Appellant and highlighted Appellant's mental health treatment as the most important part of the agreement. Regarding the mental health requirements in the service agreement, Ms. Spillane stated:

> Beginning with the first one, and the most important one, and the one that I continue to stress to [Appellant] and is so, so important is that she obtain regular and consistent mental health treatment. I have met with [Appellant] numerous times and we've discussed this just about every time that I see her. She's assured me that she has been going to mental health treatment. She did sign consents for us to talk with the mental health provider.
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> * * *
>
> Upon contacting the therapist, [Appellant] attended an intake appointment on January 18, 2015, which was just after [A.M.] came into care. Keep in mind that we had been asking her to attend mental health treatment for the previous 20 months and she has not done that. . . . She's been only for one followup session on January 22nd. According to the letter and the contact that was given to me by the agency, she was discharged March 9th as insufficient progress, and not attending treatments.

The Department also observed that Appellant "has a very difficult time with parenting education and is largely not able to receive or hear the feedback presented to her."

Indeed, the record reflects that Appellant's erratic behavior and frequent outbursts affected her relationships with care providers and others assisting her with A.M.'s care. In

February 2015, Gateway Pediatrics banned Appellant from their practice and complained that she "is verbally abusive to our providers and our staff," and that Appellant's behavior had been disruptive to A.M.'s care. Ms. Spillane testified as follows regarding her observations of Appellant's behavior at A.M.'s first pediatric appointment after she came into the Department's care:

> [Appellant] was unable to follow instructions even from beginning in the parking lot when the foster parent arrived with the baby. She came right up behind the foster parent as the foster parent was trying to get the baby out of the car. She was almost too close to the foster parent and I asked her to step aside; she wouldn't listen. I asked her to wait to see the baby until we got into the pediatric office. She became very aggressive with me, she pushed me, she shoved me, she threatened to call the police on me. We got into the pediatric office, she, as soon as we got in there the foster parent set the baby carrier down. [Appellant] grabbed the baby carrier, abruptly grabbing at the baby, trying to pull off her clothing and the car seat belt, and sadly was very loud and disruptive at the office. The office staff quickly got us into a back room and [Appellant] was able to calm herself down and deescalate, although she was – instead of asking about, the doctor, how her baby as doing, any concerns with the baby, she was very accusatory to the pediatrician. She wasn't able to ask about the baby but only why did you call DSS on me.

Although the Department agreed that the plan had to "start as reunification," they could not, at that time, recommend reunification "as untreated mental health issues render [Appellant] incapable of providing a safe, stable environment for her children." The Department recommended a permanency plan of reunification with a concurrent plan of care, custody, and guardianship to a non-relative.[8]

[8] The Department had explored relative placements with Appellant's second child, M.M., but had eventually ruled them out after the sole relative who was deemed capable and willing had returned M.M. to the Department after only a few days in her care. Regarding the possibility for placement with a relative, Ms. Spillane testified that:

(continued…)

At the close of the March 18, 2015 disposition hearing, the magistrate recommended that A.M. be found CINA and that her care and custody be with the Department for appropriate placement. The magistrate recommended that "[A.M.] be found a child in need of assistance by reason of neglect and because [Appellant] is unwilling or unable to provide the proper care and attention necessary to protect the health, safety, and well-being." In an order dated March 31, 2015, the magistrate recommended that the initial permanency plan be reunification. The court signed an additional order to that effect on April 15, 2015, which also recommended that Appellant be allowed supervised visitation, attend weekly therapy sessions and regular parenting education classes, and that the permanency plan would be reunification.

Permanency Plan Hearing June 3, 2015

By A.M.'s 12-month checkup, she weighed 19 lbs. 1 oz. and was meeting all of her developmental milestones. Clearly A.M. was finally back on track in the care of a preadoptive foster family, and on May 21, 2015, the Department filed a line with the court advising of its intention to request that the permanency plan be changed to adoption. The Department's written recommendations, prepared for the June 3, 2015 permanency plan hearing, stated that "[Appellant] has made limited progress since the Local Department

> The only relative that we could possibly try with was [Appellant's] sister. Her sister would only accept M[.] M. if [Appellant] was not told the location of her home, and that only if visitation would occur at DSS. She did not want any involvement with [Appellant] or [Appellant] knowing where she lived because of [Appellant's] unstable mental health.

became involved with her since [A.M.'s] brother came in care on October 17, 2013." The Department's recommendation also provided:

> Previously, [Appellant] reported at least six different addresses of where she is living to this agency. [Appellant] was living with several different "friends." All these addresses belong to transient "friends." However, [Appellant] obtained a housing voucher with the assistance of the Local Department, and her voucher covers 100% of her rent. [Appellant] is responsible only for a small portion of her utilities.
>
> The Local Department referred [Appellant] to Dr. Samantha Scott at The Child and Family Center for psychological assessment and treatment recommendations. [Appellant] completed the evaluation with Dr. Samantha Scott on February 24, 2015, due to the urgency and insistency of this worker.

Dr. Scott's first assessment, a Fit-to-Parent evaluation, was completed in October 2014, and was requested by the Department in relation to the case involving Appellant's second child, M.M. In that assessment, Dr. Scott reviewed Appellant's records, and interviewed a friend of Appellant's, as well as Appellant's brother. Dr. Scott concluded the following:

> Taken together, [Appellant] has a long history of mental illness, including chronic mood lability and paranoid thinking. She also has an extensive trauma history that has the potential to cause unpredictable, aggressive behavior when left untreated. Although she has become more stable in recent years, she continues to exhibit very concerning behavior with her third child (currently in her custody) when under some distress. In addition, [Appellant] appears to be in great denial regarding her mental health needs, refusing medication, which is typically necessary to appropriately treat psychotic symptoms and Bipolar Disorder. Unfortunately, disorders such as these tend to oscillate, whereby individuals can function appropriately at times but then exhibit unforeseen spikes in unsafe behavior. Thus, treatment for [Appellant] will likely need to be long term and ongoing. At this time, new formal diagnoses are not made as [Appellant] personally denied all symptoms; however, a previous diagnosis of Bipolar I Disorder with Mood Congruent Psychotic Features (Grandiosity and Paranoid thinking) is supported by historical information and observational data. It will be important that [Appellant] is evaluated by a psychologist in an

> [o]ngoing fashion to determine accurate diagnoses and the most appropriate treatment.
>
> Lastly, [Appellant's] lack of follow-through with regard to supervised visits and appointments set for the current evaluation suggest that [Appellant] may not be ready for the responsibility of parenting a child 24 hours per day.

After her second evaluation in February 2015, Dr. Scott provided expert testimony at the June 3, 2015 permanency plan hearing. Dr. Scott diagnosed Appellant with "a delusional disorder, a persecutory type with non-bizarre delusions unspecified." Dr. Scott also recommended that Appellant seek inpatient psychiatric treatment. Regarding her diagnosis of Appellant, Dr. Scott opined:

> [Appellant] has psychotic symptoms, yes.
>
> * * *
>
> [W]ith delusional disorder, it looks different because often cognition is intact. They can still function socially in many situations. It seems to be more specific to the delusional thought where functioning is less.
>
> * * *
>
> For example anything to do with the people here or the pediatricians that [Appellant] encountered or the people that were trying to help her with the child.

Dr. Scott's written recommendations, submitted to the court, provided:

> 1. [Appellant] needs intensive and long-term therapy to address her history of abuse and current symptoms of delusional and paranoid thinking. Therapy will only be successful if [Appellant] can remain in therapy on a weekly basis (at the very minimum) with the same therapist who will need to spend a lengthy amount of time to gain [Appellant's] trust.
>
> 2. Currently, given [Appellant's] great distrust of all individuals and professionals associated with DSS, finding a therapist with whom she will see weekly and eventually trust is unlikely. Thus, a more appropriate and successful approach might include inpatient psychiatric treatment.

3. Regardless of treatment modality, it is likely that [Appellant] would benefit greatly from psychotropic medication.

4. At this time, [Appellant's] cognitive thought patterns and lack of insight suggest that she is not capable of offering a safe environment for her daughter.

Following Dr. Scott's testimony, the court recessed until June 24, 2015. On that date, however, Appellant was physically ill and unable to participate meaningfully in the proceeding. Accordingly, the court continued the case to July 8, 2015.

Permanency Plan Hearing July 8, 2015

At the July 8 hearing, Ms. Spillane testified that there was nothing further the Department could do to help Appellant regain care and custody of her children, stating:

> I don't believe there is anything that can be done at this point in time for [Appellant] to be able to safely parent. We continually want to try to help her. We want to make sure she doesn't lose her housing. We want to make sure she can sustain herself, financially, by making sure she continues to receive some of the financial services of the Department, such as food stamps and things like that that help her to survive.
>
> We continue to want to try to see her get into some mental health treatment. But as far as reunification, I don't think there is anything more that we can do. The children do not have a bond with her. . . . [W]hen she is in a good place, she can be appropriate and she can certainly function enough to meet her basic needs, but when she was not in a good place, and when she was in one of her delusional episodes, she can be very, very unsafe.

Ms. Spillane also testified that Appellant had refused to give more formula to the Department to give to the foster parent, arguing that each can of formula should last longer and complained to the Department that she believed the Department was "instructing the foster parents to force feed A.M. and to feed her excessively so that she would gain weight."

Ms. Spillane also related to the court that, prior to A.M.'s placement in foster care, A.M. was lacking in multiple areas of development upon her entry into shelter care. A.M. could not hold her head up consistently, she was "emaciated," and looked like "maybe a two-month old." In contrast to the Department and the pediatrician's observations, Appellant claimed that A.M. never missed any milestones while in her care, and that she was "always talking, laughing, giggling," and "doing a lot."

Moreover, the Department reported that since 2010, Appellant has had numerous service agreements with both Wicomico and Worcester County Departments of Social Services in relation to all three of her children. Ms. Spillane testified that "for the past two years, the mental health participation has been one of the key aspects of her service agreement," but that Appellant had only attended "nine total mental health appointments with a therapist" in that time period. In late April 2015, Appellant began seeing a different therapist and for the first time in two years she began to attend therapy regularly, attending seven sessions including intake. This was short-lived, however, and by mid-June, she had stopped going altogether.

The Department highlighted several other parenting issues that they repeatedly attempted to address with Appellant, but Appellant was not receptive to the Department's instruction. Ms. Spillane testified that, during the two years that they worked with Appellant, the Department tried to address Appellant's unsafe infant feeding practices. The Department also raised safety concerns over Appellant's sleeping arrangements for A.M. after Department workers repeatedly observed that A.M. slept in a bed with Appellant, despite the Department providing Appellant "extensive instruction about safe sleeping

arrangements" and providing a crib for A.M. Appellant, however, denied that A.M. slept in her bed with her, and testified that A.M. always slept in a crib.

At the close of the permanency plan hearing, the Department requested that the permanency plan be changed to adoption and stated:

> We are here early ahead of time. Normally, we work with the mother for a longer period, but we are asking for this change of plan early in [A.M.'s] case but we cannot look at [A.M.] in a vacuum.
>
> We have to look at this case, in considering the five years that the Department and I mean, Department of Social Services, in the aggregate of Wicomico County and Worcester County have been working with [Appellant] over a continuous five-year period. And within that five-year period, she has made pretty much zero progress.
>
> We have -- she spent maybe five weeks in therapy over a five-year period. That's pretty much nothing. She has not engaged in any meaningful way to try to improve herself improve her circumstances to be able to provide a safe environment for her children.[9]

A.M.'s court-appointed advocate, Christina Feehan, agreed with the Department's recommendation and request.

Thereafter, the court changed the permanency plan to a plan of adoption with a concurrent plan of care, custody, and guardianship to a non-relative and reiterated that Appellant's service agreement with the Department remains in effect and Appellant "shall attend at a minimum twice weekly mental health treatment." Addressing Appellant directly, the magistrate stated:

> Your attorney made a very impassioned argument, and during the trial or the hearing carefully made sure that evidence was brought out of the efforts that you have made and your engagement with your therapist in particular.
>
> * * *

[9] At the time of this hearing, Appellant was pregnant with her fourth child.

> As this goes forward, it will only help you if you remain engaged in th[at] intense way with your therapist. That can only make things better for you, however, it goes forward. In fact, I think that's absolutely necessary for anything to go the way you would like it to go.
>
> So I'm going to suggest to you that as disappointed as you are, and I know you are, that you not let that interfere with your continued therapy because it's important to how this goes -- we haven't decided anything today about adoption or anything like that. I'm just changing the plan to adoption.
>
> As this goes forward, your engagement with the therapy will be critical to how that's viewed in the future from the Department, from child counsel, and, ultimately, from the Court.

The court entered a permanency plan review order on July 9, 2015, which found that the Department had made reasonable efforts toward alleviating or mitigating the circumstances that necessitated A.M.'s commitment and that a permanency plan of adoption with a concurrent plan of care, custody, and guardianship to a non-relative was in A.M.'s best interest.

Appellant filed a notice of appeal on July 23, 2015.

DISCUSSION

Recently, in *In re A.N.*, this Court summarized the appropriate standard applied in reviewing a permanency plan change in a CINA proceeding and stated:

> When reviewing an order regarding a permanency plan in a CINA proceeding "[t]he appellate standard of review as to the overall determination of the hearing court is one of 'abuse of discretion.'" *In re Yve S.,* 373 Md. 551, 583, 819 A.2d 1030 (2003). However, when an appellate court reviews cases involving the custody of children generally, it simultaneously applies three different levels of review. *Id.* at 584, 819 A.2d 1030. First, when an appellate court scrutinizes factual findings, the clearly erroneous standard applies. *In re Shirley B.,* 419 Md. 1, 18, 18 A.3d 40 (2011) (citing *In re Yve S.,* 373 Md. at 586, 819 A.2d 1030). Second, "if it appears that the [juvenile 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." *Id.* (alteration in original) (quoting *In re Yve S.,* 373 Md. at 586, 819 A.2d 1030).

> Finally, when reviewing a juvenile court's decision to modify the permanency plan for the children, this Court "must determine whether the court abused its discretion." *Id.* at 18-19, 18 A.3d 40.

226 Md. App. 283, 305-06 (2015).

In the present case, Appellant contends that the circuit court abused its discretion when it changed the permanency plan from reunification to adoption. Appellant, citing to *In re Yve S.*, maintains that, in the absence of compelling circumstances to the contrary, "it is presumed that it is in the best interest of a child to be returned to his or her natural parent." 373 Md. at 582. Thus, Appellant argues that, because she had "begun to comply with the therapy appointments required for her to be reunified" with A.M., the court should have granted her "additional time to work on reunification."

Additionally, Appellant argues that "the fact that [Appellant] had mental health problems did not warrant a conclusion that she was unable to parent after receiving appropriate treatment[,]" and that "[Appellant] did not knowingly neglect [A.M.] prior to her failure to thrive diagnosis." Rather, Appellant asserts that she "cared for [A.M.] without significant concern for the first 5 months of [A.M.'s] life."

The Department argues that "the juvenile court changed [A.M.'s] plan after finding that [Appellant] had not 'addressed that single most critical need'—mental health services—despite 'five years' of services from two local departments of social services." The Department asserts that, during the permanency plan review hearing, the court was required to determine the extent to which Appellant had progressed towards alleviating or mitigating the circumstances that led to A.M. being removed from Appellant's custody and care. The Department argues that the court correctly found that Appellant had not made

sufficient progress and that "the uncontroverted evidence established that [Appellant] would be unable to care for [A.M.] in the foreseeable future[.]" Thus, the Department argues that it was proper for the court to move toward "achiev[ing] a timely and permanent placement for the child consistent with the child's best interests." CJP § 3-802(a)(7). A.M.'s child advocate also argues, before this court, that the court's finding that Appellant could not safely care for A.M. was supported by sufficient evidence, not clearly erroneous, and that the court's decision to change the permanency plan to adoption was not an abuse of discretion.

CINA Permanency Planning Framework

Pursuant to CJP §3-823(b), once a child has been removed from the family home pursuant to a CINA finding, the juvenile court is required to conduct "a permanency planning hearing to determine the permanency plan for a child[.]" To establish an initial permanency plan, the court shall:

> 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 ...;
> 3. Adoption by a non-relative;
> 4. Custody and guardianship by a non-relative …;
> 5. 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[.]

CJP § 3-823(e)(1).

After the establishment of an initial permanency plan, the court must conduct periodic hearings and "[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). Pursuant to CJP § 3-823(e)(2), in determining what permanency plan is in the child's best interest, the court shall consider the factors in Maryland Code (1984, 2012 Repl. Vol., 2015 Supp.) Family Law Article ("FL") § 5-525(f), which states:

> (f)(1) In developing a permanency plan for a child in an out-of-home placement, the local department shall give primary consideration to the best interests of the child, including consideration of both in-State and out-of-state placements. The local department shall consider the following factors in determining the permanency plan that is in the best interests of the child:
>
> (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.

At a permanency plan hearing, the court is required to make a finding of whether or not the local department "made reasonable efforts to prevent placement of the child into the local department's custody." CJP § 3-816.1(b)(1). Further, the court "shall make a finding whether a local department made reasonable efforts to . . . [f]inalize the permanency

plan in effect for the child; and . . . [m]eet the needs of the child, including the child's health, education, safety, and preparation for independence[.]" CJP § 3-816.1(b)(2). To make those findings, the court shall consider the following factors:

> (1) The extent to which a local department has complied with the law, regulations, state or federal court orders, or a stipulated agreement accepted by the court regarding the provision of services to a child in an out-of-home placement;
> (2) Whether a local department has ensured that:
> (i) A caseworker is promptly assigned to and actively responsible for the case at all times;
> (ii) The identity of the caseworker has been promptly communicated to the court and the parties; and
> (iii) The caseworker is knowledgeable about the case and has received on a timely basis all pertinent files and other information after receiving the assignment from the local department;
> (3) For a hearing under § 3-823 of this subtitle, whether a local department has provided appropriate services that facilitate the achievement of a permanency plan for the child, including consideration of in-State and out-of-state placement options;
> (4) Whether the child's placement has been stable and in the least restrictive setting appropriate, available, and accessible for the child during the period since the most recent hearing held by the court;
> (5) Whether a local department notified the court and all parties before any change of placement for the child, or, if emergency conditions made a change necessary, as soon as possible after the change of placement;
> (6) On receipt of a report of maltreatment of a child occurring while the child is in the custody of a local department, whether the local department provided the appropriate parties, including the child's attorney, a report or notice of a report of the suspected maltreatment of the child and of the disposition of the investigation within the time required by regulation and court order; and
> (7) Whether a local department has provided appropriate and timely services to help maintain the child in the child's existing placement, including all services and benefits available in accordance with State law, regulations, state and federal court orders, stipulated agreements, or professional standards regarding the provision of services to children in out-of-home placements.

CJP § 3-816.1(c).

The "best interests of the child" must be the "primary consideration" when determining a permanency plan. *In re Shirley B.*, 191 Md. App. 678, 707 (2010). "Reunification with the parent is presumptively the better option, and, absent compelling circumstances to the contrary, the plan should be to work towards reunification as it is presumed that 'it is in the best interest of the children to remain in the care and custody of their [biological] parent[ ].'" *In re Adoption of Cadence B.*, 417 Md. 146, 157 (2010) (*quoting In re Adoption/Guardianship of Rashawn H. and Tyrese H.*, 402 Md. 477, 495 (2007)). That presumption may be rebutted, however, where there are circumstances "indicating that reunification with the parent is not in the child's best interest." *Id.*

The Best Interests of the Child

In *In re A.N.*, we recognized that:

> Parents enjoy a well-established and fundamental constitutional right—protected by the Fourteenth Amendment—to raise their children without undue influence by the State, and that right cannot be taken away "'unless clearly justified.'" *In re Yve S.,* 373 Md. at 565–66, 819 A.2d 1030 (quoting *Wolinski v. Browneller,* 115 Md. App. 285, 693 A.2d 30 (1997)). However, that right is not absolute and must be balanced against the State's interest in protecting the health, safety, and welfare of the child. *Id.* at 568–69, 819 A.2d 1030. Indeed, the Court of Appeals has "'often reaffirmed that [the best interest of the child] takes precedence over the fundamental right of a parent to raise his or her child.'" *Id.* at 569–70, 819 A.2d 1030 (quoting *Wolinski,* 115 Md. App. at 301, 693 A.2d 30).

226 Md. App. 283, 306 (2015). Indeed, the Court of Appeals has made clear that, "where the fundamental right of parents to raise their children stands in the starkest contrast to the State's effort to protect those children from unacceptable neglect or abuse, the best interest of the child remains the ultimate governing standard." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 496 (2007) (footnote omitted).

Here, there was sufficient evidence to support the court's finding that Appellant was unable to care properly for A.M. We cannot say that the court's finding that Appellant's mental health issues affected her "ability to parent and give proper care and attention" to A.M. was made in error. There was extensive evidence provided, at both the adjudication/disposition hearings and the permanency plan hearings, that A.M. failed to thrive while in Appellant's care, and that she began to gain weight and reach developmental milestones after she was removed from Appellant's custody. The Department provided evidence that Appellant had received numerous services to assist her in parenting A.M., including: assistance with obtaining and retaining housing, assistance with maintaining her food stamp benefits, providing infant supplies, providing transportation, and providing parenting instruction. Notably, there is evidence that the Appellant has resisted or rejected a significant portion of that assistance. And there is evidence that, at least on some occasions, Appellant spent cash assistance money on things like getting her own her hair and nails done, rather than buying necessities for her baby, who did not even have a crib, and apparently not enough food.

There was considerable evidence that Appellant has a mental illness that affects her ability to parent A.M. Dr. Scott's expert testimony and recommendations revealed that "[Appellant] needs intensive and long-term therapy to address her history of abuse and current symptoms of delusional and paranoid thinking[,]" and "[Appellant's] cognitive thought patterns and lack of insight suggest that she is not capable of offering a safe environment for her daughter." Moreover, the Department presented uncontroverted evidence that, despite the requirement to participate in mental health treatment under her

agreement with the Department, Appellant had only attended nine mental health appointments with a therapist in the two years preceding the July 8, 2015 permanency plan hearing.

Although Appellant maintains that she cared for A.M. "without significant concern for the first 5 months of her life," the record in this case paints a different picture. Accordingly, the court did not find Appellant's testimony credible, and stated that doing so would "be to find every single solitary other individual's testimony and input in this case to be incredible including the pediatrician, the workers at DSS, every single solitary counter -- every person encountering her is telling something that is inconsistent with what she says."

Here, the clear evidence in the record supports the court's finding that despite working with various departments for the last five years, Appellant had not addressed the "single most critical need" of mental health treatment. It was appropriate for the court to consider Appellant's prior course of conduct, for it is well established "that a parent's past conduct is relevant to a consideration of his or her future conduct."

It is readily apparent that the court properly considered the factors required under CJP § 3-816.1(b)(2), and those required by CJP § 3-823(e)(2) and enumerated in FL § 5-525(f). In the context of its consideration of all the factors in this case, the juvenile court's ultimate determination that it was in the best interests of A.M. to change the permanency

plan to adoption with a concurrent plan of care, custody, and guardianship to a non-relative was not an abuse of discretion.

ORDER OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.