UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1418

September Term, 2015

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IN RE: D.H.

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Krauser, C.J.
Berger,
Reed,

JJ.

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Opinion by Reed, J.

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Filed: May 4, 2016

This appeal arises from a decision of the Circuit Court for Baltimore County, sitting as a juvenile court, to change the permanency plan for D.H.,[1] from a plan of reunification with the parents to a plan of reunification concurrent with adoption by a non-relative. Appellant, Mr. H., who is D.H.'s father, filed a timely notice of appeal of the juvenile court's order,[2] presenting one question for our review, which we quote:

> Did the juvenile court err by changing [D.H.'s] permanency plan without first making specific, on-the-record findings regarding each factor set forth in Maryland Code, § 5-525(f)(1) of the Family Law Article?

Finding no error, we shall affirm the juvenile court's order.[3]

## FACTUAL AND PROCEDURAL HISTORY

D.H. was born on October 18, 2010. On July 20, 2012, the Baltimore County Department of Social Services ("Department") filed a Child in Need of Assistance ("CINA") [4] Petition and Request for Shelter Care, alleging medical neglect by his parents,

[1] In furtherance of the privacy interests of Md. Rule 8-121(b), the juvenile will be referred to by his initials only in the caption of this appeal and in the opinion.

[2] D.H.'s mother, Ms. H., is not a party to this appeal.

[3] An order changing a permanency plan for a child adjudicated to be a Child in Need of Assistance is an appealable interlocutory order pursuant to Md. Code (1974, 2013 Repl. Vol.), § 12-303(3)(x) of the Courts & Judicial Proceedings Article ("CJP"), which allows an appeal from an interlocutory order depriving a parent of the care and custody of his child, or changing the terms of such an order. *See In re: Ashley E.*, 158 Md. App. 144, 160 (2004), *aff'd,* 387 Md. 260 (2005). Therefore, this appeal is correctly before us.

[4] Pursuant to CJP § 3-801(f), a "Child in need of assistance" ("CINA") 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."

Mr. and Ms. H. The Department advised the court that D.H. is "medically fragile, requiring a significant amount of specialized care."[5] D.H.'s diagnoses include anemia, chronic lung disease, GERD (gastroesophageal reflux disease), hydronephrosis, hypothyroidism and Trisomy 21 (commonly known as Down syndrome).

According to the Department, the parents had trouble following directions for D.H.'s medical care, which posed serious concerns. For example, despite extensive training by in-home nursing staff, the parents were not giving D.H. oxygen, medications, or injections as prescribed, raising concerns about potential "life-threatening" consequences. D.H. required specialized feeding through a gastric tube, but, although Ms. H. had been instructed "numerous" times, the pump had been set improperly on several occasions, putting D.H.'s health at risk. D.H. was diagnosed with "failure to thrive" as a result of improper feeding. In addition to that, the Department also noted that the parents had also missed D.H.'s medical appointments.

In the Department's opinion, "[t]he parents have received extensive instruction over time regarding the proper care of [D.H.] and his needs and demonstrate an understanding of such instruction. However, they have consistently chosen to treat him in a way that is contrary to the medical instruction that has been provided to them."

[5] Mr. H. filed a reply brief, objecting to references in the Department's brief to allegations made in the CINA Petition and Request for Shelter Care. Mr. H. argues that, because the juvenile court based its adjudication that D.H. was a CINA on the parties' agreed upon statement of facts, the specific allegations in the CINA petition were never proven, and, therefore, this Court should not consider them. As it appears that the juvenile court relied upon the allegations in the CINA Petition and Request for Shelter Care in issuing the Shelter Care Order on July 20, 2012, we find it appropriate to recite them in this opinion.

The court issued a Shelter Care Order on July 20, 2012, and D.H. was placed into a "medically fragile foster home" where he has resided since that time.[6] In October 2012, prior to the adjudicatory hearing, the Department reported that Mr. and Ms. H. and their two older children had to move out of their apartment and did not have a stable residence. Ms. H. stated to a social worker that she was not able to care for D.H. at that time, and that she believed that foster care was the best place for D.H. The social worker also reported that during visits with D.H., Mr. H. demonstrated an "inability to focus," and asked the same questions "repeatedly."

On October 16, 2012, with the consent of all parties, D.H. was adjudicated to be a CINA based on the following proffer of agreed upon facts:

> On July 18, 2012, the [Department] received a report of medical neglect of [D.H.], age 21 months. [D.H.] has Down Syndrome and is medically fragile[,] requiring a significant amount of specialized care. Nurses from Johns Hopkins Peds [*sic*] at Home reported serious concerns about lapses in the medical care being provided to [D.H.] by the parents.
>
> The parents have received extensive instruction over time regarding the proper care of [D.H.] and his needs[,] and demonstrate an understanding of such instruction. However, they have been unable consistently to follow all of the medical instructions.

Mr. and Ms. H. were granted liberal, supervised visitation. D.H.'s permanency plan was established to be reunification with his parents.

In December 2012, Mr. H. underwent a court-ordered psychological evaluation, which resulted in a diagnosis of anxiety disorder. The report of the evaluation noted that

[6] "'Shelter care' means a temporary placement of a child outside of the home at any time before [CINA] disposition." CJP § 3-801(y).

Mr. H. "seemed to lack insight into the seriousness of the situation, and at no point did he express any remorse and/or responsibility for the circumstances." It also noted that "it seemed that Mr. H. has great difficulty focusing on detail and/or he is distracted by extraneous detail, and this may be a significant factor which ultimately resulted in his neglect of his children."

The psychological evaluation "reflect[ed] similar concerns to those of the Department." Although the Department described Mr. H. as "cooperative," it questioned his ability to focus on important conversations about D.H.'s health, which it noted was "concerning when considering D.H.'s significant multiple medical needs."

Mr. H. attended most of D.H.'s medical appointments, when he could schedule to be off work, and was described by the Department as "very devoted to D.H.," but appeared to "have difficulty grasping and understanding basic tasks" related to D.H.'s multiple medical issues. In addition, the Department noted that Mr. and Ms. H. had voluntarily left their two daughters in the care of friends through their church, and the fact that they did not have their children with them raised "concern for whether they would be able to take D.H. back into their care." Visitation was changed from supervised to unsupervised, with the exception that the parents were not permitted to feed D.H. "except as directed by feeding clinic staff."

In April 2014, the social worker assigned to the case reported that the parents' "inability to accurately keep track of [D.H.'s] feedings and [diaper] changes make this worker very hesitant about them being in charge of his medications. This issue has been discussed with the parents on multiple occasions; however, it continues to be an ongoing

problem." The Department was also concerned that as the parents appeared to be "overwhelmed and struggling with meeting D.H.'s basic needs."

In July 2014, the Department placed responsibility for all of D.H.'s medical appointments, Infant and Toddler services, and feeding clinic appointments on the parents, in order to assess if they could demonstrate that they could manage his medical care independently. The parents missed four of D.H.'s 16 scheduled appointments in July, and missed two out of 12 appointments in August. The social worker was "also extremely concerned" with the parent's failure to schedule follow up appointments with D.H.'s medical providers, and with their difficulty understanding doctors' instructions.

In October 2014, the Department advised the court that "[i]t is important to note that Mr. and Mrs. [H.] have been attending most of [D.H.'s] appointments since he came into care over two years ago and [it is] very concerning that they would still not understand instructions provided by the doctor or staff of the clinic." The Department requested that D.H.'s permanency plan be changed to reunification with a concurrent plan of adoption, but the court continued the sole plan of reunification.

At the January 2015 review hearing, the Department renewed its recommendation that the permanency plan be changed to reunification with parents concurrent with adoption by a non-relative. It cited the parents' "ongoing difficulty demonstrating that they could manage all of [D.H.'s] intensive medical needs independently[.]" His gastric tube feedings "continue[d] to be either skipped or inaccurate in volume when with his parents", and there was a concern about D.H.'s weight loss. The parents had attended all but one of D.H.'s medical appointments, but had required "a lot of guidance and reminders" to keep track of

them. The report submitted to the juvenile court prior to the January 2015 hearing stated that

> the Department is very concerned that [D.H.] has now been in care for over two years and the parents have not demonstrated that they are capable of managing his complex medical needs. The Department has attempted to give Mr. and Mrs. [H.] more responsibility in managing all of [D.H.'s] appointments and day[-]to[-]day care gradually [*sic*] and they have continued to appear overwhelmed and to struggle with meeting his needs[,] which has continued to put [D.H.] at risk. Mr. and Mrs. [H.] have not been able to make the changes necessary to care for [D.H.] or their other two children who do not have the same special needs that [D.H.] has, yet have remained in the care of others for almost as long. The Department requests that [D.H.'s] permanency plan be changed to a concurrent plan of reunification and adoption by a non-relative.

D.H.'s attorney agreed with the Department's recommendation. Both parents objected. The magistrate continued the sole plan of reunification, while telling the parents "I'm trying to give you every opportunity that you could get", and urging them to "be accurate" and "step up" their care of D.H.

At the next review hearing in May 2015, the Department repeated its concerns that, in the nearly three years since D.H. had gone into care, the parents had continually failed to demonstrate the ability to manage D.H.'s medical needs. The Department again requested that the permanency plan be changed to reunification with a concurrent plan of adoption by a non-relative. The magistrate recommended that the permanency plan remain a sole plan of reunification, but told the parents, "I recognize how much you love the child but what you're doing isn't working. It has to change. . . . and if it does not change then we have to make changes."

***Change in the Permanency Plan – July 2015***

Following the May 2015 review hearing, the Department filed exceptions to the magistrate's recommendation that the permanency plan remain a sole plan of reunification. The juvenile court heard oral argument from each party at a hearing on July 6, 2015.

At the hearing on the exceptions, the Department highlighted that after almost three years that D.H. had been in care, the parents continued to have difficulty complying with the complex requirements for his care. The Department also pointed out that the parents still did not have stable housing or custody of their two other children, and had requested less frequent visitation with D.H.

Counsel for D.H. acknowledged the bond D.H. has with his parents, but expressed that, due to the severity of D.H.'s needs, and his parents' continuing struggle after three years to appropriately meet those needs, a concurrent plan of adoption would allow the Department to explore other options for D.H.

Counsel for Mr. H. argued that the permanency plan should not be changed simply because the parents were having difficulty taking care of D.H.'s complex medical needs. She explained that the parents were working very hard toward becoming self-supporting and obtaining housing, so that they could be reunited with D.H., and that their request for decreased visitation was necessitated by their work and school schedules.

After a 30-minute recess to read case law and review the facts of the case, the court announced its decision that the permanency plan should be changed. The court explained that, while the parents clearly love D.H., the major issue was the parent's compliance with D.H.'s care requirements. The court stated that "I can't stress to the parents how fantastic

their representation was here today and how much it made the [c]ourt think, but what concerns the [c]ourt greatly is that [D.H.] doesn't receive the medical care that he is to have while in the parents' care." The court weighed the parents' wishes to be reunified with D.H. along with "the factual realities of the parents' abilities at this time and the special needs of [D.H.]," and concluded that "it is in the best interest of the child to have a reunification with the parents plan concurrent with adoption by a non-relative, should the parents not be able to rise to the level of being able to care for [D.H.]". This appeal followed.

## DISCUSSION

### A. Parties' Contentions

Mr. H. contends that the juvenile court erred in changing the permanency plan without making specific, on the record findings regarding each statutory factor set forth in Md. Code (1984, 2012 Repl. Vol.), § 5-525(f)(1) of the Family Law Article ("FL"). In support of his argument, Mr. H. relies on a statute that does not apply to permanency plan review, but rather, applies to proceedings to terminate parental rights ("TPR"). That statute, FL § 5-323, explicitly requires the juvenile court to "make a specific finding, based on facts in the record, whether return of the child to a parent's custody poses an unacceptable risk to the child's future safety" before terminating parental rights in order to grant nonconsensual guardianship of a child. FL § 5-323(f)[7] Mr. H. suggests that "because

[7] More precisely, § 5-323(f) requires the juvenile court to make specific findings on the record if it "finds that an act or circumstance listed in subsection (d)(3)(iii), (iv), or (v) of this section exists," meaning:

(continued…)

a change in a permanency plan that adversely affects a parent's interests may well set the stage for a later TPR," a juvenile court's review of a permanency plan should be guided by the same standards as those that apply in a TPR hearing, because "FL § 5-525(f)(1) is functionally equivalent to FL § 5-[3]23(d)."

The Department responds that there is no statutory requirement compelling a juvenile court to delineate its specific consideration of each statutory factor when reviewing a permanency plan, and that the court's oral opinion demonstrates that the court properly considered the factors appropriate in a permanency plan review hearing. The Department submits that the juvenile court properly exercised its discretion in changing D.H.'s permanency plan.

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(3) whether:

* * *

(iii) the parent subjected the child to:

1. chronic abuse;
2. chronic and life-threatening neglect;
3. sexual abuse; or
4. torture;

(iv) the parent has been convicted, in any state or any court of the United States, of:

1. a crime of violence against:
   A. a minor offspring of the parent;
   B. the child; or
   C. another parent of the child; or
2. aiding or abetting, conspiring, or soliciting to commit a crime described in item 1 of this item; and

(v) the parent has involuntarily lost parental rights to a sibling of the child[.]

FL § 5-323(d)(3)(iii)-(v).

Counsel for D.H. submits that the juvenile court complied with the requirements of the governing statutes, and properly found that it was in D.H.'s best interests to change the permanency plan to reunification with a concurrent plan of adoption.

**B. Standard of Review**

When reviewing child placement determinations, Maryland courts utilize three different standards simultaneously:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard . . . applies. [Secondly,] 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. Finally, when the appellate court views the ultimate conclusion of the [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [juvenile court's] decision should be disturbed only if there has been a clear abuse of discretion.

*In re: Shirley B.*, 419 Md. 1, 18 (2011) (alterations in original) (quoting *In re: Yve S.*, 373 Md. 551, 586 (2003)).

"A trial court's exercise of discretion in changing a permanency plan will be reversed if the court's decision is well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable." *In re: Andre J.*, 223 Md. App. 305, 323 (2015) (citation and internal quotation marks omitted).

**C. Analysis**

A juvenile court must conduct a hearing to determine the permanency plan for a child within eleven months of a child's commitment to the Department's care. *See* CJP § 3-823(b). As the Court of Appeals has explained:

> The permanency plan is an integral part of the statutory scheme designed to expedite the movement of Maryland's children from foster care to a

> permanent living, and hopefully, family arrangement. . . . Services to be provided by the local social service department and commitments that must be made by the parents and children are determined by the permanency plan.

*In re: Damon M.*, 362 Md. 429, 436 (2001)).

Possible permanency plans are listed in CJP § 3-823(e), in descending order or priority and according to the child's best interests: 1) reunification with the parent or guardian; 2) placement with a relative; 3) adoption by a nonrelative; 4) custody and guardianship by a nonrelative; or 5) another planned permanent living arrangement.

Periodic hearings to review the permanency plan are required, at which the juvenile court must, *inter alia*, determine whether reasonable efforts have been made to finalize the permanency plan, and change the permanency plan if it would be in the best interest of the child to do so. CJP § 3-823(h)(2)(ii) and (vi).

Pursuant to CJP § 3-823(e)(2), in determining the child's permanency plan, the court must consider the factors enumerated in FL § 5-525(f)(1), which include:

> (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;
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> (iii) the child's emotional attachment to the child's current caregiver and the caregiver's family;
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> (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.

FL § 5-525(f)(1).

At issue in the present case is the juvenile court's order changing the permanency plan. As stated above, when a juvenile court reviews a child's permanency plan, the juvenile court need only consider the statutory factors listed in FL § 5-525(f)(1). The statute governing permanency plan review does not require the court to make a specific, on the record finding as to each factor, and Mr. H. has offered absolutely no support to justify such a position. Accordingly, Mr. H's argument that the juvenile court's review of a child's permanency plan should be governed by the same standards imposed in a matter involving the termination of parental rights is patently without merit.

Although Mr. H. presents no specific argument to the contrary, the record supports a reasonable conclusion that the juvenile court properly considered the required factors before changing D.H.'s permanency plan. *See Smith v. Johns Hopkins Community Physicians, Inc*., 209 Md. App. 406, 426 (2013) ((" [A] trial judge's failure to state each and every consideration or factor in a particular applicable standard does not, absent more, constitute an abuse of discretion, so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion.") (quoting *Cobrand v. Adventist Healthcare*, 149 Md. App. 431, 445 (2003) (emphasis deleted))).

As far as the child's ability to be safe and healthy in the parent's home, the court heard argument from the Department that the parents had made no progress managing D.H.'s complex medical needs in the almost three years that D.H. had been in care, and that they still did not have stable housing. Indeed, even Mr. H.'s counsel stated that D.H. was "maybe not appropriately safe in the parents' home now[.]" In announcing its decision,

the court stated that it was "greatly" concerned that D.H. "doesn't receive the medical care that he is to have while in the parents' care."

Moreover, counsel for D.H. highlighted for the court D.H.'s attachment to his parents and siblings, as well as his caregiver, and, in announcing its decision, the court acknowledged the parents' love for D.H. The record also clearly establishes that the court was aware that D.H. had been in the same foster care home for almost three years, and that D.H.'s need for permanency after that amount of time in care was discussed at the hearing.

Accordingly, we conclude that the court adequately considered the required factors when reviewing D.H.'s permanency plan, and reasonably concluded that it was in D.H.'s best interest to have a permanency plan of reunification concurrent with adoption by a non-relative "should the parents not be able to rise to the level of being able to care for [D.H.]". We perceive no abuse of discretion in the court's ruling.

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFRIMED. COSTS TO BE PAID BY APPELLANT.**