UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1670

September Term, 2015

IN RE: A.C., M.V., D.N. AND D.N.

Wright,
Graeff,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: March 22, 2016

Ms. N., appellant, appeals from an order of the Circuit Court for Montgomery County, sitting as a juvenile court, changing the permanency plans for Ms. N.'s children (A.C., M.V., Dn.N., and Dv.N.) from reunification to adoption by a non-relative. Ms. N. presents two questions for our review, which we have rephrased:

> 1. Did the court err by changing the children's permanency plans to a sole plan of adoption by a non-relative?
>
> 2. Did the court err by limiting Ms. N.'s testimony regarding the participation of a Department social worker in an educational video?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Assuming the parties' and counsels' familiarity with the history of the litigation and underlying facts, we adopt and incorporate from *In Re:* [*A.C., M.V., Dn.N., Dv.N., M.N., Cr.M., J.M., and Ca.M.*], No. 1485, September Term, 2013, unreported opinion (May 30, 2014), a statement of the pertinent facts. *See* slip op. at 1-13.

We note briefly that Ms. N. is the natural mother of A.C. (DOB 2012), M.V. (DOB 2011), Dn.N. (DOB 2009), and Dv.N. (DOB 2008).[1] Ms. N.'s children were

[1] Ms. N. has five other children who are not a subject of this appeal, Ca.M. (DOB 2002), J.M. (DOB 2003), Cr.M. (DOB 2004); M.N. (DOB 2006), and J.C. (DOB 2015). Jose M. has custody of his children, Ca.M., J.M., and Cr.M. Their CINA cases are closed. Jose N., who resides in El Salvador, is the father of M.N., Dn.N., and Dv.N. He is not a placement resource for his children. Elder V. is the father of M.V. Though he participates in regular visitation with M.V., he is not a viable placement resource for her. Adderly C.R., who is currently incarcerated for physically and sexually abusing Ms. N's older children, is the father of A.C. It is unlikely he will be released from prison during A.C.'s minority. Francisco D.L.C. is the father of J.C. He was working with the Department to begin visitation and expressed interest in being a placement resource for his child. J.C. is currently in shelter care with Ms. N's sister. None of the children's fathers is a party to the instant appeal.

removed from her custody in April of 2013 and were determined to be Children in Need of Assistance ("CINA")[2] by court order filed on August 29, 2013. Ms. N. appealed from that judgment. In an unreported opinion, this Court affirmed the circuit court's determinations. *In Re:* [*A.C., M.V., Dn.N., Dv.N., M.N., Cr.M., J.M., and Ca.M.*], No. 1485, September Term, 2013, unreported opinion (May 30, 2014).

After the children had been in foster care placements for more than two years, the Montgomery County Department of Social Services ("the Department"), recommended that the children's permanency plans be changed from reunification with Ms. N. to adoption by their non-relative foster families. The children, through counsel, agreed that their permanency plans should be changed to non-relative adoption. Ms. N. argued that the goal of the children's permanency plans should remain reunification.

The evidence adduced during hearings on July 30, August 12, and September 1, 2015, demonstrated that since the previous permanency planning review hearing, Ms. N. was residing in an apartment and was working part-time in a dental office. Ms. N. continued to participate in regular visitation with the children, but remained unable to effectively manage the children's needs during visits without the intervention and assistance of Department staff. Ms. N. also consistently attended individual therapy to

[2] A CINA is "a child who requires court intervention because" the "child has been abused, has been neglected, has a developmental disability, or has a mental disorder," and whose "parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Md. Code (1974, 2013 Repl. Vol.), §3–801(f) of the Courts & Judicial Proceedings Article.

address her psychological problems and had demonstrated good attendance at meetings of a non-offending parent support group.

Despite Ms. N.'s technical compliance with the requirements of her children's permanency plans, she has made little progress toward reunification. Ms. N.'s continued disregard for the law and her debts evidence her irresponsible lifestyle and demonstrate her inability to anticipate the negative consequences of her actions. Ms. N. remains reticent about releasing information regarding her progress in therapy to the Department, authorizing only the release of information as to her attendance at group meetings. Additionally, she has failed to provide any proof of her employment to the Department and seeks the guidance of her counselor and/or attorney, but not the Department, before making any decisions. The court observed that Ms. N. "continues to lack insight into the Children's experiences and past trauma," and "lacks an understanding of what the Children need to be stable and safe." Ms. N. also struggles with consistency and fails to demonstrate any concern regarding how her actions -- tardiness, schedule changes, television appearances, etc., -- may negatively impact her children.

Following the three days of hearings, on September 16, 2015, the circuit court filed permanency planning review hearing orders in the children's cases. In the orders, the court found, from the evidence presented, that the Department had made reasonable efforts to achieve the permanency plan of reunification. The court determined that it was in the children's best interests to change their permanency plans from reunification to adoption by a non-relative. This appeal followed.

DISCUSSION

I. Changing the Permanency Plans

Ms. N. contends that the circuit court erred in changing the children's permanency plans from reunification to adoption. Ms. N. points out that she diligently completed the tasks set for her by the court in the previous permanency plans, and argues that she should have been permitted to continue to work toward reunification with her children.

We review child custody cases under three "different but interrelated" standards of review. *In re Adoption/Guardianship of Cadence B.*, 417 Md. 146, 155 (2010). First, we review factual findings under the clearly erroneous standard. *Id*. Second, we review purely legal questions *de novo*, requiring further proceedings except in cases of harmless error. *Id*. Finally, we review "'the ultimate conclusion of the [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous'" for a "'clear abuse of discretion.'" *Id*. (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

It is well established that in CINA cases, where a child had been removed from the family home, the juvenile court is required to conduct "a permanency planning hearing to determine the permanency plan for a child." Md. Code (2001, 2013 Repl. Vol.) §3-823(b) of the Courts and Judicial Proceedings Article ("CJP"). Once the initial permanency plan is established, the court is obliged to 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); Md. Code (1984, 2014 Repl. Vol.) §5-525(f)(1) of the Family Law Article ("FL"). In any review of a permanency plan, the

best interest of the child remains the primary concern. FL §5-525(f)(1). The relevant statute, FL §5-525(f)(1), lists six factors the court should consider when determining what permanency plan is in a child's best interest:

> (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;
>
> (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.

In this case, after three days of hearings, the circuit court made detailed findings of fact explicitly addressing each of the factors set forth in FL §5-525(f)(1). The court briefly addressed the length of time the children have resided with their respective families, noting that "[The Children] have spent the last 27 months with their respective caregivers" and opining that for each of the children, that period "represents a substantial portion of their lives."

Considering the ability of the children to be safe and happy in Ms. N.'s care, the circuit court acknowledged the progress Ms. N. had made in acquiring an apartment, finding a job, attending therapy and otherwise participating in services, "some consistently and some inconsistently." The court expressed serious concerns, however,

regarding Ms. N.'s ability to act maturely and responsibly in the best interest of her children. The court observed that despite the intensive intervention of the Department over the last twenty-eight months, Ms. N. remained "unable to provide adequate housing, food, and care for [the children] without the assistance of the Department[,]" and that the best estimates indicated she would not be able to provide even basic shelter and sustenance for the children for another two to four years. The court opined:

> [T]he question about safety and health are questions that span a broader spectrum than just is there a roof over their head and are they being fed, it's also whether their parent can make decisions for them and about them that are focused on them, whether the chaos that existed in their lives and the record is replete with it, the children's lives, can be calmed enough so that they can be on grade level in school, which they were not when they came into care, that they can get the services they need, that they can be happy and healthy.

The circuit court also questioned Ms. N.'s "history of unhealthy relationships with men" and her poor judgment in having another child after her eight older children had been removed from her care, and suggested that Ms. N.'s actions "demonstrate her inability to grasp the severity of the circumstances in which she finds herself."

Regarding the children's emotional attachment and emotional ties to Ms. N. and their siblings, the circuit court observed that all of the children demonstrated some attachment to Ms. N. that varied depending upon their age when they were removed from her care. The court clearly stated that the emotional ties of all of the children to Ms. N. had been weakened as a result of her slow progress in becoming a viable parent for them, opining that Ms. N. "ha[d] not made the changes necessary for full engagement in the lives" of her children. The court commended the cooperation and commitment of the

children's foster families, which had allowed the children to maintain their strong bonds with one another.

Addressing the children's emotional attachment to their foster families, the circuit court observed that the children were all strongly attached to their foster families and thriving in their care, stating "[t]he foster parents provide security and consistency, and fulfill [the children's] needs in all aspects of their lives." Accordingly, addressing the potential harm that could accrue to the children if they were moved from their current placements, the court said:

> . . . I think for these four kids the placements for them have been what has allowed them to pass through a very bad time in their lives and come to the place where they are safe, happy and at home with their foster parents and I think that removal of them from those placements would be extremely emotionally, developmentally, and educationally harmful to the children.

And finally, as to the potential harm the children could suffer by remaining in the custody of the State, the circuit court acknowledged that because of the stability of their foster placements, the children were not greatly troubled by the fact that they were still in the care of the Department. The court expressed its belief, however, that the children had "come as far as they can" in the foster system. The court concluded:

> It's not fair for them for them to wait some more for how long, we don't know. Ms. N. has made some progress, but the two to four year estimate that her therapist gave about how long it would take to get her to the place where she could parent these kids is, as far as I'm concerned, too long to ask these little kids to wait.

And further, the court stated that the children were "entitled to safety, security, and permanency."

The circuit court's finding that it would be harmful to disrupt the children's current placements was amply supported by the record. Given that Ms. N. was not a viable placement resource option for her children at the time of the hearings, and she would not be a viable placement resource for her children for at least another two to four years, the court properly concluded that it was not in the children's best interests to wait an undetermined amount of time to see if Ms. N. would ever be able to progress enough to provide her children with a safe and stable home. The court ultimately concluded that it was in A.C., M.V., Dn.N., and Dv.N's best interests that their permanency plans be changed to the goal of adoption by a non-relative. The court was 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 Adoption/Guardianship Nos. J9610436 and J9711031*, 368 Md. 666, 696 (2002) (quoting *In re Mark M.*, 365 Md. 687, 707 (2001)).

We are persuaded that the circuit court adequately considered all of the available evidence before adopting permanency plans that would offer A.C., M.V., Dn.N., and Dv.N. their best chance at a safe and stable future. Discerning no error in the court's factual determinations, we conclude that the court's decision to change the goals of the children's permanency plans from reunification to adoption was in the children's best interest, and, therefore, did not constitute an abuse of discretion.

II. Limitations on Ms. N.'s Testimony

At the permanency planning hearing, several witnesses testified regarding Ms. N.'s participation in an interview for a televised educational video about child abuse produced by Univision, a Spanish language television station. During Ms. N.'s

testimony, her attorney repeatedly tried to elicit from Ms. N. that she believed that, since the Department employee was participating in the program, the Department would approve of her own decision to be interviewed on camera. The following exchange occurred:

> [Ms. N.'s Attorney]: Now, did there come a time when you participated in a Univision program?
>
> A. Yes.
>
> [Ms. N.'s Attorney]: And how did that come about?
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> A. I received a call where they wanted me to participate in educational videos for other women that are either going through the same situation or might be at risk at going through the same situation.
>
> [Ms. N.'s Attorney]: Okay. Was it – what was your understanding about who else was going to participate in that program? Any other individuals besides you?
>
> A. Yes.
>
> [Ms. N.'s Attorney]: Who?
>
> A. Child Protection Services and –
>
> [Department's Attorney]: Objection, Your Honor.
>
> THE COURT: Well, yes, I'll sustain the objection. I think you're going to have to lay a foundation for –
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> [Ms. N.'s Attorney]: What –
>
> THE COURT: --it.
>
> [Ms. N.'s Attorney]: What was the basis for you making the decision to participate in the program?

A. The fact that my family's been through the same situation, the fact that I wanted to teach other women about what I have learned, and also the fact that I just wanted to help other people.

[Ms. N.'s Attorney]: In forming your – in making the decision to participate in the program, did you consider whether or not any other professionals would be part of the program?

A. Yes.

[Ms. N.'s Attorney]: And was it your understanding that there would be professionals participating?

[Department's Attorney]: Objection.

THE COURT: Sustained.

[Ms. N.'s Attorney]: Your Honor, it goes to her state of mind, why she decided to participate in the program. Whether it's the truth or not, whether there – it's certainly the basis for her state of mind as to why she wanted to do it.

[Department's Attorney]: That's still hearsay.

THE COURT. Okay. So, [Counsel], she's already said why she participated in it, and I think the problem is that there's not a way to get from what you just asked her to an answer without hearsay, that I can think of. And if it's not –

[Ms. N.'s Attorney]: Well, I'm not introducing it for –

THE COURT: Well, and if it's not for the truth of the matter but only for her state of mind, I'm not really sure how that helps me.

[Ms. N.'s Attorney]: Well, it – what I would say is it lays the foundation for why she did what she did. It was her belief about who else was going to be part of the program. Besides, Ms. Bowen has already testified that she knew the social worker form Child Protective Services in Montgomery County participated

THE COURT: And I'm aware of that. I'm not sure how this is going to help your client, but I already know that the social worker participated.

[Ms. N.'s Attorney]: Okay.

In permanency plan review hearings, the court may decline to require strict application of the evidentiary rules, "other than those relating to competency of witnesses." Md. Rule 5-101(c)(6). Although the Rules of Evidence may not be strictly applied, the court must still determine whether proffered evidence is "sufficiently reliable and probative to its admission." *In re Billy W.*, 387 Md. 405, 434 (2005). Even in permanency planning hearings, a court does not err in excluding evidence when "its probative value is substantially outweighed by . . . considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403.

Insofar as Ms. N. now contends that it was not clear that defense counsel's questions required her to recount what someone else had told her, we note that defense counsel did not raise this argument or proffer a non-hearsay source for Ms. N.'s understanding at the hearing.[3] We conclude, therefore, that this argument was not properly preserved for appellate review. Md. Rule 8-131(a) (providing that this Court will generally decline to review an argument "unless it plainly appears by the record to have been raised in or decided by the trial court").

In any event, it is clear from the record that the circuit court excluded the evidence regarding Ms. N.'s understanding that an employee of the Department would also be participating in the Univision program because the court found the testimony to be

[3] On appeal, Ms. N. contends that her understanding regarding the participation in the Univision program could have been formed when she saw an employee of the Department at the production. However, Ms. N.'s sister testified that Ms. N. was interviewed at her sister's home and that no one from the Department was present.

cumulative and unhelpful to the court's determinations. The court stated, "I don't know how this is going to help your client, but I already know that the social worker participated." Whereas the court had previously heard testimony regarding Ms. N.'s reasons for participating in the program, as well as testimony from multiple witnesses indicating that a Department social worker had participated in the Univision program, we discern no abuse of discretion in the court's decision to limit Ms. N.'s cumulative testimony.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.