UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2250

September Term, 2015

IN RE: T.J.

Graeff,
Arthur,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: August 31, 2016

After the Circuit Court for Prince George's County, sitting as a juvenile court, found that Ms. J.'s daughter, T.J., was a Child in Need of Assistance ("CINA")[1] in late 2014, the court placed T.J. in the custody of appellee, the Prince George's County Department of Social Services (the "Department"). On April 20, 2015, Ms. J. appealed this finding along with the visitation schedule. While that appeal was pending, the juvenile court held review hearings concerning T.J.'s placement and wellbeing in the summer of 2015.

From July through October, 2015, the position of the Department, the father, the mother, and the child, all represented by counsel, was for T.J. to be ultimately placed in the permanent custody and guardianship of her paternal grandmother, Ms. B., in the District of Columbia pursuant to an Interstate Compact for the Placement of Children ("ICPC") request.[2] Ms. J. urged the court to place T.J. on an "extended visitation" with Ms. B. so she could attend school with her older sister while the ICPC request was pending in D.C. However, after the ICPC had been approved, Ms. J. decided that she did not want Ms. B. to be T.J.'s guardian, and instead wanted T.J. to return to foster care in Prince George's County with the goal of reunification. The Department, father, and T.J. (through counsel) disagreed with Ms. J.'s new position and argued that placement with Ms. B. was in the best interest of the child. The juvenile court agreed with the

[1] A "CINA" case refers to proceedings brought for the protection of children and coming within the provisions of Md. Code (1974, Repl. Vol. 2013) Courts & Judicial Proceedings Article ("CJP") §§ 3-802(a)(1), 3-801(g).

[2] T.J.'s father was incarcerated, but was present at the hearings through counsel.

Department and placed T.J. in the custody of Ms. B., ordered visitation with Ms. J. contingent on a verification of Ms. J.'s address, and closed the CINA case.

Ms. J. appealed and presents the following questions for our review:

1. "Did the juvenile court err in closing the CINA case and terminating the court's jurisdiction during the pendency of two appeals in the Court of Special Appeals?"
2. "Did the juvenile court err in granting custody and guardianship to the grandmother, where there was no likelihood of future abuse or neglect, the mother was fit, and there were no exceptional circumstances justifying divesting the mother of custody of her child? Did the juvenile court err in failing to set a visitation schedule?"
3. "Did the juvenile court err in failing to order a specific visitation schedule?"[3]

For the following reasons, we affirm the judgment of the circuit court.

[3] The Department stated its questions presented as follows:

1. "Did the juvenile court properly exercise discretion when it granted custody and guardianship to a child's grandmother and closed the child's CINA case as the child's mother repeatedly had urged the court to do?"

2. "Did the juvenile court permissibly exercise its discretion when it declined to order a specific visitation schedule for a mother who had a history of abusing and neglecting her child and who refused to disclose her residence to the child's guardian or the court?"

The father's questions presented consisted of the following:

1. "Did the juvenile court properly exercise its discretion in granting custody and guardianship to the paternal grandmother when there was insufficient evidence presented to allow the court to make a finding that there was no likelihood of future abuse or neglect, and that there was no evidence to show that mother was capable of providing for her child on a full-time basis."

2. "Did the court properly exercise its discretion when it did not order a specific visitation schedule?"

BACKGROUND

A. Prior Proceedings

A three-judge panel of this Court summarized the circuit court's prior involvement with T.J. and her mother in an unreported opinion, *In re: T.J.*, Nos. 424 & 1012, Sept. Term 2015 (filed June 3, 2016):

> On December 16, 2014, the Circuit Court for Prince George's County, sitting as a juvenile court, found that [Ms. J.]'s six-year-old daughter, T.J., was a Child in Need of Assistance (CINA). The court placed T.J. in the custody of the Prince George's County Department of Social Services (hereafter the Department or DSS), while providing [Ms. J.] with five days of unsupervised visitation per week. The juvenile court's CINA findings and disposition were delivered orally at the conclusion of the hearing, but for unexplained reasons a written order was not entered until April 7, 2015. Earlier, on March 25, 2015, the juvenile court reduced [Ms. J.]'s visitation to one supervised visit per week after DSS advised that due to the mother's obstructionism, police intervention was required to verify the child's safety.

Id., slip op. at 1. The June 2016 opinion recounted the testimony presented to the juvenile court in 2014:

> A three-day adjudication hearing was conducted on December 11, 15, and 16, 2014. The appellant appeared *pro se*. The Department's first witness, and the primary witness ultimately relied upon by the juvenile court, was Ayanna Perkins. Ms. Perkins was the landlady of the rooming house located at 3912 Clark Street, Capitol Heights, Maryland, where the appellant and child had been living just before the neglect referral was made. She stated that the appellant lived at that location for approximately two months beginning in July or August of 2014. The appellant and Ms. Perkins occupied separate rooms in the basement of the house. The first floor of the house was occupied by a woman and her two children, whose ages were approximately 11 and 13. Two men lived on the upper floor of the house. Ms. Perkins testified that the appellant had complained to her about one of the men soliciting her for sex. Ms. Perkins testified that the layout of the rooming house was such that any of the residents would have had access to any of the rooms.

> Ms. Perkins testified that the appellant would leave the child alone and unattended at night "about three times a week," and "usually between 5 p.m. to the early morning, around 3 or 5 in the morning." She estimated that the child was left alone and unattended between six and eight times during the time that the appellant was living there. When the child was left alone she was mostly quiet. Sometimes she would microwave her own dinner. Occasionally, the child would wander out into the hall of the rooming house to Ms. Perkins's room and Ms. Perkins would help her to heat up some food or allow the child to stay and watch movies with her. Ms. Perkins testified that the appellant only asked her to watch the child on one occasion. Ms. Perkins informed her that she had no interest in doing so on a continuing basis due to other responsibilities.
>
> Ms. Perkins testified that there were occasions when the appellant would be home but would leave the child alone in a vacant room across the hall from the area that she and her daughter were actually renting. She described that room as a dark, cobweb-filled storage closet containing miscellaneous furniture items such as dressers and mirrors. The appellant ceased this practice when Ms. Perkins informed her that she would be placing a padlock on the door to the vacant room. Ms. Perkins also testified that when the appellant and T.J. were together the appellant would routinely yell and curse at the child in such a manner that other residents of the house would be awakened. On one occasion she heard the appellant yell at T.J. that she had never wanted a child. She described the yelling as taking place "every morning. Every day. Constant." She described the appellant's demeanor as "[v]ery confrontational, aggressive, [and] violent."

Id., slip op. at 3-4. A friend of Ms. J.'s "testified that she had never seen [Ms. J.] physically abuse the child in any way, but acknowledged that the [Ms. J.] yells at T.J., and stated that it was something that 'she and I have talked about.'" *Id.*, slip op. at 8.

Ms. J. also testified. "A recurring theme of [Ms. J.]'s testimony was an apparent belief that she and her daughter might, in fact, benefit from services but that she had a deep distrust of the Department, based on her own experiences growing up in foster care." *Id.*, slip op. at 7. Foreshadowing an issue in this appeal, Ms. J. was also very reluctant to give the juvenile court her address. At the December hearing, Ms. J.

"claimed that she had actually sent T.J. to stay with a relative in Baltimore 'due to the nature of the situation,' and refused to provide the court with the phone number or address for that relative," but in reality, Ms. J. had left T.J. at Ms. J.'s friend's home in D.C. *Id.*, slip op. at 5-6. This person was also Ms. J.'s sole witness, and had been present at the hearing during a search for T.J.'s whereabouts. *Id.*, slip op. at 6-7.

At the conclusion of the hearing, the juvenile court declared T.J. to be a CINA, and the court then ordered that T.J. be placed in the custody and care of the Department, and that unsupervised visitation would take place every weekend, and three nights during the week. *Id.*, slip op. at 8, 11. Several months later, on April 7, 2015, the court entered a written order memorializing its December 2014 ruling.

In an emergency motion filed on March 24, 2015, the Department alleged that Ms. J. and T.J. were no longer residing with Ms. J.'s friend, and that the child was allegedly being left alone again at night while the mother was at work. *Id.*, slip op. at 13. The Department further stated:

> "6. The Department's attempts to contact [T.J.]'s mother were unsuccessful, prompting it to request a welfare check through the District of Columbia's Child & Family Services Administration ("CFSA").
> "7. Upon determining [T.J.]'s whereabouts and arriving at the residence, the [appellant] would not allow CFSA to enter the home to verify the welfare and safety of the child. The police were called to assist in CFSA's effort.
> "8. The [appellant] refused to allow the police access into the residence by barricading herself and the child in the home. She also stated that she was going to kill her daughter.
> "9. The police forcibly entered the residence and removed the child. The [appellant] was taken into custody by the police for emergency psychiatric services.

> "10. [T.J.]'s safety and welfare are of grave concern and irreparable harm may result if the current visitation schedule and school arrangement remains in effect."

Id. The Department also advised the court that T.J. had been absent from school for over twenty days, beginning March 19, 2015. *Id.*, slip op. at 14.

On March 25, 2015, the court modified visitation to "once per week at the Department of Social Services, until an increase in visitation is therapeutically recommended." *Id.*, slip op. at 14. At a hearing on April 9, 2015, with the Department and Ms. J. (through counsel) present, the Department proffered evidence supporting the enumerated allegations quoted *supra*, page 6. *Id.* Ms. J.'s counsel argued that she was unaware of the specifics of the court's prior CINA ruling because it had not been memorialized in a written order until April 7, 2015. *Id.* The court did not accept this contention, and let the order modifying visitation stand. *Id.*

On April 20, 2015, Ms. J. appealed the court's order declaring T.J. to be a CINA, and on June 3, 2015, she appealed a May 6, 2015 order rescinding Ms. J.'s authority to withdraw and enroll T.J. in school. While those consolidated appeals were pending, T.J. remained in foster care in Prince George's County, and the juvenile court continued to hear matters related T.J.'s safety and wellbeing.

B. July 9, 2015 Permanency Planning Review Hearing

At a July 2015 review hearing, all parties—including Ms. J.—proffered through respective counsel that they shared the goal of placing T.J. with Ms. B., T.J.'s paternal

grandmother living in D.C. through an Interstate Compact on the Placement of Children ("ICPC") order. T.J.'s counsel contended that such an outcome best served her interests.

T.J.'s father appeared through counsel, and supplemented the record with an April 2010 ICPC report documenting Ms. B.'s past approval as T.J.'s guardian when T.J. had lived with her grandmother in D.C. for several years early in her life. Ms. J. was present and, through counsel, expressed her disappointment with the slow pace at which the ICPC was progressing, urging the court to expedite the ICPC process because she wanted T.J. to live with Ms. B. Ms. J. also wanted the court to allow her to have weekend visits in the community, supervised by Ms. B. Ms. J. "did not see what's preventing the Department from placing [T.J.] long term with the grandmother now." The court ordered the parties to work out a way for T.J. to live with her grandmother and go to school in the District of Columbia, observing that it was in the best interest of the child. The court scheduled another hearing for August 12, 2015.[4]

C. August 12, 2015 Permanency Planning Review Hearing

At the next hearing, Ms. J. again urged the court to expediently grant custody and guardianship to Ms. B. Her counsel maintained that the permanency plan had included custody and guardianship since April 2015, and contended that the Department had not worked hard enough to implement the ICPC process. Regarding the latter contention,

[4] In the time since Ms. J. filed her appeal in Case No. 424 on April 20, 2015, custody cases initiated by Ms. B. had been taking place in D.C. concurrently with the juvenile court's 2014 CINA case in Maryland. At the July 2015 hearing, the juvenile court gave no effect to the D.C. custody cases that had granted Ms. B. custody of T.J., finding that T.J. had always been under the supervision of the Maryland juvenile court.

Ms. J's counsel urged the court to find that the Department had failed to make reasonable efforts toward the plan of custody and guardianship with Ms. B.

Ms. J.'s counsel expressed Ms. J's disappointment that T.J., at the time living in a foster home, was not yet placed with her grandmother and her half-sister in D.C. Ms. J's counsel noted that T.J. was on the cusp of starting school and her young age made further delay contrary to her best interest. Through counsel, Ms. J. expressed her wish to have T.J. placed with Ms. B. immediately, i.e. before the ICPC process was completed. As a way to secure an out-of-state placement before the ICPC process was complete, Ms. J.'s counsel asked the court to place T.J. on an "extended visit" with Ms. B. before school started. She argued that, after the ICPC was completed, the court could change its order from an extended visit to a permanent placement, rescind T.J.'s commitment to the Department, and close the CINA case.

The court concluded that an extended visit would temporarily allow T.J. to live with her family in D.C. until the full ICPC process could be completed. The Department asked the court to close the CINA case with a custody order to the grandmother.[5] The court noted: "To be honest with you, [Ms. J.] wants her to live with the paternal grandmother. That's my understanding, correct? She has no objection." Ms. J. did not

[5] The Department expressed concerns about whether the court could order the extended placement, and whether the Department could provide services while T.J. lived in D.C., but thought that Ms. B. could transition T.J.'s services to D.C., and in the meantime, bring T.J. back into Maryland to receive therapy until completing her permanent move to D.C. After the hearing, the Department asked the circuit court to reconsider its order, but later withdrew its motion. The Department did not appeal this order.

object or contradict the court. The court indicated its understanding of all of the parties' wishes that "when we close the case, we're [not] placing her back with her mother. It's going to be with the grandmother."

The court orally ruled in August 2015 that, when the ICPC was completed in the next few months, T.J. would continue to live with her grandmother and sister in D.C., and the CINA case would be closed. Neither Ms. J. nor T.J., nor her father, objected to the court's oral ruling, or contradicted that it was in T.J.'s "best interest to live with her grandmother and start school and be with her other cousins." Because school started the following week, the court issued an immediate order.

D. September 8, 2015 Permanency Planning Review Hearing

At a hearing on September 8, the Department stated that the D.C. Department of Human Services verbally indicated that it had approved T.J.'s ICPC application, and Ms. B. as a family resource for T.J. Ms. J. requested—as she had in July and August—that the court move forward with the plan of custody and guardianship with Ms. B. in D.C. and close the CINA case in Maryland. Ms. J. also requested that the August order, authorizing T.J. to live with Ms. B. on an extended visit, remain in place until the next hearing. The court agreed.

E. October 22, 2015 Permanency Planning Review Hearing

At the October hearing, Ms. J. informed the court, for the first time, that she no longer agreed with placing T.J. in the custody and guardianship of Ms. B. Ms. J., present and represented by counsel, proffered that her relationship with Ms. B. had deteriorated,

and that she now wanted to "really fight for her daughter." According to Ms. J., she changed her mind about T.J.'s placement because Ms. J. had experienced frustration with Ms. B. over her visits with T.J. She conveyed that her visits with T.J. were being controlled by Ms. B., who was not willing to supervise visits in the way Ms. J. wanted, and at the times Ms. J. wanted. As a result, Ms. J.'s counsel believed that reunification through the Department was in T.J.'s best interests. Ms. J. took the stand and testified that she had always wanted reunification. She averred that she had engaged in therapy and anger management classes and had undergone a psychological evaluation on her own. The court remarked that she had been offered those services by the Department but had rejected them simply because it was the Department that offered them. The Department stated that because the plan had been for custody and guardianship and case closure, it had stopped working toward reunification, with Ms. J.'s agreement.

T.J.'s counsel thought that T.J. would suffer if Ms. J.'s permanency plan prevailed and vehemently disagreed Ms. J.'s newly proffered plan. T.J.'s counsel expressed her concern about returning T.J. to foster care and taking her away from her grandmother and sister, where she was thriving and doing well in school. T.J.'s counsel reminded the court that Ms. J. had favored case closure under a plan of custody and guardianship to Ms. B. during the prior hearings held throughout the summer, stressing that this was the first time Ms. J. had raised doubts about the direction of T.J.'s case. She also noted that any problems regarding visitation could be resolved without changing the permanency plan by initiating a separate, non-CINA proceeding in D.C. Counsel for T.J.'s father and

the Department similarly expressed concern about Ms. J.'s change of heart, and argued that permanent placement with Ms. B. was in the best interest of the child.

The court found it unfair for Ms. J. to contest the Department's efforts toward the plan of reunification when, since before July 2015, the plan had been for custody and guardianship with Ms. B. in D.C. and closure of the case in Maryland. The court noted that Ms. J. was "saying something completely different than what [she] said at the last hearing." The court recognized that reunification through the Department meant that T.J. would be uprooted from her placement and school in D.C. and placed back in foster care in Prince George's County.

All parties requested that, if T.J. was placed permanently with Ms. B., Ms. J. be given visitation with T.J. Ms. J. requested unsupervised visitation from Thursday through Sunday evening, each week. The Department, T.J.'s counsel, and counsel for the father requested that Ms. J. be allowed visitation Friday through Sunday evening on alternating weekends. Reminiscent of the disputes in the December 2014 hearing, Ms. J. informed the court that she did not want Ms. B. knowing where she lived. The court explained that: "In any kind of visitation schedule, anything CINA, any kind of case involving children, the address of where [the child is] going must be verified and known."

Before closing the case, the court consulted on the record with T.J. The court asked T.J. whether she liked her school, to which T.J. responded, "Yes." The court asked if she liked where she was living. T.J. said: "Probably." The court asked why she said

probably, and T.J. responded that she didn't know. The court next asked whether her grandmother took good care of her, and T.J. said: "Um-hum." The court asked if she was happy, and T.J. said: "Yes."

In an oral ruling, the court closed the case, granted custody and guardianship to T.J.'s paternal grandmother, Ms. B., and ordered visitation with Ms. J. on alternating weekends Friday through Sunday and on all holidays. The court asked the Department not to submit "an order until after verification of the [mother's] address." Ms. J. then reasserted her refusal to give the court her address, and the court ruled that if "she doesn't provide it, then the visitation can't start."

The court issued a case closure order on November 24, 2015. In the order, the court found by a preponderance of the evidence that there was a continued necessity for an out-of-home placement, that reasonable efforts toward the permanency plan were made by the Department, and that Ms. B. had completed a successful home study in D.C. The court acknowledged that Ms. J. "object[ed] to case closure although she previously argued that the minor child should be placed with [Ms. B.]" The court closed T.J.'s CINA case, placed T.J. in the care and custody of her grandmother, and terminated the Department's obligations. Ms. J. filed this appeal on December 1, 2015.

On June 3, 2016, a three-judge panel of this Court filed an unreported opinion resolving Ms. J.'s prior appeals. *See In re: T.J.*, Nos. 424 & 1012, Sept. Term 2015. This panel affirmed the juvenile court and held 1) that the findings by the juvenile court were sufficient to support a determination that T.J. was a CINA; 2) that the court did not

err in removing T.J. from Ms. J.'s custody; and 3) that the court did not err in reducing visitation between Ms. J. and T.J. based on Ms. J.'s failure to comply with the juvenile court's oral rulings.

DISCUSSION

The Court of Appeals has articulated three distinct aspects of review in child custody disputes:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard . . . applies. [Secondly,] [i]f 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 Yve S., 373 Md. 551, 586 (2003) (quoting *Davis v. Davis*, 280 Md. 119, 122-26 (1977)).

I. Case Closure While Appeal Was Pending

Citing *In re Emileigh F.*, 355 Md. 198 (1999), Ms. J. argues that we must vacate the order of the juvenile court closing T.J.'s CINA case because the order addressed matters in the pending appeal in case numbers 424 and 1012. The father and the Department argue that because a panel of this Court resolved her prior appeals and affirmed the juvenile court, Ms. J.'s appeal was not frustrated and any error was harmless. We agree with the latter argument.

During the pendency of an appeal in a CINA case, the juvenile court continues to exercise jurisdiction over the case. *See In re Ashley S.*, 431 Md. 678, 719 (2013) ("The law governing CINA proceedings . . . allows for concurrent juvenile court and appellate proceedings"). In *In re Ashley S.*, the Court of Appeals summarized the continuing obligations of the juvenile court:

> A review hearing concerning the permanency plan is to be held at least every six months for updates and amendments to the original plan. CJ § 3-823(h). At the hearing, the juvenile court is to assess the continuing necessity for, and appropriateness of, the prior commitment of the child; whether reasonable efforts have been made to finalize the child's permanency plan; the extent of progress in alleviating or mitigating the parent's problems; a reasonable date by which the child may be returned home, placed in a pre-adoptive home, or placed under legal guardianship; and the safety of the child and any measures needed to protect the child. CJ § 3-823(h)(2). **The court is to change the permanency plan when it would be in the child's best interests to do so. CJ § 3-823(h)(2)(vi).**

431 Md. at 687 (Emphasis added); *see also In re Deontay J.*, 408 Md. 152, 164 (2009) ("The Circuit Court has a duty to modify a custody order when persuaded that a modification is necessary to protect the health, safety and well-being of a CINA. This duty is not affected by the pendency of an appeal").

Thus, it is clear that "the juvenile court [has] fundamental jurisdiction, *i.e.,* the power residing in a court to determine judicially a given action, or question presented to it for a decision, over the subject matter of the proceedings." *In re Emileigh F.*, 355 Md. 198, 202 (1999) (citing *Pulley v. State,* 287 Md. 406, 415-16 (1980)). However, "[a]fter an appeal is filed, a trial court may not act to frustrate the actions of an appellate court.

Post-appeal orders which affect the subject matter of the appeal are prohibited." *Id.* at 202-03 (citing *State v. Peterson*, 315 Md. 73 (1989)).

Even if we accept Ms. J.'s premise that the juvenile court interfered with an appellate court's ability to review a matter already on appeal, the court's ruling "is not void *ab* initio for lack of jurisdiction to enter it." *Jackson v. State*, 358 Md. 612, 620 (2000). Rather, the ruling is "subject to reversal on appeal." *Id.*

With the benefit of hindsight, it is clear that the juvenile court's action to terminate the CINA proceeding, if in error, was harmless. This Court upheld the juvenile court's CINA determination, custody order, and visitation order. Even if the court had not terminated jurisdiction, the only further action it could have taken was to wait for this Court to file its opinion in Case Nos. 424 and 1012, and then terminate the case. We will not remand this case solely to have the juvenile court enter the same order it has already entered.

II. T.J.'s Permanent Placement with Ms. B.

Ms. J. argues that the juvenile court erred in granting custody of T.J. to Ms. B. because 1) the court misapplied the best interest of the child standard as articulated in *In re Yve S.*, 373 Md. 551 (2003), and failed to apply the appropriate standard for terminating the custody of a natural parent in favor of a third party; and 2) the court failed to make findings pursuant to Maryland Code (1984, 2012 Repl. Vol.), Family Law

Article ("F.L.") § 9-101.[6] The Department responds that *In re Yve S.* is distinguishable and that a custody determination in a CINA proceeding is treated differently than a third-party custody action. Father responds that, under F.L. § 9-101, because the juvenile court had previously made a finding that mother was not fit to care for T.J., the court was not required to make further findings unless Ms. J. satisfied her burden to show her current fitness to parent and the absence of further abuse or neglect.

"[W]e apply the clearly erroneous standard when reviewing the juvenile court's factual finding that the Department made reasonable efforts to preserve and reunify the family." *In re Shirley B.,* 419 Md. 1, 18 (2011). Under that standard, "'[o]ur task is limited to deciding whether the circuit court's factual findings were supported by "substantial evidence" in the record.'" *GMC v. Schmitz,* 362 Md. 229, 234 (2001) (quoting *Ryan v. Thurston*, 276 Md. 390, 392 (1975)). "[T]o that end, we view all the evidence 'in a light most favorable to the prevailing party.'" *Id.* (quoting *Ryan,* 276 Md. at 392).

[6] F.L. § 9-101(b) provides:

> Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

Contrary to Ms. J.'s contention, *In re Yve S.* does not control this case.[7] Instead, we look for guidance to our decision in *In re Caya B.*, 153 Md. App. 63 (2003), where the appellant made a similar argument. In that case, the appellant contended that by granting custody and guardianship of her daughter to the foster family, by refusing to order formal visitation, and closing the case for all but appellate purposes, "the court, in effect, denied her 'any means to maintain any contact whatsoever with her child.'" *Id.* at 77. To this end, the appellant argued that the juvenile court erred by not making the express findings required to terminate her parental rights. In rejecting this argument, we contrasted a permanent custody placement in a CINA proceeding with the termination of parental rights intrinsic to an adoption proceeding.

Regarding a placement in a CINA proceeding, the *Caya* court stated:

> A permanency plan in a CINA case may call for, *inter alia,* custody and guardianship with a relative *or* adoption by a relative. *See* Code (1974, 2002 Repl. Vol., 2003 Repl. Vol.), § 3-823(e)(1)(ii) of the Cts. & Jud. Proc. Art.[8] **If the permanency plan calls for custody and guardianship by a**

[7] The Court of Appeals in *In re Yve S.*, determined that the juvenile court's finding that the appellant was unable to care for a child with special needs was clearly erroneous because the evidence before the court regarding a reunification goal for the permanency plan was substantial, and because an expert psychologist testified that the mother had been compliant with mental health treatment and stable for the past two years, and opined that the mother was capable of caring for any child. 373 Md. at 620. The circumstances of *In re Yve S.* contrast with those of this case, where Ms. J. refused to provide the Department with the opportunity to verify her living situation, and refused to work with the Department to prove that she had remedied the problems that necessitated T.J.'s CINA disposition.

[8] This section allows for placement with a relative for custody or guardianship pursuant to CJP § 3-819.2. Section 3-819.2(f), in turn, provides that:

(Continued . . .)

> **relative but does not contemplate adoption, the court may issue a decree of guardianship to the relative and may then close the case.** *See id.,* § 3-823(h)(iii)(1).[9] **Parental rights are not terminated in such a situation: the parents are free at any time to petition an appropriate court of equity for a change in custody, guardianship, or visitation.** *See generally* Code (1974, 2002 Repl. Vol., 2003 Cum. Supp.), § 1-201 of the Cts. & Jud. Proc. Art.

Id. at 78 (Emphasis added). The termination of parental rights through adoption requires different considerations:

> If the permanency plan calls for adoption by a relative, the court may grant guardianship of the child to the local department with the right to consent to adoption. *See* Code (1984, 1999 Repl. Vol., 2003 Cum. Supp.), §§ 5-301(b) and (c), 5-313(a)(2), and § 5-317 of the Fam. Law Art. Before doing so, however, the court must make express findings, based on clear and convincing evidence, as to the required considerations set forth in § 5-313(c) of the Family Law Article. *See In Re: Adoption/ Guardianship No. 95195062/CAD,* 116 Md. App. 443, 457-59, 696 A.2d 1102 (1997). *See also Shurupoff v. Vockroth,* 372 Md. 639, 652-54, 814 A.2d 543 (2003); *In Re: Adoption/Guardianship No. 95195062/CAD,* 116 Md. App. at 454, 696 A.2d 1102. The court will not close the case until the adoption takes place. *See generally* Code (1984, 1999 Repl. Vol.), § 5-319 of the Fam. Law Art. In such a situation, parental rights *are* terminated when the decree of guardianship is entered. *See id.,* § 5-317(f)(1).

Id.

(. . . continued)

> Before granting custody and guardianship under this section, the court shall consider: . . . (ii) All factors necessary to determine the best interests of the child; and . . . (iii) A report by a local department or a licensed child placement agency, completed in compliance with regulations adopted by the Department of Human Resources, on the suitability of the individual to be the guardian of the child.

[9] This subsection provides: "1. Unless the court finds good cause, a case shall be terminated after the court grants custody and guardianship of the child to a relative or other individual."

We concluded that the juvenile court's action—granting custody and guardianship to the foster family, refusing to order formal visitation, and closing the case—did not terminate the appellant's parental rights because the court's ultimate goal was not adoption, and because the juvenile court "did not purport to grant guardianship to the Department with the right to consent to adoption. It granted custody and guardianship—and nothing more—to [the foster family]." *Id.* at 78-79.

Here, the court similarly did not terminate Ms. J.'s parental rights—it merely granted guardianship to Ms. B. according to the permanency plan that had been in place for the previous half year. Based on our reading of the record of the October 22, 2015 hearing and its subsequent order, we believe the juvenile court considered the appropriate factors under CJP § 3-823 and CJP § 3-819.2(f): "All factors necessary to determine the best interests of the child; and . . . (iii) A report by a local department or a licensed child placement agency, completed in compliance with regulations adopted by the Department of Human Resources, on the suitability of the individual to be the guardian of the child."

Under F.L. § 9-101, *supra* note 6, pages 15-16, in a CINA case, "[t]he burden is on the parent previously having been found to have abused or neglected the child to adduce evidence and persuade the court to make the requisite finding under § 9-101(b)." *In re Caya B.*, 153 Md. App. at 76 (quoting *In re Yve S.*, 373 Md. at 587). Here, although Ms. J. introduced documents purporting to show that she was in individual therapy, had completed an anger management course, and had submitted to a psychological evaluation, neither she nor her attorney asked the court to make a finding that "there

[was] no likelihood of further child abuse or neglect" on her part.[10] *See* F.L. § 9-101(b). Without such a request, we find no error in the court's determination. We further hold that the court did not abuse its discretion in granting custody and guardianship to Ms. B., closing the CINA case.

III. Visitation

Finally, Ms. J. argues that the court erred in failing to set a visitation schedule. At the October 22, 2015 hearing, all parties and the court agreed that it was important that Ms. J. be able to see T.J., i.e. that visitation was appropriate. However, the Department, counsel for the father, and counsel for T.J. desired "a safety aspect" to the visitation plan and requested that Ms. J. provide "her address and contact information, name and address and where she's taking the child, where she's going to be at, the address for the child[.]" After hearing this, Ms. J. informed the court that she did not want Ms. B. knowing where she lived. The court explained that: "In any kind of visitation schedule, anything CINA, any kind of case involving children, the address of where [the child is] going must be verified and known." The court ultimately ruled that visitation on alternating weekends was appropriate, but said that visitation could not start until the Department verified Ms. J.'s address.

[10] Ms. J. argues that she was presumed to be fit because she had had numerous unsupervised overnight visitations with T.J. The fact that Ms. J. was previously allowed unsupervised visitation does not relieve her of the burden of proving her fitness to the court at the October 22, 2015 hearing, if she desired custody of T.J. at that time.

We agree with Ms. J., quoting *Roberts v. Roberts*, 35 Md. App. 497, 507 (1977), that "the right of visitation is an important, natural, and legal right, although it is not an absolute right, but is one which must yield to the good of the child." Here, however, the court reasonably expressed its intention to order visitation, with the entry of that order contingent on the verification of Ms. J.'s address. We are aware of, and are certain that the juvenile court was aware of, Ms. J.'s prior resistance to disclosing her address, and her prior untruthfulness about T.J.'s whereabouts—partly the subject of her prior appeal.

Just as in her previous dealings with the court, it was within Ms. J.'s power to allow for visitation by cooperating with the Department and verifying her address. However, Ms. J. does not argue that the Department verified her address, and there is no proof in the record that the Department did so. Given this history, we hold that the juvenile court did not abuse its discretion in entering an order that did not provide visitation. Absent some affirmative showing that the Department verified Ms. J.'s address, we will not reverse the juvenile court's decision on this matter.[11]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.

[11] We note that Ms. J. is still able to initiate proceedings for visitation in the D.C. Superior Court.