UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2462

September Term, 2015

IN RE: JOSHUA G.

Graeff,
Friedman,
Harrell, Glenn T., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: June 22, 2016

In this child custody matter, the father, Appellant Taj. G. ("Mr. G."), was not present at a Permanency Plan Review hearing where the plan for his child, who was found previously to be a child in need of assistance ("CINA"), was changed from a primary objective of relative reunification to non-relative adoption. Mr. G. appealed to this Court on the grounds of ineffective assistance of counsel, based principally on an alleged failure by his retained counsel to request a postponement of the hearing. For the following reasons, we affirm the judgment of the Circuit Court for Cecil County, sitting as a juvenile court, to conduct the hearing, finding no abuse of discretion by that court in doing so.

FACTS AND LEGAL PROCEEDINGS

Joshua G. was born in 2005. His mother died in 2009. Joshua lived with his father in Cecil County, Maryland. They moved to Maryland from Philadelphia in September 2013. On 2 May 2014, an investigation was initiated by the Cecil County Department of Social Services ("the Department") after it received a report that large bruises were observed on Joshua's upper arms. Taegan Stallone, a child protective services assessor, investigated the report. Stallone interviewed Joshua on May 2 at his elementary school. He told her that the bruises were inflicted by Mercedes, the twelve-year old daughter of his father's girlfriend (Annmarie R.) of four years, with whom Mr. G. and Joshua were living, along with Annmarie R.'s six children, including Mercedes.

During the interview, Joshua explained that it was commonplace for the other children in the household to punch him, without any attempt by Mr. G. or Ms. R. to

intervene to stop the pummeling. He stated further that, Mr. G., who would watch often the abuse occurring, would call him a "cry baby" and not come to his aid. Joshua shared with Stallone that he was afraid of Ms. R.'s children and that, at times, they would gang up on him, with one restraining him while the other children punched him. Moreover, Joshua related to Stallone about an incident on the previous Easter where Mr. G. also punched and kicked him.

Upon hearing these statements, Stallone told Joshua that the next step would be for her, her co-worker, and a police detective to make a visit to the home to establish a safety plan with his father. Joshua became upset, warning that his father would be very angry because there had been a previous investigation by Child Protective Services ("CPS") when they lived in Philadelphia.

Stallone went to Joshua's residence to talk with Mr. G., Ms. R. and Mercedes. When she arrived, Mr. G. was not home, so Stallone spoke first with Ms. R. Ms. R. had no reaction about the bruises on Joshua's arms, but confirmed that there had been some fighting between the children and that there had been a previous CPS investigation in Philadelphia. After receiving Ms. R.'s permission, Stallone interviewed Mercedes, who admitted to punching Joshua. Mercedes, who was larger physically than Joshua, remarked that her abuse of him seemed funny to her.

Mr. G. arrived before Stallone finished and she interviewed him last. Mr. G. acknowledged awareness of the incident between Joshua and Mercedes. He explained that he did not step in to assist Joshua because he "didn't feel like being bothered with

him." Stallone noted that Mr. G. seemed unconcerned about Joshua and that Mr. G. viewed him as "evil" and a "cry-baby." Stallone realized at this point that a safety plan, under the circumstances, would not work for Joshua.[1] On 7 May 2014, the Department removed Joshua from the home and placed him in Emergency Shelter Care.[2]

Between the time he was placed in Emergency Shelter Care and his initial CINA hearing on 4 June 2014, Joshua was visited by his father three times. His father continued to live with Ms. R. and her children. The circuit court, sitting as a juvenile court, found Joshua to be a CINA and awarded custody to the Department, allowing it to place Joshua in foster care. At a CINA review hearing on 3 December 2014, the juvenile court scheduled an initial permanency planning hearing for 3 June 2015. Meanwhile, Mr. G. became incarcerated in Pennsylvania in August 2014. He was not released from jail until April 2015. Mr. G. managed to attend the June 3 hearing in Maryland. He stated that his relationship with Ms. R. had ended and that he did not plan to renew the relationship. The permanency plan adopted by the juvenile court included, as its primary

[1] Joshua had no other relatives in Maryland.

[2] After being told that Joshua would be placed in foster case, Mr. G responded, according to Stallone, "that he thought maybe this was going to be the best thing for Joshua because he hadn't grown up with a mother, so maybe now he would know what it was like not to have a father, and appreciate it more."

goal, relative reunification (an objective not opposed by Mr. G.), with a secondary goal of custody and guardianship to a non-relative.[3]

Between the initial permanency planning hearing and a subsequent review hearing announced at the June 3 hearing to be held on 2 December 2015, Mr. G. did not maintain regular contact with Joshua or the Department. The process was started, under the Interstate Compact on the Placement of Children ("ICPC"),[4] to determine if one of Joshua's relatives in Pennsylvania could be approved as a potential placement.[5] Immediately prior to the December 2 hearing, Mr. G. informed the Department that he would not be able to attend the hearing because the terms of his parole did not allow him to leave the State of Pennsylvania.

At the hearing, the Department made the court aware that Mr. G. requested of it that the case be stayed until he would be able to travel to Maryland. Mr. G.'s retained counsel informed the court that Mr. G. had not been in touch with her since the June 3 hearing. Nonetheless, she objected to any change in Joshua's permanency plan, but did not move formally for a continuance. At this hearing, Joshua's permanency plan was

[3] Joshua had a grandmother and multiple aunts living in Pennsylvania who asserted that they could assume custody of him.

[4] Codified in Maryland Code (1984, 2012 Repl. Vol.), Family Law Article § 5-601 et seq. ("Fam. Law"), the Interstate Compact on the Placement of Children provides the rules on relocating from one state to another a child within the foster care system.

[5] Ultimately, all four of the relatives who Mr. G. presented to the court had their ICPC requests denied, primarily due to their failure to complete the necessary paperwork.

changed to delete the objective to place Joshua with a relative, leaving adoption by a non-relative as the sole objective going forward. In reaching this position, the circuit court explained:

> The court notes the findings – or the contents of the report; and the fact that father is unable to come to Maryland, that he refuses to complete the ICPC process, that he won't move to Maryland, and he wishes to stay in Pennsylvania; again this court would most certainly sign requests – sign a request to a judge in Pennsylvania – I think it's Philadelphia where he – that's where he lives. I think that's where his probation is –asking that he be released, or that he be able to come down here. Court notes that. . . he has not been in touch with his attorney, and that he's not here.
>
> . . .
>
> The court find sufficient evidence to change the plan to adoption by a non-relative, to provide some stability to Joshua who had been in care at least a year.

As a part of this hearing, the judge conducted a Child Consultation, during which Joshua stated that he was disappointed not to return to his father and would prefer to live with an aunt in Philadelphia, but that he was happy also in his current foster home. Joshua was doing well in school, in good health, and receiving regular counseling.

On 16 December 2015, Mr. G. wrote a letter to the court explaining that he was unable to attend the December 2 hearing because of a travel restriction condition in his parole. He indicated that he "during the months [sic] of May 2016" he would be "off of one of [his] paroles" and would be able to travel to Maryland. He attached a sparsely-worded supporting letter from Pennsylvania's Parole and Probation Department (but which did not corroborate Mr. G.'s sanguine supposition that he would be free to travel to

Maryland at any particular future date) and stated further that he had asked his attorney to request a continuance of the December 2 hearing.[6]

Mr. G. appealed ultimately to this Court on 4 January 2015, arguing ineffective assistance of counsel with regard to his counsel not seeking a continuance and, in any event, the court abused its discretion in not acting *sua sponte* to grant one. Additional facts will be provided in our discussion as necessary.

QUESTION PRESENTED[7]

Appellant presents two questions for our consideration, which we have condensed and rephrased as follows:

> Did the juvenile court err by proceeding with the permanency review hearing in Appellant's absence after being informed that he was unable to travel to Maryland due to conditions of his parole and in the absence of his counsel requesting a postponement?

For the following reasons, we affirm the judgment of the Circuit Court for Cecil County, sitting as a juvenile court.

[6] No supporting documentation or elaboration was provided to contribute any verisimilitude to the latter claim.

[7] Appellant's questions were framed as follows:

1. Was the father denied due process as a result of ineffective assistance of counsel?

2. Alternatively, did the court err in failing to continue the hearing *sua sponte* where the father was absent because one of the terms of his probation in Pennsylvania prohibited him from traveling to Maryland?

STANDARD OF REVIEW

The question on appeal is whether the December 2 hearing should have been postponed. Maryland Rule 2-508 governs the standard for consideration of a continuance: "On motion of any party or on its own initiative, the court may continue a trial or other proceeding as justice may require." The Court of Appeals has explained that the application of this rule is discretionary: "[T]he decision to grant a continuance lies within the sound discretion of the trial judge. Absent an abuse of that discretion we historically have not disturbed the decision to deny a motion for continuance." *Touzeau v. Deffinbaugh*, 394 Md. 654, 669, 907 A.2d 807, 816 (2006) (citations omitted).

Thus, although no demonstrable motion for a continuance was filed, we will review this case under the abuse of discretion standard, which is defined as "discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Touzeau*, 394 Md. at 669, 907 A.2d at 816 (quoting *Jenkins v. City of College Park,* 379 Md. 142, 165, 840 A.2d 139, 153 (2003)). Thus, "to be reversed the decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *In re Shirley B.*, 419 Md. 1, 18-19, 18 A.3d 40, 50-51 (2011) (quoting *In re Yve S.*, 373 Md. 551, 583-84, 819 A.2d 1030, 1049 (2003)).

DISCUSSION

I. Contentions

Mr. G. contends that he was denied due process because of ineffective assistance of counsel when his retained lawyer did not request a continuance. In the alternative, Mr. G. argues that, if this Court does not find the elements of ineffective assistance of counsel, the circuit court erred by not postponing the hearing *sua sponte* in order to allow him an opportunity to seek permission from the Parole Board to travel to Maryland from Pennsylvania for a hearing at some point in the future or when his travel ability as not so inhibited.

The Department responds that it was within the sound discretion of the circuit court to decline to postpone the hearing, particularly where a statute mandates a schedule for periodic review hearings. The Department maintains that if "Mr. G. desired to be present, he was obligated to find a way to either be there personally, through counsel, or by telephone." Mr. G. had not been in contact with his lawyer since the June 3 hearing, at which time Mr. G. knew the date of the December 2 hearing, was already on parole, and had managed to travel to Maryland nonetheless. Moreover, Mr. G. offered no elaboration of his claim that he asked his lawyer to seek a continuance, for which there was direct contradiction from his lawyer that he had not been in contact with her between June 3 and December 2. Finally, the lack of a postponement, according to the Department, did not result in prejudice to Mr. G. because neither he nor any of Joshua's

relatives were in a position to qualify for reunification because none had followed through on any of the steps required for reunification under the ICPC.

II. Ineffective Assistance of Counsel and Potential Prejudice

Ineffective assistance of counsel is governed by the *Strickland* standard, established originally in the context of a criminal case, but applied beyond that confinement to cases of the type represented here:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Strickland v. Washington, 466 U.S. 668, 687 (1984). In order to show successfully ineffective assistance of counsel, both prongs must be met, because, in the absence of one, it cannot be determined that the outcome of the case was affected by any alleged ineffectiveness. *Strickland*, 466 U.S. at 687.

a. Action of Mr. G.'s Counsel

Courts recognize that there is "no right more fundamental to any parent than to be given a reasonable opportunity to be present at any judicial proceeding where the issue is whether or not the parent should be permitted to have custody of its child." *In re McNeil*, 21 Md. App. 484, 496, 320 A.2d 57, 64 (1974). Consistently, the Maryland General Assembly recognizes the "principle that the primary right to rear and nurture a child rests in its parents and not in the State, and it is only under the most extraordinary

circumstances that a parent may be divested of that right and custody of a child placed in the hands of others." *McNeil*, 21 Md. App. at 497, 320 A.2d at 64.

The *McNeil* case presented a situation where a mother was unable to be present at a custody hearing because she was caring for her sick child. The mother's counsel made several requests to have the hearing postponed:

> The first such request was made at the very outset, when counsel advised the court of the inability of the mother to be present. Although this request was not completely articulated, it is abundantly clear that counsel was attempting to seek as continuance because of the absence of his client, and it is equally clear that this request was denied by the court. Subsequently, counsel made formal motions for continuances, so that he could summons three medical witnesses.

McNeil, 21 Md. App. at 496, 320 A.2d at 64. This Court held, in *McNeil*, that it was a "serious error" for the trial judge to proceed with the hearing in the mother's absence. The trial judge failed to make a "realistic inquiry into the circumstances of [the mother's] absence, or ascertain whether she had been guilty of a pattern of unconcern." *McNeil*, 21 Md. App. at 498, 320 A.2d at 65. Rather, the record in *McNeil* showed the mother to be a concerned and responsible parent:

> [I]t [was] readily apparent that throughout the entire proceedings involving her children, the [mother] had acted in a responsible manner. It was she who had filed the original petition seeking assistance for those children, which resulted in their commitment to Social Services on February 9, 1973. Although she consented to that commitment, it is obvious that she did not do so from any desire to be rid of the children or to shirk the responsibilities of parenthood, because it was she who filed the Petition for Review of Commitment, asking that her children be returned to her. . . . It is ironic that this woman's Petition for the return of her children was dismissed at a hearing which she was unable to attend because at that very time, according to the uncontradicted statement of her counsel, she was caring for one of those selfsame children, who had become ill.

McNeil, 21 Md. App. at 498, 320 A.2d at 65. Moreover, it was clear that the mother's testimony was relevant to the proceedings, making it apparent that the case was "one of those exceptional instances where refusal to grant a continuance was so arbitrary as to constitute a denial of due process." *McNeil*, 21 Md. App. at 499, 320 A.2d at 65.

This Court made clear that its holding in the *McNeil* was highly fact specific and may not foretell a similar outcome in other factual situations: "We do not hold that it is never permissible to hold a custody hearing in the absence of one or both parents. Under some circumstances such a hearing could be necessary and proper, but no such circumstances were present in the instant case." *McNeil*, 21 Md. App. at 499, 320 A.2d at 66.

In other child custody proceedings, the Court of Appeals found an abuse of discretion when a juvenile court does not allow a continuance, but mainly in extreme circumstances:

> We have found that it would be an abuse of discretion for a trial judge to deny a continuance when the continuance was mandated by law, *see Mead v. Tydings,* 133 Md. 608, 612, 105 A. 863, 864 (1919), or when counsel was taken by surprise by an unforeseen event at trial, when he had acted diligently to prepare for trial, *Plank v. Summers,* 205 Md. 598, 604-05, 109 A.2d 914, 916-17 (1954), or, in the face of an unforeseen event, counsel had acted with diligence to mitigate the effects of the surprise, *Thanos v. Mitchell,* 220 Md. 389, 392-93, 152 A.2d 833, 834-35 (1959).

Touzeau, 394 Md. at 669-70, 907 A.2d at 816. No such circumstances exist in the present case. As such, Mr. G. has not shown that his counsel's representation was so deficient as to render it ineffective.

At the 2 December 2015 hearing, where Mr. G. was not present, the following exchange occurred:

> DDS Counsel: The mother is deceased; and there's been no contact with the father since June. As it turns out he apparently is on probation up in Pennsylvania; and I will tell the court that the department got a phone call a day or so ago. He says he can't leave Pennsylvania because of his probation, and that is why he's not here today or he wasn't going to come; and basically asked the – that this case be put on hold until, I think – I don't know – whenever he expects to get out.
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> The Court: [Mr. G.'s Counsel], the court will sign an order requesting – or sign a request asking the sentencing judge in Philadelphia to release him just for court down here, if that would be helpful. We need him here at some point.
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> Mr. G.'s Counsel: Your Honor, Mr. G. – Mr. Taj G. has not been in contact with me since our last appearance here in June. . . . And I did send him a letter that he did not respond to, but acknowledged that he received it. He, to the best of my knowledge, has not changed his position [about refusing to engage in the ICPC process] since we were here in June.

It is clear from the transcript that the juvenile court and Mr. G.'s counsel were forced to speculate regarding the reasons for Mr. G.'s absence. Moreover, it appeared that Mr. G. had not been in contact with anyone until contacting the Department (but not his attorney) shortly before the hearing.

Mr. G. sent (after the hearing) a letter to his counsel on 16 December 2015, stating that he was "very unhappy" with her representation at the 2 December 2015 hearing. On that same date, Mr. G. sent a letter to the circuit court explaining that he could not appear due to the conditions of his parole and that he notified his attorney before the hearing to ask for a continuance. An accompanying letter from the Commonwealth of Pennsylvania (dated 4 December 2015 (2 days after the hearing)) attached to Mr. G.'s letter to the court

stated simply that, because Mr. G. was "currently not in compliance with his supervision in our Department, [he was] prohibit[ed] from being granted permission to leave the Commonwealth of Pennsylvania."[8] Moreover, Mr. G.'s December 16 letter to the court left his timeline of when he could leave Pennsylvania vague, providing only an unsubstantiated and somewhat illogical claim that he might be available in May 2016 to attend a future hearing.

Mr. G.'s situation is distinguishable from the *McNeil* case by his lack of involvement in the process prior to the December 2 hearing, his general lack of willingness to work toward reunification with Joshua, and his overall "pattern of unconcern:"

> CAPES Attorney[9]: And I think that part of that position is he's not going to go through the ICPC process.
>
> The Court: Right
>
> CAPES Attorney: And he's not going to move to Maryland. So that leaves us at – at a dead end in terms of any reunification efforts. So I support the change of plan today, and I think, as Judge Lidums would say, his absence speaks volumes.
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> The Court: Indeed it does. I know you're in a – your client has placed you in a position.

[8] Thus, it was unclear whether Mr. G.'s limitation on travel outside of Pennsylvania was due to a boilerplate provision of the original conditions of parole or the result of imposing an after-the-fact limitation because of his failure to comply with parole supervision.

[9] CAPES is an abbreviation for the Child Advocacy Project Eastern Shore, Inc., which was appointed to represent Joshua during the proceedings.

> Mr. G.'s Counsel: Very awkward position your Honor.
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> . . .
>
> Mr. G.'s Counsel: I'm going to object to the change in plan in order to preserve Mr. G.'s opportunity to come and speak to you and to work on a reunification effort again. And I understand full well that the department will be filing to terminate his parental rights, and I will advise him accordingly.

The December 2 hearing date was set at the June 3 hearing, at which Mr. G. was present. Thus, Mr. G. was aware of the latter review hearing for at least six months, but only sought to get involved immediately before Joshua's permanency plan was changed. Moreover, Mr. G. was aware of his responsibilities for seeking reunification with Joshua, but failed to complete any of the required steps. At the June 3 hearing, the juvenile court explained that it was willing to work with Mr. G. on reunification with Joshua, if Mr. G. would reengage with the child.[10]

It is apparent that the juvenile court made appropriate inquiries at the December 2 hearing regarding Mr. G.'s absence, but was kept largely in the dark by Mr. G.'s failure to engage in the case. Due to the length of time Joshua had been in foster care already and the uncertainty of when Mr. G. might be available, it was not so far off the mark or

[10] The circuit court stated on the record at the hearing:

> The Court: If dad can reengage and we can have the three plans, because Joshua was fine with all three of them that – I think that's what we will have to do. Because dad has to prove to me and to Joshua that he's reengaging, and he's going to do what he hasn't been able to do for the past eight months [while he was incarcerated].

"beyond the fringe" of what the court "deems minimally acceptable" to proceed with the December 2 hearing. Thus, we hold that it was not an abuse of discretion for the juvenile court to proceed with the hearing.

b. Prejudice

Even had Mr. G.'s counsel rendered ineffective assistance or the circuit court abused its discretion (neither of which we can find on this record), Mr. G. would need to show further that the lack of postponement for Joshua's review hearing and change in the permanency plan prejudiced his rights in some way. Mr. G. contends that the failure to postpone, whether via denial of an implied motion or the circuit court's declination to act *sua sponte*, would require that prejudice be presumed. Mr. G. relies on *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 251, 13 A.3d 1227, 1239 (2011), in which the Petitioner's absence during trial due to a religious holiday was "presumptively prejudicial and require[d] reversal." The Court of Appeals explained further that "upon the presumption of prejudice, the non-complaining party must prove that the error did not impact the outcome of the case." *Neustadter*, 418 Md. at 252, 13 A.3d at 1239.

Even were we to assume prejudice for the sake of argument, we hold that Mr. G.'s claim fails because the Department presented evidence to the juvenile court showing that it had made reasonable efforts to establish conditions that would allow Joshua to be reunited with a relative (a result approved by Mr. G.) and that Mr. G. and the various relatives in Pennsylvania failed ultimately to comply with necessary requirements. Because Joshua was found CINA by the court, in order for him to be returned to his

father's custody the court must find that it was in his best interest to be returned to his father and that abuse was no longer likely - *see* Fam. Law § 9-101(b).[11] The goal of these proceedings is always reunification if possible and it is the court's "responsibility [to] determin[e] the permanency plan, . . . and [to] justify [ ] the placement of children in out of home placements for a specified period or on a long-term or permanent basis. . ." *Shirley B.*, 419 Md. at 19, 18 A.3d at 51 (quoting *In re Yve S.*, 373 Md. 551, 577, 819 A.2d 1030, 1046 (2003) (alterations in *Shirley B*)).

In the June 3 Permanency Plan hearing report, the Department reported the following Reunification Efforts:

> 1. The Department established a Service Agreement with Mr. G. upon J[oshua] entering foster care.
> 2. The Department established a Visitation Agreement with Mr. G. upon J[oshua] entering foster care.
> 3. Weekly visitation had been offered to Mr. G. now that he is no longer incarcerated.
> 4. The Department has encouraged Mr. G. to complete the necessary paperwork so that an ICPC can be initiated with the state he resides in.
> 5. The Department and J[oshua's] foster parents updated Mr. G. on J[oshua's] medical status.
> 6. The Department has supervised visitation for J[oshua] with various relatives and his older half sibling.
> 7. A Family Involvement Meeting was held on May 11, 2015.

[11] Fam. Law § 9-101(b) states specifically:

> 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.

At the Family Involvement Meeting, Mr. G. maintained that he would not enter into a service agreement with the Department[12], he intended to stay in Philadelphia, and he did not want an ICPC initiated with regard to himself. At this point, the ICPCs for Joshua's grandmother and two aunts were initiated, but not finalized. By the 3 June 2015 hearing, due to Mr. G.'s refusal to acknowledge the earlier abuse and his refusal to sign a service agreement or allow an ICPC study, Joshua could not be returned to his father's custody in Pennsylvania at that time.

The Progress Review Report provided by the Department prior to Joshua's six month review hearing explained that Mr. G. said he would think about completing an ICPC application. The Department explained to him that "placement with a relative was not guaranteed and without receiving his ICPC application, [Joshua's] permanency plan could be changed to adoption." The Department attempted to contact Mr. G. on numerous occasions and received no response. Mr. G. did not contact the Department after June 2015 and had only two supervised visits with Joshua during the review period. Additionally, the ICPC requests for Joshua's out-of-state relatives were denied, due to lack of follow-through by the individuals.

A "critical factor in determining what is in the best interest of a child is the desire for permanency in the child's life." *In re Adoption of Jayden G.*, 433 Md. 50, 82, 70

[12] The service agreement contained requirements that Mr. G. complete a substance abuse assessment, participate in a psychological/parenting agreement, establish a safe housing situation, and sign up for health insurance for Joshua.

A.3d 276, 295 (2013). Joshua has been in foster care for almost two years. We cannot say that it was not in his best interest for the December 2 proceeding to move forward. It is not the obligation of the State to:

> find employment for the parent, to find and pay for permanent and suitable housing for the family, to bring the parent out of poverty, or to cure or ameliorate any disability that prevents the parent from being able to care for the child. It must provide reasonable assistance in helping the parent to achieve those goals, but its duty to protect the health and safety of the children is not lessened and cannot be cast aside if the parent, despite that assistance, remains unable or unwilling to provide appropriate care.

In re Adoption/Guardianship of Rashawn H., 402 Md. 477, 500-01, 937 A.2d 177, 191 (2007). Based on the evidence provided to the court in the Department's report, which was provided to all parties prior to the hearing[13], it was clear that Mr. G. had not been cooperating with the current permanency plan and that he was not in compliance with his parole, making a reliable timeline for his ability to leave Pennsylvania nebulous.[14] We cannot hold that the result would have been different had Mr. G. attended the hearing or

[13] Pursuant to Maryland Code (2006, 2013 Repl. Vol.), Courts & Judicial Proceedings Article § 3-823(d) ("CJP"), the Department is required to provide all parties and the court with an copy of the proposed permanency plan ten days in advance of the initial hearing.

[14] Mr. G's contention that his counsel failed to present a meaningful defense does not impress us. There was little for her to present.

that it was an abuse of discretion for the juvenile court to proceed with the hearing in order to serve the best interests of the child, which is of paramount concern.[15]

Thus, we hold that the juvenile court did not abuse its discretion in moving forward with Joshua's 2 December 2015 Permanency Plan Review hearing, in Mr. G.'s absence.

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

[15] We note that there are significant distinctions between a permanency plan hearing and a Termination of Parental Rights ("TPR") proceeding:

> Nonetheless, our case law has been clear and consistent, that, even in contested adoption and TPR cases (and in permanency plan proceedings that may inevitably lead to a TPR case), 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, 937 A.2d 177, 189 (2007). While the hearing in this case did change the focus of Joshua's permanency plan to non-relative adoption, it did not terminate Mr. G.'s parental rights. All the circuit court is required to assess at a permanency plan review hearing is whether the Department made "reasonable efforts" to place Joshua back with his father. In all of these situations, the child's best interest is still the primary focus and it is clear that the Department hoped to reunite Joshua with Mr. G.