UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2842

September Term, 2015

IN RE: J.M.

Krauser, C.J.,
Woodward,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: September 27, 2016

The Circuit Court for Wicomico County, sitting as the juvenile court, declared "J.M.," the infant son of Mary M., to be a Child in Need of Assistance ("CINA"). Although the court then ordered that J.M.'s permanency plan be one of reunification with Ms. M., it subsequently ordered, after a permanency plan review hearing, that J.M.'s permanency plan be one of adoption by a non-relative. From that order, Ms. M. noted this appeal, contending that the juvenile court erred in changing J.M.'s permanency plan. Finding no error, we affirm.

BACKGROUND

Ms. M. first came to the attention of the County Department of Social Services (the "Department") on November 8, 2010, "for allegedly not providing proper care and attention to her first child." The Department then initiated an investigation, which revealed neglect. Ultimately, Ms. M's parental rights with respect to that child were terminated two years later.

On or about May 29, 2013, Ms. M. gave birth to her second child, "M.M." M.M. was found to be a CINA and was placed in foster care six months after her birth. A little more than a year later, on June 11, 2014, Ms. M. gave birth to her third child, "A.M." That child was also removed from Ms. M.'s care and custody six months later. All three of Ms. M.'s children "were removed from [her] care for their own safety."

On August 11, 2015, Ms. M. gave birth to her fourth child, J.M., who is the subject of the instant case. Two days later the Department took over the care of J.M. as a result of Ms. M.'s "extensive history" with the Department. J.M. was placed in foster care with his

two siblings, M.M. and A.M, and was subsequently adjudicated CINA, based upon the following facts, to which Ms. M. stipulated:

- [Ms. M.] suffers from severe and untreated mental health issues which impact her ability to safely care for her children.
- [J.M.] is one of four children born to Ms. M. Ms. M. has an extensive history of being unable to properly care for all of her children. All have been removed from her care for their own safety.
- The Department conducted a safety assessment, concluded that Ms. M. could not safely care for [M.M.], and provided in-home services in an effort to reduce the risk of harm to [M.M.] Ms. M. has been unsuccessful in working towards reunification in [M.M.'s] case, and his permanency plan has been changed to adoption.
- On June 11, 2014, Ms. M. gave birth to a third child, [A.M.] Between the time of [A.M.'s] birth and her ultimate removal on January 13, 2015, the Department made unsuccessful efforts to safely maintain [A.M.] in Ms. M.'s custody. Ms. M. has not adjusted her circumstances so that [A.M.] may be safely returned to her care.
- [J.M.] is a vulnerable infant who would be similarly subjected to a substantial risk of harm if placed in his mother's custody at this time.
- The Department is re-evaluating and assessing [J.M.'s maternal grandmother].
- [J.M.'s] named father [Mr. Q.] is not an available source of continuous care for [J.M.] by his refusal to respond to the local Department. Mr. Q. is the named father of Ms. M's third and fourth child. Mr. Q. has been served by process server, by certified mail, regular mail, and messages left with family members. He has ignored all attempts of the local Department to make contact.

On October 28, 2015, the juvenile court held a disposition hearing for J.M.[1] At the hearing, the Department established that Ms. M. had failed to engage in mental health therapy "to address the concerns" of the Department and that she had failed to make "continuous and forward progress to better herself to be able to care for her children." Although noting that Ms. M. was willing to engage in and look for services, the Department

[1] Ms. M. was inexplicably absent from the proceedings.

asserted that she had a tendency to "do a couple of visits and then . . . stop attending." It further stated that because Ms. M. had revoked her consent to the release of information to the Department, the Department was prevented from discussing Ms. M.'s mental health with her health care providers. The Department further noted that, of the eleven visits scheduled to occur between the time of J.M.'s placement in foster care and the date of the hearing, Ms. M. was a "no show" for five of them.

Given the foregoing facts and circumstances, the Department concluded that Ms. M. was not "capable at this time of providing a safe and nurturing environment for [J.M.] to meet his needs." Nor was placement with Ms. M.'s relatives an option. After exploring that option, the Department ultimately ruled it out after having reviewed the family's "very extensive history with the Department" and emotional instability.

At the conclusion of the hearing, the juvenile court found that Ms. M.'s continued custody of J.M. was contrary to his safety and awarded care and custody of J.M. to the Department for appropriate placement. The court continued Ms. M.'s weekly supervised visits with J.M. and ordered that Ms. M. enter into a service agreement with the Department and that she comply with the agreement's terms. The court also ordered that Ms. M. attend mental health therapy "a minimum of twice per week" and that she "adhere to regular and on-going parenting education." As for J.M.'s permanency plan, the court ordered that it be "reunification for the present" and scheduled a permanency plan hearing for January 6, 2016.

At that hearing, the Department submitted a report to the court. The report began by noting that J.M. was doing well in his current placement:

> [J.M.] is doing well, and he had his first physical checkup and immunizations . . . on August 14, 2015. . . . [J.M.] has been seen for his routine medical appointments and required immunizations. . . . [J.M.'s] foster parents report that he is eating and sleeping well. . . . [J.M.] and his two siblings are now attending the same day care center. . . . At this present time, [J.M.] and his two siblings have been doing well and they are bonding with each other and their foster parents and the children of foster parents.

It then discussed Ms. M.'s visitation with J.M. since the October 7 adjudication hearing:

> There have been 10 days of visitation scheduled between [J.M.], his siblings and his mother, Ms. M. Ms. M. has weekly visitation with her children on Wednesdays from 11:00 A.M. to 12:30 P.M. This schedule has been provided verbally and in writing and has been the same day and time since Ms. M.'s first child entered care on October 18, 2013. . . . Further, Ms. M. has been offered transportation which she has just started to utilize. It should be noted that she declined at first for at least over a year.
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> Ms. M. has attended only 5 visits out of the 10 visits scheduled. . . . During visitation Ms. M. is at times able to appropriately interact with [J.M.], to make eye contact and appropriately try to engage him. . . . Ms. M. is not cognitively able to understand developmental milestones and emotional attachment issues. She does not seem to comprehend the importance of weekly visits to establish a bond, and she does not understand that her son will not develop a bond with her when she has only completed less than half of the visits scheduled. Ms. M.'s visits have not been consistent, and she cannot receive advice or feedback without aggression and hostility and she shows a lack of interest in attending visits regularly.

The report then laid out the Department's efforts to assist Ms. M. and her progress in achieving set goals, including obtaining stable employment and housing:

> Ms. M. has made extremely limited progress since the Local Department became involved with her since [J.M.'s] brother came in care in October 17, 2013.
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> Since signing the first service agreement Ms. M. has reported being employed by a local company as a wedding planner and other jobs; however, she never provided proof of income. Ms. M. just signed a second service agreement on November 2, 2015, and she reported that now she is currently unemployed, and she is looking for a job.
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> Previously, Ms. M. reported at least six different addresses of where she is living to this agency. Ms. M. was living with several different "friends." All these addresses and places belong to transient "friends." However, Ms. M. obtained a housing voucher with the assistance of the Local Department, and her voucher covers 100% of her rent.
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> On October 30, 2015, this worker completed an unannounced visit to the residence of Ms. M. to do a safety check since Ms. M. did not show up for court hearing of her daughter scheduled on October 28, 2015. During this visit, this worker was able to observe that the two front windows of Ms. M.'s residence were broken, and the windows were boarded with plywood. . . . It should be noted that this worker and supervisor have observed previously signs of domestic violence in the house such as broken doors, and holes on the walls on visit completed on August 13, 2015 (while during the removal of [J.M.]). . . . The Local Department paid in full the replacement of the windows and the repair of broken doors . . . to prevent Ms. M. from becoming homeless and losing her housing voucher.
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> The Local Department requested copies of police reports regarding any calls to [Ms. M.'s] residence. Police reports stated that Ms. M. called on November 25, 2015 stating that the father of her children, [Mr. Q.], stole her cell phone…[and] made threats to kill her, put a knife on her throat, and a gun on her head . . . . On September 15, 2015, Ms. M. reported that her front door was damaged and someone made a forceful entry to her house. . . . On September 30, 2015 police were called to Ms. M.'s residence with a report of destruction of property . . . . Ms. M. reported to been physically assaulted by two females over a friendship with a male. . . . On December 7, 2015, police were called to Ms. M.'s residence. The police report states that Ms. M. was assaulted by a female neighbor over a loan of money ($6.00).

As for Ms. M.'s progress regarding mental health treatment, the Department's report stated:

> Since [J.M.] came in care on August 13, 2015 Ms. M. has not maintained any consistent counseling or mental health appointments. Ms. M. chose a mental health therapist . . . and has been seen by the practice on two occasions, 1/18/2015 for intake/assessment and 1/22/2015 for therapy. On March 9, 2015 the Local Department received a report . . . stating that Ms. M.'s services have been terminated due to the fact of insufficient progress by failure to attend.
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> Ms. M. has reported that she has started with yet another therapist, [Mr. C.] . . . . The total number of therapists Ms. M. has reported that she has seen is over 10, and she never has had consistent attendance or participation with any mental health provider. . . . During this reporting period, Ms. M. stated that she no longer was attending counseling with [Mr. C.] and that she was once again switching therapists; however, on October 21, 2015 Ms. M. reported that she will go back again for counseling with [Mr. C.], and she signed consent of release information to [the Department].
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> Ms. M. has reported that the recommendations made by mental health in the past are inaccurate, and that they had misdiagnosed her and she believes she is mentally stable and able to provide the proper care for her child. She does not believe she is in need of mental health counseling, in spite of numerous evaluations, reports, and psychiatric hospitalizations dating back to January of 2007. . . . Ms. M. has also been advised by this Local Department that regular mental health is critical for her well-being and for the possibility of reunification with [J.M.]; however, [Ms. M.] has not followed through despite being told that attending mental health treatment was the number one priority of her service agreement.

The report further set forth the Department's efforts at placing J.M. with his purported father and/or relatives:

> On October 9, 2015, this worker completed a face to face home visit with the maternal grandparents [C.M. and R.M.]. During home visit, this worker was unable to complete an assessment in the house due to the fact that the house [is] still under repairs and renovations It should be noted that this home had been explored with each of Ms. M.'s children when they entered care, and each time the maternal grandparent's home has consistently been unable to pass a home safety inspection due to the on-going "renovations." Due to

> extensive family history of domestic violence and child abuse, and to the home health inspection not passing minimal standards, and due to the lack of response of the maternal grandparents, both [R.M. and C.M.] were ruled out.
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> In the past, the Local Department has explored Ms. M's sister [C.B.], who was approved by the Local Department when [J.M.'s] brother came in care After a home health inspection and receiving appropriate background clearances [J.M.'s] brother was placed with [C.B.] on November 13, 2014. The Department had concern that [C.B.] had another baby very close in age . . . . [A]fter only six days of placement . . . she advised the Department she could not keep [J.M.'s] brother. Also, on 11/19/13 a CPS call was received and an investigation was opened on [C.B.] . . . . At the present time, the Local Department is revisiting and exploring family members on the paternal side of [J.M.] as possible resources, and it should be noted that the family resides out of the State of Maryland, and paternity test has not been yet established.
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> The named father of [J.M.] had been advised about [J.M.] since [J. M.] entered care and [the father] failed to demonstrate any interest in [J.M.] The Local Department has offered him a [paternity test] and he has failed to engage with the Local Department, and he has no bond with [J.M.] [J.M.] has no relationship with him.

The Department's report concluded with a recommendation that J.M.'s permanency plan become one of adoption, with a concurrent plan of placement with a non-relative.

Ms. M. testified that she currently lives by herself and has maintained the same residence for "almost two years." She also stated that the home is "fully furnished" and that "there's nothing wrong with the house at this point." As for employment, Ms. M. was "waiting on two temp agencies . . . to place [her] on a more permanent placement," but that "because of the holidays and everything, everything's very slow right now, so it's hard to just get it." As of the hearing, Ms. M. had "no independent way to provide for [her] children other than through help of friends or the Department."

Ms. M. specified that she had been attending counseling with Mr. C. for "a couple of months" and, over that period of time, had attended all scheduled appointments. She admitted that prior to this time she had not attended her appointments regularly, but she insisted that she "had good reasons for not being able to attend therapy," namely, that she "had a lot going on outside." Ms. M. also indicated that she had an upcoming appointment for "domestic violence group intensive therapy."

With respect to her visits with J.M., Ms. M. stated that she did not believe that she had missed as many visits as reported by the Department. She also stated that her reasons for missing certain scheduled visits was "all the stuff with [her] house, as far as everything that was going on in [her] neighborhood." Ms. M. indicated that she "never had a chance" with J.M. because of her past, which has been "used against [her] in a negative way."

On January 15, 2016, the juvenile court issued its findings and opinion, in which the court determined that J.M.'s permanency plan should be changed from reunification to adoption by a non-relative:

> [F]ollowing the October 28, 2015 permanency plan hearing, it was determined that the primary permanency plan for [J.M.] was reunification with [Ms. M.] and the concurrent permanency plan was relative placement. Due to the fact that the putative father is unconfirmed, the maternal grandparents lack a suitable shelter and [J.M.'s] maternal aunt is unable to care for [J.M.], this court determines that the Department has explored its options for placing [J.M.] with a relative, without success.
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> In the instant case, a significant portion of the evidence presented by the Department centered on [Ms. M.'s] neglect of [J.M.'s] siblings, and the rather lengthy history between [Ms. M.] and the Department. The evidence presented at the hearing reveals that although [J.M.] has suffered no abuse or neglect while in the care and custody of [Ms. M.], each of [J.M.'s] three

siblings have previously been found to be children in need of assistance, while in the care of Ms. M. . . . Ms. M. has been diagnosed with various psychological disorders which she has failed to consistently address. Ms. M's failure in this regard is evidenced by the attendance logs from [Mr. C.] which indicate that Ms. M. only attended 16 out of the 33 scheduled therapy appointments and failed a drug test from October 28, 2015 to December 18, 2015. (Exhibit 6, Exhibit 7).

Further, [Ms. M.'s] history of failing to avail herself of visitation opportunities with J.M. coupled with the progress [J.M.] has made while in foster care, support a finding that the permanency plan should be changed from reunifications with [Ms. M.] to adoption by a nonrelative. . . . Ms. M. testified that she failed to attend nearly half of her scheduled visitation and counseling sessions due to her "poor choices" and detrimental association in her neighborhood. When asked to further explain specifically what "poor choices" she made, Ms. M. refused to expound. When asked why she failed one of the uranalysis exams, Ms. M. explained that a neighbor gave her a brownie, which, unbeknown to her at the time of consumption, was laced with drugs. Ms. M. credits this mistake as the geniuses [sic] of her failed urinalysis. (Exhibit 5, Page 1.) Ms. M. also testified that she is currently unemployed, and receives substantial assistance from the Department in the form of subsidies. Ms. M. testified that the Department fully subsidizes her housing, partially subsidizes her utilities and provides her with transportation to-and-from appointments as necessary.

Further, Ms. M. testified that she was the victim of at least five separate domestic disturbances between the dates of November 2014 and December 2015. . . . Ms. M's failure to consistently keep appointments and accept responsibility for her poor decisions, despite her own testimony that she has limited other responsibilities, financial or otherwise, weigh heavily in favor of a plan of adoption[.]

* * *

By all credible accounts, [J.M.] has been thriving in his foster home, and has bonded with his siblings and the members of his foster family. The evidence shows that [J.M.] is approximately 5 months old, and has been in the custody of the Department since his birth, in a safe and secure pre-adoptive foster home. [J.M.] has been seen for his routine medical appointments and required immunizations while in foster care and has been eating and sleeping well. He is bonded with his foster family. Mrs. Hall testified that Ms. M.'s missed visits with [J.M.] has been detrimental to the establishment of a bond between the two. Ms. M.'s testimony supported the Department's opinion

> that she is not cognitively able to understand developmental milestones and emotional attachment issues involving J.M. She does not seem to comprehend the importance of weekly visits to establish a bond, and she does not understand that her son will not develop a bond with her when she has only completed less than half of the scheduled visits. (Exhibit 1, Page 3-4.)
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> The evidence that [J.M.] is "thriving" in his foster home, and has developed a bond with his siblings, indicates to the Court that [J.M.] is flourishing in his current placement. Further, the Court finds that the potential harm of removing [J.M.] from a thriving environment and placing him into the care of Ms. M., who has yet to demonstrate her willingness to combat her psychological issues, is of grave concern.
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> [T]he Court has assessed the history between Ms. M. and [J.M.'s] siblings as well as Ms. M.'s progress since [J.M.'s] birth. The Court finds that Ms. M. has failed to address her mental health issues with consistent mental health treatment, nor has she made consistent attempts at developing a bond with [J.M.], despite the Department's best efforts to facilitate both. The Court also finds that [J.M.] has bonded well with his foster family, and that it would be detrimental to his physical and emotional well-being if he was placed in the care of Ms. M.

DISCUSSION

Ms. M. contends that the juvenile court erred in changing J.M.'s permanency plan to adoption by a non-relative, "when he had been in foster care for fewer than five months" and in making that change "without determining that a change of plan would serve his best interests." She further contends that the court erred in failing to credit her "for the significant progress that she made after J.M. was removed from her" and denying her "a realistic opportunity to attempt reunification with her son based solely on the history with the older children." Accordingly, Ms. M. avers that "the change in J.M.'s permanency plan was not warranted" and "reversal is required." We disagree.

Appellate review of a juvenile court's decision regarding child custody involves three interrelated standards. First, any factual findings made by the juvenile court are reviewed for clear error. *In re Yve S.*, 373 Md. 551, 586 (2003). Second, any legal conclusions made by the juvenile court are reviewed *de novo*. *Id.* "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 [court's] decision should be disturbed only if there has been a clear abuse of discretion." *Davis v. Davis*, 280 Md. 119, 234 (1977). Moreover, "[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 that court deems minimally acceptable.'" *In re Andre J.*, 223 Md. App. 305, 323 (2015) (internal citations omitted).

When a child is declared CINA and removed from the care of the parent, the juvenile court is required to hold a hearing to determine a permanency plan for the child. Md. Code, Courts and Judicial Proceedings, § 3-823(b)(1). In developing a child's permanency plan, the court's primary consideration is always the best interest of the child. Md. Code, Family Law, § 5-525(e)(1). This standard "embraces a strong presumption that the child's best interests are served by maintaining parental rights." *In re Yve S.*, 373 Md. at 571. Therefore, a juvenile court's first priority in developing a permanency plan should be reunification with the parent or guardian. Md. Code, Courts and Judicial Proceedings, § 3-823(e)(1)(i).

Following its implementation of a permanency plan, the juvenile court is required to conduct a review hearing "every 6 months until commitment is rescinded or a voluntary placement is terminated."[2] Md. Code, Courts and Judicial Proceedings, § 3-823(h)(1)(i). At the hearing, the juvenile court is required to determine: 1) the appropriateness of the current plan; 2) whether reasonable efforts have been made in achieving the goals of the permanency plan; 3) the level of progress made toward remedying the circumstances that necessitated commitment; 4) a reasonable date by which placement will be achieved; and 5) the overall safety and well-being of the child. Md. Code, Courts and Judicial Proceedings, § 3-823(h)(2).

In addition, the juvenile court is required to "change the permanency plan if a change . . . would be in the child's best interest." *Id.* Before such a change can be made, however, the court must consider the statutory factors outlined in Md. Code, Family Law, § 5-525(f)(1). *See* Md. Code, Courts and Judicial Proceedings, § 3-823(e)(2). These factors include the child's ability to be safe and healthy in the parent's home, the child's attachment to the parent and current caregiver, the length of time the child has resided with the current caregiver, the potential harm to the child if removed from the current placement, and the potential harm to the child in remaining in State custody. Md. Code, Family Law, § 5-525(f)(1). In short, "if there are weighty circumstances indicating that reunification with the parent is not in the child's best interest, the court should modify the permanency

[2] The statute does contain some exceptions to this rule; however, these exceptions are not applicable in the instant case. Md. Code, Courts and Judicial Proceedings, § 3-823(h)(1)(i).

plan to a more appropriate arrangement." *In re Adoption of Cadence B.*, 417 Md. 146, 157 (2010).

We hold that the juvenile court did not err in changing J.M.'s permanency plan from reunification to adoption by a non-relative. As required by the above-referenced statutes, the juvenile court held an appropriate permanency plan review hearing, after which it determined that continued efforts at reunification with Ms. M. would no longer be in J.M.'s best interest.[3] The juvenile court further determined that, based on the evidence presented and the circumstances at the time of the hearing, there were no suitable relatives with whom J.M. could be placed. With respect to the factors enumerated in Md. Code, Family Law, § 5-525(f)(1), the juvenile court found that Ms. M. could not provide a safe home for J.M., that J.M. had developed a strong bond with his siblings and foster family, that no significant bond had been established between Ms. M. and J.M., that J.M. had resided in his current placement for virtually his entire natural life, and that J.M. may suffer physical and emotional harm if he were removed from his current placement and placed in Ms. M.'s care.

Nevertheless, Ms. M. maintains that the juvenile court committed reversible error. Specifically, Ms. M. contends that the court failed to recognize her "renewed efforts toward reunification in the months leading up to the hearing," changed the permanency plan after only a "very short time (5 months)," and based its decision "solely on the history with the

[3] In its Order, the juvenile court specifically referenced both Md. Code, Courts and Judicial Proceedings, § 3-823, and Md. Code, Family Law, § 5-525; however, we have omitted these references for brevity.

other children." Ms. M. further contends that, despite the court's obligation to act in J.M.'s best interest, it "never mentioned J.M.'s best interests in determining that he could not be reunified with his mother."

We find Ms. M.'s arguments unpersuasive. First, there is nothing in the relevant statutes that states that a court is required to credit a parent for "renewed efforts," nor is there anything that states that a child must be out of a parent's care for longer than five months before the court can change the child's permanency plan. The statutes are quite clear regarding the steps a court must take and the factors it must consider, and, as noted, the juvenile court acted in accordance with these statutes prior to making its decision. Moreover, the court did not, as Ms. M. suggests, base its decision "solely" on her history with J.M.'s siblings; the court offered numerous examples of Ms. M.'s inability to care for J.M. that were specific to their relationship. Nevertheless, it is well settled that a juvenile court may consider a parent's history with her other children when assessing a parent's ability to care for the child that is the subject of a particular CINA proceeding. *See, e.g., In re Nathaniel A.*, 160 Md. App. 581, 597 (2005); *In re Dustin T.*, 93 Md. App. 726, 731 (1992); *In re William B.*, 73 Md. App. 68, 77 (1987).

As for Ms. M.'s claim that the trial court erred by failing to expressly mention the "best interest standard," we find no error in the court's failure to use those precise words. *See In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 738 (2014) (affirming the juvenile court's decision to terminate a mother's parental rights despite the fact that the court "did not explicitly state that a termination of [the mother's] parental rights would be

in [the child's] best interest in either its oral opinion or written order."). But, it clearly applied that standard in rendering its decision.

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