Circuit Court for Harford County
Case No. 12A-13-000037
Circuit Court for Baltimore County
Case No. 03-C-15-012600

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 2479 & 2599

September Term, 2016

No. 148

September Term, 2017

IN RE ADOPTION/GUARDIANSHIP OF
N.C.

E.C.
v.

R.M.

Wright,
Nazarian,
Krauser, Peter B. (Senior Judge,
Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: September 25, 2017

This is an adoption case. E.C. is the biological mother of N.C., a young boy. E.C.'s half-sister, R.M., and her husband, W.M. ("The Ms"), have served as N's guardian since he was eighteen months old, and eventually sought to adopt him. E originally consented, but after the Ms filed the papers in the Circuit Court for Harford County, E filed a timely objection, and the case proceeded as a non-consensual adoption (the full procedural history is somewhat more complicated, as we will explain). After a trial, the court granted the non-consensual adoption, which terminated E's parental rights, and later denied E's motion for a new trial. E appeals, and we affirm.

I. BACKGROUND

N was born on June 22, 2010. E and C.R., N's biological father,[1] have struggled with addiction and mental health issues since before N was born. E had custody of N until August 26, 2010, when the Baltimore County Department of Social Services ("DSS") intervened and placed him in emergency shelter care with his maternal grandmother, M.C. ("Grandmother"); E and Grandmother live in Baltimore County. DSS received a referral from Franklin Square Hospital informing them that E, C, and N were in the emergency department because C had attempted suicide and that, upon discharge, they did not have a safe place to stay.

E and C told the hospital social worker that they had been living with Grandmother, but refused to return there and instead planned to live on the streets and panhandle. At the

[1] C is not identified on N's birth certificate, although there does not appear to be any dispute that he is N's biological father. He was served by publication and has not participated in these proceedings.

social worker's urging, E and C agreed to allow N to stay overnight with Grandmother until DSS could meet with the family the next day. During this meeting, E and C also agreed that Grandmother could take them to New York to enroll in a treatment program. Once there, however, Grandmother said that the two were "uncooperative and refused to return home to Maryland, thus abandoning [N]." N remained sheltered with Grandmother in the meantime, and on September 7, 2010 the court ordered N and C to submit to mental health and substance abuse evaluations, follow a recommended treatment plan, and complete Parenting Skills Classes. The court granted liberal supervised visitation.

N was adjudicated a Child in Need of Assistance ("CINA") by the Circuit Court for Baltimore County on September 30, 2010. At the conclusion of the disposition hearing, which occurred on the same day as the adjudication, the court granted Grandmother concurrent custody and guardianship and granted E supervised visitation. In January 2012, however, Grandmother went out of the country and left E to care for N without full-time supervision. While Grandmother was gone, E and N became ill, and E asked her father to take care of N while she went to the hospital. Her father, who is also R.M.'s father, called R and asked her to care of N. R and her husband, W, live in Harford County.

After taking N home, R contacted DSS on January 13, 2012 to inform them that she had N, that he was sick and needed medical care, and to inquire about his medical coverage. Tamara White of DSS told R to take N to Patient First, and ultimately had to fax a letter explaining that N was placed in emergency care with R. DSS filed a Motion for Emergency Review and Request for Shelter Care on January 17, 2012, which the court heard and

granted on January 23, 2012. The court ordered N to remain in Shelter Care with the Ms and granted liberal supervised visitation to E.

N then remained with the Ms, and on March 11, 2012, the court granted them custody, with a permanency plan of reunification with E. At a review hearing on October 5, 2012, the court changed N's permanency plan from reunification to placement with a relative for custody and guardianship and on March 11, 2013, the court awarded the Ms permanent guardianship with liberal supervised visitation to E, and closed the CINA case.

On December 20, 2013, the Ms filed, in the Circuit Court for Harford County, the Petition for Adoption ("Adoption Petition") before us here. E consented at first, but revoked her consent within the statutory period by filing a Notice of Objection/Request for Appointment of Attorney.

E then, in parallel, filed a Complaint for Custody on November 16, 2015 in the Circuit Court for Baltimore County (the "Custody Complaint"). In their Answer to the Custody Complaint, the Ms moved to dismiss the case or, in the alternative, transfer it to the Circuit Court for Harford County and consolidate it with the Adoption Petition. The court opted for the latter course, and on March 2, 2016, denied the Motion to Dismiss and transferred the case to Harford County pursuant to Maryland Rule 2-327(b). For reasons the record does not reveal, the Custody Complaint case file was not actually transferred to

Harford County until November 10, 2016. E filed a Motion to Consolidate the Custody Complaint with the Petition for Adoption, which the court denied.[2]

The trial on the Adoption Petition began on November 22, 2016. R testified about the circumstances of N's placement with the Ms and explained her attempts to facilitate visitations with E. She contended that E had made little effort to contact N after the court granted the Ms guardianship. The Ms' counsel introduced a calendar noting the visits R had arranged with E and the times that E had cancelled or failed to show up. During 2013, E saw N once, on Thanksgiving. In 2014, E's only visit with N took place on his birthday. E did not see N at all during 2015, and finally contacted the Ms about visitation in April 2016. There were a few visits during 2016, but R said that she stopped scheduling them because E was "difficult" and "rude" and would "complain" about the location of the visits. E filed a Petition for Contempt and, after a pre-trial conference, the court ordered visits to resume, which they did, in August 2016, every other Saturday for two hours.

According to R, E did not support N financially, and other than receiving Medical Assistance, the Ms support him fully. She testified that N is a "family member," that her other children consider him their "little brother," and he refers to them as his sisters and to R as "mom" and W as "dad." When asked why she wants to adopt N, R testified that he was part of their family:

> [N's] a part of our family. We didn't plan on a fourth, kind of fell into our laps. We thought it was going to be for a few

[2] The court took no further action on the Custody Complaint except to grant the Ms' motion dismiss it, without a hearing, after the court entered judgment in the adoption case. E filed a separate notice of appeal from that decision.

> hours. Never dreamed we would be in this situation, but he is a part of our family. We love him. I love him like my own children, and we just want to be able to give him the best of what he can have, have a family with a mom and a dad and the normal life that he has lived over the past almost five years.

R's husband W, a Detective Lieutenant for the Baltimore City Police Department, offered similar testimony:

> [N] had completely bonded with our family. He was part of our family, and we just wanted to do what we felt was in his best interest to provide him stability and permanency and structure.
>
> * * *
>
> Well, for approximately almost five years now, we are the family that he knows. He is bonded with us. He has absolutely become part of our family, and I think it would be very difficult for [N] to be removed from that environment and what he knows.

Ms. White, a Family Services Case Work Specialist for the Baltimore County DSS, testified that DSS opened the CINA case in August 2010, after N's father overdosed and they were contacted by a hospital social worker. After the CINA disposition hearing, the court ordered E to submit to mental health and substance abuse evaluations, follow recommendations for treatment, and attend parenting skills classes. Ms. White referred E for a substance abuse evaluation, but E didn't enroll because she and her family moved to Ohio. While in Ohio, E attended the "Life Enrichment Center," which Ms. White described as "more of a support group" than a "true substance abuse treatment program." E traveled to Maryland once a month to meet with her probation officer and, when in Maryland, participated in a few therapy sessions, but was discharged from the program for not

attending. E and her family moved back to Maryland and Ms. White continued to meet with her. At one point, E was diagnosed with "Depressive Disorder, cannabis abuse[,] and anxiety disorder," but never filled her prescription because, according to Ms. White, E didn't think she needed medication, and E eventually stopped going to therapy.

Ms. White described numerous services DSS made available to E, but said that E "did not take advantage of them or that she would start a program but fail to complete it." According to Ms. White, the original permanency plan goal was reunification, but that "that wasn't possible because [E] had not complied with the services that were either in place or that she was referred to." She testified that DSS generally stays involved in a case for about eighteen months, and if they "don't see any significant progress in terms of what the parents are court ordered to do, then we look at an alternative placement or arrangement." In this case, DSS "attempted to put all these different services in place and there was no compliance," so they considered the Ms, where N had already been placed, as an alternative placement for him. DSS conducted a home study, found that it was a "good home, a stable home environment" and found no concerns regarding N's safety or well-being, so they closed the case and allowed N to remain with the Ms.[3]

[3] Ms. White also testified about DSS's involvement with E's second child, who was born drug-exposed. E produced prescriptions for oxycodone from several doctors (Ms. White believed E was "hospital shopping for pain medication"), so DSS did not investigate the matter further, but continued to monitor E's ability to care for the child. DSS's intake unit later received a call regarding "deplorable living conditions, [E] taking [the child] on drug runs with her, smoking marijuana in front of [him], and ongoing Oxycodone use." DSS was unable to substantiate the allegations, and the neglect case ultimately was closed. E's third child was also adjudicated a CINA.

Ms. White testified that N was "[v]ery attached to all of [the Ms]" and was "very bonded to them, and they were very bonded to him as well." And after N had been with the Ms for about fifteen months, E had still made very little progress toward unification, completing only the parenting classes. As a result, DSS concluded that there was no hope of reunifying N with E, so they asked the court to rescind the Order of Protective Supervision and award custody and guardianship to the Ms.

On the third day of trial**,** E's counsel attempted to call Julia Rastas as a witness to testify about her interactions with E and N. The Ms' counsel objected because Ms. Rastas had not been listed as a potential witness. The court excluded her on the ground that allowing her to testify without notice would be prejudicial to the Ms. Later in the trial, E's counsel asked the court to reconsider its ruling, and the court declined.

The Ms sought to introduce into evidence a report generated from a court-ordered home study conducted by Licensed Clinical Social Worker ("LCSW") Casey Green of the Office of Family Court Services. E's counsel objected on the grounds that the report did not comply with the Family Law Article because Ms. Green did not observe N and E together. The court concluded that the main purpose of the home study was to look at the physical space of the homes, not the nature of the relationships, and admitted the report.

Jamie Monath of the Division of Parole and Probation testified that he met E when she was placed on probation on July 26, 2012, for a theft charge for which she received probation before judgment. As a condition of her probation, she was ordered, among other things, to abstain from drugs and alcohol and to submit to drug and alcohol evaluation,

testing, and treatment. E did not comply with these conditions: she failed to report for urinalysis and did not enroll in drug treatment. In addition, she failed to appear in court, at one point was found to have violated her probation, and her probation closed unsuccessfully. While on probation, E told Agent Monath that she was the victim of domestic violence at the hand of her boyfriend, and the agent referred her to shelters and to House of Ruth. In June 2013, E told him that she was living with her child and boyfriend in a house with "dead rats and feces, [and] germs everywhere," and that it wasn't "a good place for her and her child."

The Ms called David Moyer, a character witness, who testified about his relationship with them and his observations of them with N. Mr. Moyer stated that he had known R for almost thirty years and W for over twenty years. He said that he and his family visit the Ms almost weekly and that N is always with them. Mr. Moyer observed that N had "bonded" with the Ms and become "a part of their family." He testified as well that the Ms "are loving, caring parents that offer tremendous stability and consistency in the home they have given [N]," and that the Ms have a "tremendous reputation in the community."

E testified that she is twenty-three years old and has four children, all of whom are in good health. She is unemployed and receives Temporary Cash Assistance, WIC, and food stamps for herself and her children. She stated that she "sells antiques on the side" and sometimes work for her mother, and had worked at the Ritz Cabaret and the Gold Club. She lives with her three younger children and her mother. She said that she cares for her

three children herself, but gets help transporting them to and from daycare because she does not have a driver's license, although she plans to get one after she finishes Family Recovery Court. E said that she is in good health and does not take prescription drugs, other than suboxone, which she gets through a menthadone program, and that she is detoxing voluntarily.

E recounted that N was placed in emergency shelter care for the first time when C attempted to commit suicide, and that N was placed before she spoke to the social worker from the hospital. E explained that the CINA court had ordered her to complete parenting classes and drug treatment and submit to a mental health exam, but admitted that her attitude toward these tasks was "not the best" and that she ultimately relapsed. E claimed that she submitted to a mental health evaluation, but did not complete the recommended treatment because she moved to Ohio, where she and her family lived for about nine or ten months. While there, E said that she attended recovery groups, but did not attend a formal drug treatment program. She also returned to Maryland during this time in order to check in with her probation officer. (She was on probation for two different thefts, both of which occurred in early 2012). E's probation was ultimately closed as "unsuccessful."

E explained that N was removed from Grandmother's care and placed with the Ms because N had been left with E without supervision while Grandmother was out of the country. E confirmed that most of the dates in R's calendar were correct. She stated that most of the visits went well, but that there was a lot of tension during the visits when R was present, and that it was difficult to hear N call R "mom." According to E, the

breakdown in visitations occurred in part because her father would no longer allow the visits to take place at his house and the Ms would not allow her to come to their house. She admitted that she had open warrants at the time. In 2014, E stated that she attempted to contact R about visitation via certified mail and text messages, but R never responded.

In August 2014, E said that she met with the Ms to discuss the adoption. E signed the adoption consent forms and the Ms gave her a check to pay for her to obtain counsel. E claimed that at the time, she didn't understand what she was signing, that she was "under the influence" and "wanted the money to use drugs." E filed a timely objection to the adoption and requested counsel. After being "clean" for a few months, E filed a Complaint for Custody because she didn't know what was going on with the adoption case.

In 2015, E completed a thirty-day intensive in-patient recovery program, and since has participated voluntarily in Family Recovery Drug Court. E had a few months free from drugs in 2015, but relapsed after being prescribed pain medication for dental work. At the time of trial, she stated that with the exception of suboxone, she had been drug free since June 2016 (about 5 months at that point). She admitted, however, that she had been using drugs while pregnant with her youngest daughter, who was born in July 2016. E also said that she had been the victim of domestic violence by a boyfriend in 2011 and 2012.

In 2016, after E filed a Petition for Contempt against the Ms for denying her visitation, the court ordered supervised visits to resume, twice a month for two hours each visit. E testified that N "was very, very excited every time [she] saw him."

E stated that she attends recovery groups several times per week and counseling once a month. She believed it would be in N's best interest for her parental rights not to be terminated:

> I believe that [N] was given to me. I believe that he was put in my stomach for a reason. I believe that I have since given [him] the environment to succeed. Done exceedingly well, given the circumstances I have pushed through against the odds, even when they weren't in my favor. I believe it's in his best interest to be able to grow up with his brothers and be able to be with his mom. Be able to be with his mom, be with me for holidays, day to day. I believe that I should be able to take care of him. I believe that it's my right to take care of him and he be able to grow up with his natural family. I don't think that should be taken from me for something that I didn't do. That's all.

At the conclusion of the trial, the court granted the adoption, which terminated E's parental rights. The court subsequently dismissed E's Custody Complaint. E filed a "motion for a new trial, motion to alter or amend, or in the alternative, revisory motion" and requested a hearing on the motion, both of which the court denied. This appeal followed. We will supply additional facts as necessary below.

II. DISCUSSION

E raises numerous contentions on appeal,[4] which we have consolidated and rephrased. Stated concisely, E challenges the court's decisions to grant the non-consensual

[4] In her brief for appeal 2016.2479, E phrased the Questions Presented as follows:

I. <u>Did the Investigation meet the requirements of the statute?</u>

II. <u>Did the Court commit clear error in failing to appoint counsel for the minor child and E.C.?</u>

III. **Did the Court abuse its discretion by excluding Julia Rastas[]?**

IV. **Did the Court abuse its discretion in finding the facts supported granting a non-consensual adoption and termination of parental rights?**

V. **Did the Court's procedures deny the Appellant and minor child due process?**

VI. **Did the court abuse its discretion in failing to consolidate the cases?**

VII. **Was the Appellant and minor child denied the right to effective assistance of counsel?**

In her brief for appeal 2016.2599, E phrased the Questions Presented as follows:

I. DID THE COURT ERR OR ABUSE ITS DISCRETION IN DISMISSING E.C.'s COMPLAINT BY A MOTION TO DISMISS?

II. WAS IT AN ERROR OR ABUSE OF DISCRTION FOR EIGHT MONTHS TO HAVE PASSED BEFORE THE CLERK TRANSFERRED THE FILE FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY TO THE CIRCUIT COURT FOR HARFORD COUNTY?

III. WAS IT AN ERROR OR ABUSE OF DISCRETION IN NOT HOLDING A HEARING ON THE MOTION TO DISMISS?

In her brief for appeal 2017.148, E phrased the Questions Presented as follows:

I. **DID THE COURT ABUSE ITS DISCRETION IN NOT GRANTING THE MOTION FOR NEW TRIAL, MOTION TO ALTER OR AMEND, OR IN THE ALTERNATIVE, REVISORY MOTION?**

A. **DID THE COURT ABUSE ITS DISCRETION IN FAILING TO GRANT THE MOTION REGARDING THE FAILURE TO APPOINT COUNSEL?**

B. **DID THE COURT ABUSE ITS DISCRETION IN FAILING TO GRANT THE MOTION DUE TO INEFFECTIVE ASSISTANCE [OF COUNSEL]?**

adoption, to dismiss her Complaint for Custody, and to deny her motion for a new trial. She contends that the court erred in relying on the investigative report generated by the Office of Family Court Services and in declining to appoint counsel for her and for N, in prohibiting Ms. Rastas from testifying, and that she was denied due process throughout the proceedings.

The Ms respond that the facts supported the court's decision to grant the non-consensual adoption, that the court's decision to deny E's Complaint for Custody was correct in light of its ruling on the adoption, and that the court correctly denied E.C.'s motion for a new trial.

We review child custody and termination of parental rights cases using three interrelated standards of review:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of Rule 8-131(c) applies. Second, if it appears that the 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 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.

II. DID THE COURT ABUSE ITS DISCRETION IN NOT HOLDING A HEARING ON THE MOTION FOR NEW TRIAL, MOTION TO ALTER OR AMEND, OR IN THE ALTERNATIVE, REVISORY MOTION?

In re Adoption of Sean M., 204 Md. App. 724, 732-33 (2012) (internal quotations and citation omitted).

A. The Court Did Not Err In Relying On the Investigative Report.

E contends that the circuit court erred in relying on the investigative report generated by Ms. Green. She argues that the report did not comply with Md. Code (1984, 2006 Repl. Vol., 2016 Supp.) § 5-3B-16 of the Family Law Article ("FL") because it did not contain "observations of N.C.'s emotional ties with and feelings toward E.C., or E.C.'s other children." We disagree.

In a non-consensual independent adoption, the court must order an investigation, *see* Md. Rule 9-106(d)(2), that yields reports summarizing the adoptee's ties with the people and places in his life:

> (b) Report. – Before ruling on a nonconsensual adoption petition under §§ 5-3B-20(2) and 5-3B-22 of this subtitle, a court shall order an appropriate agency to investigate and submit a report that includes summaries of:
>
> (1) the prospective adoptee's emotional ties with and feelings toward the prospective adoptee's parents, the prospective adoptee's siblings, and *others who may affect the adoptee's best interests significantly*; and
>
> (2) the prospective adoptee's adjustment to:
> (i) community;
> (ii) home; and
> (iii) school.

FL § 5-3B-16 (emphasis added). To that end, the circuit court ordered the Office of Family Court Services on May 16, 2016 to conduct an investigation that addressed the following questions: (1) "Is the home of the Petitioners a suitable environment for the child?" (2)

"What are the prospective adoptees emotional ties and feelings toward the Petitioners, any siblings, and others who may affect the child's best interest?" and (3) "How has the child adjusted to the home, school and community?" By its terms, the order sought a report that answered the statutory questions.

Ms. Green conducted two investigations for the Office of Family Court Services. The first investigation covered E's home, and N was not present. The second covered the Ms' home, and E was not present. E contends that because N was not present during the investigation of her home and she was not present during the investigation of the Ms' home, the investigations did not comply with the statute, in that "[t]he investigator was unable to make any observations as to whether N.C. has a good, bad or indifferent relationship with E.C., or his siblings."

We disagree that the investigation fell short simply because E and N were not in the same place at the same time. In fact, the two reports *do* contain information and observations describing N's emotional ties to E and his siblings: between them, the two reports included observations from E, from Grandmother, and from the Ms about N's interactions with all of them. Between the two reports, Ms. Green observed and interviewed all of the relevant parties as well. Not surprisingly, the different family members offer different perspectives. The important thing for our purposes, though, is that the court had available to it the information the statute required, and that it needed, to discern whether the proposed non-consensual adoption served N's best interests, and it did. The court did not err in accepting and relying on these reports.

B. The Circuit Court Did Not Err In Declining To Appoint Counsel For N And E.

Next, E argues that the circuit court erred in failing to appoint counsel for her and N. In particular, E contends that FL § 5-3B-06 entitled her to a court-appointed attorney based on disability, and entitled N to a court-appointed attorney based on his age. E argues further that "in the very least, a hearing should have been scheduled [to] address the issue."

FL § 5-3B-06, which governs appointment of counsel in independent adoptions, states in pertinent part:

> (a) *Parent.* – (1) In a case under this subtitle, a court shall appoint an attorney to represent a parent who:
>
> (i) has a disability that makes the parent incapable of effectively participating in the case; or
>
> (ii) when the parent must decide whether to consent to adoption, is still a minor.
>
> (2) To determine whether a disability makes a parent incapable of effectively participating in a case, a court, on its own motion or on motion of a party, may order examination of the parent.
>
> (b) *Prospective adoptee.* – (1) In a case under this subtitle, a court shall appoint an attorney to represent a prospective adoptee who:
>
> (i) has a disability that makes the prospective adoptee incapable of effectively participating in the case; and
>
> (ii) when the prospective adoptee must decide whether to consent to adoption, is at least 10 years old.

It's true, as E notes in her brief, that the Ms stated in their Petition For Independent Adoption that they "believe the birth mother and birth father are in need of the appointment of an attorney to advise them in this matter," and that they also requested a court-appointed attorney on N's behalf because he was "not of sufficient age to understand the nature of these proceedings and cannot participate in them in any meaningful manner." And indeed,

E requested counsel on her own behalf in her Notice of Objection/Request for Appointment of Attorney. But requesting that counsel be appointed does not mean that the court is required to appoint one, and in this case the court wasn't required to do so.

Putting aside for the moment that E was, in fact, represented by counsel at trial and before, her Notice of Objection/Request for Appointment of Attorney neither alleged nor demonstrated that she met the requirements set forth in FL § 5-3B-06. She is not a parent under 18 years of age. She does not suffer from a disability that prohibited her from participating effectively in the adoption proceedings. There was, to be sure, evidence throughout these proceedings of E's struggles with addiction and mental health challenges. But she never claimed or put on any evidence or testimony that portrayed her issues as a disability that entitled her to court-appointed counsel.

Moreover, Md. Rule 9-105(b) did not require the court to hold a hearing:

> (b) **Appointment of Attorney for Disabled Party.** (1) If the parties agree that a party who is not represented has a disability that makes the party incapable of consenting or participating effectively in the proceeding, the court shall appoint an attorney who shall represent the disabled party throughout the proceeding.
>
> (2) If there is a dispute as to whether a party who is not represented has a disability that makes the party incapable of consenting or participating effectively in the proceeding, the court shall:
>
> (A) hold a hearing promptly to resolve the dispute;
>
> (B) appoint an attorney to represent the alleged disabled party at that hearing;
>
> (C) provide notice of that hearing to all parties; and
>
> (D) if the court finds at the hearing that the party has such a disability, appoint an attorney who shall represent the disabled party throughout the proceeding.

To be sure, the court would have been required to appoint counsel for E if the parties agreed that she was disabled, and the court would have been required to hold a hearing if there was a dispute about whether she had such a disability. But E argued neither—she simply asked for a lawyer. And there was no agreement on this point: although the Ms didn't object to E having counsel, their Petition stated that "[n]o facts are known to the Petitioners that would indicate whether the birth mother or the birth father have a disability that make him or her incapable of consenting or participating in the proceedings."

Nor was the court required to appoint counsel for N. Again, a prospective adoptee is entitled to a court-appointed attorney if he or she has a disability that renders him or her incapable of effectively participating in the case *and* he or she is at least ten years old. N meets neither of these criteria. The record contains no suggestion, let alone evidence, that he suffers from any disability, and he was only six years old at the time of trial.

As such, the decision whether to appoint counsel for N was discretionary. *See Garg v. Garg*, 393 Md. 225, 238 (2006) ("The decision whether to appoint independent counsel for the child is a discretionary one, reviewable under the rather constricted standard of whether that discretion was abused."). "The abuse of discretion standard requires a trial judge to use his or her discretion soundly and the record must reflect the exercise of that discretion. Abuse occurs when a trial judge exercises discretion in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law." *Id.* (citation omitted). E's counsel requested a court-appointed attorney to represent N on the first day of trial. The trial court denied the request as untimely and unnecessary in light of

the fact that there were numerous witnesses to testify on his behalf. The court did not, under the circumstances, abuse its discretion in denying that request.[5]

C. The Circuit Court Did Not Abuse Its Discretion By Excluding Ms. Rastas's Testimony.

On the third day of trial, E's counsel attempted to call Ms. Rastas, a police officer friend of E's family who had supervised N years before, when M.C. was his guardian. The Ms' counsel objected because E's counsel had not listed Ms. Rastas as a potential witness. The court asked for a proffer of Ms. Rastas's testimony and ultimately excluded her from testifying because the Ms had no notice:

> THE COURT: [E's counsel], what would be the substance of Ms. Rastas' testimony?
>
> [E'S COUNSEL]: The substance of her testimony would be . . . that she was the person that was called to assist to care for, assist in the care for [N] while [M] was out of the country. . . .
>
> * * *
>
> [E'S COUNSEL]: She would be testifying that she is a police officer for Baltimore County, and she would be testifying that she was spending off time and evenings with [E] and [N].
>
> THE COURT: Is there any reason why she wasn't listed then as a witness for the [Ms] to become aware of her?
>
> [E'S COUNSEL]: Your Honor, I have to own that one. My client's told me, and I was preparing the pretrial, and it is an omission that I have to - -

[5] E contends that N was required to be present during the hearing pursuant to Md. Rule 9-109(b)(1). But E never raised the issue or objected to N's absence, during the trial, and she cannot raise the issue for the first time on appeal. Md. Rule 3-517 (c).

> THE COURT: That seems like a pretty important omission to me, so I'm not going to permit her to testify.
>
> [E'S COUNSEL]: Your Honor, I would just - -
>
> THE COURT: The [Ms] would be entitled to at least investigate the source of her ability to have been there and to talk to other folks that would substantiate that rather than for the first time hearing a witness's name and then having to cross-examine basically in the dark. These are not trials by ambush. That's why we have rules for discovery.
>
> * * *
>
> THE COURT: Well, I'm not saying it's trial by ambush necessarily, but it certainly is a surprise. And given the nature of that witness' participation, if you will, that seems like a pretty important witness to apprise the [Ms] of in terms of their ability to prepare for their testimony because this, all the genesis of all of this is that there was no supervision. No supervision. So the counter to that would be yes, there was, and here's the name of a witness who would testify under oath to that. So, that to me is like the very first thing that should have been presented to the other side and it wasn't. And we are here on the third day of trial, and [the Ms' counsel] is just now finding out about that witness? That is a surprise. That's a significant surprise.

E contends that the court abused its discretion in excluding Ms. Rastas as a witness on the November 23, 2016, the third day of trial, and again when her counsel asked the court to reconsider its ruling. She argues that "[t]he Court did not order that the parties exchange the names of non-expert witnesses," that "the [Ms] were apprised on October 28, 2016 that Julia Rastas might be called as a witness, by virtue of a Line filed with the Clerk, with a copy to counsel for the [Ms]," and that "the Court's chosen remedy to exclude the

witness was draconian, and not supported by some persistent and deliberate violations of the discovery rules."

"Generally, whether a particular item of evidence should be admitted or excluded is committed to the considerable and sound discretion of the trial court and reviewed under an abuse of discretion standard." *Perry v. Asphalt & Concrete Services, Inc.*, 447 Md. 31, 48 (2016) (internal quotations and citation omitted). We will not reverse for harmless error, and the burden is on the appellant to show prejudice as well as error. *Crane v. Dunn*, 382 Md. 83, 91 (2004) (citations omitted). Prejudice will be found if a showing is made that the error was likely to have affected the verdict below. *Id.* "Courts are reluctant to set aside verdicts for errors in the admission or exclusion of evidence unless they cause substantial injustice." *Perry*, 447 Md. at 49 (citations omitted).

Here, E's counsel filed a Line for "subpoenas for the following individuals who will testify at trial" on November 21, 2016. That list did not contain Ms. Rastas. Although counsel filed another line for "subpoenas duces tecum for the following individuals" on October 28, 2016 that did include Ms. Rastas was listed, a subpoena *duces tecum* is not the same as a subpoena for a trial witness.[6] *See* Md. Rule 4-265. The trial court reasoned that it would be an unfair surprise to the Ms if Ms. Rastas was allowed to testify, and we agree. Moreover, E does not articulate how the exclusion of Ms. Rastas's testimony prejudiced her or in any way affected the outcome of the case. So even if the

[6] A *subpoena duces tecum* is for "relevant documents, records, recordings, photographs, or other tangible things, not privileged, that are to be produced by the witness." Md. Rule 4-265 (b)(1).

trial court erred, the error was harmless. *See* Md. Rule 5-103 (a) ("Error may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling[.]").

We disagree as well that the court abused its discretion when it denied her request to reconsider this decision. At that point, counsel argued that Ms. Rastas was no longer a surprise witness. The Ms' counsel responded that she had not contacted Ms. Rastas because she had relied on the court's original ruling and that, moreover, she had seen Ms. Rastas speaking to and reviewing documents with Grandmother in violation of the court's sequestration order. Trial courts have discretion to enforce their own orders. *Butler v. S & S Partnership*, 435 Md. 635, 660 (2013) (citation omitted). Ms. Rastas's defiance of the sequestration order is grounds enough on its own to prohibit her from testifying, and nothing else that had changed in the meantime compelled the court to change its prior ruling.

D. The Circuit Court Did Not Abuse Its Discretion In Terminating E's Parental Rights And Granting A Non-Consensual Adoption And Name Change.

E's *next* contention is that the circuit court erred in terminating her parental rights and granting the non-consensual adoption and name change. She argues that "[t]he evidence presented and considered by the Court does not support [its] findings." We disagree.

"In termination of parental rights cases, the standard of review is 'whether the trial court, in making its determination, abused its discretion or made findings of fact that were

clearly erroneous.'" *In re Adoption/Guardianship of Harold H.*, 171 Md. App. 564, 570 (2006) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 311 (1997)). In these cases, "the greatest respect must be accorded [to] the opportunity the [trial court] had to see and hear the witnesses and to observe their appearance and demeanor." *Id.* (citation omitted). The circuit court's determination, therefore, is given great deference, unless it is arbitrary or clearly wrong. *Id.* (citation omitted).

At the outset, we recognize the "fundamental right of parents generally to direct and control the upbringing of their children." *In re Adoption/Guardianship of L.B.*, 229 Md. App. 566, 589 (2016) (citations omitted). A parent's fundamental right to raise her child, however, is not absolute and "must be balanced against the fundamental right and responsibility of the State to protect children, who cannot protect themselves, from abuse and neglect." *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497 (2007). We also recognize that terminating parental rights "is a drastic measure, and should only be taken with great caution. . . ." *In re Adoption/Guardianship of Harold H.*, 171 Md. App. 564, 576 (2006) (citation omitted). Courts generally presume "that it is in the best interest of children to remain in the care and custody of their parents," but that presumption "may be rebutted upon a showing either that the parent is 'unfit' or that 'exceptional circumstances' exist which would make continued custody with the parent detrimental to the best interest of the child." *In re Adoption/Guardianship of L.B.*, 229 Md. App. at 589. To be sure, "the controlling factor in adoption and custody cases is not the natural parent's

interest in raising the child, but rather what best serves the interest of the child." *In re Adoption/Guardianship of Harold H.*, 171 Md. App. at 572.

Non-consensual adoptions are governed by FL § 5-3B-22, which provides in pertinent part:

> (a) *Scope of section.* – This section applies only if a parent affirmatively withholds consent by filing a notice of objection.
> (b) *Custodian.* – (1) A court may allow adoption, without parental consent otherwise required under this subtitle, by a petitioner who has exercise physical care, control, or custody over the prospective adoptee for at least 180 days, if the court finds by clear and convincing evidence that:
>
> (i) The parent has not had custody of the prospective adoptee for at least 1 year;
>
> (ii) The prospective adoptee has significant emotional ties to and feelings for the petitioner; and
>
> (iii) The parent:
>
> 1. Has not maintained meaningful contact with the prospective adoptee while the petitioner had custody, nothwithstanding an opportunity to do so;
>
> 2. Has failed to contribute to the prospective adoptee's physical care and support, nothwithstanding the ability to do so;
>
> * * *
>
> (3) In determining whether it is in the best interests of a prospective adoptee to terminate a parent's rights under this subsection, a court shall:
>
> (i) give primary consideration to the health and safety of the prospective adoptee; and
>
> (ii) consider the report required under section 5-3b-16 of this subtitle.

The question before us is whether termination of E.C.'s parental rights and granting the adoption served N's best interest. The circuit court found that it did, noting several facts to support its conclusion:

- E conceded that N has resided with the Ms since he was approximately eighteen or nineteen months old, well past the one-year statutory requirement.

- In addressing § 5- 3B-22(ii), the court found that N had developed significant emotional ties to and feelings for the Ms, crediting the testimony of Ms. White, the social worker who observed them together, and Mr. Moyer, a long-time family friend, who frequently spends time with the Ms and testified that N had become part of their family. Additionally, the court noted that N has resided with the Ms since he was very young, calls them "mom" and "dad," and refers to their daughters as his "sisters." The record supports the court's conclusion that at this point in N's life, the Ms are the only family he knows, and that he has significant emotional ties to them.

- With regard to § 5- 3B-22 (iii), the court determined that E did not maintain meaningful contact with N during the time the Ms had custody, despite the opportunity to do so. The court noted that "overall, given the number of opportunities that [E] had in looking at the calendar that Ms. [M] testified to . . . there were long periods of time that [E] did not see [N]." The court recounted some of the reasons that E had provided for her lack of meaningful contact she had with N, but ultimately concluded that E did not take advantage of the opportunities she had to spend time with N. The record supports the court's conclusion, most notably through the fact that E saw N only once in 2013, once in 2014, and not at all in 2015.

- The court also found that E had not contributed to N's financial support. The court acknowledged E's limited resources, but also noted that "there was never any attempt

to make any financial contribution," even though, by E's own admission, she had worked at nightclubs, sold antiques at a flea market, and sometimes worked with her mother, who works in real estate. The court concluded that there was "some income, or some resources which could have gone towards [N.C.'s] support and none were provided." The record supported the court's conclusion that E could have contributed to N's care and support, but failed to do so.

- In considering the remaining § 5- 3B-22 factors, the court found that the primary consideration, N's health and safety, was being met by the Ms. The court cited evidence and testimony demonstrating that N is healthy, doing well in school, participating in recreational activities, and is a member of a faith community. The court found that N "is integrated into the [Ms'] household" and that N "sees himself, based on the testimony not only of the [Ms] and the witnesses that they provided here, to be a part of their family," and that even [E] "concedes that that is true in this case."

- In contrast, the court found that "[e]ven as recently as June of this year [E] still had been testing positive for illicit or illegal substances, and having three children, one of whom is subject to the jurisdiction of the CINA court, certainly would make it difficult for her to affectively parent all three of them without some assistance." Moreover, the court noted that during the time that N was under DSS's guardianship, E was court-ordered to get mental health treatment and take any medications that were prescribed as well as go to a substance abuse treatment program, stop using illegal or illicit substances, and take parenting classes. The court emphasized that E only completed one of those

requirements—parenting classes—and that although she eventually completed a drug treatment program, she had tested positive to drug use only months before the trial began.

It is never an easy decision to terminate a parent's parental rights, but the record in this case supports the court's decision to grant the Ms' petition to adopt N. The court heard and considered substantial evidence and testimony during a lengthy trial, applied the governing law, and came to a sound decision. We see no abuse of discretion in the court's decisions to terminate E's parental rights, authorize the Ms to adopt N, and to change N's last name.

E. E And N Were Not Denied Due Process, Nor Did The Circuit Court Abuse Its Discretion In Declining To Consolidate The Adoption Case With E's Complaint For Custody Or In Dismissing It.

Next, E contends that she was denied due process because more than two years passed between when she filed her Complaint for Custody in Baltimore County and the court's first hearing on the matter. Additionally, E contends that the Baltimore County court abused its discretion in "permitting eight months to pass before transferring the file for her Custody Complaint case from Harford County," declining to consolidate her Complaint for Custody with the adoption case, and in dismissing the Complaint for Custody. We disagree with all of these contentions.

E claims that she was denied due process because there was no timely resolution to the custody claim, "which worked to the detriment of E.C., and to the benefit of the Ms, causing the unnecessary separation of N.C. from E.C." She points to the "purposes" of the Independent Adoption Statute, codified in FL § 5-3B-03:

> (b) *Purposes.* – The purposes of this subtitle are to:

> (1) timely provide permanent and safe homes for children consistent with their best interests;
>
> (2) protect children from unnecessary separation from their parents;

We agree that E was entitled to due process in these cases. *In re Adoption of Sean M.*, 204 Md. App at. 745 ("It is well established that parents have a fundamental liberty interest in raising their children under the Due Process Clause of the 14th Amendment." (citations omitted)). The Family Law article contains procedural safeguards designed to guarantee that parents in these cases receive fair notice and an opportunity to object and participate. *See* FL § 5-334 (setting forth the requirement, service, and method of Show Cause Orders in adoption without prior termination of parental rights cases); Md. Rule 9-105 (setting forth the requirements for and service and form of Show Cause Orders for independent adoptions as well as the consequences of the failure to file objection within the required time).

E was served with the Petition for Adoption on January 17, 2014, and the Show Cause Order on December 1, 2015. N's biological father, C, was entitled to notice as well. The record reveals that the Ms made numerous attempts both in 2013 and 2015 to provide such notice, but ultimately failed because there was no known address for C. On August 4, 2015, the court granted the Ms' request to provide notice by publication, which gave C until September 29, 2015 to respond. This delay was no fault of the court nor the parties, and did not deprive E of due process.

Nor do we find that the circuit court abused its discretion in declining to consolidate

E's Complaint for Custody with the adoption proceedings. A trial court has inherent authority to control its own docket. *Wynn v. State*, 388 Md. 423, 437 (2005). The circuit court in this case likely reasoned that it was more efficient to hold the adoption proceeding first because the result of that proceeding could have been, and in fact was, dispositive. Additionally, the court did not abuse its discretion in dismissing E's Complaint for Custody because, as discussed below, the decision to terminate her parental rights and grant the adoption rendered the Complaint for Custody moot.

F. E's Contentions Regarding Her Complaint For Custody Are Moot. [Appeal 2599]

E contends that the trial court erred or abused its discretion in "permitting eight months to pass before transferring the file to the Circuit Court for Harford County," in "dismissing [her] complaint [for custody] by way of a motion to dismiss," and "in not holding a hearing on the motion to dismiss." The resolution of the Adoption Petition, however, mooted E's claims in the Custody Complaint.

"A question is moot if, at the time it comes before the court, there is no longer an existing controversy between the parties, so that there is no longer an effective remedy which the court can provide." *Att'y Gen. v. Anne Arundel Cty. Sch. Bus Contractors Ass'n., Inc.*, 286 Md. 324, 327 (1979) (citation omitted). In general, courts "should decline to address the merits of a moot case." *In re W.Y.*, 228 Md. App. 596, 609 (2016) (citation omitted). "It is well settled that appellate courts do not sit to give opinions on abstract propositions or moot questions, and appeals which present nothing else for decision are

dismissed as a matter of course." *Cottman v. State*, 395 Md. 729, 744 (2006) (internal quotations and citations omitted).

The court's decision to allow the Ms to adopt N, and thus to terminate E's parental rights, subsumed E's Custody Complaint and left no relief for a court to grant her in that regard.[7] Although in rare instances courts can decide to address the merits of a moot case, *Lloyd v. Board of Supervisors of Elections*, 206 Md. 36, 43 (1954), this case does not involve the kinds of broader *public* issues that justify an exception to the mootness principles:

> [O]nly where the urgency of establishing a rule of future conduct in matters of important public concern is imperative and manifest, will there be justified a departure from the general rule and practice of not deciding academic questions. . . . [I]f the public interest clearly will be hurt if the question is not immediately decided, if the matter involved is likely to recur frequently, and its recurrence will involve a relationship between government and its citizens, or a duty of government, and upon any recurrence, the same difficulty which prevented the appeal at hand from being heard in time is likely again to prevent a decision, then the Court may find justification for deciding the issues raised by a question which has become moot, particularly if all these factors concur with sufficient weight.

Id.

[7] E did not seek visitation as alternative relief in the adoption case. Nothing, of course, precludes the Ms from allowing E to visit N and to be part of his life, although any decision in that regard would be theirs to make.

We recognize that this case involves matters of intense *personal* interest to these parties, especially E and N and the Ms. But the decisions we review here do not implicate broader public issues that, if left undecided, will leave uncertainty or allow potential harm to continue or recur, and we decline to address the merits of this moot dispute.

G. E Cannot Claim Ineffective Assistance Of Counsel Because She Had No Right To Counsel.

Next, E contends that the court's orders should be vacated, reversed, and remanded due to ineffective assistance of counsel. She lists a host of issues and arguments that "could have been raised sooner in this matter" such as, the appointment of counsel for N, the defectiveness of the home investigations, and the transfer and consolidation of the Custody Complaint. E argues as well that Ms. White should not have been allowed to testify regarding her reports and opinions because she was not qualified as an expert, and that other documents, such as those from the one of her rehabilitation programs, could have been presented and an expert on addiction should have been called to "explain the arc of addiction, recovery, and the setbacks that occur."

As discussed above, E was not entitled to a court-appointed attorney under FL § 5-3B-06. Because this is a civil proceeding and not a criminal matter, E was not constitutionally entitled to a court-appointed attorney generally. *See In re Adoption/Guardianship No.* 6Z98001, 131 Md. App. 187, 192 (2002) (holding that the Sixth Amendment right to be present during proceedings does not apply to TPR proceedings because they are civil proceedings). And without a constitutional right to counsel in the first place, ineffective assistance of counsel is not a basis to reverse the trial

court's decisions. Put another way, the right to counsel includes the right to effective assistance of counsel, *Strickland v. Washington*, 466 U.S. 668, 686 (1984), but one must first have the right to counsel before we can address whether counsel was ineffective.

H. The Court Properly Exercised Its Discretion In Denying The Motion For A New Trial And Denying The Request For A Hearing On The Motion.

Finally, E contends that the trial court abused its discretion in denying her "motion for a new trial, motion to alter or amend, or in the alternative, revisory motion." In support of this contention, E rehashes two arguments from her appeal of the grant of custody and termination of parental rights: that the court erred by failing to appoint counsel for her and that her counsel provided ineffective assistance.

"In general, the denial of a motion to alter or amend a judgment or for reconsideration is reviewed by appellate courts for abuse of discretion." *Miller v. Mathias*, 428 Md. 419, 438 (2012) (citations omitted). In this context, the court's discretion is even broader than usual, since the court is being asked to revisit a decision it just finished making:

> With respect to the denial of a Motion to Alter or Amend, . . . the discretion of the trial judge is more than broad; it is virtually without limit. What is, in effect, a post-trial motion to reconsider is not a time machine in which to travel back to a recently concluded trial in order to try the case better with hindsight. The trial judge has boundless discretion not to indulge this all-too-natural desire to raise issues after the fact that could have been raised earlier but were not or to make objections after the fact that could have been earlier but were not. Losers do not enjoy *carte blanche*, through post-trial motions, to replay the game as a matter of right.

Steinhoff v. Sommerfelt, 144 Md. App. 463, 484 (2002). Our decisions above on E's right to counsel and effective assistance of counsel arguments answer the question here: we discern no abuse of discretion in the circuit court's ruling denying her motion to reconsider.

E also contends that the trial court abused its discretion in not granting a hearing on the motion. In particular, she claims that "a number of pieces of evidence could have, or should have been placed into evidence, and [she] should have had an opportunity to have a hearing to discuss those errors, especially since this matter involves the severe result of termination of parental rights." We disagree.

Maryland Rule 2-311 (e), provides the court with discretion in determining whether to hold a hearing before denying a motion for new trial or motion to amend the judgment:

> (e) Hearing – Motions for Judgment Notwithstanding the Verdict, for New Trial, or to Amend the Judgment. When a motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the court shall determine in each case whether a hearing will be held, but it may not grant the motion without a hearing.

We review the circuit court's denial of a request for a hearing on such motions under an abuse of discretion standard. *Miller*, 428 Md. at 438-441 (explaining that a hearing is required when the court grants a Rule 2-532, 2-533, or 2-534 motion; otherwise the decision to hold a hearing is discretionary); *see also In re Adoption/Guardianship of Joshua M.*, 166 Md. App. 341, 358 (2005) (explaining that court is not required to hold a hearing prior to denying a motion under Rule 2-534). But as we have discussed already, the court's decisions on the merits of these cases were supported by the law and the record, and her motion for reconsideration did not raise issues that compelled a hearing.

JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. APPELLANT TO PAY COSTS.