Circuit Court for Harford County
Case Nos. 12-I-14-000109 &
12-I-14-000110

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0551

September Term, 2016

IN RE: E.O. AND E.O.

Woodward,
Leahy,
Friedman,

JJ.

Opinion by Leahy, J.

Filed: February 7, 2017

In November 2014, the Harford County Department of Social Services (the "Department") received notification that two siblings, Es. O. and Em. O. aged 14 and 12, were being physically abused by their mother, Ms. O. The Department intervened, placed the children in foster care, and filed petitions in the Circuit Court for Harford County to deem the siblings Children in Need of Assistance ("CINA").[1] The children were thus adjudicated CINA and a primary permanency plan of reunification was established. In December 2015, the court changed the permanency plan to a primary plan of adoption, with a secondary plan of reunification with Ms. O.

In February 2016, after a lack of progress toward reunification, the Department recommended that the permanency plan be changed to one of adoption, with no secondary plan of reunification. The magistrate accepted the Department's recommendation, upon which Ms. O. noted exceptions. After a two-day hearing, the court ordered that the permanency plan be changed to a sole plan of adoption. Ms. O. appeals from this order, presenting a single question for our review: "Did the trial court abuse its discretion when it changed the permanency plan concerning E[s].[]O. and E[m]. []O. from adoption with a secondary plan of reunification to one simply of adoption?"

For the reasons set forth below, we conclude that the circuit court did not abuse its discretion, and we shall affirm its judgment.

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[1] A "child in need of assistance" is one who requires court intervention because the child has been abused or neglected, or has a developmental disability or mental disorder; and his or her "parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Maryland Code (1973, 2013 Repl. Vol., 2016 Supp.), Courts and Judicial Proceedings Article ("CJP"), §3-801(f).

BACKGROUND

Ms. O. is the biological mother of Es. O. (a girl, born in 2000) and Em. O. (a boy, born in 2002). Es. O. and Em. O. were born in Nigeria, where they lived with their father[2] and step-mother until they came to the United States four years ago to live with Ms. O.

On November 22, 2014, the Harford County Sheriff's Office notified the Department of Social Services that it received a telephone call at approximately 12:30 a.m. from Em. O., who was then 12 years old, stating that he was home by himself and scared. Em. O. stated that he was afraid of his 22-year old brother, V.O., who had threatened to beat Em. O. the next time that he saw him. Em. O. reported that his brother had previously beat him with closed fists; had cracked the top of Em. O.'s head open with a high-heeled shoe; hit Em. O. in the ankle bone with a high-heeled shoe; and bent Em. O.'s leg backward, threatening to break it. Em. O. also reported that Ms. O. beat him with a broomstick the previous evening and had beaten him with wires in the past. Es. O., who was then 14 years old, was not at home because she had left the home earlier with Ms. O.'s friend, Margaret. Ms. O., who apparently was working the evening shift at a nursing home, did not respond to attempts by the sheriff's deputy to contact her. The sheriff's deputy successfully contacted Margaret, who responded and returned to the home.

Approximately two months before Em. O. called the Sherriff's Office, the Department had received a neglect referral regarding Em. O. Em. O. had reported to a

[2] The children's father still resides in Nigeria.

school official that Ms. O. had punched him in the face following an altercation over shoes. According to Em. O., Ms. O. stopped hitting him with wires following that report, but she continued to hit Em. O and Es. O with her hands.

On November 25, 2014, Catherine Perrin and Bethany Fisher, social services workers for the Department, visited Ms. O. and the children in Ms. O.'s home. Ms. Perrin interviewed Em. O. and Es. O. together. Em. O. and Es. O. reported that Ms. O. routinely hit them, using her hands, wires, shoes, and other objects, and that Ms. O. would wake them up at night to hit them, and often they did not know why she was hitting them. The children reported that Ms. O. punished them if they touched food without permission, and forced them to hold "the stance," a position in which the children were forced to bend over and touch the index finger of one hand to the floor and extend one leg and arm in the air for five to ten minutes or "until they start crying because of the pain."

Ms. Perrin and Ms. Fisher interviewed Ms. O. apart from the children. Ms. O. denied hitting the children, but indicated that they "fear me as a mother." Ms. O. acknowledged disciplining them using "the stance." Ms. O. complained that Em. O. eats too much food and that she caught him giving rice to his friend who lives nearby. Upon further questioning, Ms. O. admitted hitting Em. O. with a dustpan because "too much food was missing." Ms. O. denied knowing how Em. O. got the scar on the top of his head, and when Ms. Fisher asked Ms. O. about Em. O.'s allegation that his older brother had beaten and threatened him, Ms. O. smiled and claimed that she has "no idea" what happens between them when she is not home. Ms. O. repeatedly told Ms. Fisher that she

is "done" with the children because they are disrespectful and that she spent $15,000.00 to bring them from Nigeria "for nothing." Ms. O. told Ms. Perrin that she "asks God every night why he cursed [her] with such terrible children." Ms. O. informed Ms. Perrin that she wanted to send the children back to Nigeria and that Ms. Perrin "can find somebody else to mother [the children]."

Following the conclusion of the interviews that day, Ms. Perrin placed the children in foster care. Ms. O. asked Ms. Perrin whether she could make the children write a letter explaining that "they did this to themselves and that they are bad children[,]" stating that she wanted the letter for her records. Ms. Perrin informed Ms. O. that the children were being placed in foster care because they were not safe in the care of their mother, not because they were being punished. On December 1, 2014, the Department filed CINA petitions for Em. O. and Es. O.

On December 5, 2014, the juvenile court ordered that Es. O. and Em. O. be placed in the custody of the Department and in foster care. On December 9, 2014, Ms. Perrin attempted to schedule a family-involvement meeting ("FIM"),[3] but Ms. O. refused to

[3] According to a memorandum produced by the Maryland Department of Human Resources Social Services Administration, a family involvement meeting

> is a casework practice forum to convene family members during key child welfare decision points. The purpose of the FIM is to establish a team to engage families and their support network to access the needs and develop service plans. The goal is to develop service plan recommendations for the safest and least restrictive placement for a child while also considering appropriate permanency and well-being options for that child.

Department of Human Resources Social Services Administration, Policy Directive SSA #10-08, *available at* http://dhr.maryland.gov/documents/SSA%20Policy%20Directives/

participate. When asked whether she planned to visit Em. O. and Es. O., Ms. O. responded that she did not have time to see them. Ms. O. also refused to provide the Department with any medical information regarding Em. O. and Es. O. or the names of any family members who could be resources for the children.

The CINA adjudication hearing occurred before a magistrate on December 29, 2014. Ms. O.'s theory of the case was that the children—Es. O. in particular—were involved in a scheme to purchase goods with other people's credit cards and that, when the scheme was discovered, the children fabricated the allegations of abuse. The magistrate accepted Ms. Perrin's CINA petition for the children, discussed *supra*, as a proffer of the testimony the Department would elucidate from her. V.O. testified as part of Ms. O.'s case and stated that he had never seen Ms. O. beat the children, and he testified that Es. O. had been receiving stolen goods at the house. He further testified that he had never struck Em. O. with a high-heeled shoe, as Es. O. had claimed.

Ms. O. testified that she had never beaten the children and that her conversation with Ms. Perrin had been taken out of context. She did, however, admit to using "the Stance," previously described, for periods of five minutes.

Em. O. also testified. He testified that he indeed called the police in late November because he had been left alone by himself and he was scared that his brother, V.O., was going to beat him when he returned home. He further testified that the scar on his head resulted from the time his brother struck him with a high-heeled shoe. His

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Child%20Welfare/SSA%2010-8%20Family%20Involvement%20Meetings%20FIMs.pdf (last visited Jan. 11, 2017).

testimony concerning Ms. O.'s beating of him with wires and other objects was consistent with his statements reported in Ms. Perrin's CINA petition. He further testified that Ms. O. would make him and his sister assume "the Stance" for periods of much longer than five minutes. In response to the magistrate's inquiry, Em. O. testified that he did not want to return home to live with his mother because he did not feel safe at home.

The magistrate found "that [Em. O.] and [Es. O.]'s complaint to Ms. Perrin as to repeated acts of physical abuse are credible" and stated that he believed that the children were crying out for help. Concerning "the Stance," the magistrate observed that it sounded more like "torture" than "discipline." He further stated that he did not have enough evidence to find that the children alleged abuse in efforts to hide a criminal scheme. The magistrate sustained the allegations contained in the CINA petition and scheduled a disposition hearing for January 28, 2015.

At the January 28, 2015 disposition hearing, the magistrate determined that Em. O. and Es. O. were both CINA. He further found that the children had been abused and neglected. The magistrate recommended continuing the children's placement in foster care, and the circuit court accepted the magistrate's recommendations.

From November 2014 through April 2015, Ms. O. had no contact with the Department or the children. On March 13, 2015, Ms. Adrienna Christy, a social worker for the Department, sent Ms. O. a letter encouraging her to contact the Department and start working toward reunification, but Ms. O. did not respond until June 2015.

On May 27, 2015, the juvenile court held a Permanency Plan Review Hearing. Ms. O. attended this hearing. Ms. Christy, in her written report to the magistrate, noted that Ms. O. had stated at a child support hearing on May 14, 2015 that she wanted the children to be returned to her care. The court ordered that Em. O. and Es. O. remain CINA and in foster care, and further ordered a primary plan of reunification with Ms. O. The court also awarded Ms. O. visitation and ordered that she submit to a psychological evaluation.

Ms. Christy arranged a visit between the children and Ms. O. for July 17, 2015 at a Burger King restaurant. Tensions escalated quickly when the children asked Ms. O. to admit to allegations of hitting them and Ms. O. refused. According to Ms. Christy, there was "yelling, screaming and tears[,]" and the Burger King staff had to intervene to physically separate the children and Ms. O. That visit lasted only ten minutes, and Ms. Christy did not schedule additional visits. Following that visit, Ms. O. saw the children at two FIMs on November 13, 2015 and April 20, 2016. Tragically, both of these meetings ended prematurely due to "explosive" and "toxic" conflicts between Ms. O. and her children.

Ms. O. completed a court-ordered psychological evaluation on October 22, 2015. Ms. O. was diagnosed with schizoid personality disorder and with avoidant, obsessive-compulsive, and paranoid traits. The psychologist expressed concern that Ms. O. lacked insight into the reason why the children were in foster care. At that time, Ms. O. had not begun psychological treatment, but expressed some willingness to participate if the Department provided financial support.

On December 1, 2015, the juvenile court held a Permanency Plan Review Hearing. Ms. O. attended. The Department requested that the permanency plan for each child be changed to adoption because the children had been "in [and] out of home care for twelve months with no[] significant efforts toward reunification on the part of their mother and their father is in agreement with the change in plan."[4]

In her report to the magistrate, Ms. Christy stated that Ms. O.'s contact with the Department was infrequent and that Ms. O. had rarely requested visitation with the children. Ms. Christy explained that visitation was not recommended without adequate family treatment, "given the children's trauma responses and requests to not participate[.]" Moreover, Ms. Christy related that the children wanted to be adopted.

The magistrate recommended that the permanency plan be changed to a primary plan of adoption with a secondary plan of reunification. The juvenile court accepted the magistrate's recommendation and ordered that the permanency plan be changed to one of adoption, with a secondary plan of reunification.

In January 2016, Ms. O. signed a court-ordered service agreement with the Department. Ms. O. agreed to obtain a mental health provider, contact the Department at a minimum of twice per month, and complete a parenting class. The Department agreed

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[4] The Department's report and recommendation related that the older brother had called the children's father and that the father agreed to placing the children for adoption:

> . . . V.O., the children's adult brother, was able to call Mr. O. in Nigeria on the telephone. Mr. O. stated that he has not seen his children in over 5 years since they left Nigeria. While Mr. O. would like to come to the United States and raise his children, that is not possible at this time. Mr. O. stated that if the children want to be adopted, he is in agreement.

to pay the costs of Ms. O's therapy in excess of her insurance (i.e., copayments). Ms. O. completed the parenting class and contacted the Department regularly. She failed, however, to obtain mental health treatment.

The magistrate held a permanency plan review hearing on February 12, 2016, at which he recommended a change in the permanency plan to a sole plan of adoption.[5] Ms. O. filed exceptions to this recommendation on February 18, 2016. The juvenile court held hearings on the exceptions on May 10 and 11, 2016.

At the exceptions hearing, Ms. Christy testified that she has "had several conversations" with Ms. O. about assisting her with obtaining mental health treatment in order for Ms. O to gain a better understanding of her diagnoses, including gaining insight into her children's trauma; the effects of the parent-child relationship; and working towards interpersonal skills, relationships, and a personal support system. Ms. Christy testified that she referred Ms. O. to a program called "Families Connected" to receive treatment after learning that Ms. O. had not obtained treatment on her own. Ms. Christy testified that Ms. O. requires therapy to help her understand why the children are upset and why they are in foster care. The objective for counseling was for Ms. O. and the children to receive separate treatment initially, and then work toward joint therapy between Ms. O. and the children. Ms. Christy explained that the she did not perceive the

[5] Es. O. and Em. O. were initially placed together in a foster home in Edgewood, Maryland. Em. O. was subsequently moved to a new foster home. Shortly thereafter, Es. O. expressed concern about being separated from her brother, and the Department was able to move her to a foster home two miles away from her brother. The children visited one another frequently. On April 20, 2016, the Department placed Em. O. with Es. O. in the same potential adoptive foster home.

conflict between Ms. O. and the children to be the result of cultural differences between Nigerian culture and American culture.

At the exceptions hearing, Es. O., who was then 15 years old, testified that she was doing well in high school and that she loved her foster home, where she lived with her brother. She explained that she is getting As, Bs, and one C in school, whereas her grades were Es and Ds when she lived with Ms. O. Es. O. testified that she wanted "to be adopted and get out of this mess" and "move on with [her] life." Es. O. testified that she did not want any contact with Ms. O. because Ms. O. "is evil." Es. O. further testified that Ms. O. never had time for her, that she was always working, that Ms. O. never gave her any money for the work she did, that she never told her anything positive, and that she made her babysit her younger brother. Es. O. refused to participate in any family meeting or therapy with Ms. O.

Em. O., who was 13 years old at the time of the hearing, testified that he was doing "pretty good" in his foster home with his sister, and that he wanted to be adopted. Em. O. testified that he is doing well in school and that he had two As and that his lowest grade is a C.[6]

Ms. O. testified that she did not hit the children or abuse them despite admitting as much to Ms. Perrin. Ms. O. also testified that she called the Department many times

[6] Em. O., who testified on May 11, also testified, over objection, that he had overheard—the previous day in the courthouse—his brother, V.O., tell another man that he "would kill us." Es. O. confirmed Em. O.'s account of the story.

V.O. claimed that this gentleman was his uncle, but Em. O. testified that he did not recognize this gentleman and that he "[n]ever saw him a day in [his] life."

asking for visits, saying "'I want my children[,]" but that her calls would go unanswered. Ms. O. also explained that she had told the children that they were responsible for their current situation. Ms. O. nonetheless stated that she had forgiven the children for their disrespectful behavior and that she would like for them to return home with her. Ms. O. explained that she was fighting for her children, and she did not want them to lose their lives, their souls, and their Nigerian culture, which she believes will happen if they are adopted.

In closing, the Department argued that (1) the children would not be safe in Ms. O.'s home; (2) that the children had no emotional attachment to Ms. O.; (3) that the Es. O. was attached to her foster mother and that Em. O. is in the process of becoming attached; (4) that remaining in State custody indefinitely was harmful to the children and that, as a result, adoption was the best option; and (5) that the relationship between the children and Ms. O. was toxic and not likely to improve. The children's attorney echoed the Department's arguments and maintained that adoption by a non-relative was the only viable option, given the circumstances.

Ms. O., through her counsel, responded by arguing that the Department had been failing to take Ms. O.'s Nigerian culture into account in its recommendations. Ms. O. also contended that it was not in the best interest of the children, and that it would ultimately be very harmful, for the primary permanency plan be changed to adoption, with no secondary permanency plan to reunify the children with Ms. O. Ms. O. did not request that the court change the primary permanency plan to reunification; instead, she requested that the court retain reunification as the secondary permanency plan.

After closing argument, the court orally announced its ruling:

I think everyone has outlined the factors that the Court does need [to] look at in terms of making a finding regarding the change in the permanency plan and choosing what the plan should be in this case.

I recognize that for Ms. [O.] it has to be very difficult, that appearing to have the children reject their culture, but I don't necessarily see that this is a rejection of the Nigerian culture. . . .

They have become very Americanized, but I don't think that means they have rejected the Nigerian culture. I think what is at the root here is parent-child conflict that has nothing to do with culture itself.

In analyzing this case with respect to these factors, I don't see that it is safe at this point if [Em. O. and Es. O.] are returned to Ms. [O.]'s care. I recognize that Ms. [O.] is not asking for that immediately. She's just asking that the plan remain reunification in this case, but in terms of their attachment and emotional ties to Ms. [O.] and to siblings, I think it's clear in this case that the only emotion going on here is the conflict, the toxicity in terms of the emotions that the children and Ms. [O.] have toward each other.

If we can't get to a point where we can't even take the emotion out of the communication, there is no issue with respect to cultural insensitivity or a cultural bias on the part of the department. It's not up to Ms. [O.] to tell the children to ignore the fact about what they believed happened to them. What the department has said is under the terms of the Service Agreement, we want the children in therapy, we want Ms. [O.] in therapy, and then at some point when it is appropriate, the two -- the children and Ms. [O.] will be in family therapy together.

At this point we have both sides saying: We're not doing that, and the children in particular, [Es. O.] and [Em. O.] in particular are saying that they are not going to do that.

It's clear that they are very attached to each other. When they were in separate foster homes, [Em. O.] was moved to a home close to where [Es. O.] was in foster care, and now they are both in the same foster home together.

* * *

I recognize that they are still young. They are 13 and 15 years of age, and sometimes it is difficult for younger people, teenagers of their age, to see outside of their own circumstances, but sometimes the parents have to meet the children where they are, and it is adults who are in a better position to meet the children where they are emotionally than to ask the children to meet the adult where they are emotionally.

A good example of the toxicity of the relationship was on display here in the courtroom today. Whether [Es. O.] perceived Ms. [O.] looking at her in a certain way and the response that they both had to that conflict, if we can't get past the conflict, we can't get into reunification, and that is the point that Ms. Christy testified to quite competently about what is going on here.

This is about what parent/child conflict has occurred. The children say that they were physically abused; Ms. [O.] denies that. Fighting about that in the absence of therapy is not helpful to the children, and there can't be reunification if we can't get past the point of conflict to even discuss the issues.

It may not be necessary to decide who is right and who is wrong, but if the adult's position, that being Ms. [O.]'s position, is she gets to forgive the children, then where is Ms. [O.]'s insight into understanding where the children are emotionally?

They are clearly attached to [the foster mother] in this case, and I agree, [Es. O.] more so than [Em. O.] because he has not been in that home as long, but certainly his attachment to his sister, [Es. O.] is a strong attachment, and [Es. O.] has been with [the foster mother] for awhile now. I believe she indicated in this case that she's been there since July 10, 2015, and [Em. O.] just for a few months. But I have heard of no problems there. In fact, both children are thriving, not only in the home but are doing well in school. And in terms of their emotional development, I haven't heard that there are any problems in [the foster mother]'s home.

There are no developmental issues w[ith] respect to their maturity levels. I think that in terms of their ages, they are probably right where they should be developmentally. And educationally, they both appear to be doing reasonably well in school.

The harm in remaining in state custody for an extended period of time. Both children have said they want to move on with their lives. The reason I asked the question about how much communication the children had with Ms. [O.] when they were still in Nigeria before the five-year period that they have been in the United States is because I wanted to know what opportunities to maintain any mother/child bond had occurred that could be continued here in the United States, and the experience in terms of prior Department of Social Services' investigation that was closed, but even this investigation, which means the children have been in care for, I believe, 14 months at this point -- 18 months, excuse me, it's clear these children have no significant emotional attachment with Ms. [O.]. That doesn't mean it can't be developed, but if the children are expected to say that they made it all up and Ms. [O.] is right, there's never going to be a development of any more emotional attachment.

In this case in terms of the reasonableness of the plan in this case, that being adoption, it does have to be rooted in reality in this case. It can't be, certainly, in terms of any other potential options for the children. Even their father has said he doesn't have a problem with them being adopted as long as they maintain contact. . . .

No other relatives have been identified either in the United States or outside the United States as a viable option for [Es. O.] and [Em. O.], and if the option is reunification and returning them home, I think I have already outlined all the issues with respect to difficulty in saying that that should be the plan at this point when both sides, the children and Ms. [O.], have said their positions are not likely to change.

The children are in therapy. And in this case, Ms. [O.] did not get into therapy right away. I give significant weight to Ms. Christy's testimony that once she got the case and once she saw there had been no contact and notification, that she immediately communicated with Ms. [O.]. Ms. [O.] contacted her, and that she arranged for a visit for approximately a month later, as soon as she could once she heard back from Ms. [O.], and that that visit ended in complete emotional turmoil, as did subsequent FIMs.

So with respect to the visitation in this matter, at this point whether Ms. [O.] didn't want to visit the children, the issue isn't that. The issue at this point is: Is Ms. [O.] going to get into the individual therapy where we can determine whether family therapy or joint therapy involving the children should take place? But if her position is: I will forgive the children, then what is the point of the visits or reunification at this point?

We have to meet the children where they are. So in this case, I don't think that the best option for these children is reunification. I am aware that certainly with respect to changing the plan to adoption that that means that there is a rift in this particular family, but that is not necessarily a rejection of their Nigerian roots or culture. It is a rejection of who they believe their mother is and what she can provide for them emotionally, and that has nothing to do with culture in this case.

So at this point for all those reasons, I do think that it is in the best interest of these children, and the department has met its burden in providing services to Ms. [O.] and to the children and in determining what the reasonable placement should be in this case and that the plan going forward should be adoption.

I'm not going to order a secondary plan of reunification. That doesn't foreclose that option based on how any therapy might go, and then schedule this matter in for a review.

On May 16, 2016, the juvenile court entered an order changing the permanency plan to a sole plan of adoption. This timely appeal followed on the same day.[7]

DISCUSSION

We review child custody cases under three "different but interrelated" standards of review. *In re Adoption/Guardianship of Cadence B.*, 417 Md. 146, 155 (2010). The Court of Appeals has instructed:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8–131(c)] applies. [Second,] [i]f 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.

In re Adoption of Ta'Niya C., 417 Md. 90, 100 (2010) (citing *In re Adoption/Guardianship of Victor A.*, 386 Md. 288, 297 (2005)).

A parent has "a well-established and fundamental constitutional right—protected by the Fourteenth Amendment—to raise their children without undue influence by the State, and that right cannot be taken away 'unless clearly justified.'" *In re A.N.*, 226 Md. App. 283, 306 (2015) (some internal quotation marks omitted) (quoting *In re Yve S.*, 373 Md. 551, 565-66 (2003)). That right, however, "is not absolute and must be balanced against the State's interest in protecting the health, safety, and welfare of the child." *Id.* (quoting *Yve S.*, 373 Md. at 568-69). The best interests of the child standard, which

[7] We note appellate jurisdiction pursuant to CJP § 12-303(3)(x) (providing that a party may appeal from an interlocutory order "[d]epriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order.").

guides the court in determinations such as these, "embraces a strong presumption that the child's best interests are served by maintaining parental rights," *Yve S.*, 373 Md. at 571 (citing *In re: Adoption/Guardianship Nos. J9610436 & J9711031*, 368 Md. 666, 692 (2002), but Maryland appellate courts have "'often reaffirmed that [the best interests of the child] takes precedence over the fundamental right of a parent to raise his or her child.'" *In re: A.N.*, 226 Md. App. at 306 (citing *Yve S.*, 373 Md. at 569-70).

When a child is adjudicated CINA, removed from his or her home, and placed in the temporary custody of the Department, the Department must use best interests of the child standard as a guide in selecting a permanency plan to recommend to the circuit court. *See* FL § 5-525(f)(1); *see also In re Andre J.*, 223 Md. App. 305, 320 (2015); *In re Shirley B.*, 191 Md. App. 678, 707 (2010). The Department must consider the following factors in assessing the best interests of the child:

> (i) the child's ability to be safe and healthy in the home of the child's parent;
> (ii) the child's attachment and emotional ties to the child's natural parents and siblings;
> (iii) the child's emotional attachment to the child's current caregiver and the caregiver's family;
> (iv) the length of time the child has resided with the current caregiver;
> (v) the potential emotional, developmental, and educational harm to the child if moved from the child's current placement; and
> (vi) the potential harm to the child by remaining in State custody for an excessive period of time.

FL § 5-525(f)(1). The circuit court then considers these factors when it reviews the Department's recommended permanency plan and conducts its own best interests of the child inquiry at the initial permanency planning hearing. CJP § 3-823(e); *see also Andre J.*, 223 Md. App. at 320-21 (citations omitted).

The circuit court is required to periodically review the permanency plan after the establishment of the initial permanency plan. *In re A.N.*, 226 Md. App. at 307. CJP § 3-823(h) provides, in pertinent part:

> (h)(1)(i) . . . the court shall conduct a hearing to review the permanency plan at least every 6 months until commitment is rescinded or a voluntary placement is terminated.
>
> * * *
>
> (2) At the review hearing, the court shall:
>
> (i) Determine the continuing necessity for and appropriateness of the commitment;
>
> (ii) Determine and document in its order whether reasonable efforts have been made to finalize the permanency plan that is in effect;
>
> (iii) Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating commitment;
>
> (iv) Project a reasonable date by which a child in placement may be returned home, placed in a preadoptive home, or placed under a legal guardianship;
>
> (v) Evaluate the safety of the child and take necessary measures to protect the child; and
>
> (vi) Change the permanency plan if a change in the permanency plan would be in the child's best interest.
>
> (3) Every reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement.

The Court of Appeals has interpreted CJP § 3-823(h)(2)(vi) to mean that an existing permanency plan "may not be changed without the court first determining that it is in the child's best interest to do so." *In re Yve S.*, 373 Md. at 581. Under § 3-823(h)(2)(iii), the review hearing court must "[d]etermine the extent of progress that has been made toward alleviating or mitigating the causes necessitating commitment." But ultimately, "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 plan to a more appropriate arrangement." *Id.* (citing *In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 496 (2007)).

Ms. O. contends that the juvenile court erred by changing the children's permanency plans from adoption with a secondary plan of reunification to a sole plan of adoption where the evidence "did not support a finding that eliminating the goal of reunification was in the children's best interests." Ms. O. claims that the juvenile court abused its discretion when it "improperly weighed the wishes of the children, who were the ones to disrupt visitation and who refused to participate in any attempts at conversation with their mother against those of Ms. O. who only wanted the chance to prove herself and come back into their lives."

The Department argues that the juvenile court did not abuse its discretion in concluding that changing the children's permanency plan from adoption with a secondary plan of reunification to a sole plan of adoption was in the children's best interests because, after eighteen months, Ms. O. had made no progress towards reunification. The Department further contends that Ms. O.'s arguments, "which blame the children for her own lack of effort, are meritless."

As required by law, the juvenile court applied the factors set forth in FL § 5-525(f)(1) in developing its permanency planning order. The court found that the children would not be safe if they were currently returned to Ms. O.'s care, although the court recognized that Ms. O. was not requesting immediate reunification. The court then examined the second factor and stated that she thought it was "clear that the only emotion

going on here is the conflict, the toxicity in terms of the emotions that the children and Ms. [O.] have toward each other."

The juvenile court also found that Em. O. and Es. O. are "clearly attached" to Ms. Taylor, their foster parent,[8] and that both children are "thriving" in their foster home, at school, and in their emotional development. The juvenile court considered the harm in remaining in state custody for an extended period of time, and found that, after 18 months, it was unlikely that reunification with Ms. O. would be forthcoming in the near future, and the children wanted to "move on" with their lives. The juvenile court concluded that it was not in the children's best interest for them to remain in State custody on a plan of reunification.

Ms. O., however, does not contend that the juvenile court erred in its analysis of the factors outlined in FL § 5-525(f)(1). She instead contends that the juvenile court abused its discretion in "improperly weighing the wishes of the children," who "unilaterally decided not to put any effort into reunifying with their mother." The Court of Appeals has stated that "[t]he desire of an intelligent child, who has reached the age of discretion, should be given some consideration in determining custody, but even in a custody case the wish is not controlling." *Radford v. Matczuk*, 223 Md. 483, 491 (1960) (citations omitted). We have recognized in the context of matters of custody and visitation that "'[w]hen a child is of sufficient age and has the intelligence and discretion to exercise judgment as to his or her future welfare, based upon facts and not mere

[8] The court observed that Es. O. was more attached to Ms. Taylor than Em. O. because Es. O. had been in Ms. Taylor's home for a longer period of time than Es. O., but also noted that the attachment between Es. O. and Em. O. was very strong.

whims, those wishes are one factor that, within context, should be considered by the trial judge[.]'" *Andre J.*, 223 Md. App. at 324 (quoting *In re Barry E.*, 107 Md. App. 206, 220 (1995) (deciding that the juvenile court appropriately considered the wishes of an intellectually disabled individual who was almost 20 years old and determined to be CINA, who did not want to move out-of-state to live with his mother); *see also In re Iris M.*, 118 Md. App. 636, 648 (1998) (noting that the preference of a child who was almost 15 years old and wished not to have visitation with her father should be given some consideration, but should not be the sole factor in determining visitation).

Here, in determining whether it was appropriate for the juvenile court to consider the children's wishes, we acknowledge that the juvenile court is "in the unique position to marshal the applicable facts, assess the situation, and determine the correct means of fulfilling a child's best interests." *In re Mark M.*, 365 Md. 687, 707 (2001). Indeed, the juvenile court commented on the "toxicity of the relationship" that it observed in the courtroom, and explained that the children, ages 15 and 13, may not emotionally be in a position to overcome the trauma from their abuse and neglect and work toward reunification with Ms. O. As the juvenile court noted, the children had no significant emotional attachment to Ms. O., and efforts at reunification had been unsuccessful because neither Ms. O. nor the children wished to participate in family therapy. Accordingly, the court's consideration of the children's wishes to not participate in visits with Ms. O., and to be adopted was reasonable in light of the fact that the children and Ms. O. had been unable to move past the conflict in their relationship and, therefore, reunification remained unlikely.

Regardless, the children's refusal to visit and reunify with their mother was but one of many factors that the juvenile court considered in determining that reunification was not in the best interest of the children. Indeed, the court found that an important factor was that the children would not be safe in Ms. O.'s care. And, the court noted that Ms. O.'s view that she wanted the children returned to her because she had forgiven them, failed to account for the children's emotional needs. The juvenile court determined that there could be no reunification until Ms. O. and the children first "get past the conflict," which it concluded was unlikely without therapy. Although the children were in therapy, Ms. O. had not sought therapy on her own despite having agreed to do so, and had only recently started therapy, and therefore no progress had been made in her own mental health or in her ability to meet the needs of the children.

We conclude that that juvenile court did not abuse its discretion in deciding to change the children's permanency plan from adoption with a secondary plan of reunification to a sole plan of adoption, under these circumstances in which, clearly, there was no meaningful progress toward reunification and was unlikely to be forthcoming.

JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.