Circuit Court for Baltimore City
Petition Nos.: 813290001
813290002
813290003

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1853 & 2298

September Term, 2016

IN RE: M.S., A.S., AND M.S.

Nazarian,
Shaw Geter,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: July 31, 2017

On September 26, 2016, during a review hearing, the juvenile court in the Circuit Court for Baltimore City modified the permanency plan for three children that were previously found to be children in need of assistance and committed to the care of the Department of Social Services. The court ordered that the concurrent plan of reunification or guardianship with a non-relative be changed to a plan of sole reunification with the children's father, who resides in Mexico. Appellants, the children and their mother, filed an immediate appeal. On December 1, 2016, the juvenile court held an additional hearing, wherein it removed a previously imposed restriction that limited the Department's use of the children's passports. Appellants noted a subsequent appeal, and the cases were consolidated for review. Collectively, appellants present four issues for our consideration:

1. Whether the juvenile court committed error of law when it changed the permanency plan to reunification with Father only, having the effect of requiring the Children, United States citizens, to be removed from the United States against their best interests, and far exceeding its authority under the Juvenile Causes Act?

2. Whether the juvenile court abused its discretion in changing the permanency plan from reunification with a parent or guardian concurrent with a guardianship by a non-relative to reunification with Father only based on findings made with insufficient and contrary evidence that this change was in the best interests of the Children?[1]

3. Did the court err by denying the request for a psychological evaluation of the Children?

4. Did the court err by removing language from its order limiting the use of the passports without further review by the court?

[1] The children's statement of the issue is reproduced verbatim. The mother presents the issue as follows: Did the court err by changing the permanency plan to reunification with father against the wishes of the children, where the father had been deported to Mexico four years earlier due to domestic violence and he was practically a stranger to the children?

For the reasons discussed below, we shall affirm the judgment of the circuit court.

BACKGROUND

On October 6, 2013, Ms. L presented her three children, MJS (a girl born March 2010), AHS (a girl born March 2011), and MAS (AHS' twin sister) to the Department of Social Services for assistance because she was homeless. On October 17, the juvenile court in the Circuit Court for Baltimore City held an emergency shelter care hearing. The court found that continued residence with Ms. L was contrary to the welfare of the children because Ms. L was unwilling/unable to provide adequate housing, and the children's father, Mr. S, resides in Mexico. As a result, the court ordered the Department to provide care and custody for the children.

A little over one month later, on November 14, 2013, the court held a hearing to determine whether the children were children in need of assistance (CINA).[2] The court made the following findings: first, Ms. L failed to maintain a safe, stable, nurturing, and protective environment for the children. Second, Ms. L has a history of living a transient lifestyle, is not gainfully employed, and has no means of independent housing. Third, she has been diagnosed with diabetes and has very poor vision. Finally, the court noted that Mr. S was deported in 2012, and it found that he failed to take the necessary steps to protect his children from the neglectful situation. Accordingly, the court determined each child to

[2] A CINA is "a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." MD. CODE ANN., CTS. & JUD. PROC. § 3-801(f) (West 2011).

be a CINA and committed them to the Baltimore City Department of Social Services. A review hearing was scheduled within six months, on April 14, 2014.

The case was thereafter continued a number of times, in part because Ms. L moved to Florida and did not notify the Department of her whereabouts, and Mr. S could not legally reenter the United States. The initial six-month review hearing was not held until February 2, 2016. After testimony was taken, the court found that the Department had made reasonable efforts with the parents/guardians in support of accomplishing the court plan, and it changed the permanency plan to reunification with a parent or guardian concurrent with guardianship by a non-relative for all three children.

The court held a subsequent permanency plan review hearing, which forms the basis of the first part of this appeal, in September 2016. Several witnesses testified during the hearing. Tracy Cook-Thomas, a social worker for the Department, testified that she visits the children monthly in their foster homes, and that each child receives excellent care. Cook-Thomas spoke with each foster parent about permanency planning, and she indicated that they are willing to be permanent placements for the children. Cook-Thomas also noted, however, that MJS and AHS have received therapy for behavioral and psychological issues. MJS, for example, has hit her head against the wall when frustrated; she has thrown temper tantrums at school; and she has been diagnosed with adjustment disorder. AHS has difficulty controlling her impulses: she has difficulty sitting still; she has run out of the room during class time; and she has pushed other children and teachers.

Concerning her contact with Mr. S, Cook-Thomas testified that she gave him a number of tasks to complete, including: communicating with the Desarrollo Integral de la

Familia (DIF), the Mexican equivalent of the Department of Social Services; undergoing an assessment to see whether he had domestic violence or anger management issues; completing drug and alcohol tests; attending parenting classes; and providing appropriate housing for himself and his family. Cook-Thomas noted that aside from the parenting classes, which Mr. S is currently attending, he has completed all of the other tasks. Cook-Thomas also testified that Mr. S has maintained an adequate income, and he has passed a criminal background check. Finally, Cook-Thomas indicated that the DIF conducted a favorable home study regarding Mr. S, and the DIF will continue to monitor the children if reunification occurs.

The second witness to testify was Angela White, a clinical specialist, employed by Adoptions Together and assigned by the Department to work with all involved families relating to pre-permanency services. White spoke with Mr. S; the children's caregivers; and Maria Carvajal, the assigned social worker in Mexico, to determine what support services were needed. White received information from Carvajal about a continuum of services that could be provided to the girls and their father if reunification was ordered. She spoke directly to Mr. S about his living environment, family support, as well as schooling for the girls. White testified that she would work to prepare the caregivers as well as the children if the court changed the permanency plan to reunification.

Nicole Roth, a school based therapist employed by Hope Health Systems, testified regarding her therapy with AHS. Roth indicated that AHS has continued to have difficulty controlling her impulses, being able to focus, and sitting still with classmates. While she testified that AHS had attention deficit hyperactivity disorder, Roth could not provide

documentation or a basis for the diagnosis. As a result, the juvenile court found that she did not have ADHD. Roth recommended that AHS undergo further evaluation.

Finally, both foster care mothers testified regarding their care of the girls. The twins are very attached to their caregivers and MJS is attached to her caregiver as well. The twins refer to their foster parents as "mom" and "dad," and MJS refers to her foster parent as "mommy." The children are also very close and have asked to live together. Both foster families indicated a desire to be adoptive resources, although neither family can adopt all three girls.

Following the presentation of evidence, appellants argued that the permanency plan should not be changed to reunification with Mr. S only: the children asked for placement with a non-relative for adoption/custody and guardianship; and Ms. L, who indicated that she is not seeking reunification, asked for the plan to remain unchanged. In support of these positions, appellants noted that Mr. S had been deported to Mexico due to allegations of domestic violence, and that he had minimal contact with the children since that time.[3] Additionally, appellants argued that placement with Mr. S would be improper because the children do not speak Spanish, and Mr. S' live-in girlfriend does not speak English. Based on the children's behavioral issues, appellants also asked the court to order a psychological evaluation.

On the other hand, the Department and Mr. S, appellees, argued that the permanency plan should be changed to reunification with father only. Appellees noted that the twins

[3] Mr. S was not convicted of this offense because he was deported before a trial occurred.

are enrolled in a Spanish immersion school, the children are very close, and neither foster family can adopt all three girls. Further, testimony from Tracy Cook-Thomas and Angela White indicated that Mr. S is able to provide a safe and healthy home in Mexico, and the Department has already started the planning process by referring the family to Adoptions Together. As a result, appellees argued that it is in the children's best interests to have the permanency plan change to reunification with Mr. S. Appellees also argued that the request for a psychological evaluation should be denied because there was no evidence that the children have special needs, and the DIF has services available to support the children in Mexico.

The juvenile court made a number of findings at the conclusion of the review hearing, which are contained in its order. The court noted that Mr. S had completed all of the tasks required by the social service agencies in Maryland and Mexico. The court observed that Mr. S had been proactive in contacting the DIF, the consulate, and Adoptions Together. And the court found that Mr. S was a fit parent. The court then stated there was "no testimony or evidence" that made it concerned Mr. S would not take care of the children's health, safety, and welfare; and it added that the DIF would provide additional oversight. The court also found that the children are attached to their foster parents, but it took into consideration that Mr. S' deportation restricted his ability to avail himself of the children.

With respect to the children's behavioral and psychological issues, the court determined that MJS and AHS' needs are educationally based. As to MJS, the court stated that she "seems to have issues of just movement and moving around, but there's no

indication to this Court that she has any special needs outside of those things that a parent and the cooperation through a school system could have that I believe that Mexico could provide." For AHS, the court found that her issues relate to sitting still and interrupting her teachers, which can also be remedied through targeted strategies at home and in the classroom. The court stated, "I hear a lot of conversation and I've also documented the conversation, testimony as it pertains to [AHS]. There's been no diagnosis of ADHD. It is that she has difficulty focusing and sitting still and interrupting the teacher. . . . There was no formal treatment plan even for [AHS] at [school] or anywhere else." The court explained that while there will likely be a transitional period, the children are young enough to adapt to the changing circumstances, and it found that remaining in foster care would be detrimental to the children. Accordingly, the court denied the request for an evaluation, and it changed the permanency plan from a concurrent placement with parents and a non-relative for custody and guardianship to reunification with Mr. S. only. Appellants timely appealed these decisions.

While the September 2016 order was on appeal, the juvenile court held a hearing on December 1, 2016, to determine whether to modify an order that restricted the Department's ability to use the children's passports.[4] Appellants objected to the modification, arguing that the Department does not have authority to maintain custody of the children or to ensure their return once in Mexico. Conversely, appellees argued that

[4] The court held an additional hearing on November 28, 2016, to address appellants' request for a psychological evaluation. Appellants did not note a timely appeal, thus, any issues arising from that hearing have been waived.

Mr. S has a right to visitation with his children and the order permitted the Department to move forward with the plan of reunification. The court held that the language was put in the order "merely as a comfort that [the] Court decided to provide to all parties to make certain that everybody was on the same page, not that [the parties] agreed with that page, but that [the parties] heard the same thing at the same time." The language, the court added, was not meant to tie the hands of the Department. The court thus removed the language that restricted the Department's ability to use the children's passports. This appeal followed.

DISCUSSION

I. Motion to Dismiss

At the outset, appellees argue that the case at bar should be dismissed because the orders on appeal are not final judgments, and further, they are not appealable interlocutory orders. "[T]he issue of appealability is a threshold one, which may be raised at any time by a party, even on appeal, and, indeed, which must be addressed, and will be, by the Court on its own motion, whether raised or not." *Office of State Prosecutor v. Judicial Watch, Inc.*, 356 Md. 118, 125 (1999).

As a general rule, a party may only appeal from "a final judgment entered in a civil or criminal case by a circuit court." MD. CODE ANN., CTS. & JUD. PROC. § 12-301 (West 2011). Section 12-303, however, creates an exception to that rule, providing that a party may appeal an interlocutory order entered by a circuit court in a civil case that deprives "a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order[.]" *Id.* § 12-303(3)(x). Where, as here, the order at issue

concerns a permanency plan, the primary focus is whether the order adversely affects one of the parents' rights or changes the permanency plan to their detriment:

> In determining whether an interlocutory order is appealable, in the context of custody cases, the focus should be on whether the order and the extent to which that order changes the antecedent custody order. It is immaterial that the order appealed from emanated from the permanency planning hearing or from the periodic review hearing. If the change could deprive a parent of the fundamental right to care and custody of his or her child, whether immediately or in the future, the order is an appealable interlocutory order.

In re Karl H., 394 Md. 402, 430 (2006).

In *In re Billy W.*, the minor children were placed in foster care after the Department of Social Services conducted investigations into abuse and neglect by the parents. 387 Md. 405, 411 (2005). After a number of review hearings, the juvenile court ordered the father to hire, at his own expense, an off-duty police officer to facilitate monthly visitations. *Id.* at 423. The Court of Appeals found that the requirement constituted a detrimental change in the father's visitation rights because "the order operates as an effective denial of visitation should he not be able to afford to pay for the officer's services." *Id.* at 426. As a result, the court held that the order qualified as an appealable interlocutory order. *Id.*; *see also In re Joseph N.*, 407 Md. 278, 291 (2009) (finding the juvenile court's order "was a consequential and potentially outcome-determinative change because it potentially increased the opportunity for [the child's] father to obtain permanent custody").

There are two orders at issue in this appeal: the September 26, 2016 order and the December 1, 2016 order. We shall address each.

A. September 26, 2016 Order

At the conclusion of the permanency plan review hearing, the juvenile court: 1) changed the permanency plan to reunification with Mr. S only; and 2) denied appellants' request for a psychological evaluation.

Appellees argue that the change in permanency plan is not appealable because it did not adversely affect Ms. L's parental rights. Appellees contend that Ms. L acquiesced in eliminating her plan of reunification, so the order did not detrimentally affect her custody of the children. Appellees cite *Osztreicher v. Juanteguy*, 338 Md. 528 (1995) for the proposition that Ms. L lost the right to appeal by taking a position that is inconsistent with her right to appeal. Finally, appellees maintain that although Ms. L states that giving Mr. S custody of the children may diminish her prospects for visitation at some later day, appellate courts do not render advisory opinions that are not ripe for review.

Appellants, by contrast, argue that Ms. L did not acquiesce in the permanency plan. Appellants note that Ms. L made clear at the time of the court's September 2016 hearing that she was not in agreement with a plan of reunification with father only, and at closing she asked for the permanency plan to remain the same. Appellants also argued that the plan constitutes a detrimental change in Ms. L's visitation rights because Mr. S is prohibited from reentering the United States and, due to health concerns, Ms. L is unable to travel to Mexico.

The record reflects that Ms. L did not acquiesce to the modified reunification plan. During the review hearing, Tracy Cook-Thomas testified that she spoke with Ms. L, and Ms. L advised that it was not in the children's best interests to move to Mexico. During

closing argument, moreover, Ms. L asked the court to leave the permanency plan unchanged. This case is therefore distinguishable from *Osztreicher v. Juanteguy*, where the appellant rested his case without presenting any evidence at trial, and the Court of Appeals held that he acquiesced in the adverse judgment. *Id.* at 533, 535. Next, it is likely that, as a result of the order, Ms. L will not be able to visit her children. Ms. L is diagnosed with diabetes and has poor vision, so it will be very challenging for her to travel to Mexico, and Mr. S cannot legally reenter the country. Like the order in *In re Billy W.* that required the father to hire an off-duty officer to facilitate visitation, the juvenile court's order operates as an effective denial of visitation should Ms. L not be able to travel to Mexico. The order therefore had a detrimental impact on Ms. L's parental rights, and it qualifies as an appealable interlocutory order.

Concerning the denial of the psychological evaluation, appellees argue that the order is not appealable because it did not change the terms of a prior custody order or permanency plan. Appellees also assert that this court lacks jurisdiction over the issue because appellants did not file their appeal within thirty days, as required by Md. Rule 8-202(a). Conversely, appellants argue that the claim was preserved when the parties made oral motions at the September 26, 2016 hearing, and it is appealable because the denial had a detrimental impact on Ms. L's parental rights.

Appellants correctly note that both parties made an oral motion for the children to obtain an evaluation on September 26, 2016, which was denied, and thereafter filed an appeal on October 25, 2016. The issue is therefore preserved for our review. Next, because the court restricted appellants' ability to offer evidence at the review hearing, and the court

ultimately modified the reunification plan with Mr. S only, the order had a detrimental impact on Ms. L's parental rights. The order thus qualifies as an appealable interlocutory order.

B. December 1, 2016 Order

The juvenile court's December 2016 order lifted a restriction on the use of the children's passports, making it possible to visit Mr. S in Mexico. Appellees argue that the order is not appealable because it did not change the terms of a prior custody order or permanency plan. Appellants, on the other hand, argue that the December 2016 order is appealable because it affects the subject matter of the September 2016 order, and it infringed on Ms. S' natural rights as a parent.

The December 2016 order removed the following language from the September 2016 order: "[t]he Court limits the use of the [children's] passports until further proceedings." Since the modification facilitated visitation of the children with Mr. S in Mexico, and the September 2016 order was on appeal at that time, we find that the December 2016 order affects the subject matter of the September 2016 order. As such, the December 2016 order qualifies as an appealable interlocutory order. *See In re Emileigh F.*, 355 Md. 198, 202–03 (1999) ("After an appeal is filed, a trial court may not act to frustrate the actions of an appellate court. Post-appeal orders which affect the subject matter of the appeal are prohibited.").

II. Challenges to the Permanency Plan

In *In re A.N.*, we discussed the standard of review that applies in CINA cases:

> When reviewing an order regarding a permanency plan in a CINA proceeding "[t]he appellate standard of review as to the overall determination of the hearing court is one of 'abuse of discretion.' " *In re Yve S.*, 373 Md. 551, 583, 819 A.2d 1030 (2003). However, when an appellate court reviews cases involving the custody of children generally, it simultaneously applies three different levels of review. *Id.* at 584, 819 A.2d 1030. First, when an appellate court scrutinizes factual findings, the clearly erroneous standard applies. *In re Shirley B.*, 419 Md. 1, 18, 18 A.3d 40 (2011) (citing *In re Yve S.*, 373 Md. at 586, 819 A.2d 1030). Second, "if it appears that the [juvenile court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless." *Id.* (alteration in original) (quoting *In re Yve S.*, 373 Md. at 586, 819 A.2d 1030). Finally, when reviewing a juvenile court's decision to modify the permanency plan for the children, this Court "must determine whether the court abused its discretion." *Id.* at 18–19, 18 A.3d 40.

226 Md. App. 283, 305–06 (2015). In applying this standard, Maryland incorporates "a *prima facie* presumption that a child's welfare will be best served in the care and custody of its parents rather than in the custody of others." *In re Yve S.*, 373 Md. 551, 572 (2003) (citation omitted). Parents are entitled to this heightened presumption because the law "has recognized that natural bonds of affection lead parents to act in the best interests of their children." *Id.* Accordingly, "[i]n whatever context the best interest of the child is the applicable standard, the presumption exists, until rebutted, that it is in the child's best interest to be placed with a parent." *Id.*

A. Constitutional Challenge

Appellants argue that the juvenile court's order violates the children's constitutional rights and that it is an abuse of the court's authority. Appellees, on the other hand, contend that the claim is waived because it was not raised at trial and is not preserved for appellate review. In response, appellants argue that the issue is not waived because the court lacked subject matter jurisdiction to issue the order and the question of subject matter jurisdiction

may be raised at any time. Before we can turn to the merits of their claim, we must therefore address whether appellants waived their right to challenge the constitutionality of the juvenile court's order.

The Court of Appeals has explained that "a court's actions cannot be assailed for lack of subject matter jurisdiction unless that jurisdiction is lacking in a 'fundamental sense.'" *Salvagno v. Frew*, 388 Md. 605, 616 n.4 (2005). Fundamental jurisdiction refers to "the power to act with regard to a subject matter which 'is conferred by the sovereign authority which organizes the court, and is to be sought for in the general nature of its powers, or in authority specially conferred.'" *Pulley v. State*, 287 Md. 406, 416 (1980) (quoting *Cooper v. Reynolds*, 77 U.S. (10 Wall.) 308, 316 (1870)). Accordingly, the threshold question is whether the court has the *power* to render a decree, not whether the grant of relief is appropriate. *Id.* at 415–16; *see also First Federated Commodity Trust Corp. v. Comm'r of Sec.*, 272 Md. 329, 334 (1974) ("It is only when the court lacks the power to render a decree, for example because the parties are not before the court, as being improperly served with process, or because the court is without authority to pass upon the subject matter involved in the dispute, that its decree is void.").

Appellants do not dispute that the juvenile court had the power to conduct the review hearing of the children's permanency plan. The children's reply brief states "[w]hile the juvenile court certainly had the authority to conduct a review hearing of the Children's permanency plan in September 2016, its order changing the permanency plan to reunification with father only, which, to be achieved[,] will result in the removal of the Children to Mexico, was beyond its – or any U.S. Court's – authority." Rather, what

appellants seek to challenge is the appropriateness of the relief. But a challenge to the appropriateness of relief does not constitute a fundamental error, and only fundamental errors provide a basis to challenge the court's subject matter jurisdiction. Therefore, because appellants did not preserve the constitutional argument in the court below, they have waived their right to raise this issue on appeal.

B. Sufficiency of the Evidence

Appellants challenge the sufficiency of the evidence to support the juvenile court's order changing the permanency plan to reunification with Mr. S. When developing a permanency plan in a CINA case, the juvenile court must consider the following factors:

> (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.

In re Andre J., 223 Md. App. 305, 320–21 (2015) (citing MD. CODE ANN., FAM. LAW § 5-525(f)(1) (West 2006)); *see also* MD. CODE ANN., CTS. & JUD. PROC. § 3-823(e)(2) (West 2011). At a permanency plan review hearing, the juvenile court may change a permanency plan only if the change "would be in the child's best interest." CTS. & JUD. PROC. § 3-823(h)(2)(vi). In addressing appellants' sufficiency of the evidence claim, we must therefore look at whether the juvenile court correctly applied the six factors in FAM. LAW § 5-525(f)(1), and whether the change was in the children's best interests.

1. Children's Ability to Be Safe and Healthy in Mr. S' Home

Appellants raise five arguments as to why the children will not be safe and healthy in Mr. S' home. First, Mr. S was deported in 2012 due to allegations of domestic violence, and the juvenile court did not determine whether his alleged domestic violence was an ongoing issue. Second, Mr. S' criminal background check was limited in scope. Third, the court improperly accepted State's Exhibit #2—a home study conducted by the DIF—into evidence because the document was not authenticated, and it was presented to counsel for the first time on the morning of the hearing. Fourth, placement with Mr. S would be improper because his live-in girlfriend does not speak English, and the children do not speak Spanish. Fifth, MJS and AHS have special needs, and there was no testimony demonstrating that their emotional needs would be met if they move to Mexico.

Appellees, on the other hand, argue that the children will be safe and healthy in Mr. S' home. Appellees note that Mr. S has maintained appropriate housing, an adequate income, and the DIF presented a favorable home study on his behalf. Mr. S, moreover, has passed a criminal background check (which included Maryland and Mr. S' home state of Tlaxcala, Mexico), a drug and alcohol assessment, and he has engaged in domestic violence counseling.

At the conclusion of the review hearing, the court stated:

> [A]s I will note in a Memorandum that will be attached to the Order, I think it should be noted the information that [DIF] did present to this Court that father did, in fact, contact the agency. He contacted the Agency in order for a home visit. He made certain there was an assigned case manager. . . .
>
> One of the tasks was for assessment for domestic violence and that assessment was done, drug and alcohol assessment was prepared, parenting

> classes were undertaken. The housing issue, at one point the housing was not appropriate and he found himself getting a larger home. He contacted the consulate. He's provided all the information as he works in Mexico. He provided information regarding his income. . . . There was a criminal background check that was done. There was a psychological assessment that was done on Father as it pertains to any domestic violence issues. He has communicated with Adoptions Together. . . . [A]nd all of those tasks that were communicated to this Court by the caseworker, that father has, in fact, done those things and maintained regular contact with the Court with the caseworker.

The court went on to find there was "no testimony or evidence" that would call into question Mr. S' ability to take care of the children's health or safety; and it observed that the DIF would provide additional oversight. We agree. We also note the DIF indicated that, overall, Mr. S' "performance is positive" and he "has shown a consistent development as required."

Next, while the DIF report contained a number of hearsay statements, the document was received from the Mexican Consulate in Washington, D.C.; it contained valuable information that could not have been obtained without hardship to the Department; it was affixed with a seal; and Tracy Cook-Thomas spoke with the DIF agent that assisted in preparing the report. The juvenile court thus did not err in admitting the document in the interest of justice. *See* MD. R. EVID. 5-101(c) (noting that a juvenile court in a permanency plan hearing may, "in the interest of justice, decline to require strict application" of the rules of evidence).

As to appellants' remaining arguments, the background check was sufficient in scope; Mr. S speaks English, although his live-in girlfriend speaks only Spanish; the twins are currently placed in Spanish immersion school; and the children's age—five and six at

the time of the hearing—will likely provide for greater flexibility in their transition to Mexico. Finally, Angela White testified that the DIF could provide a continuum of services to support the children, should reunification be achieved:

> Should reunification be achieved, [DIF] can work with the family on a continuous basis. [DIF] specifically mentioned psychological therapy. They would just follow up on the girls' medical appointments, also help with school and any extracurricular activities.
>
> They would ensure that (inaudible) continue not just for Dad but also for the children to make sure that they're well supported and adjusting well. The children would have the opportunity -- they're also [going] to be able to ensure that it's a safe placement both (inaudible) would definitely be (inaudible) and to adjust the emotional (inaudible) that can come with such a transition.

Accordingly, we find no error with the juvenile court's determination that the children will be safe and healthy in Mr. S' home.

2. Children's Attachment to Natural Parents and Each Other

Appellants argue that the children have minimal attachment and emotional ties with Mr. S because, unlike Ms. L, he has had minimal contact with the children since his deportation. Appellants also assert that, by moving to Mexico, the children would no longer have relationships with their half siblings that live in Maryland. Appellees, by contrast, argue that the children are very close, and the twins have specifically asked their foster parents if MJS could live with them. Further, Ms. L ceased all contact with the children for nine months after placing them in foster care, and there was no evidence of a relationship between the children and their half siblings.

The juvenile court found that the children know Mr. S and Ms. L, and that they are attached to one another. It stated:

> As it pertains to the children's attachment and their emotional ties, it's clear that the children are attached to the caregivers, but it is also certain that the children know the father as well as the mother. The father was deported in 2012 and I think that has to be in this Court's consideration about the ability to avail himself to the children that are in the United States, but they are aware of their father.
>
> . . . And I do find that they are attached and they are attached to their siblings. I mean, they are not together presently and when they see each other, they clearly want to all be together.

There is ample evidence from the record to support these findings. During the hearing, the twins' foster mother testified that the children "can't stop hugging and -- hugging, and [MJS is] always trying to pick them up." MJS' foster mother also testified that the children see each other two to three times per month. Nor was there any error with the court's finding that the children know Mr. S and Ms. L, or its taking into consideration that Mr. S' deportation restricted his ability to avail himself to the children. We also note that, as to the children's relationships with their other siblings, MJS' foster mother testified that one of the half siblings called their house a few weeks before the hearing; but no other sibling had contacted them prior to that.

3. Children's Attachment and Length of Time with Current Caregivers

Appellants note that each of the children refers to their foster parent as "mom," "dad," or "mommy," and that each foster parent is willing to adopt. The juvenile court, moreover, found that the twins, who have resided with their caregivers for all three years of foster care, are strongly attached to their foster parents. It also found that MJS, who has resided with her current caregiver for six months, is attached to her foster parent. Appellants do not dispute these facts, although they note that the children's attachment to

their caregivers is not dispositive. We agree and find no error in the court's resolution of this factor.

4. Potential Emotional, Developmental, and Educational Harm to the Children If Moved from Their Current Placement

Appellants note that the children are residing in a healthy, happy, and safe environment. Their needs are being addressed and they have bonded with their respective caretakers. Yet, appellants argue, the court ordered removal to live with a man who is a virtual stranger, in a country where they do not speak the language, and it is not clear that the necessary services will be provided for the children.[5] Conversely, appellees argue that MJS and AHS do not have special needs, and that any behavioral issues can be remedied by targeted strategies at home and in the classroom. Further, appellees argue that the children are at an age where language can be learned fluently.

The court made the following findings with respect to the potential emotional, developmental, and educational harm to the children:

> As to [MJS], [MJS] again seems to have issues of just movement and moving around, but there's no indication to this Court that she has any special needs outside of those things that a parent and the cooperation through a school system could have that I believe that Mexico could provide. . . .
>
> * * *
>
> . . . I have not heard anything, as it pertains to [AHS], of any emotional concerns outside of her inability to focus in school. And so I don't believe that there is anything that's presented as it pertains to [AHS] that the children couldn't sustain this type of transition.

[5] Appellants raise an additional argument that a magistrate previously found Mr. S physically abused Ms. L. However, Mr. S denies these allegations, and the transcript of the proceeding makes clear that no findings were made regarding Mr. S' alleged domestic violence.

> As to [MAS], I've heard nothing. That she is a lovely child who loves books and I haven't heard anything that would make this Court believe that she could not sustain this type of transition.

We find no error with the court's ruling. We also note that, to the extent the children would require additional counseling, Angela White testified that the DIF could provide psychological therapy and would work with the children on a continuous basis "to ensure that it's a safe placement . . . and to adjust the emotional (inaudible) that can come with such a transition."

5. Potential Harm to the Children by Remaining in State Custody for an Excessive Period of Time

Appellants note that both foster families are ready, willing, and able to adopt the children. The court's order, they argue, only serves to delay a permanent placement for the children. Appellees, by contrast, argue that Mr. S has remedied the issues giving rise to the CINA case and that he has demonstrated his ability to care for the children. As a result, appellees argue that the State no longer has a role to play in the children's lives.

As to this factor, the juvenile court found that remaining in foster care would be detrimental to the children:

> I believe for the children to remain longer in foster care would be detrimental. These children are still at a very young age and they can transition and they are much more flexible and much more adaptable to change and there's nothing that the Court has heard that gives this Court any type of grave concerns that these children would not be able to transition, nothing about [MJS'] behavior, that gives me grave concerns or [AHS'] behavior or [MAS'] behavior."

As this case was over three years old at the time of the review hearing, there was cause for the court's concern about continued placement in foster care. Additionally, the

DIF had presented a favorable home study regarding Mr. S, and the court correctly determined that, due to their age, the children are more likely to adapt to living in Mexico. The court therefore did not err in finding that remaining in foster care would be detrimental to the children.

At the conclusion of the hearing, the juvenile court found that changing the permanency plan to reunification with father only was in the children's best interests:

> [Mr. S] has a constitutional right to his children and this Court has heard no reason why that right should not be allowed and exercised, and [Mr. S] is doing everything that this country is asking, this Court is asking for him to do and is doing those things that have been determined by the Department in Mexico, and I do find that it is in the children's best interest, it is in the best interest of [AHS], it is in the best interest of [MAS], and it is in the best interest of [MJS] to have the permanency plan change to reunification with [Mr. S].

The record supports the court's findings: Mr. S passed a criminal background check and a drug and alcohol assessment; he participated in parenting and individual counseling; and his psychological assessment demonstrated no barriers to reunification. The DIF, moreover, conducted a favorable home study; it can provide psychological therapy; and it will ensure the children are "well supported and adjusting well." Because appellants have failed to rebut the presumption that it is in the children's best interest to be placed with their father, the juvenile court did not err in changing the permanency plan to reunification with Mr. S.[6]

[6] We are not persuaded that *In re Adoption of Cadence B.*, 417 Md. 146 (2010) would compel a different result. Unlike that case, the Department is not concerned about whether the children "would be safe in [Mr. S'] custody." *Id.* at 163.

III. Denial of Psychological Evaluation

Appellants next argue that the juvenile court erred in denying their request for a psychological evaluation. "We review a juvenile court's denial of a request for a psychological examination under former § 3–818 of the Courts Article to determine whether the court abused its discretion." *In re Adoption/Guardianship of Mark M.*, 147 Md. App. 99, 111 (2002). When making a motion for an evaluation, the party must demonstrate: 1) good cause for such an evaluation; 2) that the evaluation is reasonably calculated to assist the trier of fact in rendering its decision; and 3) that the proposed evaluation would not be harmful to the child. *In re Mark M.*, 365 Md. 687, 717–18 (2001).

Appellants argue that the court erred in denying their request for a psychological evaluation because the evaluation could have helped identify services necessary to address the children's needs, as well as Mr. S and his family's ability to meet those needs, and it could have determined the impact that placement in Mexico would have on the children. Conversely, appellees argue that MJS is not experiencing behavioral problems in her current foster home, and there is no testimony or diagnosis that AHS has special needs.

The juvenile court did not find good cause for an evaluation. It stated:

> I don't believe that this court needs a further evaluation because I don't believe that there's any testimony that has been indicated to me that makes me give rise to that, especially when the [twins' foster parents] tell me that the correction is made at home and church and it's different than it is in school with [AHS] and [MAS]. And [MJS], [her foster mother] has indicated that corrections can be had at home, as well.
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> * * *
>
> This Court will not order a [court appointed special needs advocate]. This matter has been around for three years, and if there's been any issues, and

> these are the only issues that are being presented to the Court, I don't believe that they give rise to whether or not there is any mental or physical disabilities or anything else that would need to be further evaluated as to the children's adjustment.

We agree. The court's finding was consistent with the testimony of AHS' foster mother, who stated that "[a]t home, she's okay because I will tell [AHS], you know, you can't do that, no touching things, that's not yours, and she listens at home, just me and my husband, you know, don't do that." Similarly, MJS' foster mother testified that her behavior had improved at home through proper parenting, and there was no evidence that MAS had experienced similar behavioral issues. Since it cannot be said that the juvenile court's ruling was "clearly against the logic and effect of facts and inferences before the court," *Beyond Sys., Inc. v. Realtime Gaming Holding Co.*, 388 Md. 1, 28 (2005) (citation omitted), we find that the court did not abuse its discretion in denying appellants' request for a psychological evaluation.

IV. Removal of Passport Restriction

The final issue for review is whether the juvenile court erred in removing the language from the September 2016 order that restricted the Department's ability to use the children's passports. Appellants argue that the court erred because the Department has no authority to maintain custody of the children or to ensure their return to the United States. Appellees, by contrast, argue that the order merely permitted the Department to move forward with the plan of reunification by facilitating visitation with Mr. S.

As we previously found no error with the court's changing the permanency plan, it would certainly be in the children's best interest to visit Mr. S under the supervision of the

Department before potentially moving to Mexico. *See Knott v. Knott*, 146 Md. App. 232, 257 (2002) (holding that a court may modify a prior order so long as the modification is in the child's best interests). Therefore, the court did not err in removing the language from the September 2016 order that restricted the Department's ability to use the children's passports.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.