Circuit Court for Montgomery County
Juvenile Petition Nos. 06-I-14-0000109 &
06-I-14-0000110

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1943

September Term, 2016

IN RE: T.T. AND L.M.

Meredith,
Reed,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: June 12, 2017

Mr. T., appellant, appeals from an order of the Circuit Court for Montgomery County, sitting as a juvenile court, changing the permanency plan for his two sons, T.T. and L.M., from reunification to adoption by a non-relative.

Mr. T. presents a single question for our review:

> Did the juvenile court abuse its discretion by changing the children's permanency plan from reunification to adoption by a non-relative?

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

FACTUAL AND PROCEDURAL BACKGROUND

Mr. T. and Ms. M.[1] are the biological parents of T.T. (born on May 29, 2013) and L.M. (born May 5, 2014). In December 2013, Ms. M. contacted police when her 12-year-old daughter, R.R., failed to come home after school. R.R. was located in school on the following day. She explained that she had lost track of time on the previous night and that she did not return home out of fear of being beaten for coming home late. R.R. also reported that she and her siblings had been beaten with an extension cord and belt by her mother and Mr. T. (who is not her biological father). She stated that Ms. M. and Mr. T. forced her to pull her pants down and lie on the floor for the beating. R.R. also said that the beatings have left bruises and welts in the past that have made it difficult for her to sit down or stand up in class. She reported that Ms. M., Mr. T. and Mr. T.'s sister also punished her and her siblings by forcing them to stand in a corner for long periods, with a heavy pot held over their heads.

[1] Ms. M. agreed to the change in plan from reunification to adoption by a non-relative and did not participate in this appeal.

On December 17, 2013, a social worker and a supervisor for the Montgomery County Department of Health & Human Services (the "Department") met with Ms. M. and Mr. T. and told them that they were not allowed to physically discipline the children. At that time, the family was referred to Frameworks for Families for ongoing parenting support and education.

On April 1, 2014, the Department received a second report of physical abuse of R.R. and her brother, R.J., who was then 6 years old. R.J. has Down's syndrome, which has caused verbal delays and requires him to wear a pacemaker. It was also reported that R.R. had been struck several times with a belt for taking two dollars from her brother and that, a few weeks earlier, Mr. T. had beaten R.J. with a belt for misbehaving at school. That beating resulted in open wounds on his legs.

An assessment social worker for the Department met with R.J. at his school on April 2, 2014. R.J. showed the worker five "significant bruises" on the back of his legs, which he pointed to and stated, "mommy belt, daddy belt."

R.R. was interviewed at the Tree House Child Assessment Center regarding R.J.'s bruises. She said that R.J.'s bruises were the result of a beating from Mr. T. because R.J. was "put on red" at school. She also stated that when Ms. M. returned home from work and asked Mr. T. about the marks on R.J., Mr. T. responded that he "didn't care," and told her to keep R.J. home from school for a few days.

That same day, the social worker interviewed Ms. M. at the Family Crimes Division of the Montgomery County Police Department. Initially, Ms. M. claimed responsibility for the marks on R.J.'s legs by stating that she gave him a "small spanking." After she was

shown photographs of the bruises on R.J., Ms. M. recanted, and stated that Mr. T. had told her that he had beaten R.J. with a belt. Ms. M. stated that she was both afraid of Mr. T. and afraid to "lose him" because he was her only source of childcare for the children.

At the conclusion of the interview, Ms. M. was asked to take T.T., who was one year old, into another room while Mr. T. was interviewed. Mr. T. immediately became upset, raising his voice, and instructing Ms. M. not to take his son anywhere. Mr. T. then twisted Ms. M.'s arm while she was holding T.T., yelling at her, "give me my son back. You're not going anywhere with my child." Mr. T. next pushed Ms. M. into a wall. Police officers quickly intervened and escorted Ms. M. and T.T. to another room.

The Department assisted Ms. M. in filing a protective order and obtaining housing in a domestic violence shelter for Ms. M. and five of her children, including T.T. and L.M. The following day, April 3, 2014, Ms. M. told an agent of the Department that she was fearful of Mr. T. and was concerned that he would try to injure her or destroy their home as a result of her filing a request for a protective order. She recalled that in March of 2014, Mr. T. "bear clawed" her in the face after he thought that she had dropped T.T., and that Mr. T. frequently threatens to take T.T. and leave the home.

In May of 2014, Ms. M. signed a safety plan with the Department, agreeing that Mr. T. could not have contact with the children unless supervised by the Department. On June 12, 2014, Mr. T. also signed a safety plan with the Department that provided that due to the physical abuse of R.J. and domestic violence issues, he would only be allowed supervised visits with T.T. and L.M. one time per week. Mr. T. also agreed to participate in the Abused Persons Program and parenting classes.

On June 30, 2014, R.R. and A.R. (Ms. M's then 16-year-old son), who had been living with relatives in Washington, D.C., contacted the Department after going to the domestic violence shelter to see their mother and learning that she and her three younger children, R.J., T.T. and L.M., had vacated the shelter placement one week earlier and had returned to the family home. Efforts by the Department to reach Ms. M. were unsuccessful. Police then conducted a welfare check at the family home, where they located Ms. M. and the three children, as well as Mr. T. Ms. M. signed a safety plan agreeing to return for the night to the domestic violence shelter with the three children and to keep the children out of contact with Mr. T.

At a Family Involvement Meeting ("FIM") on the following day, all five children were sheltered in the care of relatives. The relatives subsequently said, however, that they would not be able to care for the children for more than a few days. The Department then filed petitions in the Circuit Court for Montgomery County requesting that A.R., R.R., R.J., T.T., and L.M. be found Children in Need of Assistance ("CINA")[2]. The Department also asked that the children be placed in shelter care. On July 2, 2014, the juvenile court held an emergency shelter care hearing on the petition. Afterwards, the court issued an order denying shelter care, returning the children to the custody of Ms. M., and scheduling an adjudicatory hearing on the CINA petitions.

[2] A "child in need of assistance" ("CINA") 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 & Judicial Proceedings Article ("CJP") §3-801(f).

At the adjudicatory hearing on July 24, 2014, the Department submitted its case based on an amended CINA petition. Ms. M. and Mr. T. were present at the hearing, but did not introduce any evidence nor did they admit to any allegation contained in the petition; they did, however, agree that the allegations, if proven, would sustain a CINA finding as to T.T. and L.M.[3] The court found: 1) T.T. and L.M. to be CINA, "based upon the facts sustained in the CINA petition"; 2) that the children had been "neglected" by their mother; 3) that Ms. M. "is unable without the assistance of the Department to give proper care and attention" to the children and their needs; and 4) that Mr. T. "is unable to give proper care and attention to [the children's] needs[.]"

The court ordered Mr. T. to, *inter alia*, complete the Responsible Father and Child Together Program, as well as the Abused Persons Program Offender Group; maintain stable housing; and have supervised visitation with T.T. and L.M., at least once per week, with the visits being supervised by the Department. He was also ordered to submit to a psychological evaluation by the Department; abide by the current protective order; and stay away from Ms. M.'s residence.

On September 23, 2014, the Department removed T.T. and L.M. from Ms. M.'s care and custody following notification that Mr. T. had been observed, unsupervised, with the

[3] The petition for A.R. was dismissed by agreement of the parties due to his age and maturity. The petition for R.R. was dismissed with an agreement that she be placed with her biological father, D.R., who was willing and able to care for her. The petition for R.J. was postponed pending the Department's efforts to contact his biological father.

children and also observed in the vicinity of Ms. M.'s residence in violation of the protective order.

On January 5, 2015, the juvenile court held a Permanency Plan Review Hearing. Glenda Cambiaso, a social worker for the Department, said in her written report that Mr. T. had successfully completed the Responsible Father and Child Together Program and had been attending the Abused Person's Program. She noted that Mr. T. had difficulty participating in visits with the children and that he had missed 7 out of 12 visits. During the visits, Mr. T. struggled to follow parenting recommendations from the community service worker. The court ordered that T.T. and L.M. remain CINA and in foster care, and further set reunification as the goal of the plan for T.T. and L.M.

In preparation for the May 18, 2015, Permanency Plan Review Hearing, Elizabeth Freeze, a social worker employed by the Department, wrote a report indicating that Mr. T. continued "to have difficulty understanding the need for and purpose of the protective order" and that he had violated the order by going to Ms. M.'s house at 2:00 a.m. to "talk to her about the children." Ms. Freeze further reported that Mr. T. continued to have difficulty participating in visits with the children, and that he only attended 5 out of 17 possible visits. She observed that Mr. T. "appears to struggle with managing his emotions about his children being in foster care and his anger and confusion over the legal process leading to their placement in foster care." On one scheduled visit, Mr. T. arrived one hour before the scheduled start time, but left soon thereafter, and refused to return even though the children had not yet arrived. On another visit, he became upset about the foster care situation, and abruptly left the visit after only twenty minutes. Visitation staff reported that

the children were very upset at his sudden departure, and that it took additional efforts to calm them. Moreover, the children's foster mother reported that both children had an especially difficult night after the disrupted visit.

Ms. Freeze testified that Mr. T. had frequently complained that he does not have a chance to get his children back. He also left voicemail messages for Ms. Freeze stating that he no longer wanted anything to do with the Department and suggesting that the Department should "give the children to Ms. M." After several attempts, Ms. Freeze was able to re-engage Mr. T. in the reunification progress, but Mr. T.'s earlier disengagement from the process resulted in setbacks that delayed his progress toward fulfilling the recommendation made by the Department.

The court, on May 18, 2015 continued its order that T.T. and L.M. remain CINA and in foster care with a primary plan of reunification.

At the Permanency Plan Review Hearing on January 6, 2016, Ms. Freeze reported that Mr. T. had made a "consistent effort to communicate with the Department" and had "been more open to suggestions in supervised visits with [the children]," having attended 11 out of 20 offered visits. Mr. T., however, continued to have "great difficulty managing the visits [with the children,]" and anticipating and responding to the children's needs. The court once again ordered that T.T. and L.M. remain CINA and in foster care with a primary plan of reunification.

According to Ms. Freeze's report that she prepared for the June 6, 2016 Permanency Plan Review Hearing, Mr. T. continued having difficulty anticipating the needs of the children and engaging them in meaningful interactive activities; additionally he had

attended only 5 out of 18 available visits. Ms. Freeze reported that Mr. T. struggled with supervising both boys at one time and had problems devising ways to improve his supervision. On one occasion, Department staff had to intervene when Mr. T. left T.T. standing unattended on the changing table. Staff was also forced to intervene on several occasions because Mr. T. had left one of the two children unattended, and as a result one of the children had run toward the street during outdoor play. Due to these safety concerns, staff were ultimately forced to suspend outdoor play during visits. Ms. Freeze also opined that Mr. T. continued to have difficulty understanding and following the suggestions and information provided to him about safe and developmentally-appropriate parenting. After the June 6, 2016 hearing, the court ordered that T.T. and L.M. remain CINA and in foster care, and continued the primary plan of reunification.

On November 2, and November 4, 2016, the juvenile court held another Permanency Plan Review Hearing. In her report prepared for that hearing, Ms. Freeze, on behalf of the Department, recommended a plan of adoption for T.T. and L.M. "given their lengthy time in foster care, their young ages, concerns about their parents' stability and parenting abilities, and their attachment to their current foster family." She opined that "reunification is [no] longer in the best interest of [the children]" because "Mr. T. has demonstrated inconsistent participation towards court orders for the majority of the two years the Department has been working with him" and he "has either been unwilling or unable to access any services or strategies provided to help him to gain more effective parenting strategies."

At the hearing, Ms. Freeze testified in detail about the factors that she considered in recommending a change in the permanency plan to adoption. First, with respect to the children's ability to be safe and healthy in the home of their parents, she noted that the children both had a history of trauma from their exposure to domestic violence in the home, and that T.T. was also exposed to significant physical discipline in the home. In addition, prior to being declared CINA, the children had inconsistent and unpredictable caregivers due to domestic violence in the household. She opined that the unpredictability affected their sense of stability, trust, and reliance on caregivers, which is crucial to the appropriate early childhood development. As a result, Ms. Freeze had observed T.T. struggle with developmental delays in the form of "[a]nger, aggression, impulse control, emotional dysregulation, sleeping problems, [and being] difficult to console." She explained that although T.T. still has developmental delays, he is making progress since receiving services from the Infants and Toddlers program.[4] L.M., who was four months old when he entered foster care, appeared to be developing in a typical manner although by age two and a half, he had developed some speech and problem-solving difficulties that are being addressed by the Infants and Toddlers Program. Ms. Freeze opined that T.T. and L.M. require "permanency" and "predictability" in their lives from a caregiver who has a "strong grasp" of "what is expected for kids their age[.]"

[4] The Infants and Toddlers Program "provide[s] a statewide, community-based interagency system of comprehensive early intervention services to eligible infants and toddlers, from birth until the beginning of the school year following a child's 4th birthday, and their families." Md. Code (2015 Supp. Vol.), Education Article § 8-416(a)(2).

Ms. Freeze also opined that Mr. T. has had difficulty "moving past" his anger and has failed to take responsibility for the trauma that was happening in the home. In her opinion, Mr. T. has experienced "very limited growth" during his time working with the Department. More specifically, she reported that his interactions with the children have been the "most lacking and most concerning," and that his visits still require supervision due to safety concerns. Mr. T. has also appeared disinterested in the children's developmental needs and in pursuing activities to obtain a better understanding of their needs. Ms. Freeze described the children's attachment to Mr. T. as to that of a "favorite uncle," with whom they enjoy having fun, rough-housing, and playing. But "[i]t is not the kind of attachment where they run to him for help" or "soothing" or "to get any kind of needs met." In fact, their attachment to him is "still limited."

She also testified that the children are very attached to one another and to their foster parents. T.T. and L.M. have been with their foster parents for the majority of their lives and they call their foster parents, "mommy" and "daddy." The children listen and respond to the foster parents and seek out physical affection from them. Their foster mother has utilized strategies that she has learned from the Infants and Toddlers program to manage T.T.'s "frustrating behaviors," and to address his needs.

When L.M. turned one year old, the foster parents welcomed a biological daughter into the family. The foster parents prepared T.T. and L.M. for the arrival of the baby, and the children have responded well to that family addition.

Ms. Freeze testified that Ms. T., who is Mr. T.'s sister, presented herself as a potential placement resource for T.T. and L.M. in July 2016. This was approximately four

months before the commencement of the hearing on November 2, 2016. Ms. Freeze testified that she had met with Ms. T. as early as June of 2015 about visiting with the children, but that she did not hear back from Ms. T. until July of 2016, when Ms. T. learned that the Department was considering adoption for the children. Ms. Freeze explained, "I really appreciate that [Ms. T. and her mother] came forward. I do. I have said it so many times that I wish it could have been a year ago, whenever this case was just much newer and we had so much more time to go through this."

Ms. Freeze testified that she continued to have concerns about whether Ms. T. could be a placement resource for the boys due to Ms. T.'s presence in the home during the time when abuse and domestic violence was reported even though Ms. T. denied any knowledge of such abuse or violence. In order for Ms. T to be considered a placement resource, Ms. Freeze opined that Ms. T., who did not have children of her own, would require parent education and "a lot of focus on how to respond to frustrating and challenging behaviors by children, understanding their emotional [] background" and "developmental stages." In addition, Ms. Freeze noted that Ms. T.'s housing and job are "in flux," and that even if those concerns could be addressed over time, the children would continue to remain in foster care, delaying their transition to a permanent home.

Ms. T. testified about her ability and desire to become a resource for the children. She currently lives with her mother and Mr. T. From the end of 2013 to 2014, she lived with Mr. T., Ms. M., T.T., L.M., A.R., R.R., and R.J. She testified that she did not witness any abuse in the home during that time. Ms. T. further testified that she first met Ms. Freeze in July 2015. She recalled telling Ms. Freeze that "based off [her] experience

growing up as a child [she knew] normal people that beat or spanked kids," but that she did not condone it. Ms. T. did not visit with T.T. and L.M. from September 2014 until August 2016 because she claimed that she "wasn't aware of the situation," based on information that she was receiving from Mr. T. Ms. T. further testified that she did not make herself available as a potential resource for the children until July of 2016, when she learned that the children might be adopted.

Julia Wessel, a therapist at the Lourie Center, testified regarding her assessment of the relationship that Mr. T. had with T.T. and L.M. during a "forensic parenting capacity evaluation." This evaluation was conducted at the direction of the Department. The evaluation is designed to "identify what the parent's capacity is in parenting their child, particularly focused on social and emotional health and wellbeing." Ms. Wessel testified that when she met with Mr. T., he appeared "somewhat ambivalent about whether he would or should get custody of his children back." Mr. T. told Ms. Wessel that he was following through with the evaluation "to clear his good name." Ms. Wessel testified that Mr. T. did not "acknowledge the abuse or trauma that had occurred in his home when the children were in his care," and that he "had a difficult time thinking about the children's emotional needs and what they would need in the future based on the trauma they had experienced." She explained her findings as follows:

> We did see that Mr. T. had a relationship with the children. It was not a specific relationship. What we saw, particularly with [L.M.], is something we might expect to see with like a favorite uncle or something. We saw a connection, but not an attuned relationship where the parent is able to recognize what the child needs emotionally, which is particularly important for children who have experienced early childhood trauma. You know, based on the records we reviewed and speaking with the Department, we did see

> some impact from Mr. T.'s own therapy he was receiving outside the Lourie Center.
>
> However, we did not see a level of insight into his children's experiences that we think is important for a parent parenting children who've experienced trauma. We saw [T.T.], particularly, at a very vulnerable place. He needed significant intervention at that time. He was difficult to manage. And it was unclear to us if Mr. T. really understood realistically what it would mean to parent these children. There was a lack of knowledge and understanding of child development, particularly developmental delays. How to engage with children who have language delays. In particular, how to manage them in terms of discipline.

In Ms. Wessel's opinion, based on Mr. T.'s limited insight into the children's needs in December 2015, it would be "unlikely that, even with one year of intervention, [Mr. T.] would be able to be attuned enough, in connection with the children's experiences [], to anticipate what their needs are, respond in a way that supported their development, and advocate for them as they continue to grow up."

Kerrie LaRosa, a parenting educator for the Department, testified regarding her observations of Mr. T. over the course of five parenting classes that she conducted with him in February of 2016. Ms. LaRosa testified that generally Mr. T. "wasn't so engaged in the parenting process." She observed that he did not respond to her attempts to discuss appropriate developmental expectations with him, and when she tried to recommend a parenting strategy for him to use with the children, he did not follow her suggestions. Ultimately, Ms. LaRosa did not see progress from Mr. T. over the course of the five sessions.

The children's foster parents, Mr. and Mrs. R., testified that T.T. and L.M. have lived with them for over two years. Initially T.T., who was fifteen months old when he

began living with them, was very anxious and fearful of strangers, including Mr. R., and he would throw fits and "lash out" at L.M., who was four months old at the time. But Mr. and Mrs. R. later observed an improvement in T.T.'s behavior. He has calmed down, become "well-adjusted," and very helpful and gentle, especially with his brother and foster sister. The Infants and Toddlers Program provided the foster parents with strategies to help manage T.T.'s "extreme" tantrums. Implementation of these strategies has resulted in a marked decrease in tantrums. Mrs. R. explained that L.M. was developmentally "advanced" initially, but has since had some developmental "setbacks," which were being addressed through speech therapy in the Infants and Toddlers Program. Mr. and Mrs. R. now consider T.T. and L.M. to be part of their family and they "would love to adopt them."

In its closing argument, the Department maintained that: (1) Mr. T. could not provide a safe and stable placement, both in terms of physical and emotional safety, that T.T. and L.M. require in order to address their special needs, as Ms. T.'s home situation still presents the same "type of risk" present when the children lived there; (2) that Mr. T. does not have a parental bond with the children; (3) that the children have a very strong bond to one another and to their foster parents; (4) that the children have resided with the current caregiver for many, many months; (5) that the children would be substantially harmed by removing them from their current placement due to their difficulties with transition and the instability that is still present in Mr. T.'s home; and (6) that the children's placement in foster care for 25 months is a considerable amount of time, considering that it has spanned almost their entire lives, and therefore adoption by a non-relative is the appropriate permanency plan for the children. Counsel for the children agreed with the

recommendation of the Department, submitting that "as far as reunification we have gone as far as we can go."

Mr. T. attended the hearing but did not testify. Through his counsel, Mr. T. argued that a change in the permanency plan was premature. Counsel requested that the juvenile court retain the permanency plan as one of reunification to allow Ms. T. to be vetted as a resource for the children. Mr. T.'s counsel made clear, however, that Mr. T. was not requesting that the plan be changed to guardianship or custody with Ms. T. at that time.

At the conclusion of the hearing, the court made the following oral ruling:

> [D]ad in this case has argued that it's premature at this point for the Court to change the permanency plan from reunification to adoption by a nonrelative and would like for the Court to keep it for reunification for some time longer. Either a) to make a determination of whether or not he could be a potential resource or b) whether his sister, [Ms.T.] could be a resource for the boys.
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> The Court first has to consider the factors under 3-823 and I think everybody is in agreement that it still remains necessary for the Court to have these two children committed to the Court, to the jurisdiction of the Court and to the Department. That there has not been a significant amount of progress with respect to alleviating the need for the commitment. We'll come back to the reasonable date. And that the children are safe and healthy in their current placement.
>
> So the Court then moves on to the factors under 5-525(f)(1) and the Court heard a lot of testimony. Specifically, with respect to the Department by Ms. Wessel from the Lourie Center. By Ms. Freeze, the social worker and also by Ms. La Rosa, the parenting education specialist. The Court first has to consider the ability of [T.T. and L.M.] to be safe and healthy in the home of their parent and in this case that's Mr. T.'s home. And, the Court first has to consider the reason why the children were removed from the home in the first place and part of the reason or a large part of the reason was the abuse that had taken place in that home to the older siblings, as well as, the domestic violence that took place in the home. One incident in particular, taking place in front of the police while Ms. M. was holding the young child. And I can't recall which child it was. The Court might have some faith that the children could be safe in that home if Mr. T. truly acknowledged and

understood a) the fact that what took place in the home was abusive, but then b) the fact that that abuse had an effect on his two children and from what I'm heard from Ms. Wessel.

What I've heard from Ms. Freeze is that there is really no appreciation for the damage that was done to those two young boys with respect not just to potentially having them be in harm's way, but in terms of their emotional health and wellbeing. Ms. Wessel said that when Mr. T. appeared for his evaluation he said he was there to clear his good name. Again, a concern for himself and not for the wellbeing of those two children and Ms. Freeze made a good point during her testimony that Mr. T. has done things to better himself. He engaged in the Abused Persons Program and the Responsible Father's Program. All things that are for him. But in terms of his interaction with the two boys, his learning to change his behavior so that if the children were to return home the same thing wouldn't happen again, really there hasn't been much of an effort in that area.

Again, all three of those witnesses testified to Mr. T.'s lack of understanding about how the children developed, what their needs are and how those needs are going to change with time. All of that goes towards one of the factors in this which is potential emotional, developmental harm to the children if their placement was moved. So, if their placement was moved from where they are now back to dad the Court has very serious concerns with whether or not the emotional and developmental needs of those children would be met by Mr. T.

Again, there was testimony, particularly from, actually it was from Ms. Freeze and it was from Ms. La Rosa regarding dad's inability to predict the needs of the children in any given moment and Ms. Freeze talked about not just with the, and I think Ms. La Rosa did too, actually, not just with respect to safety, having them, keeping them from running out in the street. Ms. Freeze testified that even with redirection and reminding that they eventually had to not allow any outdoor time. Coupled with keeping in mind that Ms. Freeze and Ms. La Rosa were there to try and model behavior for Mr. T. to assist him and to teach him. To show him ways to interact with the children and ways to be a father to the children. Couple that with the fact that this has been taking place over a two year period and basically Mr. T. kind of was in the same place as he was when the kids were first removed. He's taken a few education steps, APP and Responsible Father's, but his interaction with the kids really hasn't changed. Again, the lack of engagement, and the Court could read lack of engagement two ways.

Either an inability to change behavior or an unwillingness to change behavior and it's the unwillingness, well actually both of them, unwillingness and ability are of great concern to the Court because unwillingness suggests to the Court that we haven't learned from the mistakes that we made originally which means we're very likely to make those same mistakes. So, the things that made those boys unsafe two years ago, are very likely to be repeated yet again if we don't recognize and by we, I mean Mr. T. doesn't recognize that those things were at issue. The inability to do it again is a problem because that means those kids might not be safe, in all likelihood and the Court doesn't think they would be safe even if it is an inability to recognize and be able to do the things to keep them safe.

The Court also has to consider the child's, the children's attachment and emotional ties to their natural parents. We know, based on the testimony that they're attached to Ms. M., but I'm not going to go into anything specifically dealing with Ms. M.

With respect to Mr. T., the description I believe that Ms. Wessel gave was that the children reacted to him the way they would react to a favorite uncle, or maybe it was Ms. Freeze who said that. In any event, the children don't run to him the way they do to the foster father, Mr. R. and even if he's had 49 percent of his, he's engaged in 49 percent of the visitations, if there was attachment, if there was a bond and he was visiting those kids as much as he has over this two year period, even if it was only 50 percent of the time those kids would be running to him just like Mr. R. described when they see the grandparents that they run to the grandparents. I don't know how many times the boys have had contact with the grandparents, I'm not sure. But let's say, you know, there are 52 weeks in a year, so that's 104 weeks and let's say that Mr. T. even had visitation 30 weeks out of those 104 weeks.

In 30 weeks' time, those boys should be recognizing him, bonding with him, running to him, looking to him for comfort, sitting on his lap, any of those things if he was engaging the way a father should be engaging with his sons and that, none of that was described to the Court. So, what that means is there isn't an attachment between those boys and Mr. T. Contrast that with what we heard about their attachment to the foster parents.

Now, I want to be clear, I'm not making any call as to whether or not the foster parents can create this optimal living experience for these kids. The issue is whether or not with their parent or with a relative can they be safe? So, I'm not comparing the households with respect to material things, money, whatever the case may be. This is solely about whether the Court finds

ultimately or I should say where the Court ultimately finds the best interest of these two children lies.

So, there was a lot of testimony about the attachment of these two children to the caregivers. They're extremely bonded to them. The children have resided with the caregivers for two years, which is longer, which for [L.M.] pretty much his entire life. For [T.T.], it's a very large portion of his life. Coming back to the emotional, the potential emotional, developmental and educational harm to the child if moved from the child's current placement. This Court always recognizes that ideally children should be with their parents. And unfortunately, that is not always the case. So, two years out if the Court believed that Mr. T. had met the requirements, had in fact done everything and was ready for reunification this Court would certainly be happy to do that regardless of whether those kids had bonded with the foster parents.

So, I want to be clear that even though everyone keeps saying two years, it's not just about the fact that they've been in foster care for two years. It's about the fact that emotionally these kids need stability and they need to have caregivers who recognize what they've been through and that there will be moments, perhaps throughout their lives that those first months of their lives, what happened in their home may affect them, still. And, I'm not convinced Mr. T. recognizes the lasting impact that abuse or witnessing of abuse has had on them.

Potential harm to the child by remaining in State custody for an excessive period of time. I think I kind of already talked about that. I think every case is different. So, the Court looks at every case with respect to what's happened. Why the kids have been where they are for a certain amount of time and as I said before, if it was going to take another six months for reunification to occur but it was likely to be able to happen and be successful and the kids would be safe by doing that, then that's what the Court would do. But in this case we've seen a lack of progress over the two year period.

So for all those reasons the Court doesn't think it's in the best interest for the kids at this point to be reunified with Mr. T.

On November 7, 2016, the circuit court entered an order changing the permanency plan to a plan of adoption by a non-relative.

STANDARD OF REVIEW

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). First, we review factual findings under the clearly erroneous standard. *Id*. (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). Second, if it appears that the trial court erred in its determinations as a matter of law, we require further proceedings in the trial court, except in cases of harmless error. *Id.* 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.'" *In re A.N.*, 226 Md. App. 283, 306 (2015)(quoting *In re Shirley B.*, 419 Md. 1, 18 (2011)).

DISCUSSION

In this appeal, it is important to note that Mr. T. does not contend that any factual finding by the court was incorrect. He simply claims that the trial judge abused her discretion when she changed the permanency plan for the children. His entire argument in this regard is:

> As counsel argued at the hearing below, it was premature for the juvenile court to change the children's permanency plan at this juncture. Given that there was no evidence to suggest the likelihood of further abuse or neglect of the children in Mr. T.'s care – rather, the social worker and therapists were concerned that he would be unable to meet his children's emotional needs as T.T. and L.M. continued to develop, and they felt that Mr. T. had not made sufficient progress on this front (without regard for the fact of his cognitive limitations) – the Department should have continued working with Mr. T. to achieve reunification. Although the children had been with the foster parents for two years, and were attached to them, this may not be the dispositive factor in a court's analysis. Mr. T. was putting in the work toward reunification: he underwent counseling, completed various therapeutic programs, and attended visitation regularly with the children. It was, simply, too soon to count him out.

> Further, as stated, . . . Mr. T.'s sister had emerged as a potential placement resource for the children. Although the Department treated this development as coming too late to pursue, there was no reason that the court could not have continued the children's permanency plan to allow the Department to sufficiently vet Ms. T. and offer her whatever support and services it deemed necessary to prepare her to be a placement resource for the children.
>
> Changing the children's permanency plan to adoption by a non-relative put a stop to both potential placements, and, importantly, began the process of terminating Mr. T.'s parental rights. It was an abuse of discretion to order this change in the plan.

(Footnotes omitted, ellipsis added.)

It is very difficult to demonstrate that a trial court has abused its discretion. As the Department points out:

> Mr. T. concedes that abuse of discretion is the applicable standard of review. In reviewing such a discretionary decision, a reviewing court is "mindful that '[q]uestions within the discretion of the trial court are much better decided by the trial judges than by appellate courts, and the decisions of such judges should only be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred.'" *In re Shirley B.*, 419 Md. 1, 19 (2011) (quoting *In re Yve S.*, 373 Md. 551, 583 (2003)). A trial court has abused its discretion when "the decision under consideration [is] well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Id.* (quoting *Yve S.*, 373 Md. at 583-584) (internal quotation marks omitted)). This deferential standard is necessary because a juvenile court, "acting under the State's *parens patriae* authority, is in the unique position to marshal the applicable facts, assess the situation, and determine the correct means of fulfilling a child's best interest." *In re Mark M.*, 365 Md. 687, 707 (2001) A trial court "is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor." *Yve S.*, 373 Md. at 586.

The Department argues that the juvenile court did not abuse its discretion in changing the children's permanency plan from reunification to adoption by a non-relative,

where the children had waited over two years to achieve permanency, and it was not in the children's best interests to continue the plan of reunification to consider Ms. T. as a placement resource for the children.

A parent's right to raise his or her children without undue interference by the State is a fundamental constitutional right that cannot be taken away "unless clearly justified." *In re A.N.*, 226 Md. App. at 306 (internal quotation marks and citations omitted). That right, however, is not without limitation, and must be balanced against the State's interest in protecting the health, safety, and welfare of the child. *Id.* (citation omitted). In fact, the Court of Appeals has recognized that, "the best interests of the child may take precedence over the parent's liberty interest in the course of a custody, visitation, or adoption dispute." *In re Mark M.*, 365 Md. 687, 706 (2001)(internal quotation marks and citation omitted).

In CINA cases where the child has been placed outside of the home, the Department's primary concern in the development of a permanency plan must be the best interests of the child. *See* Md. Code (2016 Supp.) Family Law Article ("FL") § 5-525 (f)(1). *See also In re Andre J.*, 223 Md. App. 305, 320 (2015). In cases where a child has been declared CINA because of abuse or neglect, the juvenile court must deny custody to the parent under FL§ 9-101(b) "unless the court makes a specific finding that there is no likelihood of further abuse or neglect," and "[t]he burden is on the parent previously having been found to have abused or neglected his or her child to adduce evidence and persuade the court to make the requisite finding[.]" *In Re: Yve S.*, 373 Md. 551, 587 (2003) (citations omitted).

The Department must consider the following factors in determining the best interests of the child when creating a permanency plan:

> (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).

Once the circuit court establishes the permanency plan, the goal of the plan must be re-visited periodically to evaluate progress toward the permanency goal and to assess whether the permanency plan should be changed based on current circumstances. *In re Andre J.*, 223 Md. App. at 322 (citing *In re Yve S.*, 373 Md. at 582); CJP§ 3-823(h)(2)(iii). At the review hearing, the court must consider, *inter alia*, whether the commitment remains necessary and appropriate, and the extent of progress that has been made "toward alleviating or mitigating the causes" that necessitated commitment. *In re Yve S.*, 373 Md. at 581; CJP § 3-823(h)(2)(i) and (iii). The court must change the permanency plan "'if a change in the permanency plan would be in the child's best interest.'" *Id*. (quoting CJP § 3-823(h)(2)(vi)). *See also In re Adoption of Cadence B.*, 417 Md. at 157 ("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").

In changing its permanency plan in this case, the juvenile court addressed each of the factors set forth in FL §5-525(f)(1). The court found that with respect to the children's ability to be safe in the home of Mr. T., the circumstances that gave rise to the initial CINA finding remained a primary obstacle to reunification. Specifically, Mr. T. continued to fail to appreciate the damage that was done to the children as a result of the abusive home environment, and the effect that it had on the children's emotional health and well-being. Because Mr. T. has remained unable or unwilling to recognize his mistakes and to change his behavior, the court appropriately found that Mr. T. is very likely to repeat those same mistakes. *See In re Dustin T.*, 93 Md. App. 726, 731 (1992) (noting that a parent's "past conduct is relevant to a consideration of his or her future conduct.").

With respect to the children's attachment to Mr. T., the court had strong evidence to support its determination that there is no parent/child attachment between Mr. T. and the children, despite Mr. T.'s opportunities to bond with the children during his visitation with them over the course of their two-year placement. As the trial judge points out, the evidence shows that the children had not bonded with him in a way that they would if "he was engaging the way a father should be engaging with his sons," and as a result, Mr. T. "kind of was in the same place as he was when the kids were first removed."

The court's finding that the children are emotionally attached to their foster parents, with whom they have lived for the greater part of their lives, was supported by the evidence, as was the finding that the children would almost certainly suffer emotional, developmental and educational harm if they were removed from their current placement.

As mentioned earlier, Mr. T. contends that the circuit court abused its discretion by failing to retain the permanency plan of reunification in order to permit the Department to consider Ms. T. as a placement option. Although the Department tacitly acknowledged that Ms. T. could potentially have been considered a placement option if she had come forward sooner, the court disagreed with this premise, and for good reason. As the trial judge noted, she had "significant concerns" with respect to Ms. T.'s viability as a placement option for the children due to her previous involvement with the family's abusive history, and her testimony regarding that abuse, which indicated that she (Ms. T.) simply did not understand that corporal punishment is not an appropriate form of discipline. Moreover, the court found that Ms. T.'s failure to come forward to support her nephews during the nearly two year period that the children were in foster care indicated that she did not have a bond with the children or a "true commitment and interest" in their well-being. All those concerns and findings were supported by the evidence.

Given the trial court's concerns regarding Ms. T.'s ability to be entrusted with the job of being the caregiver for the children, and Mr. T.'s lack of progress in demonstrating an ability to meet the children's emotional and developmental needs over the course of two years, we conclude that the circuit court did not abuse its discretion in determining that it was in the children's best interests to change the permanency plan from reunification to adoption by a non-relative.

JUDGMENT OF THE CIRCUIT COURT

FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.