Circuit Court for Prince George's County
Nos. CINA-09-0027 & CINA-09-0029

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2429

September Term, 2016

IN RE T.G. & K.G.

Nazarian,
Arthur,
Friedman,

JJ.

Opinion by Arthur, J.

Filed: August 10, 2017

In 2009 T.G. and her brother K.G. were adjudicated as children in need of assistance ("CINA").[1] On December 15, 2016, the Circuit Court for Prince George's County, sitting as a juvenile court, changed the children's permanency plans to eliminate the option of reunification with their father ("Father"), but retained the option of reunification with their mother ("Mother").

Mother and Father noted timely appeals. We affirm.

FACTS AND LEGAL PROCEEDINGS

In one of the multiple appeals in this long-running CINA proceeding, this Court referred to the "sad and sordid six-year history of this case." *In re K.G. & T.G.*, Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343, at *15 (filed Nov. 18, 2015). The case is now eight years old, and it has become no less sad or sordid.

January 2009 to March 2009

T.G. was born on October 5, 2000; her brother K.G. was born on May 2, 2004. Both T.G. and K.G. are autistic and are unable to speak. Mother and Father are not married and do not live together.

In January 29, 2009, the Prince George's County Department of Social Services ("DSS") filed a petition for shelter care on behalf of T.G. and K.G. According to the

[1] Pursuant to Md. Code (1974, 2013 Repl. Vol.), § 3-801(f) of the Courts and Judicial Proceedings Article ("CJP"), a "child in need of assistance" means "a child who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs."

petition, DSS had received a report that T.G. (then age eight), K.G. (then age four), and two older children were living in "deplorable" and unsanitary living conditions.[2] Following a safety check by DSS workers, Mother's residence was declared unfit for human habitation and was boarded up; the children were removed from the residence. Although Father was at the residence when the children were removed, he lived elsewhere, "with his mother who was unable to have young children in her home." *In re K.G. & T.G.*, Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343, at *2.

The authorities at T.G.'s school reported that she was dirty, that she had a strong odor, and that she regularly arrived at school dirty and smelling strongly of urine. One of her upper front teeth was twisted and embedded in her gums. A Child Protective Services investigator attempted to talk to Mother, but she acted "in a bizarre manner" and refused to answer his questions.

The children were placed at St. Anne's Infant Home in Hyattsville, where the staff

[2] In the opinion in the most recent appeal, Judge Moylan described the conditions:

> The social workers sent to the home by the Department found the smell of urine and of feces to be so strong as to be detectible even from outside the home. Inside the residence, there was [sic] urine, feces, and dried food on the floor. [K.G.] had feces running down his leg and caked on the bottom of his feet. He was eating insects off the floor. The back door was blocked by a refrigerator. A gas water heater was described as a fire hazard by an investigator from Child Protective Services ("CPS") because it was surrounded by an unidentified substance, which the investigator described as "filth." The mattresses in the home were soiled and black mold was growing in the carpet. Four broken washing machines in a back room were deemed to be safety hazards for unsupervised children. The only heat source was a space heater.

In re K.G. & T.G., Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343, at *1.

spent three days cleaning their hair. "They also referred them for follow-up dental care because of their 'brown' teeth." *In re K.G. & T.G.*, Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343, at *1.

At a family facilitation meeting on January 30, 2009, Father did not advance himself as a possible placement resource for the children. Instead, he supported reunifying the children with Mother. Mother did not attend the meeting.

After Mother's adult children thoroughly cleaned her residence, a team of inspectors found it to be fit for human occupancy on February 5, 2009. Nonetheless, the children were unable to return, because the residence required new carpeting, new furniture, and additional cleaning. The Department offered to supply clean beds for both children and other furniture, but Mother refused their assistance.

On February 10, 2009, the juvenile court approved the children's removal from the home. On the following day, February 11, 2009, Mother agreed to enter into a safety plan with DSS, to participate in services, and to provide a safe and sanitary home for the children.

On March 5, 2009, the juvenile court found that the children were CINA because of neglect by their parents. The court placed the children in the custody of Mother and Father under an order of protective supervision ("OPS") by DSS. Mother and Father were required to participate in parenting classes and to undergo psychological evaluations, individual and family therapy, and any recommended substance abuse treatment, including random and frequent urinalysis.

Father went to parenting classes for about two months in late 2009, but he did not

participate in court-ordered therapy or training for parents of autistic children. He missed his appointment for a psychological evaluation and refused to participate in the evaluation that DSS had arranged. Although DSS made many attempts to communicate with him and his attorney to discuss the services that DSS could offer, he did not respond.[3]

February 2010 to July 2010

On February 25 and 26, 2010, Mother denied DSS's request to enter her home to conduct a home safety assessment. A visit to the children at school revealed that they often arrived in "unsanitary condition," with a foul odor, and that they had an excessive number of absences. Mother did not cooperate with school officials when they attempted to discuss these problems with her, and she refused to allow school employees to bathe the children or change their clothes.

A psychological evaluation revealed Mother to be a person with "perception-organizational weaknesses" and "seriously poor insight," unable to acknowledge problems with her home situation. Testing showed that she did not understand the need to plan for raising two children with special needs.

On March 11, 2010, DSS, with the assistance of a Community Response Team, gained access to Mother's home. It smelled of urine, and there was a sticky brown substance on the carpet. T.G.'s room was furnished only with a bicycle and television.

[3] Father eventually underwent a psychological evaluation on February 2, 2011, almost two years after it was ordered. The evaluator, a provider of Father's choosing, was not a licensed psychiatrist. Because of the qualifications that the evaluator lacked, DSS questioned whether he could "make a proficient analysis."

The bathtub had brown grime around the edges. Two rooms were closed off, preventing inspection. Mother refused to enter into a safety plan, but agreed to clean the house.

Mother would not work with professionals to provide educational and behavioral support in caring for the children's special needs. She refused numerous offers of in-home support services, stating that "she did not want anyone in her home." The children continued to arrive at school smelling of urine and with unwashed and unbrushed hair, and K.G.'s clothing was dirty, smelly, and torn. They required daily bathing at school. Father refused to identify himself when DSS was present in the home, and he had not completed a psychological evaluation. Nonetheless, on July 27, 2010, the juvenile court allowed Mother and Father to retain custody, but ordered Mother to cooperate with DSS and attend therapy sessions.

September 2010 to November 2011

On September 15, 2010, Mother's home had again been declared unfit for human habitation. Meanwhile, Mother had refused to meet with a DSS social worker for three weeks and had refused to develop a safety plan for the children. "On September 20, 2010, the court finally removed the children from the Mother's custody after a hearing on the Department's emergency petition to change custody." *In re K.G. & T.G.*, Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343, at *3.

"On December 1, 2010, the court continued the out-of-home placement, citing the Mother's stubborn denial of any need for in-home services despite the obvious evidence that she could not care for the children on her own, refused to disclose the status of the children's medical care, and failed to accept court-mandated oversight." *Id.*

The children thrived in their foster homes. T.G., who had been obese, lost weight because her foster mother provided well-balanced meals. K.G. learned some sign language, began to enjoy taking baths, and interacted well with other children in the foster home. "His foster parents even began to toilet train him." *Id.*

K.G.'s therapist reported that the child would benefit from receiving "individual attention with a strong emphasis on communication skills," but on May 15, 2011, Mother refused to cooperate in providing the required documentation for him to receive the recommended services. She also refused to attend a facilitation meeting with DSS or to sign a service plan.

When K.G. visited, Mother and Father did not control his intake of food. After visits with Mother and Father, K.G. would exhibit regressive behavior. When DSS attempted to bring the issue of excessive feeding to the attention of Mother and Father, they were not receptive. Both DSS and the children's attorneys requested that future visits be supervised.

On June 8, 2011, the juvenile court observed that Mother and Father had "neglected" K.G.'s "needs, including housing, hygiene, medical care, and provision of developmental services." The court "continue[d] to find that it was contrary to [K.G.]'s welfare and not in his best interest to be returned home" at that time. Nonetheless, the court ordered that the permanency plan was to return the children to Mother's care, "with implementation by November 2011." In addition, the court allowed unsupervised visitation.

November 2011 to February 2013

The juvenile court returned the children to Mother's care, under an OPS, on November 7, 2011. At the same time, the court reaffirmed the permanency plan of reunification with her.

Mother, however, continued her pattern of non-cooperation:

> She failed to follow up on a referral to [the] Kennedy Krieger [Institute] for one-on-one supportive services for [K.G.] She missed many of her own therapy appointments. She again refused to enter into a service agreement. [DSS] had difficulty in contacting the Mother and in accessing her home. Although [T.G.] had been toilet trained while in foster care, she showed up to school in pull-ups. The school reported that [K.G.] "was not being cared for properly in the home."

In re K.G. & T.G., Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343, at *3.

On May 23, 2012, DSS received yet another CPS referral regarding "filthy and inhumane" conditions in Mother's residence. When DSS employees went to the residence on May 29, 2012, Mother would not allow them to enter.

On June 19, 2012, DSS workers attempted to perform a safety check at Mother's residence, but when they arrived, they learned that there had been a fire and that the family no longer lived there. Mother had not notified DSS of the move.

The juvenile court issued body attachment writs for the children, who were not located until August 2, 2012. "As the juvenile court recalled the body attachment writs, it expressed its concern about the Mother's continued resistance to court-ordered services designed to help her parent children who have 'tremendous' special needs." *Id.* at *4. When DSS workers entered Mother's temporary apartment, "they 'gagged' because of the 'unpleasant smell' from soiled clothing and numerous bags of trash." *Id.*

Meanwhile, on April 5, 2012, Father had refused to sign a service agreement with DSS. On June 27, 2012, when the children were missing, a case worker went to Father's mother's house in an attempt to locate him, but Father's sister said that she did not know where he was.

On September 4, 2012, DSS informed the court that Mother could not manage the children during visits to Kennedy Krieger. DSS reported that on those visits the children "would tear up stacks of brochures, enter private offices, yell, and slam doors while the Mother did nothing." *Id.* DSS also reported that Mother "continued to provide unhealthy food for the children." *Id.* T.G., who was overweight, "was allowed to eat multiple Pop-Tarts and bags of potato chips in one sitting." *Id.* "Communication was difficult because the Mother did not have a working telephone." *Id.*

At about the same time, the staff at the children's school reported that T.G. and K.G. needed new clothes. The school was willing to purchase new clothes, but could not do so without permission from either Mother or Father, whom the social workers could not reach. The juvenile court expressed concern about Mother's continued resistance to court-ordered services.

On November 13, 2012, DSS received a report that Mother had neglected T.G. She had taken the child to the emergency room for a diaper rash and had told the emergency room personnel that no one wipes T.G. after she goes to the bathroom. Mother complained about the lengthy wait at the emergency room and left the hospital without picking up T.G.'s prescribed medication.

The school reported numerous unexplained absences by both children. It could

not provide transportation for the children, because Mother had not supplied her new address and did not respond to phone calls or to notes that it sent home with the children. Teacher aides reported that both children "came to school with dried feces from bowel movements left in their diapers from the night before." *Id.*

On December 13, 2012, DSS received a complaint of neglect of one of Mother's older children, who had reportedly been sexually abused by Mother's boyfriend. "The home was reported to be 'unliveable [sic] due to an excessive amount of trash, dirty dishes, holes in the wall, and a terrible smell.'" *Id.* at *5.

On January 25, 2013, T.G.'s school reported that she weighed over 250 pounds. She "suddenly did not want anyone to touch her when she was being bathed or changed." *Id.* "She was regularly falling asleep in class and her hair was regularly unwashed." *Id.* When T.G.'s teacher tried to discuss the child's condition with Mother, Mother became hostile and defensive. On numerous occasions, the children's DSS case worker was unable to gain access to Mother's residence. On one visit, the case worker observed many empty beer cans and beer bottles and other debris outside the home.

February 2013 to September 2013

On February 8, 2013, the juvenile court again removed the children from Mother's residence and placed them in therapeutic foster care.

On February 27, 2013, when the children returned to the foster home from a two-hour, unsupervised visit to Mother's residence, the foster mother found feces smeared on T.G.'s sweat pants and thigh. T.G. was wearing three urine-soaked diapers that contained no feces; she was crying and acting abnormally; her pubic hair had been trimmed; and

she had pubic hair all over her chest. K.G. had a laceration inside his buttocks that "extended from his tailbone to his anus that appeared to be 'new and raw.'" *Id.*

The foster mother notified Child Protective Services ("CPS"), which opened a sexual abuse and neglect investigation. On March 18, 2013, the juvenile court ordered that family visits be supervised pending the completion of the investigation.

On May 16, 2013, DSS concluded that it could not rule out neglect. Both Mother and Father were found to be responsible, as they had been present during the children's visit, but could not explain how the events occurred when the children were in their care. In fact, "Father declined to be interviewed." *Id.*

Less than three months later, on August 5, 2013, the court reinstated unsupervised visits, but required Mother to enter into a service agreement and to allow DSS to have access to her home. Mother continued to reject the services offered by DSS for specialized classes for parenting children with autism.

At a review hearing on September 12, 2013, the juvenile court reaffirmed that the children were CINA and continued their placement in the care and custody of DSS. It also ordered Mother to undergo a psychological evaluation to determine whether she was able to parent her autistic children. The court observed that both children had "regressed substantially between the time they were last returned home and February of [2013] in terms of autistic developmental needs." The court added: "This is a case in which we have two children who have dramatic and extensive special needs, and parents who have been unable or unwilling to accept the services that they would need in order to safely maintain their children in the home."

Mother appealed the juvenile court's order to this Court. We affirmed the order in an unpublished opinion. *In re T.A. and K.A.*, No. 1598, Sept. Term 2013 (filed Aug. 20, 2014).

September 2013 to November 2014

Mother continued to be uncooperative, and the juvenile court suspended unsupervised visits with her and Father on October 3, 2013. At that time, the court described Father's involvement in his children's cases in these terms:

> [T]he natural father continues to have only a periphery [sic] involvement . . . . [He] does not reside in the family home and maintains a separate residence from the natural mother. At no time during the history of the CINA matter, including today's hearing, has [he] volunteered to be a placement resource for the . . . children separate and apart from the natural mother. [He] has even less training regarding parenting special needs children than the natural mother.

On October 3, 2013, the court, again, ordered Mother to participate in services, to allow DSS to monitor her participation in therapy, and to submit to a home health inspection. But on the very next day, October 4, 2013, Mother refused to give DSS access to her home. She also refused to work with a professional organizer who offered to discuss the services that she could offer. In addition, she refused to allow DSS to monitor her compliance with services and to sign consent forms so that DSS could communicate with her mental health provider.

In November 2013, K.G. required dental surgery, but was unable to undergo it because Mother refused to consent. Father, who had initially given his consent, withdrew it when he learned Mother had not consented. On January 16, 2014, the juvenile court ordered that Mother immediately sign the necessary consent forms. At a meeting

between the court and K.G. in April 2014, the court discovered that K.G. was in pain because of his still-untreated dental condition. DSS reported that K.G. "needed emergency dental surgery because the Mother had failed to attend the previously scheduled dental appointments." *Id.* at *9. The court granted DSS limited guardianship of K.G. so that it could consent to emergency surgery on his behalf.

Meanwhile, on December 9, 2013, DSS had referred both Mother and Father to training provided by the Center for Autism and Related Disorders at Kennedy Krieger. "The Department offered to transport both parents to the training, but both declined to participate because of the weather." *Id.*

On March 4, 2014, the juvenile court again continued the permanency plan of reunification with Mother. In addition, the court allowed the resumption of unsupervised visits with Mother and Father, but directed that they could not occur in either parent's home until an inspection was done of each. Mother, however, refused to schedule a time for DSS to come to her residence. Father did not respond to DSS's requests for access to his.

A DSS visit to Mother's residence revealed that the furniture was inadequate for the needs of the children, because there was only one bed and one crib. Moreover, she had no functioning smoke-detectors. Thereafter, Mother refused to allow DSS workers to enter her residence.

After missing 12 therapy sessions between October 2013 and March 2014, Mother was discharged from therapy because of lack of attendance.

November 24, 2014: The First Change in the Permanency Plan

Before November 24, 2014, the children's exclusive permanency plan was reunification with Mother. On that date, however, the juvenile court changed the permanency plan for both children to custody and guardianship by a relative or non-relative. The court based its decision, in part, on a finding that Mother and Father continued to refuse to grant DSS access to their residences. The court concluded that DSS's efforts to render Mother able to parent the children, which included extensive services offered from January 2009 through November 2014, were futile.

Although the order focused on the rationale for changing the permanency plan to remove Mother as a resource, the court made a number of comments concerning Father. It wrote that Father had "made only [a] sporadic commitment to specialized training opportunities offered by [DSS] to specifically address parenting children that present with autism spectrum traits." It also wrote that, according to Father's "last self-report," he still resides in the abode of his mother . . . and shares that abode with additional individuals," which would prohibit the placement of the children in that residence. "In past reviews," the court continued, "Father has intimated that he has been on the verge of securing his own housing circumstances but as of August 2014 he was still residing in the home of his own mother with other individuals and has never made that home open for any type of safety assessment by [DSS]."

Mother and Father appealed the change in the permanency plan. We dismissed

Father's appeal[4] and affirmed the order as it pertained to Mother. *In re K.G. & T.G*, Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343 (filed Nov. 18, 2015).

January 15, 2015: The Second Change in the Permanency Plans

On January 15, 2015, Father formally asked to be considered as a placement resource for the children.[5] Father had previously supported the plan of reunification with Mother.

In an order dated January 15, 2015, but not docketed until April 16, 2015, the juvenile court changed the children's permanency plans from a singular plan of custody or guardianship by a relative or non-relative to a concurrent plan of custody or guardianship and reunification with either Mother or Father. In changing the permanency plans to include the potential for reunification with Mother or Father, the court cited the "incremental progress by the parents in their demonstrated efforts towards reunification." The court granted Mother and Father unsupervised visitation in the community, but refused to permit unsupervised visitation in either of their residences until DSS had "unrestricted and unfettered" access to the homes to conduct home safety assessments.

DSS attempted to schedule home visits in March 2015, but Mother refused to open

[4] Father's appeal had become moot during the pendency of the proceeding. While the appeal was pending, the juvenile court issued a new permanency plan, which called both for custody or guardianship by a non-relative and reunification with either Mother *or Father*. That permanency plan made Father a reunification resource, which was what he argued he was entitled to receive in the appeal.

[5] On November 24, 2014, when the juvenile court changed the permanency plans to custody and guardianship, it found that Father "agreed to having his residence be considered as a placement resource." Father did not, however, make a formal request that he be considered as a placement resource at that time.

the door and yelled out the window that she had nothing to say to the DSS worker. At that time, DSS reported no contact with Father, other than his participation in visits with the children. The DSS workers were unaware of any housing that Father had to accommodate the children. Furthermore, Father had not participated in services.

Nonetheless, after a review hearing on April 16, 2015, the court maintained the concurrent permanency plans of custody and guardianship by a relative or non-relative and reunification with either Mother or Father.

September to December 2015

In September 2015, DSS reported that Mother and Father had been visiting with the children regularly, on a bi-weekly basis. The unsupervised visits had gone well, but DSS recommended that they continue to occur in public until a home safety assessment was completed. Mother had continued to refuse to grant access to her residence to DSS.

Following a review hearing on September 29, 2015, the juvenile court found that Mother and Father's progress had been "limited to maintaining consistent visitation" with the children. The court also found it to be "[c]ritical" to a plan of reunification that a home safety assessment be conducted; that Mother submit to a psychological evaluation to assess and offer conclusions or recommendations concerning her ability to care for the children, considering their special needs; and that Mother provide DSS with evidence of her compliance with individual therapy. The court maintained the concurrent permanency plans and permitted unsupervised visitation with Mother and Father.

December 2015 to March 2016

On December 7, 2015, the children's case worker made the following report about

Father:

> There has been no progress in regards to reunification with [Father] despite the Department attempting to reach Mr. G. on several occasions. The Department has also sent a letter to Mr. G. asking him to contact the Department. Additionally, Mr. G. has not reached out to the Department to provide any information about his current employment, or changes in living arrangements which would support any efforts towards reunification.

In advance of a review hearing on March 16, 2016, DSS again reported Father had made "no progress in regards to reunification," despite DSS's attempts to reach him. For example, he had not provided any information about current employment or changes in living arrangements that would support any efforts toward reunification.

At the March 16, 2016, hearing, T.G.'s therapeutic foster mother, Ms. B., stated that, although she had once been in communication with Father, she had had no interactions with him for approximately a year and was not "sure what happened." She said that she had maintained good phone communication with Mother until a year earlier, in March 2015, when Mother incorrectly asserted that T.G. was pregnant and initiated a police investigation. Ms. B. had not spoken directly with Mother since then.[6]

Ms. B. said that, aside from a recent urinary tract infection, T.G. was in good health. She was up to date with her medical visits, was toilet-trained, and was down to 151 pounds from a high of 286 pounds. T.G. suffered from such severe menstrual cramps that a doctor had suggested Depo-Provera shots to stop menstruation, but Mother refused to give permission for the treatment.

[6] T.G. was not pregnant, and Ms. B. could not understand why Mother insisted she was.

T.G. had been visiting her parents every other week, and the visits were going "pretty well." Ms. B. was willing to maintain T.G. in her home, and DSS acknowledged that it had no problem with Ms. B. continuing as T.G.'s foster mother.

K.G.'s foster mother, who is specially trained to work with medically fragile children, was unable to attend the hearing. At an earlier hearing, however, she reported that after K.G. came into her care he stopped wetting the bed at night, was able to wear underwear instead of a diaper, and had learned to communicate about when he needed to go to the bathroom. By contrast, K.G. regresses with Mother and Father: he does not use his sign-language skills to communicate his toileting needs, and he soils himself during visits.

In closing, DSS's attorney explained that nothing had changed since the last hearing – Father still had no adequate housing for the children, and Mother would not engage with T.G.'s medical concerns and continued to refuse to obey court orders, including the one requiring her to submit to a psychological evaluation. DSS requested a permanency plan of custody and guardianship by a non-relative, but said that reunification was "plausible."

Father advocated a permanency plan of reunification with himself, but said that he was open to reunification with either parent. Mother agreed that reunification with either parent would be acceptable. She believed her home to be safe for the children's return (even though she had not allowed a safety inspection) and denied the need for further psychological evaluations.

The children's attorney asserted that, in foster care, they "are where they belong"

and "are in the best place for themselves right now." Were Mother serious about reunification, counsel argued, she would enter into the service agreement and do what DSS asked, including permitting access to her home for an evaluation, but she had not done so. The children's attorney joined in DSS's recommendation, agreeing that reunification should not be ruled out, but that it would not be beneficial to the children at that time. In his opinion, the children should remain in their foster care placements.

The juvenile court continued the concurrent permanency plans of custody and guardianship with a non-relative and reunification "with a parent." The court specified, however, that if Mother had not permitted a home assessment or obtained a psychological evaluation by the time of the next permanency-plan review hearing, reunification with Mother would no longer be part of the plan, because the children had been in care too long (seven years) for those things not to have been accomplished.

December 8, 2016: The Third Change in the Permanency Plans

The next permanency-plan review hearing had been scheduled for September 7, 2016, but was continued until December 8, 2016, because of Mother's illness.

In advance of the hearing, on November 21, 2016, DSS reported that it had had "minimal contact with [Father]." To DSS's knowledge, he did not have housing that would accommodate the children were they to be placed with him. It recommended that both of the children's permanency plans be changed to custody and guardianship by a non-relative.

At the hearing on December 8, 2016, Father announced that he and Mother were "engaged," but it was unclear whether they were living together. DSS informed the court

that Mother had permitted its workers to have access to her residence, but that the visit was aborted when Mother kept the exterior door open in the cold and wind. DSS was considering home visits for the children, but wanted to ensure that Mother's residence had adequate heat. Although Mother had submitted to the court-ordered psychological evaluation, DSS had not yet received the report.

DSS requested that visitation once again be supervised and asked the court to consider Another Planned Permanent Living Arrangement ("APPLA")[7] for T.G. and to discontinue the plan of reunification with either parent in her case on the ground that it was unrealistic. In support of the request, DSS cited the "glacial pace" of Mother's progress, as well as Father's lack of activity toward reunification since the last review hearing. DSS requested no change in K.G.'s permanency plan.

Mother asked that T.G.'s permanency plan remain one of reunification, and she requested in-home visits. Father opposed any change to T.G.'s permanency plan, but he neither pointed to any efforts on his part to prepare for the care of the children nor explained why he had failed to communicate with DSS.

The children's attorney did not oppose an APPLA placement for T.G., but disapproved of a plan of custody and guardianship for K.G. because she wanted him to

[7] Another Planned Permanent Living Arrangement ("APPLA"), "is a term created by the Adoption and Safe Families Act of 1997 to replace the term 'long-term foster care.'" https://www.childwelfare.gov/glossary/glossarya/ (last visited Aug. 7, 2017). With APPLA, DSS "maintains care and custody of the youth and arranges a living situation in which the youth is expected to remain until adulthood." *Id.* APPLA is "a permanency option only when other options such as reunification, relative placement, adoption, or legal guardianship have been ruled out." *Id.*

remain in his current placement. She declined to take a position on reunification with either parent. She maintained that the children's current placements met their best interest.

The juvenile court did not believe it to be appropriate to change T.G.'s plan to APPLA, because Mother's home assessment had not been completed. Nor did the court believe custody and guardianship to be in the children's best interest. In the court's view, the best interest of the children would be met by maintaining their current placements. Agreeing that the likelihood of reunification was not strong at that time, the court reluctantly ruled that reunification continued to be an appropriate plan. The court, however, ruled out the exploration of reunification with Father, because nothing suggested that Father, "standing alone, is a reasonable placement resource." Although the court did not consider Mother and Father as a couple (despite the representation that they were now "engaged"), the court explained that excluding Father would not preclude him from benefitting from Mother's availability as a placement resource if they were living together.

In its written order regarding T.G., the court stated that it did "not consider Reunification to be an achievable plan." In its written order regarding K.G., the court found that custody and guardianship was "not realistic" and "not likely," because his current caregiver had not agreed to be an "adoptive resource," and that K.G. was "well-maintained in his present placement."

The court changed K.G.'s permanency plan from (1) a concurrent plan of custody and guardianship by a non-relative and reunification with Father and Mother to (2) a

singular plan of reunification with Mother. The court changed T.G.'s permanency plan from (1) a concurrent plan of custody and guardianship by a non-relative and reunification with Father and Mother to (2) a concurrent plan of custody and guardianship by a non-relative and reunification with Mother. In both cases, the court eliminated Father, but not Mother, as a placement resource.

Both parents appealed.

DISCUSSION

Mother and Father argue that the juvenile court abused its discretion by removing the possibility of reunification with Father from the children's permanency plan. Anticipating DSS's counter-argument that Mother has no standing and no right to appeal from the interlocutory order that did not change the terms of a custody order to her detriment, Mother asserts that she may challenge the new plan because, she says, removing Father as a resource diminishes both parents' rights. Because a dismissal of Mother's appeal would not affect our discussion of whether the juvenile court abused its discretion in removing reunification with Father from the children's permanency plan, we shall assume without deciding that Mother has the right to appeal and the standing with which to do so.

In CINA proceedings:

> [F]actual findings by the juvenile court are reviewed for clear error. An erroneous legal determination by the juvenile court will require further proceedings in the trial court unless the error is deemed to be harmless. The final conclusion of the juvenile court, when based on proper factual findings and correct legal principles, will stand unless the decision is a clear abuse of discretion.

In re Ashley S., 431 Md. 678, 704 (2013).

An abuse of discretion occurs "where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *In re Yve S.*, 373 Md. 551, 583 (2003) (citation and quotation marks omitted). A trial court's exercise of discretion in changing a permanency plan will be reversed if the court's decision is "'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *In re Adoption/Guardianship of Cadence B.*, 417 Md. 146, 155-56 (2010) (quoting *In re Yve S.*, 373 Md. at 583-84).

The broad policy of the CINA statutes is "to ensure that juvenile courts (and local departments of social services) exercise authority to protect and advance a child's best interests when court intervention is required." *In re Najasha B.*, 409 Md. 20, 33 (2009). The best interest of the child is the "paramount concern," as well as the ultimate governing standard. *In re Caya B.*, 153 Md. App. 63, 76 (2003). "CINA cases are very often fact-intensive[,]" which is why "trial courts are endowed with great discretion in making decisions concerning the best interest of the child." *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 713 (2011) (internal quotation marks and citations omitted).

Father challenges the juvenile court's ultimate decision to change the permanency plan, not any of its fact-finding. Therefore, we must determine only whether the juvenile court abused its discretion in changing the permanency plan as it did. In doing so, we must remain mindful that "only [the juvenile court] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [it] 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.'" *Baldwin v. Baynard*, 215 Md. App. 82, 105 (2013) (quoting *In re Yve S.*, 373 Md. at 585-86).

When a CINA is committed to a local department of social services, the juvenile court must determine which permanency plan is in the child's best interest. CJP § 3-823(e)(1).[8] In selecting the permanency plan that is in the best interest of the child, the court is guided by the six factors specified in Md. Code (1984, 2012 Repl. Vol.), § 5-525(f)(1) of the Family Law Article: (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 the State's custody for an excessive period of time.

Reunification with a parent is presumptively the better option, as it is presumed to be in the child's best interest to remain in the care and custody of his or her biological parent. *In re Adoption/Guardianship of Cadence B.*, 417 Md. at 157. Nonetheless, if there are "weighty circumstances indicating that reunification with the parent is not in the

[8] The permanency plans, "in descending order of priority," are: (1) reunification with a parent or guardian; (2) placement with relatives for adoption or custody and guardianship; (3) adoption by a non-relative; (4) custody and guardianship by a non-relative; or (5) another planned permanent living arrangement. CJP § 3-823(e)(1)(i).

child's best interest, the court should modify the permanency plan to a more appropriate arrangement." *Id.*

Following its implementation of a permanency plan, the juvenile court is required to conduct a review hearing "every 6 months until commitment is rescinded or a voluntary placement is terminated." CJP § 3-823(h)(1)(i). At each review hearing, the juvenile court is required to determine: (1) the appropriateness of the current plan; (2) whether reasonable efforts have been made in achieving the goals of the permanency plan; (3) the level of progress made toward remedying the circumstances that necessitated commitment; (4) a reasonable date by which placement will be achieved; and (5) the overall safety and well-being of the child. CJP § 3-823(h)(2). The court must "[c]hange the permanency plan if a change . . . would be in the child's best interest." CJP § 3-823(h)(2)(vi). In addition, the court must heed the statutory requirement that "[e]very reasonable effort . . . be made to effectuate a permanent placement for the child within 24 months after the date of initial placement." CJP § 3–823(h)(3); *see In re Adoption of Jayden G.*, 433 Md. 50, 55-56 (2013).

We hold that the juvenile court did not abuse its discretion in changing T.G.'s and K.G.'s permanency plans to remove Father as a reunification resource.

The record reflected that Father had never had custody of the children and that he did not even request to be considered as a placement resource until the children had been CINA almost for six years. The record also reflected that Father had not communicated with DSS for almost 30 months (since April 24, 2014). Nothing in the record suggested that Father had the skills or housing sufficient to accommodate two children with special

needs. The history of this case is one of Father's near-total failure to perform his obligations as a parent.

By contrast, Mother had finally achieved at least an infinitesimal measure of progress by allowing a home safety assessment and undergoing a psychological evaluation (although neither had been completed). Moreover, the court heard evidence that the children, who had been in foster care for 15 of the previous 22 months, were thriving in their placements and receiving outstanding care from their foster families, with whom they had engaged and felt secure.

On this record, the juvenile court made a perfectly sound decision in removing Father as a placement resource. Its decision was, by no means, an abuse of discretion. *See In re Ashley S.*, 431 Md. at 718-19 (holding that juvenile court did not abuse its discretion in changing permanency plan to eliminate reunification goal where parent "failed to fulfill basic parental duties" over a long period of time); *see also In re Adoption/Guardianship of Cadence B.*, 417 Md. at 163-64 (holding that juvenile court did not abuse its discretion in changing permanency plan to eliminate reunification goal where parent has a history of neglect and his failure to develop meaningful relationship with child made reunification unlikely in the foreseeable future).

In any event, as the juvenile court pointed out, removing Father as a resource does not preclude him from benefitting from Mother's status if the parents live together.[9]

[9] Father also advances a claim of gender discrimination. He asserts that both parents have an equal right to reunification, but that he was treated differently from Mother solely because of his gender. Father, however, failed to make any such argument

MOTION TO DISMISS DENIED; ORDER OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, SITTING AS A JUVENILE COURT, AFFIRMED; COSTS TO BE PAID BY APPELLANTS.

at the permanency-plan review hearing on December 8, 2016. Indeed, he failed to make any such argument even though this Court had previously held that he had failed to preserve his gender-discrimination claim because of his failure to raise it at an earlier permanency-plan review hearing. *In re K.G. & T.G.*, Nos. 2408 & 2409, Sept. Term 2014, 2015 WL 7301343, at *13. In these circumstances, Father, again, has failed to preserve the issue for appellate review. *See* Md. Rule 8-131(a). Even if he had preserved it, it would fail for reasons similar to those outlined in his earlier appeal (*In re T.A. and K.A.*, No. 1598, Sept. Term 2013 (filed Aug. 20, 2014)), as there has been no appreciable change in Father's circumstances or argument since then.